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### Freedom Flotilla 2 – Stay Human

## Providing a Voice

#### Background

The second Freedom Flotilla taking humanitarian aid to the besieged Palestinians in Gaza is expected to sail at the end of June 2011. There will be some 15 ships from various countries carrying as many as 1500 unarmed humanitarian workers and human rights activists to non-violently challenge Israel's illegal siege on the tiny, over-populated and destitute enclave – a siege that severely restricts the movement of people and goods out of and into Gaza at crossing points controlled by Israel and Egypt.

It follows in the wake of the first Freedom Flotilla led by the Turkish ship the *Mavi Marmara*, which was violently intercepted by Israeli commandos in international waters on 31 May 2010. That ended with the murder of 9 passengers, another in a coma and the wounding, maltreatment and detention of hundreds of others, Australians included. Yet, many survivors will be taking part in the current flotilla.

#### Siege or blockade?

Israel's maritime **blockade** along Gaza's coastline and territorial waters is part of the comprehensive **siege** or closure that Israel has imposed on Gaza's population since June 2007 for electing Hamas in democratically held elections the year before. Israel claims the blockade is for its security, but the blockade is not legal if it violates the *principle of proportionality* and inflicts excessive damage on the civilian population in relation to the concrete military advantage expected. Since the blockade supports the siege, which is disproportionately affecting the civilian population in Gaza, it must therefore "itself be disproportionate".

#### Israel fails to "ease" siege

To counteract the negative public relations fallout in the aftermath of the flotilla raid, Israel promised to ease the unlawful siege. However, 21 international aid organisations found late last year that Israel's easing of the siege has been negligible and it remains in place. Also, the last four years of total imprisonment have been punctuated by episodic violent attacks and massive deprivation both before and after the three weeks of savage aerial and ground assaults of Israel's Operation Cast Lead in 2008-2009.

#### Effects of siege

The vast majority of innocent civilians have been subjected to sustained abuse of their right to freedom, shelter, food and medicines, security, and their dignity. Thousands of homes, businesses, factories, universities, schools, hospitals and medical care facilities were damaged or destroyed during the offensive, including extensive tracts of Gaza's water and sanitation system. More than two years later, very little has been rebuilt or repaired because Israel refuses to allow any passage of building materials and equipment. Malnutrition in children remains extremely widespread and the economy has been destroyed.

#### International response

Throughout all this, the international community has remained deafeningly silent. Only civil society has endeavoured to find ways of ending the siege, with people from all walks of life prepared to risk their own lives and safety to reach out to the Palestinians.

Egypt's opening of the Rafah Crossing post-revolution is still very unpredictable and limited. In any case, the crossing is not designed for major cargo passage so does not abrogate the need for humanitarian supplies by way of the Freedom Flotilla 2. Gaza is the only port on the Mediterranean that is closed to shipping and the only coastal area in the world, which cannot access its own territorial waters.

#### Israel defies international law

The *Fact Finding Mission into the attack on Freedom Flotilla 1* appointed by the UN Human Rights Council concluded that Israel had violated international law. It found that excessive force had been used on humanitarian ships in international waters and that there was no justification for such force, since Israel's blockade was itself unlawful. It said that the Israeli military had "demonstrated levels of totally unnecessary and incredible violence... It constituted grave violations of human rights law and international humanitarian law."

The near universal condemnation of the siege has, however, not resulted in any meaningful action by

governments or the UN to hold Israel to account. Under the *Fourth Geneva Convention of 1949* and the *First Additional Protocol appended thereto in 1977*, Israel is obliged to respect the requirements of an Occupying Power. It has consistently refused to do so.

### Israel threatens more violence

As the Freedom Flotilla 2 prepares for its humanitarian mission, Israel has threatened to use snipers and dogs to intercept any ships trying to enter Gaza. Israeli newspaper *Haaretz* reported Israeli defence sources saying, that “there is no alternative to taking over the boats and protesters by force.” Israel is also putting pressure on governments to stop their citizens from taking part in Freedom Flotilla 2.

### UN and world leaders call flotilla a “provocation”

Despite the findings against Israel's previous unlawful attack and the current threats, the US Secretary General and world leaders are now condemning the Freedom Flotilla 2 and are calling the initiative a “provocation”. They have asked governments to dissuade their citizens from taking part and also have asked countries on the Mediterranean to prevent the flotilla from sailing. For too long, world leaders have shielded Israel's criminal acts under pressure from the US. This reluctance to hold Israel accountable, has led to a culture of impunity, which has seen Israel commit more and more reprehensible crimes against the Palestinians leading to the false belief that there is parity between the occupier and occupied. Nothing could be further from the truth and more and more people worldwide are beginning to see that.

### Freedom Flotilla 2 – citizen-led action

The Freedom Flotilla is a civil society action that allows citizens of conscience to take responsibility for the inaction of their governments in failing to stand up to Israel's intransigence and lawless behaviour. It was non-violent citizen-led initiatives that helped bring an end to the racist policies and oppressive measures once so entrenched in Apartheid South Africa, and it will be non-violent citizen-led initiatives, like the flotilla and the global boycott, divestment and sanctions (BDS) movement that will end the accumulating injustices against the Palestinians and restore the rule of law without fear or favour. For this reason, Freedom Flotilla 2 should be supported and participating citizens given the protection of their governments.

## REFERENCES

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## The legal position

- Israel is an Occupying Power and subject to the requirements of the *Fourth Geneva Convention*: it has a duty to protect the civilians under its control and to ensure unimpeded passage of food, medicines and other humanitarian relief. Regardless of its claims that it disengaged from Gaza in 2005, Israel retains control of Gaza's territorial waters, its airspace and its land borders and continues to send in troops to make its authority felt.
- Israel is engaging in **collective punishment** in violation of *Article 33 of the Fourth Geneva Convention*. The siege is **ILLEGAL**, a **WAR CRIME** and a **CRIME AGAINST HUMANITY**.
- Israel's siege contravenes *UN Security Council Resolution 1860*, which says the siege is **ILLEGAL** and should be lifted immediately.
- Israel's claim that it is in a state of war, even if true, does **NOT** permit blocking of humanitarian aid under international law.
- Israel's naval blockade violates the **principle of proportionality** and is **NOT** supported by the *San Remo Manual* as it claims. If a blockade “has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or 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, **IT IS ILLEGAL.**”
- Israel is not a signatory to the *UN Convention on the Law of the Sea (UNCLOS)*, but nevertheless, attacking a flag-state's ship on the high seas is violating that state's sovereignty. Israel's reliance on the questionable *doctrine of continuous voyage* to stop ships in open international waters from breaching the blockade is a minority position in international law and certainly does not justify a lethal attack on a humanitarian flotilla.
- Israel has violated the *Suppression of Unlawful Acts (SUA) Convention* to which Israel, Turkey and the USA are all parties. SUA followed in reaction to the 1985 Achille Lauro hijacking and murder.
- Israel cannot claim self-defence when there is no attack made on the state and passengers of a ship attacked on the high seas have every right to resist. Australian law professor Ben Saul, as well as other prominent legal scholars, have found that “One cannot attack a ship and then claim self-defence if the people on board resist the unlawful use of violence . . . a person is legally entitled to resist one's own unlawful capture, abduction and detention.”

