

## Points on the Gaza Flotilla:

### Historical background - Israel's right to self-defence

- In August 2005 the Government of Israel withdrew all civilians and military from the Gaza Strip.
- Hamas took over Gaza in a violent coup against the Palestinian Authority in June 2007.  
The Hamas Covenant calls for the obliteration of Israel and its replacement with an Islamic Palestinian state through 'jihad' (see the Introduction, articles 6-8, 11, 13, 15, 17, 27, 31, 32).
- Since illegally seizing control of Gaza, Hamas and other terrorist organisations operating in the territory have fired more than 8000 rockets and mortars into southern Israeli towns, causing death, injury and damage.
- After Operation Cast Lead concluded in January 2009, a ceasefire between the Israeli Defence Forces and Hamas was put in place. Since then, Hamas has fired 373 rockets and 333 mortar shells at Israeli civilians.
- As an example, on April 7, 2011 two people were injured (one was a 16 year old boy who later died in hospital) after Hamas' Izz al-Din al-Qassam Brigades deliberately aimed and fired a laser-guided anti-tank missile at a school bus in the southern Israeli area of Sha'ar Hanegev. The missile attack was followed by a barrage of rocket and mortar fire into southern Israel that continued for several days. Some were long-range rockets which hit an area north of Ashdod. Several villages sustained damage to property and civilians were treated for shock. Between April 7 and 10 a total of 58 rocket and 67 mortar shell hits were identified in Israeli territory.
- These actions constitute ongoing armed attacks against Israel, and the IDF has the right to do everything necessary to prevent further such attacks. Israel's naval blockade and restriction of goods moving into the Gaza Strip by land, aims to stop arms, munitions, and materials that have often been used to create weapons and munitions, from entering Gaza. The blockade has been supported by Egypt. Egypt recently opened the Rafah Crossing between the Sinai Desert and Gaza to regular pedestrian traffic.
- Humanitarian aid, food, construction materials, medicine and medical equipment, clothing and hygiene products are brought into Gaza from Israel through crossing points. An average of 1300 trucks carrying 35,000 tons of goods, including food, medicines, clothing, blankets and construction material and excluding only military materiel, enter Gaza every week. The Gaza economy is open.
- During the week 12 -17 June 2011, 1163 truckloads (29,666 tons) of goods, including 278 truckloads of construction materials and 586 tones of cooking gas were delivered via the Kerem Shalom crossing. 343 Gaza residents (patients and their companions) entered or passed through Israel for medical treatment via the Erez Crossing.

- Flotilla organisers have stated that their aim is to break the blockade of Gaza, not to provide humanitarian aid to its people (which could have been done by land via the Red Cross). Some of the activists on the previous flotilla (June 2010) were equipped with and used weapons.

### Legality of Israel's naval blockade

- The Gaza Strip is not part of Israel's sovereign territory and has never been annexed by Israel. The terrorist organisation Hamas, the ruling entity in the Gaza Strip, refuses to accept Israel's right to exist and conducts military operations against Israel from that territory. An armed conflict thus exists between Israel and the Hamas authorities in Gaza. If the laws of international armed conflict apply as regards the protection of civilians in that context, then the laws of international armed conflict apply across the board. It is therefore [lawful](#) under the rules of international law for Israel to impose a naval blockade against the Gaza Strip.
- **A naval blockade is a legitimate and recognized legal tool that may be used in the context of an armed conflict at sea.** The San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994) (see paragraphs 93-104) and the naval handbooks of various Western navies (US, UK, Germany) recognize this customary practice, and indeed there are numerous historic examples of the use of a naval blockade in the context of an armed conflict, (WW I and II, the US quarantine of Cuba in the 1960's; Egypt's blockade of Israel in the 1950's and 1960's; Vietnam; NATO's current blockade of Libya).
- Israel's naval blockade is **designed to prevent the smuggling of arms via the sea to terrorist groups**, including Hamas, operating out of the Gaza Strip. These weapons have been used time and again against Israeli civilians (with **over 10,000 rocket and mortar attacks to date**).
- **Israel has intercepted** at sea large quantities of weaponry being smuggled to terrorist groups in the region via otherwise legitimate cargo vessels. Recent interdictions include the SS Francop in 2009 (500 tons of munitions intercepted) and the **Victoria in 2011 (50 tons intercepted)**
- In this context, it should be noted that the international community is legally bound by UN Security Council Resolution 1373 (2001), which calls upon States to refrain from the provision of any form of support to terrorist organizations and to eliminate the supply of weapons to such groups (para. 2).
- When a naval blockade is in effect, **no vessel, regardless of its nature – enemy or neutral – may enter or exit the blockaded area.**
- There is **no right to breach a naval blockade as a matter of protest.**

- **Any breach or attempted breach** of the blockade gives the imposing State (here, Israel) a legal **right to undertake military action to enforce the naval blockade** on the high seas. Such action includes capture and even attack if a vessel resists capture.
- Accordingly, if a lawfully imposed naval blockade is in effect, neither civilian nor enemy vessels may enter the blockaded area. Further the blockade may be enforced in international waters if the controllers of the offending ships have manifested a clear intention to break the blockade. The blockade may be enforced by intercepting the offending ships before they cross the line into domestic waters. Other western countries have boarded ships at high sea in order to assure their security.
- The organisers of the 2010 flotilla publicly declared beforehand that the purpose of the flotilla was not to provide humanitarian aid to the residents of Gaza, but rather to break the blockade. Israeli and Egyptian forces offered to deliver all humanitarian goods if the boats landed in one of their ports, or the goods could have been delivered via the Red Cross, but the leaders of the flotilla publicly announced: "This mission is not about delivering humanitarian supplies, it's about breaking Israel's siege (sic) on 1.5 million Palestinians." ([AFP](#), May 27, 2010.)
- Given that the 2011 Gaza flotilla organisers have issued written and oral statements indicating their intention to violate the lawful naval blockade of the Gaza Strip, international law permits Israel to take enforcement measures once the flotilla leaves its port.
- For a naval blockade to be legal, certain criteria must be met. These include: due notice of the blockade; the effective and impartial enforcement of the blockade by the imposing State; and the allowance for access to ports/coasts of neutral States. Moreover, a blockade is not legal if its sole purpose is to starve the civilian population or to deny the population objects essential for its survival.
- Here it should be emphasized that Israel granted notice via accepted professional maritime channels, via official government websites, and via endless diplomatic contacts. It has effectively and impartially enforced the blockade since its imposition in early 2009. The blockade allows for access to all neutral ports and waters and, indeed, the protesters were encouraged to deliver their goods to these neutral ports. And Israel has **established mechanisms to ensure that the needs of Gaza's civilians are met and international law is upheld** (on the eve of the Mavi Marmara incident 14,000 tons of civilian goods were being transferred to Gaza weekly; currently approximately 36,000 tons of goods are delivered per week).
- In this context, it should be noted that the protesters have been made aware that **all humanitarian goods will be transferred to Gaza if they are brought to neutral ports.**
- The Israeli Public Commission to Examine the May 31<sup>st</sup> Incident (the Turkel Commission), which included two foreign observers and two prominent foreign consultants who are legal experts, **has upheld the legality of Israel's naval blockade** imposed upon the Gaza Strip and its right to enforce such blockade.

- The Turkel Commission also confirmed that **Israel meets its humanitarian obligations vis-à-vis the civilian population of Gaza**, and provides the population with the necessary civilian goods, as required under international humanitarian law. This was also upheld by Israel's Supreme Court (see e.g. al-Bassiouni et. al. v. Prime Minister et. al.)
- Since **June 2010, Israel has allowed all civilian goods to enter Gaza**. Only a limited list of munitions and dual-use items are currently barred from entering Gaza. Current figures point to 36,000 tons of goods entering the Gaza Strip on a weekly basis.
- The naval blockade of the Gaza Strip will remain lawful so long as Israel does not bar access to the ports and coasts of neutral states. According to international law, Israel must also continue to publicise the blockade's existence to both belligerents and neutral states.
- The act of attempting to break a military blockade is itself a military act, and those knowingly participating in such military action put in doubt their status as non-combatants. The protesters have been made aware of the **serious risks** involved in breaching a naval blockade. The relevant **States also have an active duty to warn citizens of risks** involved in running a blockade.
- In late May 2011, UN Secretary General Ban Ki Moon expressed his opposition to flotilla operations intended to challenge the Israeli blockade, saying that assistance and goods bound for Gaza should go through legitimate crossings. He has called on governments to use their influence to discourage flotillas, saying that they carry the potential to exacerbate rather than ameliorate the conflict.

### **Common questions - and answers**

- 1) Don't the blockades imposed both on the sea and on land by Israel work to starve the population of Gaza? Isn't this a violation of the human rights of the people of Gaza?
  - Israel is engaged in an ongoing armed conflict with Hamas and other terrorist groups operating out of Gaza, as its civilian population in the south of Israel is subject to unceasing rocket attacks. In an armed conflict, the laws of armed conflict (also known as "international humanitarian law") apply. Under such legal framework, Israel has an obligation to ensure that the vital civilian needs are met.
  - Israel has established numerous mechanisms to ensure that civilian goods are, indeed, transferred to the Gaza Strip, and works with the UN and other human rights groups to facilitate such transfers.
  - In June 2010 Israel liberalized its land policies towards Gaza. Currently, ALL civilian goods are allowed into Gaza, while only munitions and dual-use are barred from entry. At present, 36,000 tons of civilian goods are delivered to Gaza on a weekly basis.
  - Israel's Supreme Court has reviewed Israel's policies and has affirmed that Israel meets its legal obligations vis-à-vis the civilian population of Gaza (see e.g. al-Bassiouni).

- The Turkel Commission has also confirmed that Israel meets its humanitarian obligations towards the civilian population of Gaza and noted that all of the human rights groups that testified before the Commission confirmed that there is no starvation in Gaza.
- Israel isn't the only country that borders Gaza. Recently, Egypt has opened its border with Gaza.

2) Does the blockade policy constitute collective punishment?

- Israel, as the blockading party, undertakes obligatory mitigating humanitarian measures, including the monitoring and coordinating of humanitarian aid to Gaza, in order to ease the effects of the blockade.
- In light of these efforts, the Turkel Commission concluded that Israel's imposition of a naval blockade does not constitute "collective punishment".
- The legal test for collective punishment is one of intent – i.e. whether or not the main objective of a given policy is to punish the population. The Turkel Commission emphasized that there is no evidence that Israel intentionally places restrictions on goods for the sole or primary purpose of denying them to the population of Gaza. Rather, the objective of Israel's naval blockade is clearly for security.

3) Is the blockade proportionate?

- The legal test for proportionality is as follows: were the measures that were undertaken by the military proportionate to the anticipated military advantage (i.e. were the actions proportionate to the EXPECTED military goals. Note: this is not a test of whether the actions actually ACHIEVED those goals!)
- In the case of the naval blockade on Gaza, the primary military purpose is to prevent weapons from being smuggled by the sea to terrorist groups in the Gaza Strip that fire those weapons on Israeli civilians, and to prevent small vessels from attacking Israeli naval vessels at high speeds. Here it should be noted that we have witnessed many recent incidents of attempted arms-smuggling via the sea to terrorists (Francop – 500 tons of weapons; just recently the Victoria – 50 tons intercepted).
- There is no maritime commerce to Gaza, as there is no major port there. Hence, the blockade on Gaza does not have a disproportionate effect on trade to Gaza (in fact it has NO effect on trade).
- At the same time, land channels have been established to guarantee that civilian goods are transferred into Gaza unimpeded so that humanitarian needs and obligations are met.

4) Were the actions undertaken by the Israeli ships on board the Mavi Marmara in May 2010 proportionate?

- First, it should be noted that the ships were never "attacked" by Israeli soldiers.
- When the Israeli soldiers acted to enforce the blockade after rendering numerous warnings, by capturing the vessels, in line with customary international law, they were confronted by 40-odd violent protesters wielding crude-but-lethal weaponry – 100's of metal rods and sharp knives. It should be noted that these protesters belong to a group known as IHH,

which is an organization that has a history of providing material support to *jihadi* campaigns worldwide, from Chechnya to Afghanistan.

- The Israeli soldiers attempting to capture the vessels sustained serious, life-threatening injuries (one soldier was lynched and thrown from the upper deck; another cracked his skull and was left unconscious; a number of soldiers were shot, stabbed or taken hostage in the belly of the ship). This left them with no choice but to act in self defense, which is a basic legal right.
- 5) Can you enforce a blockade in international waters? Can you enforce a blockade outside the blockaded area?
- A blockade may (and usually is) imposed on the high seas. It is legal so long as it does not bar access to neutral waters and ports. Accordingly, enforcement actions also take place on the high seas.
  - You do not have to wait for an actual breach of a blockade to undertake enforcement actions. As stated in San Remo, **attempted** breach of the blockade also gives rise to a right to impose the blockade.
  - The US Naval Handbook notes that a blockade can be imposed from the time a vessel departs from port with the clear intention of breaching the blockade.
  - From an operational point of view, due to the large number of boats participating in the blockade, Israel was left with no choice but to enforce the blockade at a certain distance from the blockade itself.
- 6) Can you impose a blockade in the context of a non-international armed conflict?
- Israel considers its armed conflict with Hamas and other terrorist organizations to be an international armed conflict. This approach has been upheld by Israel's Supreme Court on various occasions. The Turkel Commission also adopted this view.
  - The above notwithstanding, customary law does not rule out the imposition of a naval blockade in a non-international armed conflict, as stated in the Commentary to the San Remo Manual.
  - Furthermore, there are numerous historic precedents to the imposition of a naval blockade in a non-international armed conflict (U.S. Civil War (1861-65); France's blockade of Algeria (1954-62); Sri Lanka (2009))
- 7) Isn't there a humanitarian crisis in Gaza?
- **The Red Cross in Gaza said on 28 April 2011 that there is no humanitarian crisis in Gaza:** ["There is no humanitarian crisis in Gaza."](#) So states categorically Mathilde Redmatn, the deputy director of the Red Cross in the Gaza Strip. "If you go to the supermarket, there are products," she said, as reported on the IDF website. "There are restaurants and a nice beach. The problem is mainly in maintenance of infrastructure and in access to certain goods such as concrete. Israel has the legitimate right to protect [its] civilian population; this right should be balanced with

the right of 1.5 million people living in the Gaza Strip.” She acknowledged that Israel has eased its closure on Gaza and has partially lifted export bans.

### **Humanitarian Aid deliveries to the Gaza Strip**

- Humanitarian aid can reach Gaza through multiple routes. The Rafah crossing between Gaza and Egypt has been open since June 2010, and in late April 2011 it was announced that the crossing would remain permanently open to pedestrian traffic.
- Israel has agreed to deliver any humanitarian aid to Gaza after an inspection at the border. [There is therefore no](#) humanitarian justification for the flotillas.
- In the [Month of May 2011](#), the following aid was delivered to Gaza on 4,942 trucks:

<b>Humanitarian Aid Deliveries to Gaza in May 2011</b>	
<b>Total truckloads of Food Products</b>	<b>1,840</b>
Milk Powder and Baby Formula	44
Rice	65
Wheat	324
Fruits and Vegetables	225
Meat/Chicken/Fish	113
Dairy Products	142
Sugar	18
Legumes	9
Flour	376
Cooking Oil	59
Salt	25
Additional Food Products	440
<b>Total truckloads of Construction Materials</b>	<b>929</b>
Aggregates	530
Glass, Wood and Aluminium Profiles	153
Cement	218
Iron	28
<b>Other truckloads</b>	<b>2173</b>
Inputs for Agriculture	96
Electrical Products	126
Clothing and Footwear	89
Animal Feed	520
Hygiene Products	123
Transportation	72
Textile	26
Plumbing and Ceramics	302
Essential Humanitarian Products	583
Medicine and Medical Equipment	32

Mixed Products	204
<b>Total weight</b>	<b>127,353</b>
<b>Total truckloads</b>	<b>4,942</b>

- After the first flotilla ships were all diverted to Ashdod (June 2010), Hamas refused to accept 21 truck loads of supplies unloaded from the flotilla.

#### **About the Turkish-based Humanitarian Aid Foundation (IHH)**

It needs to be noted that while IHH has pulled out of the 2011 flotilla, citing ‘technical reasons’ as their official statement for last-minute non-participation, they have been extensively involved in the organisation and were the main NGO behind the flotilla last year.

- IHH is a member of the Union of the Good, an umbrella of 50+ Islamic organizations, which was designated by the US government as “an organization created by Hamas leadership to transfer funds to the terrorist organization.”
- During heightened terrorist activity in 2002, the Union of the Good transferred money, via Hamas charities, to families of suicide bombers.
- IHH is listed by several Western governments as a terrorist entity.
- In 2008, Israel’s Defence Minister Ehud Barak signed an order outlawing IHH.

#### **About the International Solidarity Movement (ISM)**

[ISM](#) was also one of the NGOs who organised the 2010 Gaza Flotilla.

- Activists are often encouraged to put themselves in the line of danger in confrontations with Israeli armed forces.