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A Raid from the Sea: The Gaza Flotilla Attack and Blockade under Legal Scrutiny

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ABSTRACT

The publication of the Palmer report written by the panel of inquiry established by the UN Secretary-General Ban Ki-Moon once again brought the 31 May 2010 Gaza Flotilla incident and the blockade of Gaza back to world's attention. On May 31, 2010, Israeli commandos stormed a passenger ship, the Mavi Marmara, the largest boat of a flotilla of six boats which were carrying 10000 tons of humanitarian aid to besieged Gaza, in international high waters. The operation left 9 activists dead and over 30 activists wounded. The Israeli military assault against the Mavi Marmara immediately ignited worldwide protests and condemnation. Turkey, whose citizens were attacked by Israeli soldiers in international high waters, 72 miles away from the Gazan coast, took the lead in protests and condemnation. Israel, however, claimed that the demonstrators on the Mavi Marmara were aiming to break the blockade of Gaza and the Israeli commandos were forced onboard to react in an act of self-defense.

During more than a year past since the Mavi Marmara attack, Israel has committed a chain of errors which started with the illegal blockade of Gaza. Using the blockade as a pretext, Israel intercepted the Mavi Marmara and used excessive force killing 9 civilians on board. Israel's violations of international law were documented thoroughly in the UNHRC report, while the Palmer Commission penned a report with political rather than legal and humanitarian priorities. Ironically, as a country which has so far ignored myriad of UN resolutions, Israel has welcomed the Palmer report focusing on its mention of the blockade of Gaza as a legitimate security measure against Hamas, but totally ignoring the parts which stated that Israel used excessive force on board and maltreated the detainees after the takeover.

This paper briefly summarizes the work done with the mandate given by the UN, and attempts to put the blockade of Gaza in its legal context first, demonstrate that Israel's use of the blockade as a pretext for its belligerent act on board the Mavi Marmara has no legal ground, and consequently discuss Israel's violations of international law on the board of the Mavi Marmara.



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A RAID FROM THE SEA: THE GAZA FLOTILLA ATTACK AND BLOCKADE UNDER LEGAL SCRUTINY

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I. INTRODUCTION

The publication of the Palmer report written by the panel of inquiry established by the UN Secretary-General Ban Ki-Moon once again brought the 31 May 2010 Gaza Flotilla incident and the blockade of Gaza back to world's attention. The panel was established to inquire on that specific incident relying on the documents and information provided by the governments of Israel and Turkey. Not acting as a court and not being asked to adjudicate on legal liability, the Panel "hoped" that its report may resolve the issues surrounding the incident and bring the matter to an end.¹ Albeit being designed as a panel for reconciliation, it has furthered the rift between the two countries whose bilateral relations suffered greatly because of the Israeli attack on the Gaza Flotilla.

On May 31, 2010, Israeli commandos stormed a passenger ship, the Mavi Marmara, the largest boat of a flotilla of six boats which were carrying 10000 tons of humanitarian aid to besieged Gaza, in international high waters. The operation left 9 activists dead and over 30 activists wounded. The flotilla was carrying citizens from thirty-two countries, and among the passengers on the flotilla were European legislators, a Swedish best-selling author, Henning Mankell and Nobel peace laureate Mairead Corrigan-Maguire. The Mavi Marmara is owned by a Turkish charity, IHH (Foundation for Human Rights and Freedom and Humanitarian Relief), and was carrying around six hundred passengers most of whom are Turkish citizens. Following the military operation on the Mavi Marmara, the flotilla was docked at Ashdod port. The unarmed activists on board were detained; however, due to international pressure Israel released the passengers after a couple days of detention.

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1. "Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident", p.3. http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf

During more than a year past since the Mavi Marmara attack, political aspect of the incident has taken over its legal aspect and the deliberate violation of international law by the State of Israel has been often neglected.

The Israeli military assault against the Mavi Marmara immediately ignited worldwide protests and condemnation. Turkey, whose citizens were attacked by Israeli soldiers in international high waters, 72 miles away from the Gazan coast, took the lead in protests and condemnation, and called for emergency meetings of the UN, NATO, and the OIC. Ankara strongly condemned Israeli aggression, calling it “state terrorism”² and “an act which must be duly punished.”³ Ankara also called for an immediate release of its detained citizens, return of the dead and wounded passengers, an official apology from Israel, and an international and transparent investigation of the assault.

Israel, however, claimed that the demonstrators on the Mavi Marmara attacked the Israeli Defense Forces Naval commandos with light weaponry, such as knives and clubs, and the Israeli commandos were forced to react in an act of self-defense.⁴ Immediately after the assault, the Israeli Defense Forces (IDF) started a PR campaign and posted heavily edited short video clips, showing the clashes between the activists and IDF commandos, rappelling down to the Mavi Marmara. Tel Aviv argued that the flotilla was a deliberate provocation against Israel and was not organized with the sole purpose of humanitarian relief.⁵

During more than a year past since the Mavi Marmara attack, political aspect of the incident has taken over its legal aspect and the deliberate violation of international law by the State of Israel has been often neglected. The report prepared by the United Nations Human Rights Council has so far put forward the firmest legal arguments about the incident, and the Palmer Panel later established by the UN Secretary-General Ban Ki-Moon attempted to create a document that would help creating a point of understanding between Israel and Turkey. This paper briefly summarizes the work done with the mandate given by the UN, and attempts to put the blockade of Gaza in its legal context first, demonstrate that Israel’s use of the blockade as a pretext for its belligerent act on board the Mavi Marmara has no legal ground, and consequently discuss Israel’s violations of international law on the board of the Mavi Marmara.

II. THE UNHRC REPORT

In response to the incident the United Nations Human Rights Council established a fact-finding mission based on resolution 14/1 of 2 June 2010 to investigate violations of international law, including international humanitarian law and human rights law. The UN fact-finding mission’s report concluded that “a series of violations of international law, including international humanitarian and human rights law, were committed by the Israeli forces during the interception of the flotilla and during the detention of passengers in Israel prior to deportation.”⁶

2.<http://www.cnnturk.com/2010/dunya/05/31/erdogandan.sert.tepki.devlet.teroru/578393.0/index.html>

3.http://www.bbc.co.uk/turkce/haberler/2010/06/100601_turkey_gaza.shtml

4.<http://www.haaretz.com/news/diplomacy-defense/israel-navy-commandos-gaza-flotilla-activists-tried-to-lynch-us-1.293089>

5.<http://www.nrg.co.il/online/1/ART2/114/049.html>

6.http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf

The report observed that the conduct of the Israeli military and other personnel towards the flotilla passengers was not only disproportionate to the occasion but demonstrated levels of totally unnecessary and incredible violence. It betrayed an unacceptable level of brutality. Such conduct cannot be justified or condoned on security or any other grounds. It constituted a grave violation of human rights law and international humanitarian law. The mission found clear evidence to support prosecutions of the following crimes within the terms of article 147 of the Fourth Geneva Convention: willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury to body or health.⁷ It also considers that a series of violations of Israel's obligations under international human rights law have taken place, including: right to life (art. 6, International Covenant on Civil and Political Rights), torture and other cruel, inhuman or degrading treatment or punishment (art. 7, International Covenant; Convention against Torture), right to liberty and security of the person and freedom from arbitrary arrest or detention (art. 9, International Covenant), right of detainees to be treated with humanity and respect for the inherent dignity of the human person (art. 10, International Covenant), freedom of expression (art. 19, International Covenant).⁸

As a matter of fact, the UNHRC report has satisfied Turkey's initial demand of an international and transparent investigation of the assault. The report which was written after a series of interviews with the eye witnesses and on-site observations dealt with the Mavi Marmara attack in its totality. The Israeli occupation, the blockade of Gaza and humanitarian conditions in Gaza are critical issues without which one cannot build a legal opinion on the Mavi Marmara attack. The report demonstrated that the Israeli occupation continues to the extent to which Israel retains effective control of Gaza and the blockade is illegal regardless of Israeli justifications on security grounds. Another key aspect of the report is that it establishes that a humanitarian crisis existed on 31 May 2010 in Gaza and the preponderance of evidence from impeccable sources make it impossible to come to a contrary opinion. Therefore, the humanitarian crisis alone suffices to reason the blockade is unlawful and cannot be sustained in law. Establishing such substantial arguments on the events predating the Mavi Marmara attack, the report consequently makes it clear that the attack was illegal from top to the bottom.

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III. THE PALMER REPORT

UN Secretary General Ban Ki-moon formed a panel of inquiry on August 2010 to investigate the Mavi Marmara incident. Moon appointed ex-PM of New Zealand Geoffrey Palmer as the head of the panel, and the panel included ex-President of Colombia Alvaro Uribe and one representative from Turkey and Israel, Özdem Sanberk and Joseph Ciechanover. The panel also tried to gather information thorough points

7. United Nations Human Rights Council Report on the Israeli Attacks on the Gaza Flotilla, p. 40. http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf

8. Ibid, p.54

Rather, the panel relied almost entirely on the reports submitted by Turkey and Israel and attempted to bridge the gaps in Turkish and Israeli narratives.

of contact designated by Israel and Turkey. Considering the fact that none of the soldiers involved in the killings of 9 civilians and their immediate superiors have been interrogated, and Israel confiscated all the video material on board, the Israeli side provided highly filtered and selected evidence to the panel, while Turkish side provided the panel with written testimonies of 93 passengers and crew, autopsy reports, medical reports, forensic reports and some video footage.⁹

The report was submitted to Ban Ki-moon on September 2nd, 2011, one day after the full report was leaked to the New York Times and weeks after critical parts of it were leaked to the Israeli media.¹⁰ The report deals with the incident under four headlines. It first deals with Israeli naval blockade on Gaza and claims that it is a “legitimate security measure” to prevent weapons from entering Gaza by sea. It then states “The loss of life and injuries resulting from the use of force by Israeli forces during the take-over of the Mavi Marmara was unacceptable,” however adds that the flotilla organizers acted “recklessly” in attempting to breach the naval blockade of Gaza, and that more could have been done to warn flotilla participants of the potential risks involved and to dissuade them from their actions. Finally, it notes that there was “significant mistreatment” of passengers by Israeli authorities after the take-over of the vessels had been completed through until their deportation, including physical mistreatment, harassment and intimidation, unjustified confiscation of belongings and the denial of timely consular assistance.¹¹

It is important to note that the panel was not a fact-finding mission, unlike the previous UNHRC mission; hence it did not investigate the incident on site. In other words, the panel neither visited Gaza, which was a key to appreciate the humanitarian crisis in the city, nor interrogated the Israeli soldiers who took part in the deaths of 9 civilians nor listened to the eye-witnesses.¹² Rather, the panel relied almost entirely on the reports submitted by Turkey and Israel and attempted to bridge the gaps in Turkish and Israeli narratives.¹³ As the report states “what the Panel has done is to review the two national reports and identify where the differences over what happened arise...We set out what the Panel considers happened as far as that can be done on the information with which the Panel has been provided”.

The panel went parallel with a concerted effort to mend Turkish-Israeli relations. As a matter of fact, the panel itself was aimed at finding a middle way for both countries to revert the bilateral relations back to normal. This effort has had two major complications. First and foremost, it turned the report into a political document rather than a legal document that seeks justice for the civilian loss based on international law. Second, it

9. The Palmer Report, p. 18.

10. “Report Finds Naval Blockade by Israel Legal but Faults Raid”, New York Times, September 1, 2011. <http://www.nytimes.com/2011/09/02/world/middleeast/02flotilla.html>

11. The Palmer Report, pp.3-5.

12. Ibid, p. 8.

13. Ibid, p. 3.

prioritized mediation over justice, but ultimately failed in both. For these purposes, the report bears no legal precedence and neither legitimizes nor delegitimizes any issue in discussion, and it should therefore be considered as a political document rather than a legal text. As a matter of fact, the report itself states very clearly that the panel is not a court, and it was not asked from the panel to make determinations of the legal issues or to adjudicate liability.¹⁴

Despite efforts to reach a consensus between the two states, it should be made clear that the report is not written on consensus. Both states declared their objections regarding the report and disassociate themselves from bulk of it. Israel adopted the report's conclusions in general, especially the one that sees the blockade as a legitimate security measure, although it refused to concur with the conclusions that Israel used excessive and unreasonable force on board and maltreated the detained passengers. Israel which is infamous for not abiding with several UN resolutions against it, ironically welcomed the Palmer report which has no legal bearing and has substantial inadequacies in legal terms. Turkey, on the other hand, disagreed with report on the question of the legality of the blockade, the actions of the flotilla, naval blockades in general and the applicable international legal principles used in the report to discuss the issues at hand.

IV. IS THE GAZA BLOCKADE LEGAL?

Israel has been basing its efforts of legitimizing its interference with the flotilla and pursuing incidents on the presupposition that the Gaza blockade is legal. A legal blockade, Israel argues, gives Israel the right to stop and search any ship even on the high seas if they are believed on reasonable grounds to be breaching a blockade. Israel's arguments rely exclusively on the London Declaration of 1909 and the San Remo Manual on International Law Applicable to Armed Conflicts at Sea of 1994 which indeed gives right to declare a blockade if certain conditions are met.¹⁵ However, both Israel and the Palmer Commission fall short in their arguments that conditions required for declaring a blockade are actually met in the case of Israeli blockade of Gaza. This inadequacy and misinterpretation of international law by Israel and the Palmer Commission triggers further misinterpretations and consequent abuse of international law. To be concrete, attempts to legitimize illegal blockade of Gaza hinder justice in the Mavi Marmara incident.

Both London Declaration and the San Remo Manual justify a blockade only in international armed conflict under strict conditions. The Geneva Conventions of 1949

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14. Ibid, p.7.

15. IDF Chief Military Advocate General Staff, AvichaiMandelblit's testimony to the Turkel Committee: Public Commission to Examine the Maritime Incident of May 31, 2010, Session Number 4, 26 August 2010, pp. 41-43. See San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994, Section II, <http://www.icrc.org/ihl.nsf/FULL/560?OpenDocument>

This definition and requirements of the laws of naval war assert that in order for a state to declare blockade on another party that party has to be sovereign state with which that state is in an armed conflict.

define international armed conflict as a conflict between the legal armed forces of two different states.¹⁶ This definition and requirements of the laws of naval war assert that in order for a state to declare blockade on another party that party has to be sovereign state with which that state is in an armed conflict. The problem is that neither Israel nor international community recognizes the Hamas government in Gaza as a sovereign state. Furthermore, there is no armed conflict between Israel and the city of Gaza as outlined by international law. Despite Israeli withdrawal in 2005, Gaza is still under effective occupation of Israel, which still controls Gaza's airspace, sea coast, and considerable amount of its territory.¹⁷ In other words, Israel cannot declare blockade in legal terms on a territory which it effectively occupies.

As an occupied territory, therefore, Gaza falls under the jurisdiction of Fourth Geneva Convention of 1949, not the San Remo Manual. According to Fourth Geneva Convention, as noted earlier, collective punishment is prohibited; individuals cannot be held responsible for the acts of others and cannot be persecuted collectively.¹⁸ Israel's arbitrary blockade and embargo which are based on the accusation by Israel directed toward the Gazans that "you have elected Hamas, now endure its consequences" amount to collective punishment and therefore illegal according to international conventions.

Even if one defines Israel's relationship with Hamas as an armed conflict, it is quite clear that it is a non-international armed conflict. That is to say, it is an armed conflict that is non-international in nature and in which one of the parties involved is nongovernmental in nature, therefore out of San Remo's jurisdiction. The Palmer report recognizes that the conflict between Israel and Hamas is non-international in nature, but argues that blockades can be declared in non-international armed conflicts. The report admits that there are only few examples where a blockade has been instituted in a conflict that did not involve two or more States, and can give only one example, the Union blockade against the Confederate states of America during the American Civil War. Obviously, the Union blockade is not a valid example both legally and historically speaking.

The Palmer report argues that the Union blockade constitutes precedence for the Israeli blockade of Gaza in the sense that the blockade was legal although the Confederates were not recognized as a sovereign state neither by the United States of America nor the international community. To the contrary, the Union blockade is an example that points out the illegality of the blockade of Gaza. Following the U.S. announcement of its intention to establish an official blockade of Confederate ports, foreign governments began to recognize the Confederacy as a belligerent in the Civil War. Great Britain

16. See Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949, Article 2, <http://www.icrc.org/ihl.nsf/FULL/365?OpenDocument>

17. UNHRC Report, p. 15.

18. Article 33 of the Fourth Geneva Convention states that "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited." <http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>

granted belligerent status to the Confederates on May 13, 1861, Spain on June 17, and Brazil on August 1, and other foreign governments issued statements of neutrality.¹⁹ The belligerent status granted to the Confederates gave several privileges to them including but not limited to the right to contract loans and purchase supplies in neutral nations and to exercise belligerent rights on the high seas.²⁰ In other words, non-international nature of the armed conflict between North and South was turned into an international armed conflict by granting the belligerent status to the South in order to legitimize the blockade which was illegal otherwise.²¹

Israel has two options at this critical juncture: it may turn the conflict into an international armed conflict by granting Hamas belligerent status and in this way put the blockade of Gaza in the jurisdiction of the San Remo Manual. Or, it may end the illegal blockade of Gaza. Granting belligerent status to Hamas would also grant them the rights that were granted to the Confederates in the American Civil War. This would also make international community to drop Hamas from the terrorism list, and it is needless to say that Israel would object to this proposal feverishly.

V. THE MAVI MARMARA INCIDENT IN ITS LEGAL CONTEXT

As the part above stressed, the Israeli policy of blockade that preceded the Mavi Marmara attack was unlawful, and therefore one should detach it from the discussions on the Mavi Marmara. In other words, an illegal blockade cannot constitute the legal base of an illegal attack, and one should consider the Mavi Marmara raid as a military operation by Israeli commandoes against a humanitarian ship sailing in international waters.

Debates on the nature of the flotilla and the potential for an Israeli intervention started even before the ships set sail for Gaza. The Israeli military declared at the outset that the ships would be intercepted before they could reach Gaza's coast and towed to an Israeli port. The organizers announced that the ships would not violate Israeli territorial waters, and they do not need Israel's approval to reach Gaza by international waters. Furthermore, they argued that the Israeli blockade of Gaza is illegal and in violation of human rights based on the Fourth Geneva Convention, which considers collective punishment as a war crime.²²

Before the ships set sail to Gaza, Israeli officials asked their Turkish counterparts to stop the flotilla. Maj. Gen. Eitan Dangot, who oversees civilian Palestinian issues in the West Bank and Gaza, met with the Turkish ambassador in Tel Aviv. But the Turkish government

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19. "Preventing Diplomatic Recognition of the Confederacy, 1861-1865", <http://history.state.gov/milestones/1861-1865/Confederacy>

20. Ibid.

21. Howard Jones, *Union in Peril: The Crisis over British Intervention in the Civil War* (Nebraska: U of Nebraska Press, 1997) p.11, p.114.

22. See the FAQ section at IHH's website <http://www.ihh.org.tr/guncel-sorular-ve-cevaplari/en/>

Responding to Israeli allegations that activists aboard possessed weapons, Fevzi Gülcan, the head of customs at the Mediterranean port city of Antalya, stated that these allegations were baseless and added that the Mavi Marmara was thoroughly searched in Istanbul.

reportedly said that since the flotilla was sailing under the auspices of a private group, they could not stop them.²³ One of the few things the Turkish government was able to do was to explain what the stakes were to the flotilla organizers and the activists. The Turkish government warned the activists of Israel's likely interception and the physical and legal risks that the activists were taking by confronting Israel.

In addition to issuing warnings to the activists, the Turkish government also inspected the ships thoroughly before leaving from Turkey. Responding to Israeli allegations that activists aboard possessed weapons, Fevzi Gülcan, the head of customs at the Mediterranean port city of Antalya, stated that these allegations were baseless and added that the Mavi Marmara was thoroughly searched in Istanbul. Furthermore, its passengers were allowed on board only after being searched by security officers and x-ray scanners before setting out into the Mediterranean.²⁴

Israeli military officials decided upon the method of the operation after examining several options, such as sabotaging propellers or engines, and the use of chains. However, military officials concluded that a takeover of the boats by Israeli commandos was the best option. The plan involved an assault by zodiac boats and rappelling down of the commandos to the ship. According to military officials, the Israeli plan was designed with the expectation that they would only encounter passive resistance from the activists.²⁵

Ironically, the Israeli version of the story later included the allegations that some of the activists possessed fire weapons, some are terrorists, Israeli commandos were lynched by the activists as soon as they landed on the deck, and therefore, the commandos shot live ammunition in an act of self-defense. The IDF's version of the incident raises many legitimate questions regarding the plan and intention of this Israeli commando operation. Satisfactory answers to these questions would help the international community to understand what really happened on the boat in the early morning of May 31st.

First, Israel's expectations of passive resistance and the later allegations of presence of the terrorists on board are contradictory. If the flotilla organizers are indeed a radical Islamic organization with ties to terrorist organizations, as characterized by the Israelis, why would the Israelis only expect passive resistance? As a matter of fact, the expectation of passive resistance falls in line with the statements of Turkish customs authorities that the ship was clear of any kind of weapons. Hence, it is questionable whether a small number of otherwise peaceful activists could resort to violence against the IDF if the commandos did not board the ship in the manner they did.

Second, what turned peaceful activists into violent protesters leads us to also question the Israeli version of the story. Several eyewitnesses, including an Arab member of the

23. <http://www.nytimes.com/2010/06/05/world/europe/05reconstruct.html>

24. <http://www.aa.com.tr/tr/israil-gemilere-mudahale-etti-2-olu.html>

25. An Israeli military spokesman said they were expecting a sit-down or a linking of arms. <http://www.nytimes.com/2010/06/05/world/europe/05reconstruct.html>

Knesset Haneen Zoabi, Former US Marine Ken O’Keefe and journalists confirm that live rounds and rubber bullets were fired from the helicopter and from the sea, killing at least one passenger before any Israeli commandos landed on the Mavi Marmara.²⁶ UNHRC also concluded in its report that live ammunition was used from the helicopter onto the top deck prior to the descent of the soldiers.²⁷

Third, the Israeli version of the raid, which justifies the killings through self-defense, falls short of explaining, among others, the death of Furkan Doğan, a 19 year old Turkish-American high school student, who was shot at close range, with four bullets in his head and one in his chest. It also fails to justify the death of İbrahim Bilgen, a 60-year-old man who was shot four times in the temple, chest, hip and back. One should also take into consideration the fact that nine Turkish citizens on board the Mavi Marmara were shot a total of 30 times, and five were killed by gunshot wounds to the head.

The United Nations’ principles on the use of force by state actors give the right of self-defense or defense of others where it may be necessary and proportional to an imminent threat to life; however, it restricts use of force to the minimum extent necessary. It also requires that law enforcement agents have a duty to use alternative non-violent and non-lethal methods of restraint and conflict resolution.²⁸ Forensic evidence, and even the heavily edited videos of the IDF, clearly indicates that Israel violated the principle of proportionality and restraint. If a single bullet to the head could incapacitate an activist, then why would an activist such as Dogan be shot four times in the head and once in the chest? This indicates that the Israeli commandos were not merely responding in self-defense.

Fourth, in addition to the civilian fatalities and casualties on the boat, there is also a valid discussion on the legality of the Israeli attack in international high waters, seventy-two miles off the coast of Israel, on ships, flying under foreign flags. The ships were carrying civilians from thirty-two countries. The Convention on the High Seas and the UN Convention on the Law of the Sea protect freedom of navigation. This principle stipulates that all states have the freedom to sail ships flying their flags on the high seas. Since sovereignty over a ship is exclusive to the state whose flag the ship is flying, any attempt to board the ship of another flag-state is therefore considered a breach of that state’s sovereignty.

International law does provide that warships may interfere with the passage on the high seas of ships flying the flag of another State in three exceptional circumstances. Article 22(1) of the 1958 Geneva High Seas Convention states that:

26. See <http://www.aawsat.com/details.asp?section=4&issueno=11509&article=572178&search=%CD%E4%ED%E4&state=true> and Al-Jazeera’s Jamal ElShayyal’s account of the raid http://www.huffingtonpost.com/2010/06/04/al-jazeera-reporter-israel_600720.html and for some other eyewitness accounts <http://213.243.28.155/Radikal.aspx?aType=RadikalHaberDetay&Date=&ArticleID=1000385&CategoryID=97>

27. http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf, p.26

28. See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials by the UN. <http://www2.ohchr.org/english/law/pdf/firearms.pdf>

Forensic evidence, and even the heavily edited videos of the IDF, clearly indicates that Israel violated the principle of proportionality

Israel has so far committed a chain of errors which started with the illegal blockade of Gaza. Using the blockade as a pretext, Israel intercepted the Mavi Marmara and used excessive force killing 9 civilians on board.

“Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is a reasonable ground for suspecting:

- a. that the ship is engaged in piracy; or
- b. that the ship is engaged in the slave trade; or
- c. that, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.”

It is needless to say that none of these grounds would have given Israel the pretext to interfere with the flotilla in the high seas; therefore, Israeli attack on the Mavi Marmara cannot be justified and should be treated as a grave violation of international law.

VI. CONCLUSION

Israel has so far committed a chain of errors which started with the illegal blockade of Gaza. Using the blockade as a pretext, Israel intercepted the Mavi Marmara and used excessive force killing 9 civilians on board. Israel’s violations of international law were documented thoroughly in the UNHRC report while the Palmer Commission penned a report with political rather than legal and humanitarian priorities. Ironically, as a country which has so far ignored myriad of UN resolutions, Israel has welcomed the Palmer report focusing on its mention of the blockade of Gaza as a legitimate security measure against Hamas, but totally ignoring the parts which stated that Israel used excessive force on board and maltreated the detainees after the takeover.

Due to the extreme-right elements within the government and a strong Israeli public opinion against meeting Turkey’s demands, which include an official apology, reparation to the families of the victims and ending the blockade of Gaza, Israeli government have not met demands for normalization of the ties. As a matter of fact, the UNHRC report, and even the Palmer report to a certain degree, has given the Israeli government a valid reason to meet Turkey’s demands. Both reports asserted that the Israeli actions on board the Mavi Marmara were unlawful. However, Israeli government has so far chosen to abide by the domestic public opinion and ignore international calls to meet the Turkish demands for reconciliation.

Israeli government’s short-sightedness and misreading of the region plays a significant part in the current deadlock. The Middle East is changing at the expense of the system created after the Camp David Accords in 1979 which set Israeli security concerns as the top priority that needs to be assured by any means necessary. Thanks to this ongoing change, Israel’s southern neighbor Egypt is in a democratization process, and Israel’s traditional allies in Egypt are not reigning the country alone anymore. It is also known that Egyptian public opinion is strongly against previous Egyptian collaboration with Israel on Palestinian affairs. The popular protests in front of the Israeli embassy in Cairo,

the border clashes in the Sinai and the latest attack on the Israeli embassy once again demonstrated that Israel will not be able take Egypt for granted. The ongoing anti-regime protests and activity in Syria are also a worrisome indicator for Israel that Israel's northern border may not stay as quiet as it has since Israeli occupation of the Golan Heights in 1967. Although the eastern neighbor Jordan has stayed relatively quiet so far, the country's predominantly Palestinian population poses another potential threat for Israel. In a region which is going through systemic transformation and in which Israel's isolation has been increasing daily, Israel will have to decide on a road map to face with the consequences of the ongoing transformation and its increasing isolation. Current crisis with Turkey only furthers Israeli isolation in the region, and will have serious implications for Israel in the long-run.

The publication of the Palmer report written by the panel of inquiry established by the UN Secretary-General Ban Ki-Moon once again brought the 31 May 2010 Gaza Flotilla incident and the blockade of Gaza back to world's attention. On May 31, 2010, Israeli commandos stormed a passenger ship, the Mavi Marmara, the largest boat of a flotilla of six boats which were carrying 10000 tons of humanitarian aid to besieged Gaza, in international high waters. The operation left 9 activists dead and over 30 activists wounded. The Israeli military assault against the Mavi Marmara immediately ignited worldwide protests and condemnation. Turkey, whose citizens were attacked by Israeli soldiers in international high waters, 72 miles away from the Gazan coast, took the lead in protests and condemnation. Israel, however, claimed that the demonstrators on the Mavi Marmara were aiming to break the blockade of Gaza and the Israeli commandos were forced onboard to react in an act of self-defense.

During more than a year past since the Mavi Marmara attack, Israel has committed a chain of errors which started with the illegal blockade of Gaza. Using the blockade as a pretext, Israel intercepted the Mavi Marmara and used excessive force killing 9 civilians on board. Israel's violations of international law were documented thoroughly in the UNHRC report, while the Palmer Commission penned a report with political rather than legal and humanitarian priorities. Ironically, as a country which has so far ignored myriad of UN resolutions, Israel has welcomed the Palmer report focusing on its mention of the blockade of Gaza as a legitimate security measure against Hamas, but totally ignoring the parts which stated that Israel used excessive force on board and maltreated the detainees after the takeover.

This paper briefly summarizes the work done with the mandate given by the UN, and attempts to put the blockade of Gaza in its legal context first, demonstrate that Israel's use of the blockade as a pretext for its belligerent act on board the Mavi Marmara has no legal ground, and consequently discuss Israel's violations of international law on the board of the Mavi Marmara.

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