

The Legality of the Israeli Buffer Zone in the Gaza Strip

Adv. Avraham (Russell) Shalev



September 16, 2024

Israel has reportedly established a security zone within the Gaza Strip, along the border, to prevent terrorist infiltration, invasion or launching of attacks on Israel, such as occurred in the October 7th massacre. Israel is reportedly similarly contemplating a buffer zone in southern Lebanon to protect Israel's northern communities. It has been claimed that the Israeli buffer zone violates international law.¹

There are two main claims that are leveled against the buffer zone. It is asserted that Israeli demolition of homes is wanton destruction of property unjustified by military necessity. Furthermore, it has been argued that Israel is prohibited from establishing a defensive zone on territory of the Gaza Strip, and that any buffer must be established on Israeli territory. According to this view, the establishment of a buffer zone in Gazan consists of an illegal occupation of Gazan territory.

This paper will argue that Israel's actions stem from clear military necessity and that as such they do not violate the prohibition against wanton destruction of property. In addition, states are entitled to hold enemy territory in the lawful exercise of their right to self-defense. This will be demonstrated most recently by the examples of the Turkish buffer zones in Syria and Iraq, which have been accepted as legal by leading Western states, as well as Ukrainian plans to establish a buffer zone in Russia's Kursk Oblast.

¹ Loveday Morris, Sarah Cahlan & Jonathan Baran, What to know about Israel's controversial 'buffer zone' in Gaza, THE WASHINGTON POST (Jan. 24, 2024) <https://www.washingtonpost.com/world/2024/01/24/israel-buffer-zone-gaza-war/>

► 1 | What is a buffer zone?

According to the United States Department of Defense, buffer zones are “a defined area controlled by a peace operations force from which disputing or belligerent forces have been excluded”.² A buffer zone is designed to create space between hostile parties and to guard borders from invasion and attack.

The considered Israeli buffer zone may comprise the exclusion of Palestinian civilians from the area, the destruction of all Palestinian buildings, establishment of Israeli army infrastructure and a permanent or semi-permanent Israeli military presence.



UN Buffer Zone warning sign on the Greek Cypriot side near Ledra crossing, with a view towards the Turkish side.

WikiCommons

² United States Department of Defense, Dictionary of Military Terms and Acronyms, November 2021.

► 2 | The Prohibition against Wanton Destruction of Property

The wanton destruction of enemy property during wartime is prohibited under international customary and treaty laws. The Hague Regulations prohibit a party to “destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war.”³

According to Article 50 of the 1949 Geneva Convention I, Article 51 of the 1949 Geneva Convention II and Article 147 of the 1949 Geneva Convention IV, “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” are grave breaches. Furthermore, Article 53 of the 1949 Geneva Convention IV prohibits the destruction of property by the Occupying Power “except where such destruction is absolutely necessary by military operations.”

The ICTY in the Kordic Trial Chamber judgement defined the elements of the crime: “(i) the destruction of property occurs on a large scale; (ii) the destruction is not justified by military necessity; and (iii) the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.”⁴

The appropriate legal framework for assessing Israel’s actions are the laws of armed conflict. There are competing views among scholars as to whether Israel’s war against Palestinian terrorist groups is an international or non-international armed conflict.⁵ In any case, Israel cannot be considered an Occupying Power since it withdrew all military forces and civilians from the Gaza Strip in 2005 (assuming that it was an Occupying Power during the period from 1967-2005).⁶ Effective control is the “condition sine qua non of belligerent occupation”⁷ and even now, over three months since beginning of hostilities, Hamas maintains civil administration over much of the Gaza Strip. In any case, Hamas has yet to surrender or be defeated, and Israel has not imposed its civil authority on the Strip.⁸

3 1907 Hague Regulations, Article 23(g)

4 Prosecutor v. Kordić and Čerkez, Case No. IT-95-14/2, Judgement, P.346-347 (Int’l Crim. Trib. for the Former Yugoslavia Feb. 26, 2001). P. 346-347

5 See Michael N. Schmitt, *Israel – Hamas 2023 Symposium – The Legal Context Of Operations Al-Aqsa Flood and Swords of Iron*, Articles Of War (Oct. 10, 2023), <https://lieber.westpoint.edu/legal-context-operations-al-aqsa-flood-swords-of-iron/>

6 For the Israeli Supreme Court’s analysis, see HCJ 9132/07 Al-Bassiouni v. Prime Minister. For full discussion of status of Gaza strip post-2005, see: For full discussion of status of Gaza strip post-2005, see: Avi Bell & Dov Shefi, *The Mythical Post-2005 Israeli Occupation of the Gaza Strip*, 16 Israel Affairs 268 (2010).

7 Yoram Dinstein, *The International Law of Belligerent Occupation* (Cambridge: Cambridge University Press, 2009), 43.

8 Prosecutor v. Naletilić and Martinović, Case No. IT-98-34-T, Judgement, Par 217 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 31, 2003). Par. 217



Palestinian terrorist near Gaza border during 2018 “Great March of Return”.
(Photo: Reuters)



Palestinian terrorist near Gaza border during 2018 “Great March of Return”.
(Photo: Reuters)



Map of Gaza border breach on October 7th.
Google Earth / Canva

► 3 | Israel's Military Goals - Removing the Threat from Gaza

Since the beginning of its offensive in Gaza, Israel's leadership has articulated three concrete goals: the return of the Israeli hostages, the defeat of Hamas, and the prevention of a future threat from Gaza.⁹ The creation of a security buffer along the Gaza/Israel border serves the purpose of destroying Hamas' infrastructure and eliminating the threat to Israel. From the fact that Israel is specifically demolishing structures around the border, it is clear that the intent is not malicious or wanton, but rather aimed to protect border communities and denying the enemy a staging ground for attacks.

Indeed, the buffer zone operation is a narrow response to a direct military threat. After the October 7th invasion and massacre, tens of thousands of residents of southern Israel were evacuated, and remain unable to return home until the country can guarantee their safety. Some Palestinian structures are practically on the border, and only several hundred yards away from Israeli communities such as Kfar Aza, Kerem Shalom and Sderot.¹⁰ The Palestinian terrorists that carried out the October 7th murderous attacks crossed into Israel from many of these border-adjacent areas. Hamas officials have already vowed that *"we will do this again and again. The Al-Aqsa Flood [the October 7th massacre] is just the first time, and there will be a second, a third, a fourth..."*¹¹

In 2018 and 2019, Hamas and Palestinian Islamic Jihad organized mass marches towards the Israeli border with the goal of breaking into Israel. Billed by Palestinians as "the Great March of Return", its name reveals its purpose – invasion. Although the marches were supposedly non-violent, they featured largescale attacks on Israeli forces as well as arson and damage to Israel agriculture and civilian communities.¹² Moreover, the Oct. 7th massacre was made possible by Hamas's prepositioning military hardware along the border under false cover of civilian activity. The security perimeter is intended to prevent a reprise of these events.

9 Jeremy Sharon, *Netanyahu: Israel will not halt Gaza war until all goals achieved*, The Times Of Israel (Dec. 2, 2024) https://www.timesofisrael.com/liveblog_entry/netanyahu-israel-will-not-halt-gaza-war-until-all-goals-achieved/

10 Yoav Zitun, *The explosive operation to create the buffer zone, and the main move of the maneuver*, Ynet (Dec. 24, 2024) <https://www.ynet.co.il/news/article/rkhvmykpa>

11 *Hamas Official Ghazi Hamad: We Will Repeat The October 7 Attack, Time And Again, Until Israel Is Annihilated; We Are Victims – Everything We Do Is Justified*, Memri (Nov. 1, 2023) <https://www.memri.org/reports/hamas-official-ghazi-hamad-we-will-repeat-october-7-attack-time-and-again-until-israel>

12 The Meir Amit Intelligence and Terrorism Information Center, *A Possible Renewal of the Return Marches*, (Sep. 7, 2023) <https://www.terrorism-info.org.il/en/possible-renewal-of-the-return-marches/>

► 4 | A Military Objective is not Wanton or Willful

State practice and case law demonstrate that the prohibition against destruction of property refers to destruction for its own sake, or for purposes of reprisal and looting. This stands in stark contrast to Israel's military goal of preventing further attacks on its population.

Australia's 2006 Law of Armed Conflict Manual states that: "*The principle of military necessity ... permits the destruction of property if that destruction is imperatively demanded by the necessities of war. Destruction of property as an end in itself is a violation of international law. There must be a reasonable connection between the destruction of property and the overcoming of enemy forces.*"¹³

Canada's 2001 Code of Conduct for Canadian Forces Personnel warns against "needless" destruction.¹⁴ The United Kingdom's 2004 Joint Service Manual of the Law of Armed Conflict explains that: "*It may be possible to destroy a house in order to clear a field of fire or because it is being used as an enemy observation or sniper post. It would not be permissible to burn down a house simply to prevent its being inhabited by persons of a different ethnic group or religious persuasion.*"¹⁵

The 2015 US Field Manual states that:

It may be imperatively demanded by the necessities of war to seize or destroy enemy property in order to support military operations. These examples are illustrative and not exhaustive:

- using enemy land for the construction of military bases, air fields, and other facilities to support military operations; [...]
- demolishing, cutting down, or removing enemy walls, forests, and buildings to clear field of fire or to provide construction material;¹⁶

Similarly, the 1956 US Field Manual provides:

The measure of permissible devastation is found in the strict necessities of war. Devastation as an end in itself or as a separate measure of war is not sanctioned by the law of war. There must be some reasonably close connection between the destruction of property and the overcoming of the enemy's army. Thus the rule requiring respect for private property is not violated through damage resulting

13 Australia, *The Manual of the Law of Armed Conflict*, Australian Defence Doctrine Publication 06.4, Australian Defence Headquarters, 11 May 2006, §§ 2.6

14 Canada, Code of Conduct for CF Personnel, Office of the Judge Advocate General, 4 June 2001, Rule 4, § 5.

15 United Kingdom, *The Manual of the Law of Armed Conflict*, Ministry of Defence, 1 July 2004. Par. 15.17.12.

16 United States, Department of Defense Law of War Manual, June 2015, 5.17.2.2

from operations, movements, or combat activity of the army; that is, real estate may be used for marches, camp sites, construction of field fortifications, etc. Buildings may be destroyed for sanitary purposes or used for shelter for troops, the wounded and sick and vehicles and for reconnaissance, cover, and defense. Fences, woods, crops, buildings, etc., may be demolished, cut down, and removed to clear a field of fire, to clear the ground for landing field, or to furnish building materials or fuel if imperatively needed for the army.¹⁷

A crucial case clarifying the meaning of “wanton destruction” is *the Hostages Trial*, one of the Subsequent Nuremberg Trials held before US military courts against Nazi generals. The defendants were accused, *inter alia*, of the plunder and wanton destruction of villages and towns in Norway, Greece, Albania and Yugoslavia as reprisal for resistance attacks on German soldiers.

According to the tribunal:

Military necessity has been invoked by the defendants as justifying the killing of innocent members of the population and the destruction of villages and towns in the occupied territory... The destruction of property to be lawful must be imperatively demanded by the necessities of war. Destruction as an *end in itself is a violation of international law*. There must be some reasonable connection between the destruction of property and the overcoming of the enemy forces. It is lawful to destroy railways, lines of communication, or any other property that might be utilized by the enemy. Private homes and churches even may be destroyed if necessary for military operations. It does not admit the wanton devastation of a district or the willful infliction of suffering upon its inhabitants for the sake of suffering alone.¹⁸

While the court convicted the commanders for reprisal attacks, it acquitted General Rendulic, a German commander in Norway who pursued a “scorched earth” policy which he believed to be the only reasonable tactic to slow down a Soviet invasion. In the course of this “scorched earth” campaign, Redulic evacuated and destroyed entire villages, farms and factories.

The International Criminal Tribunal for Yugoslavia case-law is also useful in illuminating the meaning of “wanton destruction”. The *Prlić* decision describes the crimes committed by leaders of the Croat militia (HVO) against Bosnian Muslims. For example, in the municipality

17 United States, *Field Manual 27-10, The Law of Land Warfare*, US Department of the Army, 18 July 1956, as modified by Change No. 1, 15 July 1976, § 56.

18 United States v. Wilhelm List (The Hostages Trial), 8 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, at 1253-1254 (1948) (emphasis added)

of Prozor, HVO soldiers burnt down 75 Muslim homes while no Croat homes were damaged.¹⁹ In the village of Parcani, HVO soldiers burnt down Muslim homes in retaliation against villagers hiding in the woods.²⁰ The Chamber also pointed to widespread damage to Muslim areas of towns, alongside largescale looting and pillaging of Muslim-owned property.

The circumstances in *Prlić* are in sharp contrast with Israel's actions in Gaza. Israel's demolition of houses is not punitive but preventative; nor is it accompanied by looting or pillage. There is still heavy fighting in the Gaza Strip between Israel and Palestinian terrorist groups. Israel's goal is to remove the threat of infiltration and invasion from its southern communities from areas that have already served as bases of attack.



Destruction of bridge in Brcko, Bosnia and Herzegovina, as part of widespread destruction of property.
Creative Commons 2.0

¹⁹ *Prlić and Others* (IT-04-74) Trial Chamber III, par. 1557

²⁰ Par. 1559

► 5 | Buffer Zones on Enemy Territory Are Accepted State Practice

It has furthermore been claimed that Israel is entitled to establish a buffer zone on its own territory, but not in the Gaza Strip.²¹ Given that some of the Israeli communities invaded on October 7th are barely one kilometer from the Gaza Strip, such a buffer zone would be ineffective as a means of defense.

International law recognizes the right of states, acting in self-defense, to hold on to enemy territory as long as its security requires. As Stephen Schwebel, former president of the International Court of Justice, famously wrote:

A state acting in lawful exercise of its right of self-defense may seize and occupy foreign territory as long as such seizure and occupation are necessary to its self-defense. As a condition of its withdrawal from such territory, that state may require the institution of security measures reasonably designed to ensure that that territory shall not again be used to mount a threat or use of force against it of such a nature as to justify exercise of self-defense.²²

Therefore, it is difficult to understand the charge that Israel is barred from exercising its right to self-defense on Gazan territory. By way of comparison, following the defeat of Nazi Germany, France occupied the Saar directly until 1947 and then indirectly until reintegration with Germany in 1957, and the Allied occupation of Berlin continued until the reunification of Germany in 1990. The Allies maintained their occupation long after the fall of the Nazi regime, due to the threat of Soviet invasion and conquest of West Berlin, and by extension Western Europe.



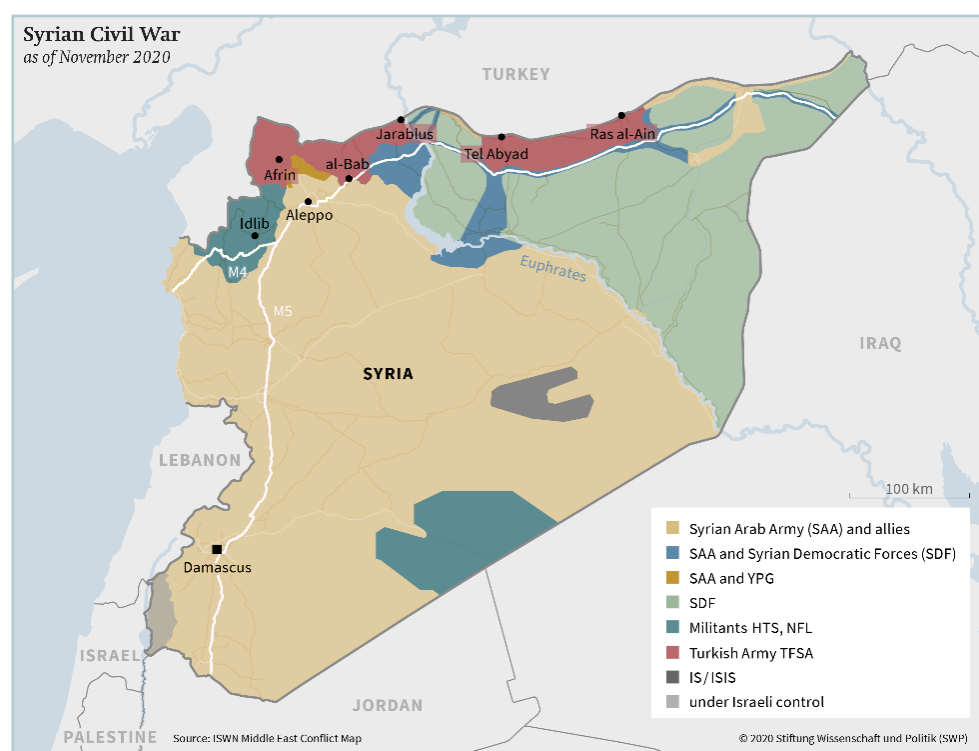
Allied forces occupying Berlin following defeat of Nazi regime. The occupation only ended in 1990 with reunification of Germany.

²¹ *Israel forges buffer zone inside Gaza at risk to civilians: experts*, France24, (Feb. 04, 2024) <https://www.france24.com/en/live-news/20240204-israel-forges-buffer-zone-inside-gaza-at-risk-to-civilians-experts>

²² Stephen M. Schwebel, *What Weight to Conquest?*, 64 AM. J. INT'L L. 344, 345 (1970).

Since the Syrian civil war in 2011, Turkey has established large “safe zones” on Syrian territory in proximity to the Turkish border.²³ In a series of military operations in 2016, 2018 and 2019, Turkey has occupied approximately 8,234 km² of territory in northern Syria, reaching 30 kilometers deep. In another operation in 2020, Turkey occupied 3,394 km² of territory in Syrian Idlib.²⁴

After Syrian forces withdrew from the Afrin border region, 10,000 Kurdish fighters of the YPG organization took over. Turkey considers the YPG to be the military wing of its enemy, the PKK, and launched a massive operation to create a buffer zone. Turkey has justified its control of Syrian territory as based on its inherent right to self-defense against Kurdish and ISIS terrorist attacks.²⁵ Turkey has faced large migration waves of Syrian refugees and has resettled the refugees in the buffer zone as opposed to Turkey proper.²⁶ The United States has sent official delegations to support Turkey in setting up the buffer zone.²⁷



23 Soner Cagaptay, A Turkish Buffer Zone inside Syria?, Washington Institute. July 2, 2011. <https://www.washingtoninstitute.org/policy-analysis/turkish-buffer-zone-inside-syria>

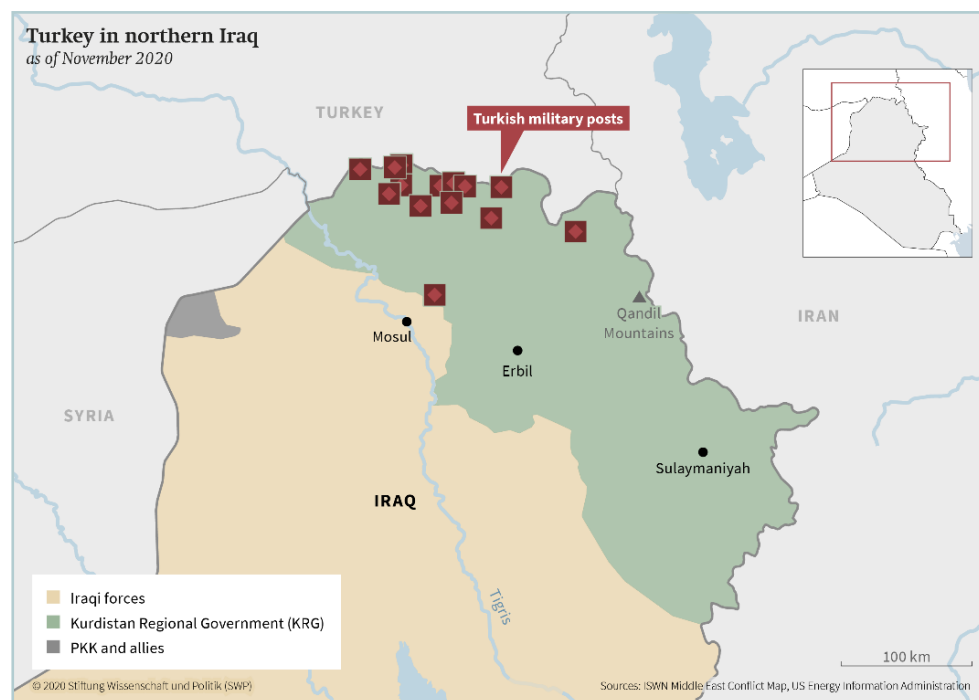
24 Yilmaz, p. 57

25 UNSC, Letter dated 9 October 2019 from the Permanent Representative of Turkey to the United Nations, addressed to the President of the Security Council, 9 October 2019, UN Doc S/2019/804; Blument Aliriza, “Understanding Turkey’s Afrin Operation,” *Center for Strategic and International Studies*, Jan. 25, 2018, <https://www.csis.org/analysis/understanding-turkeys-afrin-operation>.

26 ÖMER YILMAZ, *Turkey’s Buffer Zone in Northern Syria and Its Impact on Irregular Migration*, 24(1) *Insight Turkey* 55 (2022).

27 “US delegation arrives in Turkey to set up Kurdish buffer zone, *The National* (Aug 14, 2019). <https://www.thenationalnews.com/world/mena/us-delegation-arrives-in-turkey-to-set-up-kurdish-buffer-zone-1.897702>

During the summer and spring of 2021, Turkey erected a second buffer zone in northern Iraq. Turkey has razed forests, paved roads and set up military bases and infrastructure. Unlike the Syrian buffer zone, the Iraqi area does not include Turkish civil administration of the territory.²⁸ The PKK has operated out of northern Iraq since the 1980s.²⁹ The Turkish buffer zones in Syria and Iraq have been credited with pushing the combat with the PKK away from Turkish territory and ending attacks on Turkish border communities.³⁰



The Israeli buffer zone in Gaza would be perhaps 60 km². By contrast, the Turkish buffer zones in northern Syria span over 12,000 km², in which Turkey oversees the civil administration and local services.³¹ Neither the United States, a fellow NATO member, nor the EU have denounced these buffer zones as a violation of international law or as illegally diminishing the territory of Syria.³² On August 18, 2024, Ukraine President Volodymyr Zelensky outlined his strategic aim of establishing a buffer zone in Russia's Kursk Oblast. While the final

28 Cevik, Salim. "Turkey's military operations in Syria and Iraq." Stiftung Wissenschaft und Politik (2022), p.2

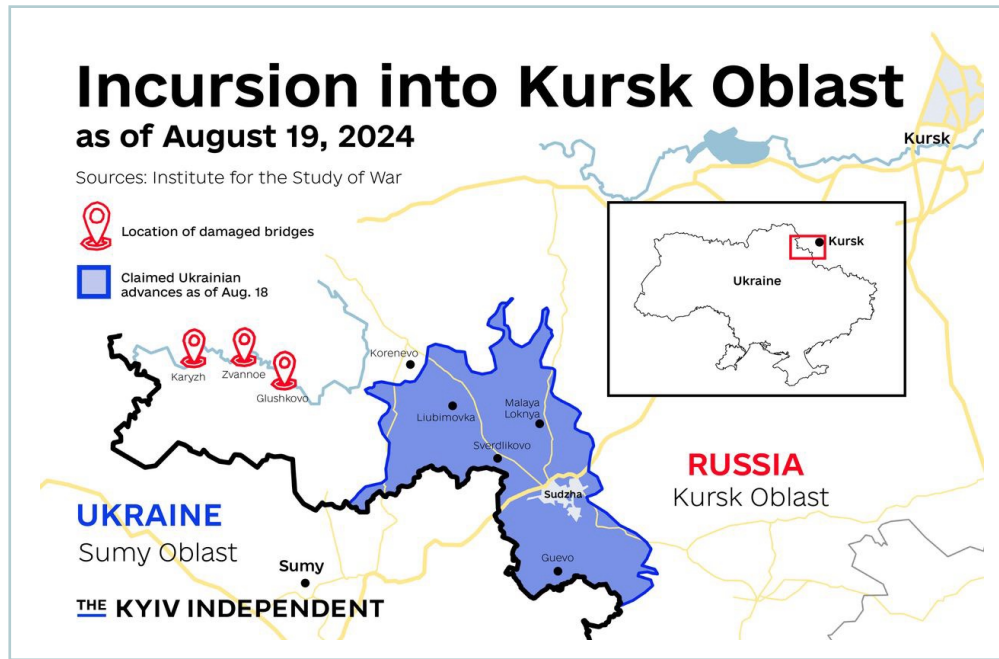
29 Razing forests, Turkey builds a huge, militarised buffer zone in Iraqi Kurdistan," The New Arab. Paul Iddon. June 18, 2021. <https://www.newarab.com/analysis/how-turkey-building-buffer-zone-iraqi-kurdistan>

30 "Turkey-PKK Conflict: Rising Violence in Northern Iraq", ACKED Data.Adam Miller, Dr. Ameneh Mehvar, Matti Suomenaro. February 3, 2022. <https://acleddata.com/2022/02/03/turkey-pkk-conflict-rising-violence-in-northern-iraqi/>; Cevik, Salim. p.1

31 United Nations Human Rights, Office of the High Commissioner, *Between a Rock and a Hard Place - Civilians in North-western Syria*, (Jun. 2018), https://reliefweb.int/sites/reliefweb.int/files/resources/ohchr_-_syria_monthly_human_rights_digest_-_june_2018.pdf

32 See: Declaration by the High Representative on behalf of the EU on recent developments in north-east Syria, 9 October 2019 [\[here\]](#)
Statement of European Council, 14 October 2019 [\[here\]](#)
White House, Notice on the Continuation of the National Emergency with Respect to the Situation in and in Relation to Syria, 7 October 2021 [\[here\]](#)

outline of the buffer zone is impossible to determine, Kyiv has recently seized 1,150 square kilometers of Russian territory, including 82 settlements. Ukraine's military operation will also protect communities in Ukraine's Sumy region from Russian shelling.³³



6 | Conclusion

Israel's creation of a buffer zone in Gaza, which includes the demolition of Palestinian structures, is fully in keeping with international law. International customary and treaty law permits the destruction of enemy property based on military necessity. Wanton and willful destruction of property is forbidden, which the case-law demonstrates to be destruction as an end in itself, reprisal or looting. Additionally, even if the buffer zone amounted to an occupation of Gaza's territory, international law entitles a state to hold enemy territory in the lawful exercise of its right to self-defense.

Israel's goal is that which has guided its mission since the deadly October 7th attacks – the removal of Hamas and other terrorist threats from Gaza, thereby allowing Israel's citizens to return home. Hamas and other terrorist groups have carried out numerous invasions and infiltration attempts from these areas and as such, a buffer zone is essential to restoring safety and security to Israel's south.

³³ The Kyiv Independent. "Ukraine's Buffer Zone in Kursk Oblast: Here's What You Need to Know." The Kyiv Independent, 15 Sept. 2024, <https://kyivindependent.com/ukraines-buffer-zone-in-kursk-oblast-heres-what-you-need-to-know/>.