

centerforconstitutionalrights

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June 17, 2010

Secretary of State Hillary Rodham Clinton
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Re: International demand for accountability for Israeli attack on the Gaza flotilla and for release of all appropriated property

Dear Secretary Clinton:

Enclosed please find an international statement regarding the May 31, 2010, attack by Israel on the flotilla of vessels that was attempting to deliver humanitarian aid to Gaza due to the unlawful blockade. The statement requests that the United States, along with other nations, call for an independent inquiry into the matter by an impartial tribunal and demand that Israel immediately release property appropriated from the flotilla.

As you should be aware, fourteen United States citizens were part of the flotilla, five of whom were on the Challenger I, a U.S.-registered vessel, and one of whom was killed on another vessel. United States citizens were beaten, and their property, which includes video and photographic evidence, was seized and appropriated by Israel and has not been returned. The United States must insist that Israel release this property forthwith.

We appreciate your urgent attention to this matter and look forward to your prompt response. Please feel free to contact me at 212-614-6430 or mlahood@ccrjustice.org if you have any questions or need any additional information.

Sincerely,



Maria C. LaHood
Senior Staff Attorney

Encl.

cc: Harold Koh, Legal Advisor

Jeffrey D. Feltman, Assistant Secretary of State
Bureau of Near Eastern Affairs

Maura Connelly, Deputy Assistant Secretary of State
Bureau of Near Eastern Affairs

Thomas Goldberger, Director, Office of Israel and Palestine Affairs
Bureau of Near Eastern Affairs



International statement concerning the legal consequences of the Israeli attack on the Gaza flotilla on 31 May 2010, with a special focus on the war crime of extensive appropriation of property

ALL GOVERNMENTS MUST DEMAND THAT ISRAEL IMMEDIATELY RELEASE ALL PROPERTY APPROPRIATED ON 31 MAY 2010

NOTE: As a first step to achieve justice with regard to the appropriation of property, a partial list of stolen items and details about the further illegal handling of those stolen items will be published in a number of countries today and in the coming days – see further below.

Introduction

1. This statement
 - Is issued by and on behalf of the Freedom Flotilla coalition, who organised the Gaza flotilla of six vessels carrying passengers (consisting of human rights activists, journalists, members of parliament and other civilians) and crew totalling approximately 700 people, taking humanitarian aid to the civilian population of Gaza, which was unlawfully intercepted and attacked in international waters by the Israeli military on 31 May 2010, leading to a series of criminal acts by the Israeli military, some of which are ongoing.
 - focuses on the legal consequences of those events, setting out some initial steps that are required in order for the responsible Israeli military personnel and political leaders to be held accountable for their actions on 31 May 2010 and subsequently.
 - Is supported by a large number of the individuals who were unlawfully transferred into Israel and mistreated by the Israeli military during their captivity on 31 May and at the beginning of June 2010. It is also supported by the bereaved families of the nine confirmed dead Turkish citizens (one of whom was a dual national US citizen).
2. Like the eight previous similar sailings to Gaza organised by the Free Gaza Movement and others, and future anticipated sailings, the Gaza humanitarian aid flotilla of May 2010 set out with a number of goals, including the long term goal of trying to bring forward the day of a peaceful settlement to the Palestinian/Israeli dispute. That goal requires an end to Israeli occupation and the opportunity for the Palestinian people to exercise their rights to self-determination. In the meantime, there is an urgent need for all Palestinians to be freed from the daily, routine abuse of their fundamental rights by Israel, the occupying power.
3. In the shorter term, therefore, another goal of the humanitarian flotilla of human rights activists and others was to seek to defy the closure of Gaza (declared unlawful by the UN and ICRC). Five previous shipments successfully delivered humanitarian cargo to Gaza in 2008 without incident, exposing the hardships and illegality of Israel's closure policy.
4. The illegal attack on the civilians on the flotilla on 31 May 2010 had terrible consequences, resulting in the death of (at least) nine civilians. It was wholly unnecessary and unwarranted. It has, however, served to focus international attention on the closure of Gaza and has led to a welcome international review of the policies of governments across the world towards the closure. There is no natural disaster in Gaza. Therefore, Gaza does not in fact need long term humanitarian aid, but instead needs to simply be allowed to rebuild its economy and trade normally with the rest of the world. It cannot do this whilst the closure and naval blockade continue.

Legal background

5. The near hermetic closure of Gaza, including the naval blockade imposed by Israel, is unlawful. The comprehensive nature of the closure constitutes collective punishment prohibited by the Fourth Geneva Convention, as was made clear most recently by the ICRC, in its statement of 14 June, available at: <http://icrc.org/web/eng/siteeng0.nsf/htmlall/palestine-update-140610>
6. The naval blockade, whenever announced and however policed, is unlawful because it contributes to that collective punishment. Furthermore, Israel has caused disproportionate harm to the civilian population of Gaza, notwithstanding any possible lawful military objective behind the blockade. Israel has failed to ensure that sufficient foodstuffs and medicine and other vital supplies have entered Gaza during the closure, whether by sea or by land, making any arguments about the lawful enforcement of the naval blockade entirely redundant. The UN Fact Finding Mission on the Gaza conflict of September 2009 [commonly referred to as the Goldstone Report] stated in this regard:–

72. The Mission acknowledges that the supply of humanitarian goods, particularly foodstuffs, allowed into Gaza by Israel temporarily increased during the military operations. The level of goods allowed into Gaza before the military operations, however, was insufficient to meet the needs of the population even before hostilities started, and has again decreased after the end of the military operations. From the facts ascertained by it, the Mission believes that Israel has violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing (article 23 of the Fourth Geneva Convention). The Mission also finds that Israel violated specific obligations it has as Occupying Power spelled out in the Fourth Geneva Convention, such as the duty to maintain medical and hospital establishments and services and to agree to relief schemes if the occupied territory is not well supplied.

73. The Mission also concludes that in the destruction by Israeli armed forces of private residential houses, water wells, water tanks, agricultural land and greenhouses there was a specific purpose of denying them for their sustenance to the population of the Gaza Strip. The Mission finds that Israel violated its duty to respect the right of the Gaza population to an adequate standard of living, including access to adequate food, water and housing....

74. The conditions of life in Gaza, resulting from deliberate actions of the Israeli forces and the declared policies of the Government of Israel – as they were presented by its authorized and legitimate representatives - with regard to the Gaza Strip before, during and after the military operation, cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip in violation of international humanitarian law.

The report also stated –

326. 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. Furthermore, the Mission notes the information it received regarding the lack of compliance by the Government of Israel even with the minimum levels set by the Israeli Court, and in this regard observes that the Government retains wide discretion

about the timing and manner of delivering fuel and electricity supplies to the Gaza Strip, and that this discretion appears to have been exercised capriciously and arbitrarily.

7. The devastating impact of the blockade on agriculture, fishing and livelihood, and the humanitarian necessity is also described in the recent report of the Office for the Coordination of Humanitarian Affairs (OCHA), 'Farming without Land, Fishing without Water: Gaza Agriculture Sector Struggles to Survive', 25 May 2010. At: The CREATING FOOD INSECURITY, 25 May 2010, which can be viewed at: http://www.ochaopt.org/documents/gaza_agriculture_25_05_2010_press_release_english.pdf
8. As recognised by the UN, Israel remains the occupying power in relation to Gaza. When Israeli military forces took control of the six ships in international waters on 31 May 2010, this triggered the applicability of the Fourth Geneva Convention of 1949 to the civilians whom Israel brought under its control. The legal consequences of this are plain and obvious, namely that, in addition to those acts that may be legally characterised as crimes against humanity, certain of the acts perpetrated by Israeli forces on all six vessels may be grave breaches of the Fourth Geneva Convention.
9. Indeed, the early testimonies of those participating in the flotilla and the video evidence which activists managed to prevent being seized by the Israeli military, provides prima facie evidence of the commission of grave breaches of the Fourth Geneva Convention by Israeli military personnel involved in the attack on the flotilla and in the detention of its passengers. That evidence suggests that the following crimes were – and/or continue to be – committed:
 - wilful killing,
 - inhuman treatment
 - wilfully causing great suffering or serious injury to body or health,
 - unlawful deportation or transfer
 - unlawful confinement
 - taking of hostages; and
 - extensive appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

The rest of this statement focuses on the last mentioned grave breach, because it is (a) on-going and (b) has a direct impact on the possibility of accountability for the other alleged grave breaches.

Legal consequences & calls for action by governments

10. In view of the above, it is entirely unacceptable for the international community to co-operate with any and all Israeli internal inquiries (including the "Torkel commission" established by the Israeli government on 14 June 2010) or regard any such inquiries as an appropriate or sufficient investigative response to the events of 31 May 2010 and subsequent. In addition, this internal Israeli inquiry will be conducted without interviews with the crew, human rights activists and others on board the flotilla, nor the Israeli forces involved in the attack, making it wholly insufficient. Such Israeli commissions are not the fully independent, impartial and transparent inquiry, meeting international standards, that is required.
11. In any event, only a fully independent inquiry, by an impartial and unbiased tribunal empowered to compel witnesses and suspects to testify before it and to ensure accountability, including by enabling criminal charges to be brought against any persons against whom there is evidence of acting illegally,

is appropriate and acceptable. Nothing less will do. Inquiries which serve merely to whitewash the actions of any state's armed forces and to malign their civilian victims and witnesses serve nobody's interests in the long term: such 'inquiries' fundamentally undermine the rule of law, and bring governments and national justice systems into disrepute. They also serve to prolong conflicts and prevent reconciliation. The Widgery Inquiry into the events of Bloody Sunday in the north of Ireland, the findings of which have very recently been superseded – and effectively overturned – by the Saville Report, published 15 June 2010, stands as a stark example of this fact.

12. Those who participated in the flotilla and their advisors are working – and will continue to work tirelessly – to assist credible criminal investigations, whether in Turkey or other countries (under universal jurisdiction or international law of the sea principles) or at the International Criminal Court. If the evidence supports the bringing of criminal charges, individuals should face a fair trial.
13. Such investigations should include a focus on the appropriation, retention, misuse and possible destruction of the property of the passengers and crew of the flotilla.
14. We call on all governments to comply with their duties under article 1 of the Fourth Geneva Convention of 1949 to respect and ensure respect for its provisions in all circumstances. In particular, we call on all governments to take the following action in relation to the appropriation of the property of those participating in the flotilla:

- ***urgently demand that Israel*** cease its on-going grave breach of the Fourth Geneva Convention involving the extensive appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, by immediately relinquishing control of all the property seized on 31 May 2010

- ***as to releasing the property that constitutes evidence, urgently demand that Israel*** send all those items of property seized on the six boats on 31 May 2010, to the UN forthwith.

(Such property would include all cameras, mobile phones laptops and recording devices which recorded the events aboard the six ships. In time, Israel will need to also hand over absolutely all of the film and photographic evidence that its forces recorded, unedited.)

- ***as to the remainder of the property (including clothes, credit cards and hard currency), urgently demand that Israel restore that property*** to its rightful owners without further delay

- ***urgently demand that Israel account for every single use of a stolen credit card or mobile or satellite telephone*** (in respect of which there are several reports) which, if true, appears to have turned acts of illegal appropriation of property into straightforward pillage.

- pending compliance with the above, urgently demand from Israel that its government

- (a) confirms that it will preserve all evidence in its possession in its original form (i.e. computer disks, hard-drives, SIM cards, memory cards, as well as any other physical evidence which could be considered relevant to any investigations) for handing over to the independent, impartial investigation ordered by the Security Council and/or UN

Fact Finding Mission ordered by the Human Rights Council and in anticipation of the opening of criminal investigations (including in jurisdictions with anti-spoliation laws); and

(b) confirms that none of the above-mentioned film and photographic evidence seized on 31 May 2010 has in fact been destroyed and that it will not do so and to account for every single destroyed or disappeared item.

15. As well as calling on all governments to demand the immediate and unconditional return of appropriated property, we call on all governments

- (a) which are parties to the Rome Statute of the International Criminal Court, acting either on their own or jointly with other States (e.g., all European Union States acting jointly), to refer the events on the Mavi Marmara, the Sfendoni and the Free Mediterranean (flagged in Comoros and Greece respectively, both State parties to the International Criminal Court) to the International Criminal Court for urgent criminal investigation, with an immediate and urgent focus on the question of retrieving any video and similar evidence which at the time of the referral is still retained by Israel; and
- (b) to open criminal investigations into the events, including in relation to the appropriation of property by the Israeli military, to facilitate – including through the sharing of intelligence – the best prospects of prosecuting all suspects identified through those criminal investigations, including all Israeli accessories after the fact, which appear (in the case of appropriated property) to include the most senior members of the Israeli military who permitted and continue to permit the appropriation and retention of property belonging to innocent civilians;
- (c) to fully co-operate with all independent investigations into the events, including the appropriation of property, particularly those conducted in Turkey (being the State of which the majority of the flotilla passengers were nationals);
- (d) to call for an independent and impartial inquiry to investigate, alongside the allegations of other crimes including the possible wilful killing of nine flotilla passengers, the circumstances surrounding the seizure and appropriation of property belonging to the passengers and crew of the Gaza flotilla, and the reasons for the destruction or disappearance of any such property, particularly any video or audio footage of the events of 31 May 2010.

17 June 2010