**The Legal Basis of Israel's Naval Blockade of Gaza**

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• The relations between Israel and Hamas are in the nature of armed conflict. Nowadays no formal declaration of war is needed. Hence the rules of the laws of armed conflict apply. This means that Israel may control shipping headed for Gaza - even when the vessels are still on the high seas.

• The rules of naval warfare have not been fully codified in a treaty and are in the nature of binding customary rules. They can be found in the relevant manuals of Western armies (in particular the U.S. and Britain) and in the San Remo Manual prepared by a group of experts.

• In order to be legal, a blockade has to be declared and announced, effective, non-discriminatory, and has to permit the passage of humanitarian assistance to the civilian population. In addition, the San Remo Manual of 1994 includes two conditions: first, the state which applies the blockade may decide where and when and through which port the assistance should reach the coast. In addition, the state may require that a neutral organization on the coast should verify who is the recipient of the assistance. In Gaza, for instance, does it reach the civilians or Hamas?

• A ship that clearly intends to breach the blockade may be stopped already when it is still on the high seas. Stopping the flotilla heading for Gaza in international waters 100 kilometers from Israel was not illegal; in time of armed conflict, ships intending to breach the blockade may be searched even on the high seas.

• Israel is within its rights and is in full compliance with international law because it has fulfilled all of the above-mentioned conditions for a lawful blockade. E.g., in January 2009 Israel notified the relevant authorities of its intention to establish a blockade of the Gaza coast.

What is the legal basis of Israel's naval blockade of Gaza? The relations between Israel and Hamas (which has ruled the Gaza Strip since 2007) are in the nature of armed conflict, meaning that the rules of the laws of armed conflict apply. This means that Israel may control shipping headed for Gaza - even when the vessel is still on the high seas. Israel may not do so in the territorial sea of a third country, such as Cyprus, but in time of armed conflict Israel may check vessels on the high seas that are headed for Gaza.

A naval blockade means preventing the passage (entry or exit) of all vessels to or from the ports and coastal areas of the enemy, irrespective of the kind of cargo carried by these vessels. One has to define clearly the borders of the area to which the blockade applies. The blockade has to be distinguished from other institutions of naval warfare, such as exclusion zones and security zones.

The Sources of International Law on Blockades

What are the sources of international law on blockades? The rules on blockades are based on customary international law, as there is no comprehensive international treaty on this subject. Customary law is binding in international law. According to Article 38 of the Statute of the International Court of Justice, the sources of international law are: a) international treaties, b) international custom, and c) general principles of law recognized by civilized nations. A binding customary rule is created when many states have for a long time behaved in a certain way and have done so because they felt an obligation to behave in that manner.

Blockades have been in existence for hundreds of years. They were mentioned specifically in the 1856 Declaration of Paris (after the Crimean War) Respecting Maritime Law. A more detailed text followed in 1909 - the London Declaration on Naval Warfare. This declaration sought to codify the rules of war at sea, but the states that participated in the declaration never ratified it. However, states actually followed the rules laid down in the declaration, and thus its provisions became binding customary rules.

The customary rules on blockade can be found in the manuals of the laws of war issued by certain Western countries such as the United States and Britain. In addition, there is a manual prepared by an international group of experts in 1994 called the San Remo Manual. (While some speak about the San Remo Agreement, there was no agreement, but rather a manual.) In addition, the general principles of the laws of armed conflict apply also to naval warfare.

When Is a Blockade Legal?

In order to be legal, several conditions have to be fulfilled. The first is the requirement to give widespread notice when a blockade is applied and to make sure that any ship that is stopped knows that there is a blockade. Nowadays the problem of notification is much easier than in the past because of the great improvement in communications.

Another condition for the legality of a sea blockade is effectiveness. It is not enough simply to declare a blockade. It has to be enforced, otherwise it is not valid and legal.

According to a further condition, a blockade should not cut off an unrelated foreign state from access to the sea. In the case of Gaza, the blockade does not prevent Egypt from reaching the sea.

Furthermore, a blockade has to be based on equality: It must apply to everybody. Of course there is always the possibility that the blockading party may give special permission to certain neutral ships to go through, but these are exceptions.

A blockade has to permit the passage of humanitarian assistance if needed. However, the San Remo Manual includes two conditions (in Article 103): first, the blockading party may decide where and when and through which port the assistance should reach the coast. In addition, the state may require that a neutral organization on the coast should control the distribution of the items. For instance, in Gaza, does it reach the civilians or Hamas?

Finally, there is the condition that a state may not starve the civilian population (San Remo, Article 102). This conforms also to the general principles of the laws on armed conflict.

What If a Ship Disobeys the Blockade?

What may be done to a ship that disobeys the blockade? Here, there may be a distinction between merchant ships and warships. A merchant ship may be visited, searched, or captured; and if the ship resists, it may be attacked. The situation of neutral warships is not quite clear: Warships may also be searched and captured, but opinions are divided on whether they may be attacked. An attack is certainly permitted in a situation of self-defense.

A ship that clearly intends to breach the blockade can be dealt with while it is still on the high seas. Stopping the flotilla in international waters 100 kilometers from Israel was legal: In time of armed conflict, ships breaching the blockade may be searched even on the high seas.

Precedents of Blockades

There are numerous precedents of blockades. During the Korean War between 1950 and 1953 there was a blockade. In 1971, when Bangladesh tried to secede from Pakistan, India applied a blockade. During the Iran-Iraq war between 1980 and 1988, there was a blockade of the Shatt el-Arab. Lebanon was blockaded for several months in the 2006 war between Israel and Hizbullah, and Israel allowed safe passage from Lebanon to Cyprus for humanitarian purposes.

In the treatment of the flotilla heading for Gaza, Israel has acted in compliance with international law because it has fulfilled all the conditions for a lawful blockade. In January 2009 Israel notified the relevant authorities of its blockade of Gaza - a lawful means of naval war. The existence of an armed conflict between Israel and Hamas in Gaza was well known and did not need a special declaration to that effect.

But Gaza Is Not a State

Can Gaza be considered an enemy although it is not a state? According to international law, this is possible. In any case, according to various judgments of Israel's Supreme Court, the conflict with Gaza is an international conflict and not an internal one because Gaza is not part of Israel. Neither Gaza nor the West Bank have been annexed by Israel, nor has Israel's "law, jurisdiction and administration" been extended thereto (as was done with east Jerusalem in 1967 and the Golan Heights in 1981).

With regard to the status of Gaza: the territory was under Ottoman sovereignty from 1517 until 1917, and then it became part of the British Mandate for Palestine. In 1948 Britain left the area and Gaza was occupied by Egypt, but Egypt never annexed it. In 1967 Gaza was occupied by Israel, which also did not annex it. In 2005 Israel withdrew from Gaza, and in 2007 it was completely taken over by Hamas. Some say that Gaza is an area sui generis, which means a special situation, while according to others, it is a self-governing territory with certain powers but not with all the powers of a state.

In both the 1993 Israeli-Palestinian Declaration of Principles on Interim Self-Government Arrangements and the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, it was agreed that after a certain period of time negotiations would take place on the permanent status of Gaza and the West Bank, but these negotiations have so far failed. The 2003 Roadmap, to which both parties have agreed, foresees a two-state solution, and that a Palestinian state should be established by agreement with Israel.

Is Israel Still an Occupier?

A recurring question is whether Gaza is still occupied or not. Some say that since Israel is still in control of Gaza's airspace and adjacent sea, Israel is still the occupier. According to another opinion, under the Hague Regulations of 1907 (Respecting the Laws and Customs of War on Land), occupation has to include full control of the area. ("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." - Article 42), and of course Israel does not control the whole territory of Gaza. Therefore, it is not responsible for what happens there.

In my opinion, since Israel is not in control of Gaza, it is not the occupier, but in those areas in which Israel still has control - which means sea and airspace - Israel is responsible. Here we have to distinguish between full control of the territory and control only of the sea and airspace.

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