The maximum possible | August 2013

A guiding principle for Israeli policy on civilian access to and from the Gaza Strip
Israel's policy toward the Gaza Strip over the past three years has been guided by two different principles, resulting in inconsistencies and contradictions between the actions taken by the security establishment and the rhetoric heard from top officials. The first principle says that restricting the movement of civilians and suppressing economic activity in the Gaza Strip are legitimate and effective means of putting pressure on the Hamas regime and other armed groups in the Gaza Strip. This is the logic that guided the Gaza closure policy between 2007 and 2010, and it continues to be the basis for some of the restrictions on access between the Gaza Strip and the West Bank and Israel, and for access restrictions used as punishment for rocket fire from the Gaza Strip. The counter-principle says that promoting economic stability in the Gaza Strip is in Israel's interest and that in order to do so Israel must distinguish between Gaza's civilian population on the one hand and the Hamas regime and other militant groups with which Israel is engaged in hostilities on the other. Evidence of this concept is found in abundance in publications put out by the Coordinator of Government Activities in the Territories (COGAT). Both principles are reflected in the table appearing in the appendix.

The results

Some may look at the current policy toward Gaza as the natural outcome of necessary trade-offs and inevitable compromises between different and sometimes contradicting considerations. Yet, this is not the case because the two above-outlined principles undermine one another. The inconsistencies and contradictions between rhetoric and action and between the two approaches, compounded by a lack of transparency that precludes informed public debate about the policy, have led to the current situation in which:

1) Israel is failing to meet its obligations under international law and continues to impede opportunities for personal and professional development and normal family life for Gaza residents.

2) The ongoing restrictions, primarily those placed on the sale of Gaza-made goods in the West Bank and Israel and travel between Gaza and the West Bank, block the path to the rehabilitation of Gaza's industries and agricultural sector and, therefore, also the chances of sustainable, long-term economic development.

3) Israel continues to pay a political price for the ongoing closure policy in the international arena, while expectations that the "separation policy" would weaken Hamas economically and politically vis-à-vis Fatah have not materialized.

4) The ongoing use of restrictions on civilian movement as political leverage or as a bargaining chip in negotiations makes it difficult for Israel to justify access restrictions that are actually needed to meet concrete and legitimate security objectives.

Is there or is there not a closure?

Closure is not a legal term, but rather a military one. The word "blockade" might also cause confusion. "Blockade" might refer to the prevention of sea access to Gaza, yet this prohibition has been in force uninterruptedly since 1967. If it refers to the overall policy toward Gaza, then the current state of affairs cannot fall under the definition of blockade. As we stated last year, the Gaza Strip is now more open to the outside world in terms of travel by individuals, incoming commercial goods, and, to a lesser extent, the export of goods. One realm that has seen almost no change at all is Gaza-West Bank access and Gaza-Israel access (the info sheet What is the "separation policy" focuses on these restrictions).

The Israeli security establishment continues to use the term "closure" to describe the protocols governing movement between Gaza and Israel. The question with respect to these protocols is, therefore, not a yes/no question, but rather a question that takes into account the fact that, on the spectrum between full freedom of movement and full closure, there is a range of situations. Our role is to constantly evaluate how far the policy is from the point that can be convincingly described as the "maximum possible" in civilian movement.
The principle of distinction and the maximum possible

Consistent with Gisha’s position with respect to Israel’s obligations toward residents of Gaza under international law, a new policy for Gaza should be based on two central principles:

1) The principle of distinction - an absolute distinction must be made between military activity that is necessary for countering concrete security threats and the operation of the crossings Israel controls.

2) The maximum possible - in the context of the exclusive control Israel has over all official movement of commercial goods into and out of the Gaza Strip and over travel of people between Gaza and the West Bank and Israel, it must allow civilian movement to the maximum extent possible under the current circumstances.

How to tell when the maximum possible is reached?

Accepting the "maximum possible" as a guiding principle will not bring an end to the debate about access policy. It is safe to assume that there will be disagreement about what is possible and what is not, especially considering that the term "possible" has different dimensions: logistically possible, possible in terms of security, possible in terms of coordination and cooperation between various actors, possible in terms of health and safety standards and more.

However, we can be certain that we are not at the point of maximum possible freedom of movement for Gaza residents so long as there are restrictions on movement whose connection to security needs is far from evident and not properly explained by the authorities. This can be examined via two main areas: passage of goods and movement of people.

"So what do you suggest we do?"

Gisha often gets asked: "How do you suggest the Israeli government respond to rocket fire from Gaza if not by closing the crossings? Do you prefer military attacks?"

Our response is that international law provides Israel with a wide range of military and diplomatic actions that can be used to counter the threat of rockets. Restrictions on movement of people and civilians as a means of punishment fall outside this range of options.

The maximum possible principle reflects the fact that Israel is authorized, under international humanitarian law, to impose restrictions on freedom of movement as long as they are necessary to meet concrete security needs and reflect a proper balance between Israel’s security needs and its obligations toward civilians in Gaza, including respect for their right to freedom of movement.
Passage of goods

Although Israel lifted most of the restrictions on the sale of goods to the Gaza Strip in 2010, and began allowing export to all third countries, the sale of goods from Gaza in Israel and the West Bank continued to be prohibited. So, for example, strawberries may be exported to Europe via Israel, but may not be sold in the West Bank or Israel itself (where in fact there is demand for a large variety of agricultural products throughout the year). In addition, Israel has not allowed packages to be mailed out of Gaza since 2007. Among other things, this ban has harmed the livelihoods of women from Gaza in particular who, in the past, used the postal services to sell their products in the West Bank and Israel. As a result, export from Gaza remains, as it has been since 2007, miniscule, certainly compared to the amounts exported before the closure was imposed.

1. Total goods entering Gaza via Israeli controlled crossings (in thousands of truckloads)

June 2007: Start of “economic warfare” policy towards the Gaza Strip
June 2010: Change in Israeli policy towards Gaza after the flotilla incident. The entrance of goods from Israel increased, yet export remained negligible

2. Total goods exiting the Gaza Strip via Israeli controlled crossings (in hundreds of truckloads)

June 2007: Israel bans sale of goods from Gaza in the West Bank and Israel
A large majority of the goods exiting Gaza are exported to Europe in the framework of a project partially funded by the Government of the Netherlands

Sources: Palestinian Crossings Authority - Gaza; United Nations Office for the Coordinator of Humanitarian Affairs (OCHA); Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO); Palestinian Civil Affairs Committee
Gaza’s chances of economic recovery are limited under the current policy on movement of goods. The private sector in Gaza, which was dealt a severe blow over the harshest years of the closure, has not been able to recover and the gap between Gaza’s gross domestic product (GDP) per capita and that of the West Bank continues to grow. While consumption, construction and foreign donations have increased Gaza’s GDP, the industry and agriculture sectors, which generate jobs, have remained much less active than they were in the years before the closure.


![GDP graph](image)

Source: Palestinian Central Bureau of Statistics (PCBS)  
*Initial estimates may be subject to change

Movement of people

Since the start of 2013, about 4,000 exits of Palestinians are recorded at Erez Crossing per month on average, compared to 500,000 exits per month in 2000 (Israel counts individual exits and not the number of people traveling). The policy on movement of people does not account for the principle of distinction and the principle of the maximum possible, as travel is restricted almost exclusively to “exceptional humanitarian cases”. So, for example, a Palestinian from the West Bank is allowed to travel to Gaza to visit her sick mother, but her six-year-old son is not eligible to receive a permit in order to join her. Unmarried young adults from Gaza can attend the wedding of a first-degree relative in the West Bank, but they may not travel to take part in an international competition sponsored by Microsoft. The state claims that travel between Gaza and the West Bank presents complex security and logistical challenges, but the sweeping access restrictions and the arbitrary criteria that determine who may and may not travel reflect a position that views access restrictions as a tool for exerting political influence.
The two graphs below depict travel by individuals through Rafah (graph no. 4) and Erez (graph no. 5) over the past six years. As shown, the number of people exiting Erez Crossing remains miniscule, compared to the figure in the year 2000. In contrast, travel through Rafah has gradually returned to the levels seen during the time that the Agreement on Movement and Access was being implemented. We note that during the month of July 2013, Egypt again restricted travel through Rafah Crossing, following mass demonstrations in the country and escalations in violence in the Sinai desert. Travel through the crossing declined to about a third of the monthly average for January to June 2013.

As stated, no one in the security establishment or the government has thus far seen fit to explain to the Israeli public how these restrictions, and many others, are essential for national security, how they are compatible with the many statements about Israel’s desire for economic development in Gaza and how they correspond with Israel’s legal and moral obligations. Gisha calls on the defense minister and the government to adopt a clear and consistent policy, guided by the principles of distinction and “the maximum possible”.

4. Entrances of Palestinians from Gaza to Egypt via Rafah Crossing (people by the thousands)

5. Entrances of Palestinians from Gaza to Israel via Erez Crossing (people by the thousands)
## Appendix: Contradictory rationales

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<th>Rational</th>
<th>Rhetoric</th>
<th>Action</th>
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<td>Restricting civilian movement and economic activity as a means of putting pressure on militants</td>
<td>COGAT, Major General Eitan Dangot: “In 2006, a decision was made to introduce a policy of separation between the Judea and Samaria area and the Gaza Strip in light of Hamas’s rise to power in the Gaza Strip. The policy currently in effect is aimed at reducing travel between the areas”⁶. Foreign Minister Avigdor Lieberman: “The continued firing has buried any possibility of there ever being territorial continuity between Gaza and Judea and Samaria”⁷. Top defense ministry officials: “[Opening the crossings] might destroy the strategy of separating Gaza from the West Bank and give rise to criticism in the Palestinian Authority about the possibility of economic growth in Gaza”⁸. “An officer in the Southern Command has recently confirmed… that government officials have ordered the closure of Kerem Shalom Crossing in response to the firing of a Grad rocket this morning”⁹.</td>
<td>Continued sweeping prohibition on the sale of Gaza-made goods in Israel and in the West Bank, in effect since 2007 ¹⁰. Continued sweeping prohibition on travel to the West Bank for the purpose of academic studies; originally imposed in October 2000 ¹¹. Closure of the crossings and further restrictions on travel by individuals in response to rockets fired toward Israel ¹². Reduction of the fishing zone following rocket fire ¹³. Restrictions on bringing construction materials from Israel into the Gaza Strip ¹⁴. Official policy continues to allow travel from Gaza to the West Bank “only in exceptional humanitarian cases, with an emphasis on urgent medical cases” ¹⁵.</td>
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<td>Distinction between civilian movement and economic activity and armed groups</td>
<td>Prime Minister Benjamin Netanyahu: “The civilian closure harmed the security closure” ¹⁶. COGAT: “We have to distinguish between the civilian population and terror elements” ¹⁷. COGAT: “… these elements reflect a policy that distinguishes between the civilian population and the Hamas terror organization. It is not just humanitarian activity and transferring medical patients, as commonly thought” ¹⁸. COGAT: “There is no more ‘humanitarian’, concluded the general officers and civilian coordinators in the Coordination and Liaison Administration in Gaza, ‘we have changed and moved to stability and economic stabilization’” ¹⁹. Security official: “The closure of the crossings hurts the Palestinians, not Hamas” ²⁰. OC Southern Command recommends “opening the crossings and allowing movement of commercial goods without restriction” ²¹.</td>
<td>Foreign ministry reports extensively about the efforts put into maintaining the operation of the crossings during Operation Pillar of Defense, “despite the ongoing rocket fire directed at the Israeli population and previous attacks on the crossings” ²². Professional training for Gaza farmers offered by COGAT ²³. Most of the restrictions on bringing goods into the Gaza Strip lifted in the summer of 2010 ²⁴. Quota for entry of Gaza traders into Israel renewed in 2010 and gradually increased to 120 entries per day. Permission by Israel for export from Gaza to Europe and countries in the region. Renewal of the sale of gravel from Israel to the private sector in Gaza (up to 20 truckloads per day).</td>
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2) Scale of Control: Israel's Continued Responsibility in the Gaza Strip, Gisha position paper, November 2011 goo.gl/lLj38
3) Gisha website, What is the "separation policy"? info sheet, June 2012 goo.gl/WolNF
4) Gisha website, January 13, 2013 goo.gl/hgtfQ
5) Gisha website, State’s affidavit in HCJ 495/12, from August 16, 2012 goo.gl/3Slq4
8) Quote from top security officials in Israeli news website Walla!, February 20, 2013 (Hebrew) goo.gl/GBqIk
9) Walla! website, February 26, 2013 (Hebrew) goo.gl/hPkj8
10) Gisha Info Sheet, June 2012 goo.gl/kCqI6
11) Post on Gisha’s blog, December 14, 2011 goo.gl/PwPqH
12) Update on the Gisha website, February 26, 2013 goo.gl/f7DU
13) Update on the Gisha website, March 21, 2013 goo.gl/XaS7Q
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16) Interview with Prime Minister Netanyahu, July 2, 2010 goo.gl/nq9HS
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