The raid on the Free Gaza Flotilla on 31 May 2010

Opinion on international law

by

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I. The facts

The raid by the Israeli army on the Free Gaza Flotilla in the early morning of 31 May 2010 aroused worldwide indignation. In the raid, nine passengers on the Mavi Marmara, sailing under the Turkish flag, died, and at least forty-five were injured, some of them seriously. While a considerable body of opinion sees this as a serious breach of international law, and even speaks of war crimes, the Israeli army regards itself as fully justified, and following an internal review has admitted only that there were some slips in the planning and execution of the seizure of the ships.[1]

Before the events can be further analysed with regard to international law, it is first necessary to set out the sequence in which they occurred, which is constantly being described differently. Only six of the original eight ships gathered on 30 May in international waters, far south of the island of Cyprus and east of Israel. They were the passenger ships MV Mavi Marmara under the Komor flag, MV Challenger I under the US flag and MV Sfendoni under the Togo flag, the freighter MV Defney under the Kiribati flag, the MV Eleftheri Mesogeio (Free Mediterranean) under the Greek flat and the MV Gazze I Sofia under the Turkey flag. Shortly after it sailed from the Greek harbour of Agios Nikolaos, the US flagged MV Challenger II had to abandon its journey and transfer its passengers to the Mavi Marmara as the result of damage to the steerage mechanism, an obvious act of sabotage by the Israeli army.[2] The freighter Rachel Corrie under the Cambodia flag from Ireland did not reach the meeting place in time as a result of a number of problems.

The ships sailed from Athens, Istanbul and Agios Nikolaos. On board there were a total of slightly more than 700 passengers from thirty-six countries (according to The Guardian 671 passengers; on 5 June, the Israeli ministry of the interior referred to 702 people deported), 577 of them on the Mavi Marmara alone. The freighters were carrying approximately 10,000 te of humanitarian aid, above all food and textiles, pharmaceuticals and medical equipment, building materials such as 3,500 te of cement, 750 te of steel, wood, plastic window frames

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[1] Cf. Frankfurter Allgemeine Zeitung of 13 July 2010.

[2] Cf. Frankfurter Allgemeine Zeitung of 2 June 2010.

and glass, electric and diesel generators, toys, 20 te of paper etc.[3] They were not the first ships of the Free Gaza Movement that attempted to break the Gaza Strip blockade. As early as August 2008, two ships carrying forty-four activists succeeded in reaching Gaza – the first international ships in forty-two years. There followed four more successful journeys and three attempts stopped by the Israeli navy. The Spirit of Humanity, which was attacked by the Israeli army and taken to Ashdod on 30 May 2009, has still not been returned.

The flotilla was assembled by a coalition of six organisations: 1. The Free Gaza Movement, 2. IHH Humanitarian Relief Foundation, 3. The European Campaign to End the Siege on Gaza (ECESG), 4. The International Committee to End the Siege on Gaza, 5. The Greek Ship to Gaza Campaign, 6. The Swedish Ship to Gaza. Before their journey, all the passengers were advised of possible dangers, and they had to agree in writing to observe complete non-violence in the case of a possible confrontation with the Israeli army. It was absolutely prohibited to take arms or ammunition on board, and the loading of the cargo was supervised by the port authorities. When the Israelis later inspected the passengers' luggage and unloaded the cargo in the port of Ashdod, it was confirmed that this prohibition had been complied with without exception.

The first contact with Israeli warships took place on 30 May at about 22.30 hours by radar and radio contact. On being requested to stop the journey, the captain of the Mavi Marmara replied that the flotilla was travelling in international waters, c. 70 – 90 miles off the coast, and that it would continue its journey taking humanitarian supplies to Gaza. At about 23.00 hours, the passengers were requested to go on deck and put on their life jackets, in case there was an Israeli attack. After an hour, the passengers were sent back to their lounges to sleep. The warships followed the flotilla. At this time, the satellite phones and the Türksat satellite frequency, which was used by the Mavi Marmara to communicate with the international media, but also between the ships in the flotilla, were blocked.

At about 4.20 hours on the next morning, 31 May, the Mavi Marmara suddenly came under fire. At this time, the flotilla was surrounded by four warships and almost thirty Zodiacs. Three helicopters appeared, and two submarines with a total of about 1,000 soldiers are also said to have taken part in this Operation Sea Breeze.[4] Israeli soldiers had made an unsuccessful attempt to board the Mavi Marmara from the Zodiacs. The following attack was made with the use of teargas and stun grenades, paint ball guns and rubber-coated steel bullets.[5] Immediately afterwards, at about 4.30 hours, the attack on the Mavi Marmara was made from helicopters, from which soldiers abseiled onto the upper deck. According to several credible witness reports, the helicopters opened fire first, even before the commandos

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[3] Detailed list in IHH, Flotilla Campaign Summary Report Palestine our Route Humanitarian Aid our Load, June 2010, p. 12.

[4] Thus stated in IHH, Summary Report, pp. 19, 21.

[5] Cf. Richard Lightbown, The Israeli raid of the Freedom Flotilla 31 May 2010, A review of media resources, 28 June 2010, p. 10.

had reached the deck. In this process, two men who had gone onto the upper deck to defend the ship were killed.[6] In the following skirmishes, nine persons were killed and fifty-four wounded, twenty-three of them seriously. There are no figures as to how many passengers made a stand against the Israeli soldiers on the upper deck. At all events, they succeeded in disarming three soldiers and taking them to the first-aid post, which had been set up on the second deck. They were only slightly injured. They were treated and were later able to leave the post without assistance. In their struggles with the soldiers, the passengers used rods, iron bars which they said they had sawed out of the deck rail with hacksaws, firehoses, chairs, water bottles and other objects which they found on deck. They did not use the weapons they had captured; some of these were thrown overboard. The fact that the Israeli army has published no details on the soldiers' injuries underlines the conclusion that the passengers did not use the captured firearms.

After about half an hour, at about 5.10 hours, the passengers were requested by loudspeaker in English and Arabic to go to their lounges, remain calm and not offer any form of resistance. They were told that the Israelis had taken over the command of the ship. They obeyed these instructions. The women, who until this time had been confined on the lowest deck for safety reasons, were now also allowed to come up. The Israeli soldiers on the outside decks, who were called on to stop using their firearms, at first ignored these orders. They repeatedly directed their guns from outside at the windows, as soon as a passenger stood up in the lounges. After some time, the Knesset member Hanin Zoabi succeeded in contacting the soldiers. Finally, all the passengers were individually ordered to leave the lounges, examined and their hands bound by cable ties attached to their wrists. They had to kneel in rows in the outer gangways; women and the few Europeans were allowed to sit on the benches. At the same time, the flotilla sailed towards Ashdod. Helicopters brought further reinforcements, including dogs.

The other ships were seized at the same time without any deaths and without serious injuries, but not without violence and aggressive insults. The Israeli soldiers used tasers and rubber bullets, hit several passengers with their rifle butts until they bled, bound them with cable ties, put hoods over their heads and bound their eyes – all this despite the fact that there was no violent resistance. Guns were used to force the crews to change course.

The journey to Ashdod took more than ten hours. In this time the passengers were given insufficient water and food. Many of them were prevented from going to the toilet etc. In Ashdod harbour, at about 19.00 hours, all of them were led individually off the ships, interrogated, given a brief medical examination and either driven to Ben Gurion airport to be flown out (for example the German prisoners) or taken by coach to the prison in Ber Sheba (for example the overwhelming majority of the prisoners). None of them could take their luggage with them; it remained on board the ships in a damaged condition. Only very few of them were able to rescue individual memory cards from their cameras. All the passengers' and journalists' electronic equipment was retained. The constantly repeated assurances that

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[6] Cf. Richard Lightbown, op. cit. pp. 11, 12.

the passengers would be given back their luggage have not been honoured, with the exception of individual pieces, usually of low value, which were sent to Istanbul.

II. Legal assessment

In attacking the Free Gaza Flotilla, the Israeli army intended to prevent the Gaza blockade from being broken. It is therefore necessary first to make a legal assessment of this blockade of the Gaza Strip.

1. Gaza Strip Blockade.

At present, the Gaza Strip is an area without statehood, without sovereignty de facto or in law, as it were a legally neutral entity. No state recognises it, and following the withdrawal of the Israeli settlers and soldiers in summer 2005, in the view of the Israeli government, also no longer occupied territory with the duties following from this for the Israeli government of an occupying power under international law: a legal no man's land. However, this does not mean that in the absence of its own state sovereignty the Gaza Strip is exposed at will to the access of its neighbouring states. The Gaza Strip is still part of the Palestinian territories, the largest part of which, the West Bank, is occupied by Israel. When, in 1988, the PLO proclaimed an independent state of Palestine on the area of the West Bank with East Jerusalem and the Gaza Strip, it was recognised by more than 100 states. However, it was not accepted into the United Nations, although it had all the constitutive characteristics of a state – territory, population, government and the ability to enter into diplomatic relations with other states. The PLO did not further insist on a claim of an independent state, above all because Israel's occupation policy prevented every exercise of independent sovereignty.

But the withdrawal of the Israeli settlers and soldiers in summer 2005 released the Gaza Strip from occupation at most until the elections in January 2006. For after the elections, the ring around the Gaza Strip closed again, first as a result of the refusal to pay out customs and tax revenue and the stopping of foreign payments until the complete blockade with a boycott and closing the borders, after Hamas had assumed power in Gaza in June 2007. Since then, Gaza has de facto returned to being an occupied territory.

There is no doubt that at the latest since summer 2007 the Israeli army has once more brought the Gaza Strip under its complete control. Neither by land nor by air or sea can anyone leave or enter the territory without the permission of the Israeli army. The people are closed in in the Gaza Strip, under collective arrest. Only in rare exceptional cases are seriously ill people permitted to leave the territory for medical treatment abroad; students may not leave the territory, and they lose their foreign grants and their places at college or university outside Gaza. Foreigners are also detained, because for months on end they are refused permission to leave. There is virtually no freedom of movement to leave the area. Every movement in the area, which is only 365 km² in size, is subject to uninterrupted aerial surveillance by the Israeli military.

For the law of the occupying state to apply, it is sufficient if the occupation takes place even without the use of military force, for example because the opponent has such superior strength that there is no resistance whatsoever. The only decisive factor is complete and effective control by the foreign power – and since summer 2007, this has been in the hands of the Israeli army in the Gaza Strip. According to the classical definition of Article 42 of the Hague Land Warfare Convention (HLWC) of 1907, 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." However, it is not necessary for the hostile army to be present at every place in the occupied territory. A territory is occupied if it is actually in the power and effectively under the control of the opposing forces, that is, if the occupying power is de facto in the position to enforce its rule over the civilian population. For the West Bank and East Jerusalem this has been the case without any doubt since 1967, but it also currently applies to the Gaza Strip too. Even though Israel officially left this area in the year 2005, Israel has occupied the Gaza Strip again from 2007 at the latest.

This assessment was rejected by the Israeli government for a long time, although it is largely accepted in the literature of international law [7] and, for example, the German Federal Foreign Office sees the situation in the same way. But as a result of this, Israel as an occupying power has again acquired a number of duties defined in international humanitarian law, and also prohibitions relating to what an occupying power may not do. These duties were codified in the HLWC and later in the Fourth Geneva Convention of 1949 and in the two protocols to the Geneva Conventions of 1977. They primarily deal with the protection and provisioning of the civilian population. Admittedly, Israel denies the application of the Geneva Conventions to the occupied territories and has also not ratified the two protocols to the Geneva Conventions. However, this is immaterial, since the contents have largely become customary law, and nobody else accepts the rejection of the Geneva Conventions. The objection that the occupied territories are not state territories is also irrelevant, since the aim of the Conventions is not the protection of statehood, but protection of human beings.

Article 43 HLWC gives the occupying power the duty to

> *"take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."*

These duties comprise not only the provisioning of the population with the food and medical supplies necessary for life (Article 55 et seq., Fourth Geneva Convention), but also the protection of human rights, of religious and other customs (Article 27 Fourth Geneva Convention) and respect for the national legal system (Article 64 Fourth Geneva Convention).

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[7] Cf. Scobbie, Ian, Israel's Withdrawal from Gaza, the Law of Occupation and of Self-Determination. In: Kattan, Victor (ed.), The Palestine Question in International Law, British Institute of International and Comparative Law, London 2008, p. 637. International Association of Democratic Lawyers (IADL), White Paper on the Legal Issues Implicated in the most Recent Attacks on Gaza, Paris 2009, p. 2.

The occupying power is expressly forbidden to annex occupied territory – that is, East Jerusalem and the Golan Heights – (Articles 2.3 and 2.4 Charter of the United Nations), to transfer parts of its own civilian population into the occupied territory, and to deport or transfer parts of the population of the occupied territory within or outside this territory (Article 147 Fourth Geneva Convention, Article 85.4 of the supplementary Protocol I to the Geneva Conventions of 1976).

A violation of these provisions is to be prosecuted as a war crime, which is in the responsibility of the International Criminal Court in The Hague (Article 8.2 a, b, Rome Statute of the International Criminal Court - ICC - of 1998).

What has been happening for years in the Gaza Strip is something that has come to be referred to as a "humanitarian catastrophe". Even before the war at the end of 2008, the Israeli blockade and political isolation of the Gaza Strip led to the collapse of the private economic sector: 98% of private enterprises had to close. Most Palestinians are unemployed and 80% live in poverty; the same number are dependent on the scarce food aid which the Israelis permit to enter the Gaza Strip. The global rise of food prices and recurrent periods of drought have made the availability of food even more unreliable.[8]

Admittedly, the United Nations Human Rights Council regularly condemns Israel's actions, for example in Resolutions S-6/1, S-9/1, 10/19 and 10/21[9], but nothing has changed as a result of this. Israel continues its stranglehold on the Gaza Strip at the cost of the civilian population: neither the most recent failed Annapolis Peace Conference nor the most recent promise of the Prime Minister of Israel, Netanyahu, to ease the blockade has altered this in any way.[10]

Navi Pillay, the United Nations High Commissioner for Human Rights, like John Ging, the head of the UNRWA in Gaza, has described the blockade of the Gaza Strip by Israel as a serious breach of international law, in particular of Article 33 of the Fourth Geneva Convention, which prohibits collective punishment of the population. Yes, there should be an investigation to determine if this does not constitute the elements of a crime against humanity, as defined in Article 7 of the Rome Statute of 1998 as an act "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack". This accusation applies not to Israel alone, but equally to the USA and the EU Member States, since in full knowledge of the misery and destruction they support this blockade.

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[8] United Nations 2009: Consolidated Appeal Process – Humanitarian Appeal 2009, November 2008: pp. 32-33.

[9] Germany abstained from voting in the above resolutions.

[10] Cf. Frankfurter Allgemeine Zeitung of 14 July 2010, p. 2: Barroso nennt Lockerung der Gaza-Blockade wirkungslos [Barroso says easing of Gaza Blockade is ineffective].

In addition, it is in direct contradiction to the two International Covenants on Human Rights of 1976, Article 1 of each of which codifies the right of self-determination as peremptory law (jus cogens). They read as follows:

"(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

(3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

2. The sea blockade

If, therefore, Israel has an obligation to lift the blockade not only of the land borders, but also of the airspace and sea access, then the question arises as to whether there are legal reasons justifying the attack on (the seizure of) the Free Gaza Flotilla in order to prevent it continuing its journey to Gaza.

The government of Israel states that it may enforce its sea blockade of the waters off Gaza against everyone who breaks the blockade. It justifies this right on the basis that Israel has been involved in armed conflict with Hamas for several years, and this conflict has intensified in particular since Hamas took over power in June 2006. Israel says it has taken a number of measures "to defend our own population against the terrorist attacks", until in December 2008 it had to turn to the means of last resort, an extended military intervention, Operation Cast Lead.[11]

The attack on the Gaza Strip at the end of 2008/beginning of 2009 undoubtedly satisfied all the criteria of an "armed conflict" within the meaning of international humanitarian law. It may be doubtful whether the period since the Israeli attacks stopped in mid-January 2009 until now is also characterised by the continuation of the state of war, in view of the fact that missiles have been fired only sporadically by both sides and Israeli attacks and targeted killings have only been carried out occasionally. However, if one follows the Israeli

[11] Cf. The Home Front Command, Interception of the Gaza flotilla – Legal aspects, June 2010; Israel Ministry of Foreign Affairs, http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Gaza_flotilla_maritime__blockade_Gaza_Legal_background__31-May-2010.htm (10.06.2010).

government in assuming that the armed conflict continues, then the imposition of a sea blockade is a form of warfare recognised by international law. It interrupts the freedom of the seas which generally prevails in times of peace in order to cut off the enemy from supplies, in particular of weapons and material goods, and from other support. It may be carried out both in international waters and in the enemy's coastal waters. Under customary law, some requirements for the lawfulness of such a blockade have been developed, above all public announcement and effective enforcement against any attempt to break the blockade.[12]

However, it is also a requirement of a lawful blockade that there is an international armed conflict, that is, a conflict between at least two states. In a non-international conflict, the state is restricted to its territorial waters if the government wishes to cut off its domestic opponents from foreign support by means of a sea blockade. According to widely held opinion, the occupying power is restricted in the same way: it can enforce a blockade only in the waters of the occupied territory, but not in international waters.[13] On the one hand, such a possible of blockade is sufficient to intercept arms deliveries to the opponent, and thus to ensure the intercepter's own safety, as is permitted under the Hague Rules. On the other hand, the occupation situation requires that the rights of occupation are not extended to international waters and that the general principle of the freedom of the seas is restricted.

However, it should be pointed out that these limits to the right to blockade are not codified law and that they are not undisputed. Thus, for example, with reference to historical precedents, the restrictions to the right to blockade mentioned above are, with specific reference to the Gaza sea blockade, not recognised, and a blockade is regarded as lawful even in international waters.[14] Old though the practice of a sea blockade is, it is not codified by treaty. It is mentioned as one of the United Nations' possible coercive measures in Article 42 of the Charter of the United Nations. The rules of armed conflict at sea are largely laid down by customary international law, which is collected in the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (San Remo Manual). Israel too relies on this manual, which was compiled between 1987 and 1994 by a number of experts and diplomats. It is not itself legally binding, but it contains a large number of provisions which have become customary law, and it serves, as it were, as soft law to identify international law.

Thus, for example, in Articles 36 – 42 in general provisions, an attack at sea is permitted only against clearly military targets, which do not include declared passenger ships and freighters. In addition, precautions must be taken to protect civilians. Article 47 (c) (3) (ii) prohibits

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[12] Cf. Bothe, Michael, Friedenssicherung und Kriegsrecht. In: Vitzthum, Völkerrecht 2007, marginal nos. 85 et seq. Heintschell von Heinegg, Blockade. In: Wolfrum, Rüdiger (ed.), Max Planck Encyclopedia of Public International Law, http://www.mpepil.com (10.06.2010), marginal nos. 28 et seq., 33 et seq.

[13] Cf. Heintschel von Heinegg (note 12), marginal no. 25.

[14] Thus stated in Posner, Eric, The Gaza Blockade and International Law, Wall Street Journal, 4 June 2010, with reference to the blockade of the Confederate harbours by the Union in the US Civil War. But see Heller, The Civil War and the Blockade of Gaza (a Response to Posner), 4 June 2010, http://opiniojuris.org/2010/06/04/eric-posners-incomplete-editorial-on-the-blockade-of-gaza/ (10.06.2010).

attacks on all ships "engaged in humanitarian missions, including vessels carrying supplies indispensable to the survival of the civilian population." Without a doubt, this applies to the ships of the Free Gaza Flotilla: their cargo consisted exclusively of humanitarian goods to supply the much suffering population of the Gaza Strip. As the occupying power, Israel is even obliged to provided such supplies. In not performing this duty, Israel violates Articles 55 et seq., Fourth Geneva Convention. If, by the blockade, it prevents provisioning from outside, this too violates Articles 55 et seq.

In contrast, Israel relies on Article 7.7.1 of the Commander's Handbook on the Law of Naval Operations (US Navy Handbook), which states inter alia:

"While the belligerent right of visit and search is designed to interdict the flow of contraband goods, the belligerent right of blockade is intended to prevent vessels and aircraft, regardless of their cargo, from crossing an established and publicized cordon separating the enemy from international waters and/or airspace."

This US Handbook is certainly not applicable international law, but is valid only within the borders of the USA. The provision may also apply in this form in an international armed conflict between two states. But with regard to the relationship between Israel and Gaza, it should be taken into account that the conflict is additionally characterised by an occupation. In this situation, a blockade may indeed by imposed for safety reasons, but it must allow passage to ships supplying the population which do not endanger the safety of the occupying power. The nature of the cargo is therefore certainly relevant: where it is exclusively for the purpose of humanitarian provisioning, it may not be stopped by a blockade when the territory is occupied. This also follows from Article 102 (b) of the San Remo Manual, which prohibits a blockade

"if the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade."

In view of this, the objection of Israel that the building materials cement, iron etc. are materials which can also be used for military purposes (known as double use) does not justify the blockade either. For apart from the question of whether cement and iron girders that are intended for the rebuilding of destroyed houses and factories are also really capable of serving military purposes – Israel refers to the possibility of building bunkers to protect against Israeli missiles - the "direct military advantage" of the blockade is still disproportionate to the damage for the population.

3. The raid on the Free Gaza Flotilla

If even the occupation of the Gaza Strip is unlawful because it violates the Fourth Geneva Convention and the two 1976 International Covenants, then the sea blockade against foreign ships must be judged by stricter standards than if the occupation were lawful. This applies above all to the enforcement of the blockade. Israel must at most be given a right to monitor whether the ships contain arms which might endanger the safety of the occupying power.

However, it must be pointed out that all ships were loaded, and inspected to check whether their cargoes contained weapons, under the supervision of the relevant harbour authorities. There was therefore no suspicion of arms smuggling, either objectively or to the knowledge of the Israeli intelligence services, which observed the whole mission from its commencement.[15]

A military attack such as the one carried out on 31 May against the flotilla and in particular the MV Mavi Marmara is at all events unlawful.[16] This follows even from the prohibition of force in Article 2.4 of the Charter of the United Nations, which prohibits all force, whether against states or individuals, which cannot be justified by self-defence (Article 51 of the Charter of the United Nations). It is true that the Israeli army invokes self-defence, saying that it was attacked by the passengers on the Mavi Marmara. But all statements of the witnesses on the ship unanimously and credibly showed that the Israeli navy, even before its soldiers abseiled onto the Mavi Marmara, had attacked the ship with grenades, and that fire was opened on the passengers on the upper deck from the helicopters.

Even if one disregards the prohibition of force in the Charter of the United Nations and concedes that the Israeli navy has a right of control, this kind of control violated the proportionality of the means, which is an essential and binding principle in international law. The Israeli navy used excessive and disproportionate force. The ships were not inspected after the attack, but forced to set course for the Israeli port of Ashdod; they were hijacked. The inspection there produced the foreseeable result that there had been no weapons on board. The offer of taking selected goods to Gaza by land was no acceptable because the flotilla had a claim to transport the total cargo.

If, in the last instance, the sea blockade and its enforcement against the Free Gaza Flotilla was an unlawful action, a war crime, then this was also an act of aggression against the state under whose flag the ship attacked was sailing. This state, in this case Turkey, would certainly have been entitled to take steps of military defence against the attack. One can only be happy that this did not happen, for this might have had unforeseeable consequences.[17]

The attack on the MV Mavi Marmara has sometimes been described as an act of piracy, because over and above the military attack and the hijacking of the ships, all the passengers' luggage was retained and only individual pieces were returned to the possession of their owners. In criminal law, this is an act of "räuberischer Diebstahl" [theft and use of force to retain stolen goods, German Criminal Code s. 252], which was clearly primarily directed at the electronic equipment of the passengers and the large number of journalists on board: mobile phones, cameras, laptops and dictaphones. For all the similarity, for example with the

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[15] Cf. Paech, Norman, Angriff auf Völkerrecht. Background. »Free Gaza« - oder was die freie Welt unter Freiheit versteht. In: junge welt of 16 June 2010, pp. 10-11.

[16] Cf. Stuby, Gerhard, Israel am Scheideweg. In: Sozialismus online 4 July 2010.

[17] Thus also stated in Farhud, Elisa, „Richard Falk: The Shock Resulting from Flotilla Attack has reinforced the Campaign to de-Legitimize Israel, http://opednews.com /articles/Richard-Falk-The-Shock-Resulting-from-Flotilla-Attack-06222010.html (01-07-2010).

hijacking of the cruise ship Achille Lauro in the year 1985 by four Palestinians, who murdered the US American Leon Klinghoffer and threw his body overboard, the hijacking of the Free Gaza Flotilla cannot be described as piracy, for this term is used in the United Nations Convention on the Law of the Sea of 1982 for seizures by private persons and groups.[18] Article 101 reads as follows:

"Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;..."

At the time, the case of the Achille Lauro led to the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which was entered into in 1988, and which makes it an international criminal offence for any person to seize a ship by force and/or injure or kill any person in the process. This act of theft too cannot be justified by the Israeli military and the government as an act of self-defence by reference to safety interests.

III.Summary

Upon legal analysis, both the blockade and renewed occupation of the Gaza Strip and also the sea blockade and the attack on the Free Gaza Flotilla are seen to be serious breaches of international law. Without doubt, the persons responsible could be made accountable before the International Criminal Court (ICC) at Den Hague if Israel had subjected itself to the decisions of the ICC. In the circumstances, it remains for criminal investigation proceedings against those responsible to be initiated by those criminal prosecution authorities which, such as those in Germany, Norway, Belgium or Spain, have international criminal law under which the victims of international crimes may prosecute the perpetrators even outside their own territory. In this way, to date, passengers of the Free Gaza Flotilla from Norway and Germany have made a criminal complaint against those responsible for the attack. In addition, the injured persons are considering taking civil action for the loss of their property, which was taken from them by the Israeli military.

Apart from court actions, however, an independent international commission is needed to investigation the details of the Israeli attack and of the events on the ships, which have still not been clarified. By reason of its greatly restricted powers of investigation (for example no

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[18] Cf. Ridley, Yvonne, From Klinghoffer to the Gaza Flotilla, http://www.counterpunch.com/ridley06022010.html (03.06.2010).

examination of the soldiers involved), the inquiry committee set up by the Israeli government cannot satisfy the requirements of independence and completeness.

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