

The Illegality of Israel's Blockade of Gaza & Attacks on the Free Gaza Flotilla

In the pre-dawn hours of May 31, 2010, a six-boat flotilla carrying more than 700 civilians from almost 40 countries was overtaken by Israeli commandos in international waters. Israeli commandos attacked the largest ship in the flotilla, the passenger ferry *Mavi Marmara*, leaving one U.S. citizen and eight Turkish citizens dead and scores of people wounded. After being boarded, the ships were forcefully rerouted to the Israeli port of Ashdod, where the majority of the passengers were detained without charge and had their property, including video evidence of the attack, confiscated before being deported from Israel.

The flotilla sought to break the Israeli blockade of Gaza and bring humanitarian and rebuilding supplies to the Gaza Strip. Before departing for Gaza, each ship was searched for weapons or any items illegal under international law and none were found. The 2010 flotilla followed none previous trips to Gaza since 2008, several of which were successful in delivering humanitarian assistance. More recent efforts to reach Gaza have been forcibly blocked by Israeli forces.

Illegality of blockade on Gaza

Israel imposed a blockade on Gaza in 2007 which has resulted in a humanitarian crisis. The Commissioner-General of the United Nations Relief Works Agency (UNRWA) summarized the situation in Gaza in stark terms: "The closure and associated policies have resulted in a crisis that transcends the humanitarian sphere. Everyone in Gaza is affected by poverty, unemployment and crippled public services, causing human misery on a massive scale." It has led to widespread malnutrition, an inability to maintain or rebuild homes and infrastructure previously destroyed by Israel, and the severe restriction of movement of people into and out of Gaza. The International Committee of the Red Cross has concluded that "The whole of Gaza's civilian population is being punished for acts for which they bear no responsibility." The blockade of Gaza clearly qualifies as collective punishment, which is strictly prohibited by the Fourth Geneva Convention.

Israel's position is that a lawful maritime blockade is in effect off the coast of Gaza. International law recognizes blockades in the context of armed conflicts, but it does not recognize a blockade by a country against a territory which it is occupying. While Israel denies that it is occupying Gaza, numerous UN reports and resolutions have found that Israel maintains "effective control" over the territory which is the hallmark of an occupation. Because Israel occupies Gaza, and accordingly has obligations under the Geneva Conventions, it cannot legally blockade Gaza.

Even if it were recognized that Israel was in a state of armed conflict with Gaza, and thus could impose a naval blockade, it would still be unlawful under international law because the manner in which the blockade has been enforced and the impact on the civilian population constitute a form of collective punishment. The Geneva Conventions state that parties in a conflict are obliged to allow passage of articles essential for the civilian population. This has not been the case since 2007: critically important medicine, food, building supplies and other essential goods have been prohibited, leading to widespread malnutrition and starvation, an inability to maintain functioning health and education systems and a lack of supplies needed to rebuild homes destroyed by Israeli forces.

Illegality of the May 2010 flotilla attack

Israel claims 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.

Israel's blockade of Gaza, however, is illegal, and it follows that Israel cannot simply intercept vessels outside of its territorial waters traveling to Gaza. As such, an attack or interception of humanitarian vessels travelling to Gaza in international waters is not lawful. Even if Israel's naval blockade of Gaza were legal, the attack on the flotilla would remain

illegal because: 1) it was a premeditated attack on a humanitarian vessel that posed no threat to Israel's security—not an act of self-defense and 2) Israel's response would have been disproportionate even as an act of self-defense.

Premeditation

The Israeli government described the humanitarian mission as a “provocative act” and on May 26, 2010 the foreign minister confirmed the launching of a military operation against the flotilla, ensuring the vessels would be stopped “at any cost.”

Leading up to the attack, three Israeli missile ships were docked in Haifa. The navy carried out an exercise and masked naval commandos were trained for the mission. Finally, a large naval fleet was deployed to stop the vessels. These preparations clearly indicate that Israel was prepared to attack *offensively* rather than merely in self-defense. Then-U.S. State Department spokesman P.J. Crowley admitted that the U.S. “communicated with Israel through multiple channels many times regarding the flotilla” in advance of the attack.

Disproportionate Response

The Free Gaza Movement mission, civilian participation and non-violent methods of resistance were well-publicized in advance of its departure.

Upon interception by Israeli commandos, each vessel's communication network was cut off, and all recording and other electronic equipment was confiscated, including that of journalists. Footage smuggled off the *Mavi Marmara* supports the testimonies of the civilians onboard the invaded ship. The footage shows that commandos fired ammunition overhead and alongside the *Mavi Marmara* prior to boarding the ship, while zodiac boats surrounded the ship. Audible amidst the sound of ammunition are loud booms and piercing sound grenades. Laser lights from rifles typically used to mark targets visibly scanned the civilian passengers. A voice on the public address system can be heard saying, “Do not show resistance...They are using live ammunition...Be calm, be very calm.” A woman can be heard shouting, “We have no guns here, we are civilians taking care of injured people.”

Israel initially said that the weaponry used against the passengers was limited to paintball rifles. According to autopsy reports, however, five of the nine passengers confirmed dead were killed by gunshot wounds to the head, most of which were

caused by 9mm bullets. U.S. citizen Furkan Doğan was shot in the face, back of the head, twice in the leg and once in the back at close range. Twenty-four others were seriously injured by live ammunition and a large number of people were wounded by plastic-coated steel bullets, beanbags and paint balls.

This evidence refutes Israel's claim that its commandos and soldiers acted in self-defense. Furthermore, under Article 51 of the U.N. Charter, the right to self-defense does not extend to the use of force against foreign-flagged vessels from neutral or allied states in international waters, particularly in circumstances such as the flotilla attack in which the vessels carried not military supplies destined for a belligerent party, but humanitarian supplies for a civilian population.

US reaction to flotilla attacks

On May 24, 2011 CCR filed a civil complaint against various components of the Departments of Defense, Homeland Security, Justice and State, to obtain documents regarding the U.S. government's knowledge of, and actions in relation to, Israel's attack on the flotilla. As a result, we have received thousands of documents, all available on our website. Key findings include:

- U.S. failed to locate slain U.S. citizen Furkan Doğan or investigate his death
- U.S. attempted to limit UN Security Council and Human Rights Council (HRC) initial reactions to attack
- U.S. took action to block the HRC fact-finding mission and, once formed, to limit its work and follow up efforts
- U.S. backed Israel's Turkel Commission, which concluded that all of Israel's actions were legal, and then the UN Secretary General's panel, which made no independent findings of law or fact
- U.S. tracked U.S. citizen participants on flotilla for the months preceding and took no measures to prevent interception
- U.S. took no significant action to assist U.S. passengers in securing their property held by Israel, including evidence of attack

For more information and guides to all of the documents see:

ccrjustice.org/gazafлотilla