

It's not Wrong,  
It's Illegal

Situating the Gaza blockade  
in international law and the

IIN Response

# Deliberate attempt to shift the legal order

- *If you do something for long enough, the world will accept it. The whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries...international law progresses through violations. We invented the targeted assassination thesis and we had to push it. At first there were protrusions that made it hard to insert easily into legal moulds. Eight years later it is at the center of the bounds of legitimacy.*

-Former head of the International Law Division of the Israeli Military Advocate General

# Structure of Paper

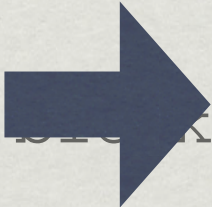
- 1) Background of the Gaza Strip leading to the imposition of a blockade;
- 2) The blockade is illegal pursuant to international humanitarian law;
- 3) The UN Security Council's treatment of the blockade demonstrates a grotesque discrepancy between its handling of other international case studies;
- 4) Implications for UN failure to uphold the rule of law; and
- 5) Recommendations to the UN to redress such failure

# Background

- 1948: Under Egyptian Control
- 1967: Occupied by Israel
- 2005: Unilateral Disengagement
- 2006: Hamas' electoral victory
- 2007: Hamas ousts Fatah from power
- 2007-present: blockade



# The Blockade in International Law

- Israel remains an Occupying Power =
- legal self-defense already triggered
- has authority to police territories
- **cannot** declare war on Occupied Territory
-  prohibition on imposing a blockade

# Article 42, Hague Regulations

- *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.*



# *Jus in bello & Jus ad bellum*

- *Jus ad bellum*: Legal justification for the initiation of force
- *Jus in bello*: Legal justification for the ongoing use of force i.e., the Laws of Armed Conflict which includes occupation and war

# Permissible Use of Force during Occupation = Police force



- *Police operations are subject to many more restrictions than hostilities. To mention but one example, force may be used against civilians only as a last resort after non-violent means have proved unsuccessful in maintaining law and order. As for the use of firearms it is an extreme measure in police operations, while it is normal against combatants in hostilities*

• *- Marco Sassoli*

# Defending oneself v. Self Defense

- *To equate the two is simply to confuse the legal with the linguistic denotation of the term "defense." Just as "negligence," in law, does not mean "carelessness" but, rather, refers to an elaborate doctrinal structure, so "self-defense" refers to a complex doctrine that has a much more restricted scope than ordinary notions of "defense." Unfortunately, this elision between legitimate security concerns and self-defense is embedded in Israel's justification*
- *-Iaan Scobbie*

# Meaning of legal self-defense

- Broad framework of customary international law
- Narrow scope as defined by the UN Charter
- Non-state actors within the meaning of Article 51
- States should not be bound by law at all in determining how best to defend themselves

# ICJ Advisory Opinion on the Wall (2004)

- a non-state entity cannot trigger Article 51, as an “armed attack” must be imputable to a foreign state
- the emergence of the attack from within and not without the Occupied Territory distinguishes it from what was contemplated in UNSC Resolutions 1368 and 1373



# Doubly vulnerable: Under occupation and attack



- *It forces the people of the Gaza Strip to face one of the most powerful militaries in the world without the benefit either of its own military, or of any realistic means to acquire the means to defend itself. Thus, [the authors] believe that Israel's attempt to transform international humanitarian law in this respect should be firmly resisted, and that its military's operations in the Gaza Strip should continue to be evaluated by law enforcement standards.*
- *-George Bisharat et. al.*

# The United Nations & the Rule of Law

- *Promoting the rule of law at the national and international levels is at the heart of the United Nations' mission...For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency*
- *-Kofi Annan, former UN Secretary-General*

# Absence of the Rule of Law in handling the Gaza Blockade

- Egregious discrepancy in the application of the law
- Inadequate scrutiny of the situation in Gaza
- Politics has trumped the law in treatment of the blockade



# Bosnia- Herzegovina

- *Demands that all parties and others concerned create immediately the necessary conditions for unimpeded delivery of humanitarian supplies to Sarajevo and other locations in Bosnia and Herzegovina, including the establishment of a security zone encompassing Sarajevo and its airport...*
- *-UNSC Resolution 757*

# Somalia

- *Expressing grave alarm at continuing reports of widespread violations of international humanitarian law occurring in Somalia, including reports of violence and threats of violence against personnel participating lawfully in impartial humanitarian relief activities: deliberate attacks on non-combatants, relief consignments and vehicles, and medical and relief facilities; and impeding the delivery of food and medical supplies essential for the survival of the civilian population... Strongly condemns all violations of international humanitarian law occurring in Somalia, including in particular the deliberate impeding of the delivery of food and medical supplies essential for the survival of the civilian population, and affirms that those who commit or order the commission of such acts will be held individually responsible in respect of such acts...*
- *-UNSC 794*

# UNSC Resolutions

- Somalia (1992): 6

- Bosnia (9/1991-5/1992)

- Middle East (2005-Present): 32

- Conflict in Lebanon: 19

- Zero Tolerance on Sexual Harassment:  
11

- **Gaza: 2**



# Politics trump law

- UNSC resolutions 1850 and 1860
- “counterproductive” (political) and “unacceptable” (moral)
- inadequate remedies
- Illegal = ending blockade
- unacceptable = easing blockade
- counterproductive = reforming blockade



# Implications for UNSC failure to uphold rule of law

- The UNSC has left confusion where there should exist clarity regarding the applicable legal order and appropriate use of force in Gaza;
- It has provided poor guidance to states that are not fulfilling their obligations pursuant to Common Article 1
- Untold impact on the authority afforded to international law and the UN itself

# Recommendations

1. Secretary-General issue a Presidential Statement and/or the Security Council pass a resolution declaring that the blockade is illegal and a threat to international peace and security;
2. Security Council invoke Chapter VII authority to use military force to reconstruct Gaza; and/or ensure the delivery of humanitarian relief throughout Gaza; and/or to impose sanctions on Israel;
3. Security Council affirm the International Court of Justice's *Advisory Opinion on the Separation Wall* thereby affirming that the only legitimate use of force in Gaza is subject to law enforcement standards;

# Recommendations

- 4. Security Council incorporate international humanitarian law into all of its statements, declarations, letters, speeches, etc.;
- 5. Secretary General request that the Government of Switzerland, in its capacity as the depository of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to convene a conference of High-Contracting Parties to the Fourth Geneva Convention to affirm its applicability to Gaza as well as discuss measures of enforcement; and
- 6. Empower the General Assembly to override a Security Council veto by a 2/3-majority vote to enable the UN to be a mechanism for the exercise of international collective will.