

MAVI MARMARA'S 10TH ANNIVERSARY AND THE STRUGGLE FOR PALESTINE

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It has been 10 years since Israel's attack on the Gaza Freedom Flotilla on the early morning of May 30, 2010, referred to as the "Mavi Marmara incident". This attack, which witnessed more than 50 people wounded and 10 volunteers murdered, had many legal, political, economic and even military consequences.

Why did Mavi Marmara go to Gaza?

Following its declaration of existence in 1948, Israel was quick to expand the lands it had captured in the period of the British mandate regime after the war with Arab countries, forcing more than a million Palestinians to leave their lands. Israel also extended its territory to the Golan Heights of Syria, the Sinai Peninsula of Egypt, the Gaza Strip and the West Bank, on top of its occupation since the 1967 War. During the Oslo negotiations, Israel recognized the presence of a Palestinian State under the leadership of Yasser Arafat in the West Bank

and Gaza territories, but increased the number of illegal Jewish settlements there every day. In 2005, Israel decided to withdraw from Gaza by evacuating settlements in the area. The Palestinian-Israeli conflict, which had been ongoing for many years, gained a different dimension, as Hamas received the highest number of votes in the election on January 25, 2006.

The Hamas government could not secure its administration long enough because Israel and some western states did not recognize Hamas as a legitimate political actor, and Fatah did not accept Hamas' victory in the election. Eventually, two different governments emerged in Palestine, one was Fatah under the leadership of Mahmud Abbas controlling the West Bank, the other was Hamas under the leadership of Khalid Mashal in Gaza. Israel announced on September 19, 2007 that it would restrict the entry and exit of

goods by declaring Gaza, controlled by Hamas-labeled as a terrorist organization-as an “enemy zone”. On January 6, 2009, a sea blockade was implemented on the Gaza Strip. Meanwhile the Yasser Arafat International Airport had been bombed by Israel in 2001, making it unusable since then. So it is safe to say that as of today, Israel has ‘locked’ the people of Gaza for the past 14 years through its blockade on land, sea and air.

The San Remo Manual on International Law Applicable to Armed Conflict at Sea / SRM, 1994, which includes the customary international law rules on maritime warfare, accepts the blockade as a method of warfare, but it stipulates it. According to the SRM, an international conflict must exist in order to implement the blockade. There are different comments on the nature of the conflicts between Israel and Palestine.¹ Even if we consider the existing tension as an international conflict without going into these discussions, it can be said that international law rules have been violated due to the way of implementation of the blockade.

Israel’s blockade on Gaza violates the Geneva Conventions, The Hague Regulation and international humanitarian law. According to Article 50 of the Hague Regulation, 1907 and Article 87 of III. Geneva Convention, collective punishment cannot be imposed on individual incidents, taking into account the actions of individuals. The Geneva Convention, Article 51, 54 (1) of the Additional Protocol I and Article 14 of the Protocol No II state that hunger cannot be used as a weapon of war and the advantage to be achieved by blockade should not be more than the damage suffered by the civilian population (the principle of proportionality). Article 17 and 23 of the Geneva Convention IV, Article 70 and 71 of the Additional Protocol I point out that humanitarian aid should be delivered and humanitarian workers should be protected when civilians are harmed and need help.²

Israel punishes the entire people of Gaza for electing Hamas through the blockade, thereby violating the “ban on collective punishment”. Due

to the blockade, 80% of the people living in Gaza are in need of humanitarian aid. Unemployment rate increased to 52%³ and poverty rate to 53%. Extreme poverty rate⁴ increased to 33.8%.⁵ “The principle of proportionality “ is violated in terms of the humanitarian consequences of the blockade, and the severity of the violations had been deepened by attacking the Gaza Freedom Flotilla, a humanitarian organization.

What happened on Mavi Marmara?

In 2007, between August and December, the Free Gaza Movement⁶ attempted to reach Gaza by small fishing boats. The mission succeeded in five of these attempts. Subsequently Europe-centered Viva Palestina and IHH Humanitarian Relief Foundation realized the “Viva Palestina” land convoy to Gaza in December 2009. Despite all the obstacles, the convoy succeeded to reach Gaza. Later, the European Campaign to end the Siege on Gaza, the Free Gaza Movement, IHH Humanitarian Relief Foundation, the International Committee to Lift the Siege on Gaza, Ship to Gaza Greece and Ship to Gaza Sweden started to organize the “Gaza Freedom Flotilla”, which was more comprehensive than the previous organizations. The Freedom Flotilla sailed to Gaza with the participation of more than 700 volunteers from 37 countries at the end of May 2010. The flotilla aimed to generate global public opinion regarding the humanitarian situation in Palestine, breaking the unlawful blockade of Israel and establishing a permanent aid corridor to deliver humanitarian aid and providing humanitarian aid to Gaza.⁷

The attack that Israeli soldiers launched on the ship, on the night of May 30, ended when they seized control of the ship at 5.17 am on May 31. The attacks on the flotilla that were done by warships and helicopters with sound, fog and gas bombs, plastic and real bullets were announced to the world public via live broadcasts. Mavi Marmara, carrying with it nine martyrs and more than 50 wounded participants, and accompanied by the physical and psychological torture on the volunteers by the Israeli soldiers, was docked at the Ashdod Port. The passengers,

who were detained at the Be'er Sheva prison after interrogation, managed to return to Turkey on June 3.

Israeli military's assault on Mavi Marmara in international waters and the excessive use of force against Mavi Marmara is unlawful. The assault is a blatant violation of the Fourth Geneva Convention and International Humanitarian Law. In addition, the violations of human rights committed by the occupying Israeli soldiers during the attack and detention period can be examined under chapter 6.

1. Violation of the right to life

According to the statement of the International Fact-finding Mission, the force used by the Israeli soldiers on Mavi Marmara is unnecessary, excessive, disproportionate and inappropriate.

At least six people were killed by arbitrary and close-range shooting, according to the forensic reports.⁸

2. Torture and other cruel, inhuman or degrading treatment or punishment

The passengers of the fleet were subjected to treatments such as overly tight handcuffing for extended periods; being subject to various forms of mistreatment onboard and during detention; insult, humiliating treatment; being beaten; being forced to sign papers in a language the signatory cannot read.

3. Violation of the right to liberty and security of person

The Mavi Marmara passengers were arrested arbitrarily and unlawfully under inhumane conditions without being informed.

4. Humane treatment to detained persons and right of respect for human dignity possessed as an innate quality

The flotilla participants were detained and deprived from their rights to an attorney and to access to families and Embassy officials.

5. Violation of the right to own property

The Israeli authority confiscated a wide range of personal belongings, including considerable amount of cash donations to be distributed in Gaza; passports, electronic items such as cell phones, laptop computers, photographic and video recording equipment, where most of these items were not returned.

6. Violation of freedom of expression

During the attack, Israeli forces imposed a total blackout on the satellite communication of Mavi Marmara. Furthermore, a journalist was shot dead at close range.

Mavi Marmara's Legal Struggle

In the immediate aftermath of the attack, victims filed complaints to the courts in Turkey and in much of the world. The complaints in Turkey were joined together in a lawsuit that was filed in 2012.

On the trial there were four defendants in the case, with 502 plaintiffs of whom 78 were foreign nationals: Former Israeli Chief of Staff Gen. Gabriel Ashkenazi, Former Navy Commander Eliezer Alfred Maron, Former Air Force Intelligence officer Avishay Levi and Former Intelligence Chief Amos Yadlin. The case was dropped on December 9, 2016 after an agreement reached between Turkey and Israel on August 28, 2016. No decision has yet been made on the appeal of the court case.

Families of the Mavi Marmara victims filed 85 separate lawsuits for compensation in Kayseri, Denizli, Diyarbakır, Ankara, Izmir, İstanbul, Konya, Erzurum and Batman cities of Turkey. The amount of compensation demanded totaled 23 million TL. The agreement reached between Turkey and Israel means Turkey shall address any demand of compensation if Israel is obliged to pay compensation for any. For this reason, the treasury of the Ministry of Finance of the Republic of Turkey was added as a party to the compensation cases.

Other lawsuits have also been filed by Freedom Flotilla participants in different parts of the world.

An investigation opened following an official complaint by Spanish participants resulted in arrest warrants issued for seven senior-level Israeli executives should Prime Minister Benjamin Netanyahu, former Defense Minister and former Foreign Minister Avigdor Liberman, among other, visit Spain.

The family of Furkan Doğan, an American-Turkish citizen, filed a lawsuit in the US where the judge ruled that the case be dropped on the grounds of the Turkish-Israeli agreement, however, this lawsuit has yet to be concluded.

Gadija Davids, a South African journalist who was on Mavi Marmara, also filed a lawsuit in which the names of the Israeli defendants were notified to the border police so that they could be arrested upon entering South Africa.

In 2013, an application was filed to the ICC on behalf of the State of the Comoros. Subsequently, Cambodia and Greece also joined the application. A decision issued from the Office of the Attorney General on November 6, 2014 labeled Israel as an occupying party in Gaza and classified Israel's attack against the fleet as "war crime". Israel's claims for "self-defense", on the other hand, were not found worth discussing. The process for initiating an investigation into the Mavi Marmara attack before the ICC is still ongoing due to procedure-related discussions between the Office of the Attorney General and the Superior Court.⁹

Conclusion

Gaza Freedom Flotilla is a paramount and most comprehensive action against Israel's invasion that it constantly expands by breaking all the rules of international law. The fact that the volunteers of "Mavi Marmara", who were all civilians, apply to the national and international courts regarding the heinous treatments they faced in the Israeli attack, strengthened the legitimacy of the Flotilla. The courageous stance of the participants during the attack as well the decisions taken in the ICC and other national

courts destroyed the perception of Israel as an untouchable state. Furthermore, the propaganda to depict Israel as the most democratic country in the Middle East was damaged because the entire world has seen how the Israeli soldiers attacked "Mavi Marmara". The Freedom Flotilla has managed to draw attention to Palestine by showing the dark side of Israel to the world and largely fulfilled its mission. It also played a significant role in the improvement of Turkey's domestic production of the defense industry caused by the fragile relations with Israel after the Mavi Marmara incident. The transition to domestic production in the defense industry, especially the İHAs and SİHAs, is one of the important results of the Freedom Flotilla.¹⁰

According to the report and testimonies prepared by the UN International Case Committee, the victimization of the participants in "Mavi Marmara" incident was registered. However, it tried to change the situation in favor of Israel with the Turkel Commission reports prepared by Israel and Palmer prepared with the pressure of the Israeli administration. Israel has not stand convicted in Turkey and the world after an agreement was signed between Turkey and Israel in 2016.

The efforts for achieving justice in the Mavi Marmara case has not yet been concluded. Gabriel Ashkenazi was appointed as foreign minister in the newly formed Israeli government. The Ministry of Defense was replaced by Benny Gantz, who will replace Netanyahu as prime minister in the upcoming year and a half. Gantz was the chief of staff during the Operation Protective Line, where 2,147 people died and more than 10,000 people were injured in 2014.

If Israel advances with its normalization process with the Arab countries, the "Deal of the Century" plan would pave the way for projects such as the annexation of the West Bank with the support of the US. But there would always be people who will stand tall and defend the rightful cause of the Palestinians. No matter the cost. This would forever be a task for those who can still hear the voice of their conscience and maintain their faith in justice.

Endnotes

- ¹ Ahmet Hamdi Topal, "İsrail'in Gazze Ablukası ve Mavi Marmara Saldırısı", Public and Private International Law Bulletin, Volume: 32, Issue: 1, 103-154, s. 109-126.
- ² International Committee of the Red Cross and Galatasaray University Faculty of Law Publications, Istanbul, 2005; Topal, o.c., s. 37-40.
- ³ الجهاز المركزي للإحصاء الفلسطيني، كتاب فلسطين الإحصائي السنوي 2009, s. 77.
- ⁴ People with a daily income below \$ 1.90.
- ⁵ Palestine in Figures 2019, Palestinian Central Bureau of Statistics, Mart 2020, s.29.
- ⁶ For detailed information: <https://www.freegaza.org/>
- ⁷ Mavi Marmara: Gazze Özgürlik Filosu, İHH Kitap, 2011, s. 39, <https://www.ihh.org.tr/public/publish/0/79/mavi-marmara-ozgurluk-filosu.pdf>
- ⁸ Report of the International Fact-Finding Mission to Investigate Violations of International Law, Including International Humanitarian and Human Rights Law, Resulting from the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance (Turkish Version), A/HRC/15/21, September 2010, s.38-40, <https://www.ihh.org.tr/yayin/birlesmis-milletler-mavi-marmara-raporu>
- ⁹ From the interview dated 21.02.20220 with lawyer Burak Turan of Mavi Marmara lawyers.
- ¹⁰ For the explanation of Baykar Technical Director Selçuk Bayraktar, see: <https://www.youtube.com/watch?v=XHJu-CIWmXc>