

Israel, the PA and the Coronavirus Vaccine

1. Introduction:

In the minds of antisemites, Jews have long been held responsible for plague and disease. In the Middle Ages, Jews were accused of bringing about the Black Plague by poisoning the wells. In the modern version of this libel, the Jewish state is accused of spreading the Coronavirus and of withholding crucial lifesaving technologies from the Palestinian population. These accusations range from the obscene, depicted in cartoons such as those by Carlos Latuff¹, to sloppy reporting by major newspaper (Guardian Headline: “*Palestinians excluded from Israeli Covid vaccine rollout as jabs go to settlers*”²), and pseudo-legal claims by NGOs such as Physicians for Human Rights³.

This brief is intended to answer the claims that Israel is neglecting its humanitarian obligations by not vaccinating the Palestinian population against Coronavirus. It will cover the State of Israel’s obligations vis-à-vis the Palestinian Authority as well as the Gaza Strip in terms of healthcare. It will also set out Israel’s concrete actions that it has taken to alleviate Palestinian hardship due to Covid-19, even in the absence of a legal obligation to do so. It will also note Israel’s vaccination of Jerusalem’s Palestinian Arab population.

2. Israel’s Obligations towards the Palestinian Authority

The Oslo Accords that were signed by Israel and the Palestinian Liberation Organization in the 1990s established the Palestinian autonomous governing body, the Palestinian Authority (“PA”), divided Judea and Samaria into three distinct areas and set out the jurisdiction and responsibility of each party in the governance of the area.

Article 17 of the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (“the Interim Agreement”), signed in September 1995, establish the respective duties of each party in terms of health care⁴. Health care, and specifically the vaccination of the Palestinian population is under the purvey of the PA. Israel and PA agreed to cooperate and exchange information between health systems, and specifically with regards to epidemics and contagious diseases:

¹ <https://twitter.com/LatuffCartoons/status/1244618294214230016/photo/1>

² <https://www.theguardian.com/world/2021/jan/03/palestinians-excluded-from-israeli-covid-vaccine-rollout-as-jabs-go-to-settlers>

³ <https://www.phr.org.il/en/israel-must-provide-necessary-vaccines-to-palestinian-health-care-systems/?pr=7017>

⁴ Israel-Palestinian Negotiations: Interim Agreement on the West Bank and the Gaza Strip (Oslo II) (September 28, 1995), Article 17

1. Powers and responsibilities in the sphere of Health in the West Bank and the Gaza Strip will be transferred to the Palestinian side, including the health insurance system.

2. The Palestinian side shall continue to apply the present standards of vaccination of Palestinians and shall improve them according to internationally accepted standards in the field, taking into account WHO recommendations. In this regard, the Palestinian side shall continue the vaccination of the population with the vaccines listed in Schedule 3.

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6. Israel and the Palestinian side shall exchange information regarding epidemics and contagious diseases, shall cooperate in combating them and shall develop methods for exchange of medical files and documents.

7. The health systems of Israel and of the Palestinian side will maintain good working relations in all matters, including mutual assistance in providing first aid in cases of emergency, medical instruction, professional training and exchange of information.

Therefore, responsibility and jurisdiction for the response to the Covid-19 pandemic lies with the PA. As we shall show, Israel has, and continues to cooperate and coordinate with the PA, transferring important healthcare equipment to the Palestinian healthcare system. However, Israel does not have the jurisdiction to operate its health system in Palestinian population centers. Just as the Israeli police or the Ministry of Education do not operate in Palestinian area, so too regarding the Ministry of Health. According to Oslo, responsibility for acquiring and administering the Coronavirus vaccine belongs to the PA. This arrangement has been adhered to since the Interim Accords' signing in 1995. Palestinians living in Judea and Samaria receive their regular and routine vaccinations through the Palestinian health system.

We note with irony that were Israel to send its soldiers or health workers into Palestinian cities areas in order administer vaccines to the Palestinian population, it would likely be accused of violating Palestinian autonomy or of annexing the territory through an imposition of its sovereignty. The Oslo Accords set out a clear division of responsibility and jurisdiction in Judea and Samaria. With the exception of security and a limited number of civil infrastructure issues, the PA is the sole body authorized and responsible to administer Palestinian civil issues. The PA (and Hamas in Gaza) governs Palestinian internal affairs

(health, education, law and order, etc.) and Israel is not authorized to do so under the Oslo Accords.

3. Israel's Obligations towards the Gaza Strip

In the summer of 2005, Israel evacuated its entire civilian and military presence from the Gaza Strip as part of its 'Disengagement Plan'. On September 12, the final Israeli soldier left the Gaza Strip and the IDF announced the end of military rule and the transfer of authority to the Palestinian Authority.⁵ In 2007, the Hamas terrorist organization seized control of the Strip in a bloody coup and has ruled the territory *de facto* ever since. The Palestinian Authority acknowledges its lack of effective control of the Strip.

Certain international bodies and humanitarian organizations have asserted that Israel remains responsible for Gaza as an occupying power. As an occupying power, Israel would be responsible for aspects of health provisions. This assertion is contrary to the State of Israel's position and rests on very creative, if unduly based, legal reasoning.

Dr. Roy Schöndorf, Deputy Attorney General (International Law) and Dr. Shamir-Borer, Head of the IDF International Law Department recently published an article in the TAU Law Review on the inapplicability of the laws of occupation to the situation in Gaza.⁶ The article demonstrates that according to the mainstream consensus among international law experts, occupation is determined by a factual test. This means that only if a state has "boots on the ground", i.e. an actual physical army presence in the occupied territory, can an occupation occur. The additional conditions for occupation are the exercise of governmental power by the occupying power, and the inability of the previous sovereign to exercise these powers. These conditions certainly do not apply to the Gaza Strip. Israel has no "boots on the ground" and cannot exercise governmental power unless it were to invade and conquer the Strip. Governmental power is exercised by Hamas. Therefore, there is no basis in international law for the claim that Israel is responsible for providing healthcare in Gaza. Hamas functions as Gaza's *de facto* government and operates healthcare, education and other civilian services.

4. Israeli Aid to Palestinians

⁵ The Proclamation on the Termination of Military Rule (Gaza Strip) (No. 6) 2006

⁶ Open Access to the Hebrew article can be found on Roy Schöndorf's LinkedIn page - <https://www.linkedin.com/in/roy-schondorf-7966823/detail/recent-activity/>

In May 2020, Physicians for Human Rights petitioned the Israeli Supreme Court demanding that the State take certain humanitarian relief actions towards the Palestinian population in Judea, Samaria and Gaza to help them combat the Coronavirus pandemic. The government responded with long list of actions it had taken, above and beyond its legal obligations including holding training courses for medical teams and lab technicians and donating coronavirus testing kits. Physicians for Human Rights accepted the State's response and agreed to withdraw the petition.⁷

In March, the UN Special Coordinator to the Middle East praised “the excellent coordination and cooperation that has been established with all Israeli and Palestinian interlocutors” as well as the various humanitarian steps that Israel has taken to help the Palestinian population, such as the transfer of coronavirus testing kits, protective suits and medical equipment to Judea, Samaria and Gaza.⁸ The IDF also processes Covid-19 tests from Gaza in its medical facility in Israel.⁹

In December 2020, the Jerusalem Post reported that the Palestinians have not approached Israel for help in obtaining Covid-19 vaccines and are planning to purchase them on their own with the help of the international community.¹⁰ In May, the PA refused medical aid from the United Arab Emirates in protest over Emirati coordination with Israel despite their then lack of ties.¹¹ The PA also harmed its ability to deal with the pandemic when it ended its security cooperation with Israel in protest of the Trump Deal of the Century. One of the halted agreements involves coordination with Israel to allow Palestinians to seek medical care in Israeli hospitals. PA officials said Palestinians would have to seek care in the PA or, if they live in Gaza, coordinate treatment with Egypt or the UN.¹² Israeli-Palestinian security cooperation has since been restored.

According to calculations done by Palestinian Media Watch, the PA spends in excess 50,000,000 shekels (\$13,937,170/ €12,579,425) monthly on payment of terror incentives and

⁷ H CJ 2669/20

<https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts%5C20%5C690%5C026%5C002&fileName=20026690.O02&type=2>

⁸ <https://www.un.org/sg/en/content/sg/note-correspondents/2020-03-27/note-correspondents-response-questions-regarding-the-work-of-special-coordinator-nickolay-mladenov-and-israeli-palestinian-cooperation-address-the-covid-19>

⁹ <https://www.idf.il/en/minisites/idfs-response-to-covid-19/israelis-and-palestinians-fight-covid-19-together/>

¹⁰ <https://www.jpost.com/israel-news/palestinians-we-didnt-ask-israel-for-covid-19-vaccine-652703>

¹¹ <https://www.aljazeera.com/news/2020/5/21/palestinian-authority-rejects-uae-aid-sent-via-israeli-airport>

¹² <https://www.haaretz.com/middle-east-news/palestinians/.premium-palestinian-pm-pa-will-prevent-chaos-after-ending-security-coordination-with-israel-1.8872821>

rewards. This monthly payment is worth the equivalent of buying 387,143 Coronavirus test kits or buying 465 of the low-cost MIT ventilators.¹³

5. **Palestinian Residents of Jerusalem**

It must be noted that Palestinian Arab residents of East Jerusalem, like all Israeli citizens and residents, are equal beneficiaries of the current Israeli mass vaccination operation and therefore have full access to vaccines through their Health Maintenance Organizations (*kuppot cholim*) operated by the Israeli Health Ministry. According to Israeli law, Jerusalem, including the Arab-majority areas, is the indivisible capital of the State of Israel and is fully subject to Israeli law and jurisdiction. Jerusalem's Palestinian Arab residents enjoy residency status and benefit from the same rights as Israeli citizens, Jews, Muslims and Christians, besides the right to vote in the Knesset. (Palestinian Arab residents largely preferred not to accept Israeli citizenship following the reunification of the city in 1967). As beneficiaries of the Israeli medical system, many Palestinian Arab residents have already been vaccinated against Covid-19.¹⁴

6. **Conclusion**

The claim that Israel is neglecting its obligations towards the Palestinians and abandoning them to the ravages of the Coronavirus pandemic is baseless. It is part of the wider campaign of delegitimization against the State of Israel. According to the Oslo Accords, the PA is responsible for the health care of Palestinians, including vaccines. Israel is not authorized to extend its health care to Palestinian civilian areas and such a move would certainly violate the Oslo Agreements. Israel does not occupy Gaza and therefore is not responsible for the health of Gaza residents. However, Israel has acted above and beyond its legal obligations and provided humanitarian relief and medical equipment to Palestinian residents of Judea, Samaria and Gaza. The PA has taken a number of steps that hurt its own residents in protest of Israeli actions. Finally, Palestinian Arabs in Jerusalem have equal access for vaccines as Israeli residents.

¹³ <https://palwatch.org/page/17674>

¹⁴ <https://www.kolhair.co.il/jerusalem-news/147117/>