

Gaza Blockade Legal? Hardly.

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By Yousef Munayyer

Much debate about the legality of Israel's naval blockade and siege of Gaza has occurred in the U.S. media with little serious analysis of the laws. Pro-Israel spokesmen and Israeli officials like the Israeli Prime Minister's spokesman Mark Regev have claimed their blockade and siege is legal in accordance with the "San Remo Manual on International Law Applicable to Armed Conflicts at Sea."

Few people have ever heard of this agreement

<http://www.icrc.org/web/eng/siteeng0.nsf/html/57JMST> and even fewer have read it.

Newscasters and program hosts airing this Israeli spin certainly have failed to put the claims to the test. Instead, some have promulgated the flawed analogy between Israel's blockade of Gaza and the United States' blockade of Germany in WWII.

One does not have to be an international legal expert to read the San Remo Manual and realize the Israeli claims to legality do not hold water. A number of points in the San Remo Manual make it clear that the Israeli blockade of Gaza is not sanctioned by international law or this agreement in particular.

There are two ways to assess the legality of the Israeli blockade in accordance with the San Remo Manual. The first is assessing the legality of the nature of the blockade. This means asking if the way in which the blockade exists is in accordance with the San Remo Manual's guidelines for sanctioned blockades. The second is by assessing the legality of the existence of the blockade. In essence, this means asking if the very existence of a naval blockade of Gaza by Israel is permitted under the guidelines of the San Remo Manual. Let's begin with the question of the nature of the blockade first.

Part V Section II (95) of the San Remo Manual states that a blockade must be effective and cannot let certain vessels in while rejecting others. Israel has, since the start of the blockade, permitted certain ships to enter while not permitting others. Of the numerous trips staged by the Free Gaza Movement, several earlier trips have been permitted to reach Gaza through the blockade, where as others were not. All of these ships were carrying flags of "neutral states." This inconsistency is contrary to Part V Section II (100 & 101) which states that the blockading party must treat ships of neutrally flagged states equally, and is a clear indication that the nature of the blockade is not legal.

The blockade is also in violation of Part V Section II (102) which prohibits blockades that:

a.) have the sole purpose of starving the civilian population or denying it other objects essential to its survival; or

b.) 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.

Dov Wiesglass, the Israeli official and aid to Former Israeli Prime Minister Ehud Olmert stated the intention of the blockade was "to put the Palestinians on a diet, but not to make them die of hunger." Numerous international aid agencies and non-government organizations have made it clear

that the deleterious effects on the civilian population are severe
<<http://thejerusalemfund.org/ht/display/ContentDetails/i/13264>> . (Arabic)
<http://www.aljazeera.net/NR/exeres/EF992634-154F-4129-B253-AF4574D1D486.htm?wbc_purpose=Basic_Current_Current_Current_Current_Current_Current_Current> A growing chorus of NGOs and officials, not excluding Israelis, has questioned the blockade's strategic value to Israel and many have concluded it is instead counterproductive in nature.

Further, the Israel blockade is also in violation of Part V Section II 106 (c) which states that the zone of the blockade shall not exceed the area "strictly required by military necessity and the principles of proportionality." Israel has enforced a blockade around the 20 nautical mile mark for incoming ships, like those which are part of the Freedom Flotilla, but it has also enforced it at the three nautical mile mark against Gaza's fishermen, devastating their livelihoods out of no military necessity whatsoever.

Clearly, a number of arguments can be made regarding the nature of the blockade and its failure to meet the standards required by the San Remo Manual. However, all of the above violations are predicated on the assumption that the San Remo Manual even applies to the territorial entities involved, in this case, Gaza and Israel.

The Manual only applies to "belligerent states" and "neutral states" as clearly indicated in Section IV. Gaza, which is part of the Palestinian Occupied Territories along with the West Bank, is not a state, due in large part, ironically, to Israeli intransigence. Gaza was occupied by Israel in 1967 and, under customary international law, Israel has been the belligerent occupier of the strip since. Despite ending their colonization of the Gaza Strip in 2005 when they withdrew the colonies they had developed and populated with their civilians, Israel still maintains "effective control" over the Gaza Strip through control of its borders, air space and of course, sea lanes.

Israel has had a love/hate relationship with its occupation of the Gaza Strip. It has loved the security advantage of effective control which it has exercised through incursions, the creation of buffer zones within the strip, routine aerial attacks and so on. But it has simultaneously hated (and denied) the obligations which come along with belligerent occupation; prime among which is upholding the well-being of the civilian population.

The international legal framework which is most appropriate for assessing Israel's obligations is the Fourth Geneva Convention, to which Israel is a party to. Part 1 Article 55 of the IV Geneva Convention clearly states:

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

And Article 56:

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.

Clearly, not only does the San Remo Manual not apply to this blockade since Gaza is occupied territory and not a state, even if Gaza was a state, the nature of the blockade is contrary to the stated requirements in the Manual. Further, since the Geneva Conventions do apply to this situation, the blockade and siege of Gaza are intentional efforts on Israel's behalf that leave it in default of its primary obligation as a belligerent occupier: the protection of the Palestinian civilian population.

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<https://app.e2ma.net/app/view:CampaignPublic/id:29513.6695827732/rid:735824254c69485794fe565a91ed9b44>