

Legal Aspects of the Gaza Flotilla Attack*

I. Introduction

At approximately 4:00am on May 31, 2010, a six-boat flotilla, carrying more than 700 civilians, including journalists, from almost 40 countries seeking to bring humanitarian and rebuilding supplies to the Gaza Strip as well as to break the Israeli blockade of Gaza, was overtaken by Israeli commandos in international waters. Israeli commandos rappelled onto the upper deck of the largest ship in the flotilla, the passenger ferry *Mavi Marmara*, leaving one Turkish-American and eight Turkish citizens dead. After being boarded by the Israeli military, the six ships and their passengers were forcefully rerouted to the Israeli port of Ashdod, where the majority of the passengers were detained without charge, before being deported from Israel. One ship, the United States registered *Challenger I*, continues to be held by Israel, as do individual effects taken from the passengers, including property of evidential value to subsequent investigations such as cameras, video equipment, cell phones and computers.

This analysis seeks to answer questions related to Israel's recourse to military force against the flotilla and the force it used against the flotilla. A question that must be addressed as a predicate to assessing the use of force by Israel against six boats filled with civilians and carrying supplies to Gaza is whether Israel's blockade of Gaza is legal.

The Israeli blockade of the Gaza Strip,¹ now in its fourth year, is illegal under international law. Due both to the legal nature of Israel's relationship to Gaza – that of occupier – and the impact of the blockade on the civilian population, amounting to “collective punishment”, the blockade cannot be reconciled with the principles of

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¹ The “blockade” was discussed, and its scope and effect outlined, in the Goldstone Commission Report: “the process of economic and political isolation imposed by Israel on the Gaza Strip [is] generally referred to as a ‘blockade’. The blockade comprises measures such as restrictions on the goods that can be imported into Gaza and the closure of border crossings for people, goods and services, sometimes for days, including cuts on the provision of fuel and electricity. ...In addition to creating an emergency situation, the blockade significantly weakened the capacities of the population and of the health, water and other public sectors to react to the emergency created by the military operations.” Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact Finding Mission on the Gaza Conflict, A/HRC/12/48, Sept. 15, 2009, ¶ 27 (“Goldstone Commission Report”).

international law, including international humanitarian law. It is recalled that the international community, speaking through both the United Nations and individual States, has repeatedly and emphatically called for an end to the blockade of the Gaza Strip.² It is in light of this context that Israel's May 31st attack on the flotilla must be assessed.

The conclusions are unambiguous: the attack on civilian ships carrying humanitarian assistance to Gaza cannot be justified by the existence of a blockade that violates international law. Even if an argument could be made that Israel was entitled to stop ships headed to Gaza, including ships *in international waters*, the disproportionate nature of Israel's 4:00am commando raid on a passenger ferry, which left nine civilians dead and many more injured, and the lack of necessity for rendering such an attack on a passenger ferry, as well as the take-over and redirection of five other ships and their passengers into Israeli territory, renders the attack illegal.

It is necessary to place these questions in the current context.

Following calls by the Security Council "for a prompt, impartial, credible and transparent investigation conforming to international standards,"³ various

² See, e.g., "UN human rights chief calls for end to the Israeli blockade of Gaza," Nov. 18, 2008, available at www.un.org/apps/news/story.asp?NewsID=28983&Cr=Palestin&Cr1 (UN High Commissioner for Human Rights Navi Pillay stated: "By function of this blockade, 1.5 million Palestinian men, women and children have been forcibly deprived of their most basic human rights for months. This is in direct contravention of international human rights and humanitarian law. It must end now."); "UN chief Blames Israeli Blockade for Suffering in Gaza," Mar. 21, 2010, available at: www.voa.com/english/news/UN-Chief-In-Gaza-Strip-To-Express-Solidarity-With-Palestinians-88759057.html (Secretary General Ban Ki-moon stated: "I have repeatedly made it quite clear to Israel's leaders that the Israeli policy of closure is not sustainable and that it's wrong. It causes unacceptable suffering of human beings."); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, A/HRC/10/20, Feb. 11, 2009, ¶ 41(c) ("Falk February 2009 Report") ("sustainable peace in Gaza requires the permanent lifting of the blockade in the short term"); "'End the Siege on Gaza Now,' Say MEPs visiting the territory," European Parliament, Press release, May 28, 2010 available at: http://www.europarl.europa.eu/news/expert/infopress_page/030-75213-148-05-22-903-20100528IPR75212-28-05-2010-2010-false/default_en.htm ("The alarming and worsening humanitarian situation calls for an immediate, comprehensive and lasting end to the Israeli blockade on Gaza").

³ Statement by the President, S/PRST/2010/9, June 1, 2010. The Statement continued: "The Security Council stresses that the situation in Gaza is not sustainable...In that context, it reiterates its grave concern at the humanitarian situation in Gaza and stresses the need for sustained and regular flow of goods and people to Gaza as well as unimpeded provision and distribution of humanitarian assistance throughout Gaza."

investigations are now underway: including one by the Israeli government,⁴ a Panel of Inquiry established by the Secretary-General of the United Nations,⁵ and a fact-finding mission established by the UN Human Rights Council.⁶ The Human Rights Council released an advance copy of the fact-finding mission's report on September 22, 2010,⁷ which will be presented on September 27, 2010; other reports are expected in the coming weeks and months.

Furthermore, in response to the international reaction to the attack on the flotilla, if not the blockade of Gaza itself, Israel did not lift the blockade; rather it "eased" the blockade by expanding the number of items let into the Gaza Strip.⁸ Many restrictions remain, however, including severe restriction on the freedom of movement for the people of Gaza.⁹ While there were statements from politicians welcoming the changes, it is notable that the United Nations Relief Works Agency's

⁴ "Government establishes independent public commission," June 14, 2010 available at: http://www.mfa.gov.il/MFA/Government/Communiques/2010/Independent_Public_Commission_Maritime_Incident_31-May-2010.htm. The mandate of the commission includes: "4 a) Examination of the security circumstances surrounding the imposition of the naval blockade on the Gaza Strip and the conformity of the naval blockade with the rules of international law; b) The conformity of the actions taken by Israel to enforce the naval blockade in the incident of 31 May 2010 with the rules of international law; and c) Examination of the actions taken by the organizers of the flotilla and its participants, as well as their identity." The Commission was also empowered to look at "mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict...."

⁵ "Secretary-General's statement on the establishment of the Panel of Inquiry on the flotilla incident of 31 May 2010," Aug. 2, 2010, available at: www.un.org/apps/sg/sgstats.asp?nid=4699.

⁶ Resolution A/HRC/RES/14/1, June 23, 2010 available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/RES.14.1_AEV.pdf (dispatching "an independent international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance").

⁷ Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance, A/HRC/15/21, Sept. 22, 2010, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf.

⁸ See I. Kershner, *Israeli Easing of Blockade of Gaza Draws Praise of U.S.*, N.Y. Times, June 21, 2010 available at: <http://www.nytimes.com/2010/06/21/world/middleeast/21mideast.html?hp>.

⁹ For an overview of what has – and has not changed– since the 'easing' of the blockade, see www.gisha.org/UserFiles/File/publications/UnravelingTheClosureEnd.pdf, and for the continued denial of freedom of movement for Palestinians in Gaza, including for educational purposes, see www.gisha.org/index.php?intLanguage=2&intItemId=1848&intSiteSN=113.

response was more muted: “In UNRWA’s experience, nothing short of the free two-way flow of people, commercial and humanitarian goods, and currency, will generate a significant reversal of the prostrate economy of Gaza, address the abject conditions ordinary Gazans currently face, and restore their trust in the international community.”¹⁰

II. Is the blockade of the Gaza Strip Legal?

A. As the Occupying Force, Israel cannot lawfully blockade Gaza.

Israel’s position is that “a maritime blockade is in effect off the coast of Gaza.”¹¹ But from time immemorial a maritime blockade has been considered an act of war by one country against another, enemy country.¹² A blockade is “the blocking by men-of-war of the approach to the enemy coast, or part of it” for the purpose of interrupting “all intercourse, and especially commercial intercourse, by sea between the coast and the world at large.”¹³ This teaching of international law is reflected in the U.S. handbook for naval operations, which specifies that blockades can be established for areas under occupation *by the enemy* –not territory being occupied by the blockading state.¹⁴

Granted that formal declarations of war are now somewhat archaic and the word “war” is increasingly replaced by the term “armed conflict.”¹⁵ Nevertheless, the

¹⁰ Commissioner-General’s Statement to the Advisory Commission, June 21-22, 2010, available at: <http://www.unrwa.org/etemplate.php?id=712> (“UNRWA June Statement”).

¹¹ Ministry of Foreign Affairs, Legal Analysis of blockade, May 31, 2010, (“MFA Analysis”) available at: http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Gaza_flotilla_maritime_blockade_Gaza-Legal_background_31-May-2010.htm.

¹² The Peloponnesian War ended in 404 B.C. when Athens surrendered after being blockaded by Sparta.

¹³ Parry and Grant, *Encyclopaedic Dictionary of International Law* at 65, citing II Oppenheim 768, (Oxford University Press, 3d ed. 2009).

¹⁴ See Annotated Supplement To The Commander’s Handbook On The Law Of Naval Operations, Newport, R.I. (1997) at 7.7.1, available at: <http://www.prio.no/upload/1117/doc/US%20Navy%20Commander's%20Handbook%20Annotated%20Supplement%201997.pdf> (“Blockade is a belligerent operation to prevent vessels and/or aircraft of all nations, enemy as well as neutral, from entering or exiting specified ports, airfields, or coastal areas belonging to, occupied by, or under the control of an enemy nation.”)

¹⁵ Cf. *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, June 12, 1994 (“San Remo Manual”), available at: <http://www.icrc.org/IHL.nsf/52d68d14de6160e0c12563da005fdb1b/7694fe2016f347e1c125641f002d49ce!OpenDocument>.

parties to an armed conflict are still enemies and belligerents. Accordingly, international law recognizes blockades in the context of armed conflicts, but it does not recognize a blockade by a country against a territory occupied by the blockading country – only territory under the control of the enemy. Such a conclusion is supported by the obligations that occupiers have towards those they occupy, as discussed below.¹⁶

But is Israel an occupying power? Not if you ask the Israeli government. Its position is that when it withdrew its armed forces from Gaza, the occupation came to an end and it no longer had any responsibility for Gaza. This position, however, is impossible to reconcile with Israel's behavior toward the Gaza Strip. Israel is the occupying power because of the complete control of access to and egress from the territory.^{17 18} Prior to the attack on the flotilla, Israel had never published a list of items which it allows to be imported to or exported from Gaza.¹⁹ But anecdotal

¹⁶ See, e.g., Fourth Geneva Convention Relative to the Protection of Civilians in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287 ("GC IV"), Art. 55.

¹⁷ See, e.g., Goldstone Commission Report, ¶ 187, *supra* n.1: In addition to controlling the borders, coastline and airspace, after the implementation of the disengagement plan, Israel continued to control Gaza's telecommunications, water, electricity and sewage networks, as well as the population registry, and the flow of people and goods into and out of the territory while the inhabitants of Gaza continued to rely on the Israeli currency. See also Goldstone Commission Report, ¶ 28 ("The Mission holds the view that Israel continues to be duty-bound under the Fourth Geneva Convention and to the full extent of the means available to it to ensure the supply of foodstuff, medical and hospital items and others to meet the humanitarian needs of the population of the Gaza Strip without qualification.").

¹⁸ See Hague Regulations, Art. 42 ("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."); GC IV, Art. 6. See also, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of July 9, 2005, I.C.J. Reports 2004 ¶¶ 101, 112; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, A/HRC/13/53/Rev.1, 7 June 2010, ¶ 4, n.5: "Israel, since its disengagement of 2005, no longer directly occupies Gaza, but continues to have the legal duties of an occupying Power under international humanitarian law due to its total control of the crossings into and out of Gaza, as well as the air space and coastal access."; Falk February 2009 Report, ¶ 4 (finding that Israel's imposition of a blockade "profoundly affected the life and well-being of every single person in Gaza," such that "regardless of the international status of the Occupied Palestinian Territory with respect to the use of force, the obligations of the Fourth Geneva Convention, as well as those of international human rights law and international criminal law, are fully applicable.")

¹⁹ For an unofficial list of prohibited and permitted items as of May 2010, see <http://gisha.org/UserFiles/File/HiddenMessages/ItemsGazaStrip060510.pdf>. On July 4, 2010, Israel issued two lists of items "whose entry into Gaza would be subject to Israeli control." See

evidence demonstrates the complete arbitrariness of such a list, as well as its irrelevance to Israel's justification for the blockade, i.e. to keep weapons from reaching the Strip. Thus, the owner of a cookie and ice cream factory complains that he cannot get cocoa powder, malt, shortening, syrup, wrapping material or boxes.²⁰ "In Gaza, no one is dying", according to Amr Hamad, deputy secretary general of the Palestinian Federation of Industries, "but no one is living."²¹ Gisha, the Israeli not-for-profit Legal Center for Freedom of Movement, reports that on June 7 Israel added jam, halva and shaving razors to the list of permitted items and indicated that it would allow additional food items such as coriander, cardamom and cookies, after having banned them for three years.²² As noted above, additional items have been permitted into Gaza since the attack on the flotilla, but not on the scale to satisfy the basic humanitarian and economic needs of the population.

As an occupying power, under international law, and particularly the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War ("GC IV"), Israel owes an obligation to the people of Gaza to ensure that they are not deprived of goods and equipment adequate for a minimally decent standard of living,²³ from which it follows that it does not have the right to impede access to Gaza for vessels carrying non-military cargo.

B. The Blockade is Not Lawful because of the Severe Harm Caused to the Civilian Population of Gaza

The San Remo Manual sets forth the conditions under which a blockade can be imposed. A blockade is prohibited if: (a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or (b) the

http://www.mfa.gov.il/MFA/HumanitarianAid/Palestinians/Lists_Controlled_Entry_Items_4-Jul-2010.htm.

²⁰ E. Bronner, *A Rising Urgency For a Gaza Shift*, N.Y. Times, June 11, 2010, p. A1.

²¹ *Id.*

²² www.gisha.org/index.php?intLanguage=2&intItemId=1804&intSiteSN=113&OldMenu=113.

²³ Article 55 of GC IV requires the occupier to provide food and health care to the occupied population. See ICRC Commentary on GCIV, at 310: "The rule that the Occupying Power is responsible for the provision of supplies for the population places that Power under a definite obligation to maintain at a reasonable level the material conditions under which the population of the occupied territory lives. ... What is essential is that the Occupying Power should, in good time and with the means available to it, take measures to procure the necessary food for the population of the occupied territory; it does not matter whether it comes from its own national territory or from any other country—allied, neutral or even enemy." See also Falk February 2009 Report, *supra* n.2, ¶ 9.

damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.²⁴ The principles set forth in the San Remo Manual reflect the requirements of international humanitarian law. Under Article 23 of GC IV, “Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores ... [and] of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.”²⁵ In relation to occupied territories, Article 27 requires that protected persons are treated humanely, which includes respect for their health. Article 59 reads: “If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate by all the means at its disposal.” Article 70 of Additional Protocol I to the Geneva Conventions provides that parties to a conflict are obliged to allow the passage of articles that are essential for the civilian population, at the earliest opportunity and without delay.²⁶

To the extent that Israel claims to be operating a legal blockade, it must comply with the San Remo Manual. Paragraph 103 provides “If the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must provide for free passage of such foodstuffs and other essential supplies,” subject to certain technical arrangements and conditions of distribution. That has simply not been the case during the years of the blockade of Gaza and continues not to be the case.

Reports on the situation in Gaza under the Israeli blockade by the World Health Organization and United Nations Relief Works Agency (UNRWA) demonstrate the serious breach by Israel of its international obligations-- and the price paid by Palestinians: inadequate food supplies leading to malnutrition and starvation, a crumbling and over-burdened health care system, environmental harms caused by pollution due to heavy damage to the water and sanitation facilities, lack of schools

²⁴ San Remo Manual, *supra* n.15, par. 102. Other requirements for a lawful blockade include: it shall be declared and notified to all belligerents and neutral States (par. 93); declaration shall specify the commencement, duration, location, and extent of the blockade and the period within which vessels of neutral States may leave the blockaded coastline (par. 94); it must be effective (par. 95); and it must be applied impartially (par. 100). Notably, paragraph 97 provides: A blockade may be enforced and maintained by a combination of legitimate methods and means of warfare provided this combination does not result in acts inconsistent with the rules set out in this document.

²⁵ See also Article 16 of GC IV (provides that the wounded and sick, as well as the infirm, and especially expectant mothers, shall be the object of particular protection and respect).

²⁶ Additional Protocol I has not been ratified by Israel, but many of its provisions have been recognized as reflecting customary international law and these provisions follow logically from the above mentioned articles of GCIV.

and supplies to maintain a functioning education system and a lack of supplies needed to rebuild destroyed homes.²⁷ And the impact of the blockade has been felt acutely on Gaza's most vulnerable: children.²⁸ The Commissioner-General of UNRWA recently summarized the situation in Gaza in stark terms: "The closure and associated policies have resulted in a crisis that transcends the humanitarian sphere. Every Gazan is affected by poverty, unemployment and crippled public services, causing human misery on a massive scale."²⁹

The blockade of Gaza clearly qualifies as collective punishment, which is strictly prohibited by the Fourth Geneva Convention.³⁰ The International Committee for the Red Cross recently concluded: "The whole of Gaza's civilian population is being punished for acts for which they bear no responsibility."³¹ And significantly for the legality of the blockade of Gaza, a blockade is prohibited if the impact on the civilian population is such that it is denied goods essential for its survival or if the harm to the civilian population – severe in this case – outweighs the military advantage of the blockade.³²

²⁷ See www.unrwa.org; <http://www.who.int/hac/crises/international/wbgs/en/> (WHO reports and statements on the occupied Palestinian territory). See also Goldstone Commission Report, *supra* n.1, ¶¶ 1217-1335; *Gaza closure: not another year!* International Committee of the Red Cross, June 14, 2010, News Release 10/103 available at: <http://www.icrc.org/web/eng/siteeng0.nsf/html/palestine-update-140610> ("ICRC June Statement") (reporting on "all-time low" of medical supplies, including essential medicines, and the effects of electricity cuts on health care, including power outages during surgery); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, A/HRC/13/53/Rev.1, June 7, 2010, ¶¶ 30-34. See, e.g., Goldstone Commission Report, ¶ 65 ("Insufficient supply of fuel for electricity generation had a negative impact on industrial activity, on the operation of hospitals, on water supply to households and on sewage treatment. Import restrictions and the ban on all exports from Gaza affected the industrial sector and agricultural production. Unemployment levels and the percentage of the population living in poverty and deep poverty were rising.").

²⁸ Goldstone Commission Report, *supra* n.1, ¶ 70: "Children's learning difficulties of psychological origin are compounded by the impact of the blockade and the military operations on the education infrastructure. 280 schools and kindergartens were destroyed in a situation in which already restrictions on the importation of construction materials meant that many school buildings were in serious need of repair."

²⁹ UNRWA June Statement, *supra* n.10.

³⁰ Article 33 of GC IV prohibits collective punishment. See also Hague Regulations, Art. 50.

³¹ ICRC June Statement, *supra* n.27.

³² San Remo Manual par. 102(a) (a blockade is prohibited if "it has the sole purpose of starving the civilian population or denying it other objects necessary for its survival"); The Commander's Handbook On The Law Of Naval Operations, July 2007, Limitations, 7.7.2.5, available at: <http://www.usnwc.edu/getattachment/a9b8e92d-2c8d-4779-9925->

Americans for Peace Now, a Zionist organization, also finds that there is indeed a humanitarian crisis in Gaza. Even if the trickle of humanitarian aid which has been entering the Strip in the past three years is increased, most Palestinians living in Gaza will not have money to buy food and other goods because more than 80% are dependent on cash and food assistance from charities; 90% of factories are closed or operating at 10% or less capacity; 40% of residents are unemployed; 90% of water is unsuitable for drinking without treatment.³³

And there is a second issue beyond the movement of necessary goods into Gaza: the movement of people into and out of Gaza. Some patients who require medical treatment not available in Gaza are denied permission to seek it elsewhere; medical personnel are often prevented from attending training opportunities abroad.³⁴ Students who have received scholarships to attend universities in other countries have been denied exit from the Gaza Strip.³⁵ And certainly ordinary Palestinians from Gaza should be permitted to enjoy the fundamental right to travel, whether to visit family living outside of Gaza, take advantage of professional opportunities or simply to enjoy a basic freedom without discrimination.

Israel claims that the purpose of the blockade is to stop civilian targets in Israel from being bombed, thus implying the purpose of the blockade is strictly military for self defense.³⁶ But in response to a lawsuit filed by Gisha, the Israeli government stated: "A country has the right to decide that it chooses not to engage in economic relations or to give economic assistance to the other party to the conflict, or that it

[0defea93325c/1-14M \(Jul 2007\) \(NWP\)](#) ("A blockade is prohibited if the sole purpose is to starve the civilian population or to deny it other objects essential for its survival.")

³³ Top 10 Reasons for Reassessing the Gaza Blockade Strategy, http://www.peacenow.org/entries/post_6. See also, K. Laub and D. Hadid, *Ordinary Gazans, not Hamas, Hurt Most by 3-Year Blockade*, AP, June 11, 2010, available at <http://act.commondreams.org/go/986?akid=79.103719/Cx7RsB&t=>.

³⁴ *Id.*

³⁵ "U.S. consulate working to get exit visas for Gaza students," May 30, 2008, available at: <http://www.haaretz.com/news/u-s-consulate-working-to-get-exit-visas-for-gaza-students-1.246876>. See also "Israel Announces: No Easing for Travel of People Into and Out of Gaza," July 8, 2010 available at: www.gisha.org/index.php?intLanguage=2&intItemId=1848&intSiteSN=113 (describing rejection of petition by human rights attorney from Gaza to attend master's program in human rights at Birzeit University in the West Bank).

³⁶ The MFA Analysis, *supra* n.11, states: "Such blockade has been imposed, as Israel is currently in a state of armed conflict with the Hamas regime that controls Gaza, which has repeatedly bombed civilian targets in Israel with weapons that have been smuggled into Gaza via the sea."

wishes to operate using ‘economic warfare.’”³⁷ Another term for “economic warfare” is “collective punishment.” This warfare, or punishment, was imposed on Gaza by Israel (with Egypt’s assistance) in 2007, purportedly as an attempt to bring about “regime change” following Hamas’ victory in democratic elections –but it is the Palestinian population as a whole that is suffering.³⁸

In conclusion, the blockade of the Gaza Strip is not lawful under international law because:

- An occupier cannot blockade the territory which it occupies;
- The damage to the civilian population is excessive in relation to the concrete military advantage anticipated by the blockade;
- Collective punishment is a blatant violation of international law and cannot justify the imposition of a blockade.³⁹
- The blockade does not comport with the San Remo Manual’s requirement that it be administered impartially since some humanitarian missions reached Gaza while others did not.⁴⁰

C. Conclusion

Both Israelis and Palestinians have a right to self-defense – but only in so far as efforts at “self-defense” do not entail violations of international law, including attacks directed at the civilian population or collective punishment. The fact that the relative positions of Israel and Gaza are severely unbalanced in their respective capacities does not exempt either Israel or Gaza/Palestine from the application of

³⁷ S. Frankel, *Israeli Document: Gaza Blockade Isn’t About Security*, McClatchy Newspapers, June 10, 2010, <http://www.commondreams.org/headline/2010/06/10-2>. See also, “Gisha Response to Cabinet Decision on Gaza Closure: We don’t need more lists; we need to end “economic warfare””, Press Release, June 17, 2010, available at: <http://www.gisha.org/index.php?intLanguage=2&intItemId=1819&intSiteSN=113>

³⁸ In other contexts, the targeting of civilians “as part of a political strategy,” including by starvation of the civilian population, has been condemned by the Secretary-General of the United Nations See “Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict,” S/2001/331, Mar. 30, 2001 at ¶14. Article 54(1) of Additional Protocol I of the Geneva Conventions provides that “starvation of civilians as a method of warfare is prohibited.”

³⁹ Hague IV, Art. 50, GC IV, Arts 33, 53. See *Is Israel’s blockade legal?* BBC News, Discussion with Maritime lawyer Douglas Guilfoyle, June 1, 2010, available at: http://news.bbc.co.uk/today/hi/today/newsid_8715000/8715428.stm.

⁴⁰ Declaration Concerning the Laws of Naval War, 1909, Ch. I, Art. 2 and 5; San Remo Manual, *supra* n.15, par. 100.

basic principles of international law, including humanitarian law, human rights law and the law of naval warfare.

As the Goldstone Commission Report found in relation to Operation Cast Lead and the policies employed in Gaza, Israel often breached the fundamental principle of distinction, conflating all civilians with its political or military enemy:

In the framing of Israeli military objectives with regard to the Gaza operations, the concept of Hamas' 'supporting infrastructure' is particularly worrying as it appears to transform civilians and civilian objects into legitimate targets. Statements by Israeli political and military leaders prior to and during the military operations in Gaza indicate that the Israeli military conception of what was necessary in a war with Hamas viewed disproportionate destruction and creating the maximum disruption in the lives of many people as a legitimate means to achieve not only military but also political goals.⁴¹

Such is the case with the blockade – and because the target of the blockade policy is, or had become, the civilian population of Gaza, the blockade is illegal and must be fully lifted immediately.

III. Was the Attack on the Flotilla Legal?

Having concluded that Israel's blockade of Gaza is illegal, it follows that Israel cannot simply intercept vessels outside of its territorial waters traveling to Gaza.⁴² As such, *any* attack or interception of the humanitarian vessels travelling to Gaza in international waters must be deemed illegal.⁴³ Because Israel has argued that its

⁴¹ Goldstone Commission Report, *supra* n.1, ¶ 63. *See also Id.*, at ¶¶ 1328-1331.

⁴² *See* Douglas Guilfoyle, "Gaza Fleet Raises Questions over Legality of Israel's Blockade," *Times Online*, June 1 2010, available at: <http://business.timesonline.co.uk/tol/business/law/article7142055.ece>.

⁴³ Under international law related to maritime and law-of-the-sea issues, while in international waters, ships are subject to the exclusive jurisdiction of the State in which they are registered. Other than for a few exceptions such as suspicion of piracy, slave trading, statelessness and unauthorized radio broadcasting (*see* United Nations Convention on the Law of the Sea (UNCLOS) Article 110), permission must be sought and granted from the flag-state before ships are boarded. *See also* Article 22(1) of the 1958 Geneva High Seas Convention. Douglas Guilfoyle, *Shipping Interdiction and the Law of the Sea*, 16, 23-24 (Cambridge University Press: 2009). *See* UNCLOS, Articles 91 and 92. In the *Lotus* case, the Permanent Court of International Justice held that "vessels on the high seas are subject to no authority except that of the State whose flag they fly". PCIJ Series A 1927 No. 9 at p. 25.

complete blockade of Gaza is legal, however, we examine whether the 31 May attack on the flotilla was lawful under international law, and we conclude it was not.

Israel has claimed that the attack on the flotilla was a necessary act of self-defense and a lawful response to an attempted breach of its naval blockade of Gaza.⁴⁴ It has also argued that the actions taken by its armed commandos against civilians were necessary acts of self-defense.⁴⁵ Such claims are factually and legally incorrect.

Israel's attack on, and seizure of, civilian ships in international waters carrying humanitarian assistance and building materials to Gaza was illegal: the heavily armed attack on the flotilla by Israel constituted a disproportionate response to any perceived or alleged threat that the civilian vessels posed; numerous options far short of the use of lethal force against unarmed civilians were at Israel's disposal and could have been used to respond to the flotilla's approach of Gaza. Even if the commandos had feared being attacked by some of the civilians on board, as Israel claims, their response would have been illegal and criminal.

The 1988 International Maritime Organization's Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which was adopted in the wake of the 1985 attack on the *Achille Lauro*, prohibits seizing a ship by force or any other form of intimidation, or to commit any acts of violence against the people on the ship. Article 3 states, in relevant part:

Any person commits an offence if that person unlawfully and intentionally:

- a. seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
- b. performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;
- ...
- g. injures or kills any person, in connection with the commission or attempted commission of any of the offences set forth in subparagraphs (a) to (f).

⁴⁴ See, e.g., *PM: Flotilla raid was in self defence*, Jerusalem Post, May 31, 2010, available at: <http://www.jpost.com/Israel/Article.aspx?id=177022>; "Statement by Prime Minister Netanyahu: "No Love Boat"," June 2, 2010, Israeli Ministry of Foreign Affairs, available at: http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2010/Statement_PM_Netanyahu_2-Jun-2010.htm. Notably and contrary to the views of the many international humanitarian organizations cited above, Prime Minister Netanyahu also said in his statement, "There is no humanitarian crisis in Gaza. ...There's no shortage of food. There's no shortage of medicine. There's no shortage of other goods." *Id.*

⁴⁵ It has been acknowledged, and is clear on the video taken during the attack, that certain of the passengers prepared to respond to the boarding of the ship by grabbing objects on the ship, such as metal piping. See <http://www.youtube.com/watch?v=vwsMJmvS0AY>.

Notably, there are no reports of passengers being armed with guns, and no weapons were reported to have been found.

Furthermore, information available demonstrates that the response to the flotilla, which included the shooting-death of nine civilians on board the *Mavi Marmara*, was not a reasonable act of self-defense. Much evidence, including by Israeli officials, demonstrates that this was planned as a heavily armed attack on civilian boats which foresaw the use of force, including deadly force. The claim put forward by the Israeli forces that they acted in self-defense is negated by the disproportionate level of violence perpetrated upon the civilian passengers onboard the humanitarian vessel.⁴⁶

The San Remo Manual provides that the “principles of necessity and proportionality apply equally to armed conflict at sea and require that the conduct of hostilities by a State should not exceed the degree and kind of force, not otherwise prohibited by the law of armed conflict, required to repel an armed attack against it and to restore its security.” Par. 4. This provision was clearly violated in the attack.

A. Premeditation

Despite the statements by the organizers and passengers of the Gaza flotilla regarding its humanitarian and non-violent nature, in the week prior to the attack, Israel prepared for an armed, military offensive against the flotilla, and particularly the *Mavi Marmara*. These preparations indicate that Israel was preparing for an *offensive* action, rather than merely responding in self-defense to any attack in the early morning hours of May 31. A forum of seven senior cabinet ministers was convened to determine how to respond to the advancing flotilla.⁴⁷ Following their deliberations along with that of the prime minister, defense minister and reportedly

⁴⁶ This analysis draws from publically available information, including eye-witness accounts of persons travelling on the flotilla, video-footage from the flotilla and government, inter-governmental and non-governmental sources. It is recalled that to date, more than three months after the attack, nearly all electronic equipment including video-footage from the ships, remains in the sole custody of the Israeli government, or otherwise unaccounted for, despite repeated calls by the passengers and certain governments to have such materials and potential evidence returned. See, e.g., *CCR Demands Return of Property and Evidence Seized by Israel from Flotilla*, Press Release, June 17, 2010, available at:

<http://www.ccrjustice.org/newsroom/press-releases/ccr-demands-return-property-and-evidence-seized-israel-flotilla>; A. Wright, *Israeli Soldiers Sell Gaza Flotilla Passengers' Computers and Steal Hundreds of Thousands of Dollars in Cash*;

Israeli Government Refuses to Secure Criminal Evidence, Common Dreams, Aug. 22, 2010, available at: <http://www.commondreams.org/view/2010/08/22-5>.

⁴⁷ See, e.g., I. Kershner, *Barak Says 'Friction' Was Expected in Flotilla Raid*, N.Y. Times, Aug. 10, 2010, available at: <http://www.nytimes.com/2010/08/11/world/middleeast/11flotilla.html?scp=1&sq=flotilla&st=cse>

consultations with the U.S. administration, a large naval fleet was deployed to stop the vessels.⁴⁸

Statements made by Israeli officials prior to the interception of the *Mavi Marmara* and the seizure of the other ships in the flotilla indicate that the attack was planned and that Israel knew that the consequences of an armed take-over of the vessels could lead to injuries, if not deaths, among the civilian passengers. Israeli forces were aware of the humanitarian flotilla traveling towards Gaza and announced that it would “use all available means to stop the ships” from docking at Gaza, and “has instructed the Israel Defense Forces and the Navy to act accordingly.”⁴⁹ Passengers, including those on the top deck of the *Mavi Marmara*, could not have fully understood the risk they faced and the intention of Israel to employ live ammunition against them, as Israel also spoke of towing the vessels to the port of Ashdod and deporting the passengers from there.⁵⁰ In the face of such warning, the flotilla passengers confirmed that they would only employ non-violent resistance methods.⁵¹ The Israeli government described the humanitarian mission as a “provocative act” and on May 26, the foreign minister confirmed the launching of a military operation against the Freedom flotilla which would ensure the vessels were stopped “at any cost.”⁵² In the lead up to the attack, three Israeli missile ships crewed by Shayetet 13 commando forces (an elite naval special forces unit, akin to the US Navy Seals) were docked at the military port in Haifa. One of these vessels was the Hanit warship, the navy’s most advanced missile boat. The navy carried out

⁴⁸ It was reported that the U.S. administration had communicated with Israel through multiple channels many times regarding the flotilla. S. Wilson and G. Kessler, *US urged Israel to use Caution and Restraint with Aid Boats Heading to Gaza*, Washington Post, June 3, 2010.

⁴⁹ J. Ferziger, *Israel Threatens Naval Action to Stop Aid Ships Bound for Gaza*, Bloomberg Businessweek, May 27, 2010, available at: <http://www.businessweek.com/news/2010-05-27/israel-threatens-naval-action-to-stop-aid-ships-bound-for-gaza.html>.

⁵⁰ *Id.* Again, it is notable that no arms had been found on any of the ships belonging to the flotilla passengers; there is evidence that some passengers on the *Mavi Marmara* prepared to respond to the boarding of the vessel by armed commandos and the firing of live ammunition by the Israelis by grabbing slingshots, sticks or metal rods, which appear to have been pulled from the railings of the ship. See video from the *Mavi Marmara* available at: www.youtube.com/watch?v=vwsMJmvS0AY.

⁵¹ J. Ferziger, *Israel Threatens Naval Action to Stop Aid Ships Bound for Gaza*, Bloomberg Businessweek, May 27, 2010.

⁵² I. Deitch, *Israeli Gunships Head to Sea to Block Freedom Flotilla; Stage set for HighSeas Showdown with Human Rights Activists*, A.P., May 28 2010. See also A. Somgalvi, *Barak contradicts Netanyahu’s testimony on flotilla*, Ynetnews, Aug. 10, 2010, available at: <http://www.ynetnews.com/articles/0,7340,L-3933060,00.html>.

an exercise intercepting ships and arresting passengers and masked naval commandos were trained for the mission.⁵³

Indeed, recent testimony by Prime Minister Netanyahu before the Israeli commission examining the flotilla attack confirms that the armed attack on the humanitarian flotilla was discussed in the days prior to the attack. While Mr. Netanyahu “asked that the confrontation be minimized as much as possible and that a supreme effort be made to avoid harming anyone,” he did not deny that he authorized the boarding of the passenger ferries under cover of darkness, by armed commandos whose rules of engagement included the use of live ammunition, despite knowing that the passengers on the ships were civilians and that their mission was humanitarian in nature.⁵⁴ Israeli defense minister Ehud Barak confirmed during his testimony before the commission that Israeli government officials were aware that the interception of the flotilla under the planned orders could turn violent, despite the expectation of being met with only passive resistance.⁵⁵

B. Disproportionate Response

The flotilla headed to Gaza was comprised of six ships, flying under the flags of the United States, Greece, Comoros Islands, Turkey and Kiribati. The ships left ports in Turkey, Greece, and Cyprus; upon departure, each ship was searched for weapons and any items illegal under international law; none were found.⁵⁶

⁵³ See R. Ben-Yishai, *Navy prepares for Gaza flotilla*, Ynetnews, May 30, 2010, available at: <http://www.ynetnews.com/articles/0,7340,L-3896090,00.html>. The Navy statement read: “The mission is relatively simple and we are aware that the other side will try to make us look bad. We will show restraint and not respond to provocations, we will do only what is necessary to carry out the mission, no more, but no less either.”

⁵⁴ I. Kershner, *Netanyahu Speaks in Flotilla Inquiry*, N.Y. Times, Aug. 9, 2010, available at: www.nytimes.com/2010/08/10/world/middleeast/10flotilla.html?scp=3&sq=flotilla&st=cse. Notably, not simply the operation itself but also the potential public relations fall-out was discussed on May 26. *Id.*

⁵⁵ I. Kershner, *Barak Says ‘Friction’ Was Expected in Flotilla Raid*, N.Y. Times, Aug. 10, 2010. Barak blamed the deaths of the civilian passengers not on the use of live ammunition by the Israeli commandos but apparently on the “underestimated” level of violence used against the Israeli forces by the civilian passengers. In this regard, as will be discussed below in detail, it is recalled that gunshots were fired at close-range, including through the back of the head, at the passengers who were killed.

⁵⁶ E. Soncan, M. Salciogli and C. Yenilmez, *Customs Officials Deny Israeli Claims Weapons were Onboard*, Today’s Zaman, May 31 2010; “As it happened; Israeli raid on Gaza flotilla,” BBC, May 31, 2010, available at: <http://www.bbc.co.uk/news/10196585>.

The six-boat flotilla claimed as its mission the delivery of humanitarian aid and building supplies to Gaza as well as a breach of the illegal Israeli blockade. The Free Gaza Movement states its “intent to overcome this brutal siege through civil resistance and non-violent direct action, and establish a permanent sea lane between Gaza and the rest of the world,” and has “not and will not ask for Israel’s permission” for its actions.⁵⁷ As was the pledge undertaken by passengers on the flotilla in the event of confrontation with Israel, the Free Gaza Movement “adhere[s] to the principles of nonviolence and nonviolent resistance in word and deed at all times.”⁵⁸ The passengers on the ships were civilians, and among the passengers in the flotilla were former U.S. Ambassador Edward Peck, members of the European Parliament as well as of national parliaments including the German and Israeli parliaments, journalists, retirees, students and activists; children were aboard the *Mavi Marmara*.⁵⁹ The flotilla’s mission, civilian nature, and non-violent methods of resistance were well-publicized in advance of its departure for Gaza.⁶⁰

At approximately 04:00 on May 31, armed IDF commandos rappelled onto the *Mavi Marmara*, and simultaneously seized control of the five other boats in the Gaza-bound flotilla in international waters. On interception, each vessel’s communication network was cut off and all recording equipment was confiscated. Despite this effort, footage smuggled off the *Mavi Marmara* and released by one of the passengers, filmmaker Iara Lee, supports the testimonies of the civilians onboard the ship.⁶¹ The footage evidences the commandos firing ammunition from overhead and alongside the *Mavi Marmara* prior to landing onboard, while inflatable zodiac boats surrounded the ship. Against the sound of live ammunition, loud booms and sound grenades, laser lights from rifles which are generally used to mark targets can be seen scanning the civilian passengers. Additionally, the footage reveals the peaceful nature of the civilians onboard the vessel, although, as noted above, it also shows some passengers holding sling shots, metal rods or other make-shift tools, apparently in preparation for an attack. Someone on the boat can be heard over the public address system saying, “Do not show resistance.... They are using live

⁵⁷ <http://www.freegaza.org/en/about-us/mission>.

⁵⁸ *Id.*

⁵⁹ Lists of some members of the flotilla are available on the Free Gaza movement web-site as well as in numerous news accounts; many passengers aboard the flotilla have written individual accounts for newspapers or blogs, and given talks about their experience which are available in video or written form on the web. *See also* Opening Statement of Iara Lee, United Nations Correspondents Association, June 10, 2010 available at: <http://vimeo.com/12615708>.

⁶⁰ Article 48 of Additional Protocol I requires parties to the conflict to distinguish at all times between civilians and combatants, and between civilian objects and military objectives, and to direct their operations only against combatants and military objectives.

⁶¹ The 62-minute video is available at: <http://www.youtube.com/watch?v=vwsMJmvS0AY>.

ammunition.... Be calm, be very calm." At the end of the footage a woman can be heard shouting: "We have no guns here, we are civilians taking care of injured people."

Israel initially asserted that the weaponry used against the flotilla passengers was limited to paintball rifles; however, according to autopsy reports compiled by the Turkish Council of Forensic Medicine, of the nine passengers confirmed dead, five were killed by gunshot wounds to the head, most of which were caused by 9mm bullets.⁶² Furkan Doğan was shot five times: once in the face, once in the back of the head, twice in the leg and once in the back from less than 45 cm.⁶³ Two of the other men were shot twice. 48 other people on the *Mavi Marmara* suffered gunshot wounds. This information reveals the illegitimate manner and intensity of the attack and undermines Israel's insistence that its soldiers opened fire only in self-defense.

Israel has attempted to justify its actions by claiming that the commandos acted in self defense. The right to self-defense is codified in Article 51 of the UN Charter.⁶⁴ However, this right does not extend to the use of force against foreign-flagged vessels from neutral or allied states in international waters in circumstances such as these, where they are carrying not military supplies destined for a belligerent party but humanitarian supplies for a civilian population. Even if Israel did have a right to board the ships, its use of force in doing so was blatantly disproportionate to any threat the unarmed civilians may have posed. Indeed, while there is video-footage of some passengers grabbing metal rods or other make-shift tools, the response of

⁶² R. Booth, *Gaza Flotilla Activists were Shot in the Head at Close Range*, The Guardian, June 4, 2010, available at: www.guardian.co.uk/world/2010/jun/04/gaza-flotilla-activists-autopsy-results.

⁶³ Autopsy records of the nine victims on file with the Center for Constitutional Rights.

⁶⁴Article 51 provides:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Discussion of proportionality and self-defense appears out of context in this case, as there was no "armed attack" by the civilians on the flotilla warranting a countermeasure or the use of force by Israel (*jus ad bellum*). Once force was employed however, it must be measured against the attack itself and the needs of self-defense (*jus in bello*).

Israeli commandos to use live ammunition – and to fire numerous bullets at close range fire s– does not conform with the requirements of international law.⁶⁵

The traditional test for the resort to force in self-defense is that the threat was “instant, overwhelming, leaving no choice of means, and no moment of deliberation.”⁶⁶ Proportionality, meaning the degree of force used against a military objective such that the force used is proportionate to the desired military outcome, is a relevant and necessary consideration in relation to a state’s determination to employ military force; its choice of weapons and tactics; the measures taken by individuals in light of the military objective;⁶⁷ and in the context of law enforcement.⁶⁸ At the International Court of Justice, examinations of proportionality require a determination of whether there exist “less intrusive means” that can equally protect a state’s legitimate needs.⁶⁹ Human rights law allows for derogations of its principles only “to the extent strictly required by the exigencies of the situation,”⁷⁰ and such derogation is not applicable to the right to life.

Applying these standards for self-defense and proportionality, Israel’s actions must be deemed unlawful. First and foremost, the humanitarian flotilla, comprised of civilians seeking to deliver non-military supplies to Gaza, cannot be deemed a “threat” to Israel’s safety and security. The flotilla did not seek to travel to Israel, let alone “attack” Israel. Furthermore, the flotilla did not constitute an act which required an “urgent” response, such that Israel had to launch a middle-of-the-night

⁶⁵ The available video-footage does not show the top-deck of the *Mavi Maramara*, where the nine passengers were shot at close range, so it is not possible to determine whether there were any passengers with any make-shift tools in their vicinity.

⁶⁶ This is known as the *Caroline* formula. Letter from Mr. Webster to Lord Ashburton, August 6, 1842, cited in Lori F. Damrosch et al., *International Law: Cases and Materials* (2001), p. 923.

⁶⁷ See Thomas Franck, *On Proportionality of Countermeasure in International Law*, 102 A. J. Int’l. L. 715, 719 (2008) (“Franck on Proportionality”)

⁶⁸ The 1990 Basis Principles on the Use of Force and Firearms by Law Enforcement Officials provide that:

Article 4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

⁶⁹ Franck on Proportionality, 102 A. J. Int’l. L. at 720-23, *supra* n.67.

⁷⁰ International Convention on Civil and Political Rights, Art. 4(1). The Human Rights Committee allows for derogation of its human rights obligations only when an emergency “threatens the life of the nation,” and derogations are limited to those that are “strictly required.” General Comment 29, States of Emergency, CCPR/C/21/Rev.1/Add.11, Aug. 31, 2001, paras. 3-4. See also Franck on Proportionality, 102 A. J. Int’l. L. at 755-62, *supra* n.67.

armed boarding that would surely raise the risks of tragedy in a way that an approach in daylight would not have; the ships would still not have reached Gaza had Israel waited a few more hour to intercept them. Moreover, boarding the ship by helicopter with baklava-clad heavily armed commandos was not a “necessary” response;⁷¹ Israel could have halted the ship without resort to force. The Israeli Navy had the power to prevent the ships from landing without firing a shot. It admits it had nets that could have halted five of the vessels, and it has larger naval vessels that could have halted the *Mavi Marmara*, either by forcibly towing it, or by physically blocking its way. Indeed, Israel had used less intrusive – and non-lethal – methods to stop prior ships from entering Gaza’s ports. Israel could also have diplomatically engaged Turkey,⁷² arranged for a third party to verify there were no weapons onboard and then peacefully guided the vessel to Gaza.⁷³ Instead of employing such methods, the evidence establishes that Israeli forces used gas bombs and tear gas, rappelled onto the ships from helicopters and used rubber bullets and live ammunition against the civilians on board.

Ultimately, the disproportionate attack on the *Mavi Marmara* violates fundamental international legal principles for which accountability must be secured.

IV. Conclusion

In light of the conclusions drawn in this paper about the illegality of the blockade, it is important to recall the statement on the easing of restrictions by the Gaza-based Palestinian Center for Human Rights (“PCHR”):

The recently published lists, which have been effectively sanctioned by the international community through statements welcoming the Israeli decision, represent an institutionalization of the siege of Gaza...PCHR is gravely concerned that Israeli policy concerning Gaza is simply shifting to another form of illegal blockade, one that may become internationally accepted and

⁷¹ For a discussion on necessity and proportionality, see Franck on Proportionality, 102 A. J. Int’l. L. at 730, *supra* n.67.

⁷² Prime Minister Netanyahu claimed that he had engaged in such diplomatic contacts with the “highest echelons of the Turkish government,” before resorting to an armed interception of the flotilla. See I. Kershner, *Netanyahu Speaks in Flotilla Inquiry*, N.Y. Times, Aug. 9, 2010.

⁷³ See The Commander’s Handbook on the Law of Naval Operations, July 2007, 7.7.3 Special Entry and Exit Authorization, available at: [http://www.usnwc.edu/getattachment/a9b8e92d-2c8d-4779-9925-0defea93325c/1-14M_\(Jul_2007\)_NWP](http://www.usnwc.edu/getattachment/a9b8e92d-2c8d-4779-9925-0defea93325c/1-14M_(Jul_2007)_NWP) (“neutral vessels and aircraft engaged in the carriage of qualifying relief supplies for the civilian population and the sick and wounded should be authorized to pass through the blockade cordon, subject to the right of the blockading force to prescribe the technical arrangements, including search, under which passage is permitted.”)

institutionalized, as Palestinians in Gaza may no longer suffer from the same shortage of goods, but will remain economically dependent and unable to care for their own population as well as socially, culturally and academically isolated from the rest of the world.⁷⁴

It seems as long as the blockade persists, future “flotillas” – including the planned U.S. boat “*The Audacity of Hope*”⁷⁵ – are prepared to sail to Gaza in an effort to achieve the same goals of the 31 May flotilla. This was not the first such mission to Gaza: of the nine trips, some have been successful in bringing humanitarian assistance to Gaza, as well as bringing Palestinians and other persons such into or out of the Gaza Strip, while others have met with force, with ships being rammed and boats being overtaken and brought to Israel.⁷⁶ But no such prior humanitarian mission has met with the loss of life.

Accountability for the illegal conduct identified herein is required, and all ongoing breaches of international law must cease immediately.

⁷⁴ “PCHR Response to Publication of New Israeli List of Items Banned from Entry to Gaza,” July 7, 2010, available at: http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=6808:pchr-response-to-publication-of-new-israeli-list-of-items-banned-from-entry-to-gaza-&catid=36:pchrpressreleases&Itemid=194.

⁷⁵ See www.ustogaza.org.

⁷⁶ See, e.g., “First Breaking of the Siege,” Apr. 12, 2009, available at <http://www.freegaza.org/en/first-voyage> (discussing the trip of 44 persons to Gaza from Cyprus in August 2008); M. Kennedy, *Free Gaza Movement's two-year campaign to break blockade*, The Guardian, May 31, 2010, available at: www.guardian.co.uk/world/2010/may/31/free-gaza-movement-blockade. For a complete listing of prior humanitarian missions to Gaza, including those which were forcibly stopped or seized by Israeli forces in late 2008 and 2009, see www.freegaza.org/en/boat-trips.