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On 13 January 1898, in the newspaper *L'Aurore*, Émile Zola published an open letter, entitled “J’Accuse...!”,¹ directed to the President of France.² Zola’s letter was a scathing indictment of the French military leadership for trying and convicting Captain Alfred Dreyfus, the only Jewish officer serving on the French General Staff, for engaging in espionage.³

Zola was appealing to the French President for justice for Dreyfus, who had been convicted on forged evidence created by a known anti-Semite,⁴

publicly stripped of his rank and military decorations,⁵

and sentenced to solitary confinement on Devil’s Island for the rest of his life.⁶

Zola detailed a series of wrongs—some innocent, some not—that led to Dreyfus’ arrest, first trial, conviction, and sentencing.⁷

Yet, even when it became clear that Dreyfus was, in fact, innocent of the charges of espionage, the injustice was compounded when senior French military leaders decided it was better to protect the Army’s reputation (by intentionally acquitting the real traitor) than to admit that Army leaders had erred with respect to Dreyfus and to set him free.⁸ Hence, based on the same false evidence, a second French military court was convened to reconvict Dreyfus while another military tribunal intentionally acquitted the real traitor.⁹

Despite pious proclamations of their fidelity to the principles of justice and the rule of law, French military leaders betrayed the very cause of justice by knowingly manipulating the French military justice system to continue the imprisonment of the innocent Dreyfus while acquitting the officer then known to have betrayed France.

In light of the near-global hysteria surrounding the May 31, 2010, clash on the high seas between Israeli forces and the so-called Free Gaza flotilla, it appears that Europe and the world have learned little since the Dreyfus Affair. Yet again, political leaders have publicly and piously proclaimed their fidelity to the rule of law and the cause of justice, all the while stirring up anti-Semitic hysteria (this time, directed at Israel) and supporting anti-Jewish bigots (this time, radical Islamists like Hamas) who openly despise and manipulate and trample on the rule of law to their own purposes. Yet again, the world community has betrayed justice by rushing to condemn the innocent, *despite clear and unambiguous evidence that the Jewish State was fully*

complying with International Humanitarian Law, and to exonerate the
guilty, *even while*
Hamas, its flotilla allies, and other opponents of Israel repeatedly and intentionally flout the rule
of law . Yet again,
despite pious platitudes of fidelity to justice and the rule of law, world leaders have turned their
backs on justice and instead have thrown their support behind the international terrorist
organization Hamas which daily violates the rule of law that Israel seeks (and world leaders
claim) to uphold. Within hours of the May 31st clash on the high seas and
well before any of them could have determined what exactly occurred at the clash site
, world leaders rushed to issue statements condemning Israel's actions, thereby fanning global
anti-Israeli hysteria.

Let's review the evidence.

I. ISRAEL'S PRECARIOUS POSITION IN THE REGION AND IN THE WORLD

From its founding in 1948, the State of Israel has had to exercise constant vigilance with respect
to hostile neighbors and their allies who wish Israel harm. Since 1948, Israel has been the
target of vicious attacks (both physical and rhetorical) by its neighbors and others opposed to
the very existence of a Jewish state.¹⁴ Israelis have been attacked repeatedly, on their own soil
and overseas. ¹⁵ Such attacks have run the gamut from
suicide bombings to *fedayeen* terrorist
attacks to skyjackings to indiscriminate rocket attacks to full-scale conventional wars.

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This has taught Israel that it must guard itself against attacks from every direction.

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Since the May 31, 2010, Israeli naval clash on the high seas with the so-called Free Gaza
flotilla, Israel has once again come under vicious rhetorical attack by world leaders of every
stripe and from every region of the globe for merely doing what any sovereign state has the
inherent right to do—act in its own self-defense.

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The outpouring of rhetorical venom directed against Israel for enforcing a lawful blockade to
ensure its own defense was immediate and widespread.¹⁹ It was essentially “*déjà vu* all over
again.” ²⁰ History had witnessed such
anti-Semitic ravings before—in 1890s France at the two Dreyfus' courts-martial, where the
innocent Dreyfus was charged, tried, and wrongly convicted twice (and the real traitor
intentionally exonerated), all despite overwhelming evidence on hand indicating that Dreyfus's
convictions constituted a gross miscarriage of justice! The situation surrounding the May 31,
2010, clash on the high seas is eerily similar—and unsettling.

II. WHAT WORLD LEADERS CHARGED ABOUT THE CLASH

What follows is a sampling of the over-the-top charges leveled at Israel regarding the Israeli

naval clash with the flotilla. Turkish Foreign Minister Ahmet Davuto_lu, despite prior warnings from Israel that Israeli forces would enforce the Gaza blockade *and* despite knowledge of the Israeli offer to ensure UN delivery of the humanitarian goods to Gaza over land, nonetheless accused Israel of “banditry and piracy.”

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The Arab League (not surprisingly) labeled Israel’s naval action a “terrorist act.”

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In what will undoubtedly go down in history as a supreme case of irony, if not outright *chutzpah*

, the Islamist terrorist group Hamas described Israel’s action as “state terrorism.”

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King Abdullah of Jordan claimed that the “Israeli attack represent[ed] a crime.”

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Not to be outdone, Syrian officials condemned the naval clash as a “crime against humanity.”

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Turkish Prime Minister Recep Tayyip Erdo_un

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characterized the Israeli action as an attack “on international law, the conscience of humanity and world peace.”

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Palestinian Authority President Mahmoud Abbas

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claimed that “Israel ha[d] committed . . . a massacre.”

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Former Egyptian President Hosni Mubarak sounded downright wimpish by comparison, merely denouncing the use of “excessive and unjustified force.”

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The Saudi Cabinet denounced the attack as “aggressive and reflect[ive of] Israel’s inhuman practices, flagrant defiance of the whole world and international law”

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President Hugo Chavez of Venezuela condemned Israel’s “attack on peace activists” and called the attack “an act of war undertaken by the Israeli army against defenseless civilians.”

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The North Korean Foreign Ministry, in a tone considerably subdued by DPRK standards, dutifully condemned Israel for having “mercilessly killed or wounded dozens of civilians aboard the boats” and then (for good measure) implicated the United States, labeling the attack a “crime against humanity perpetrated at U.S. connivance and under its patronage.”

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The President of the European Parliament, Jerzy Buzek, called the naval action “a clear and unacceptable breach of international law....”

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French President Nicolas Sarkozy

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condemned “the disproportionate use of force” against the flotilla by the Israeli forces.

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British Prime Minister David Cameron, leader of a nation that has been fighting Muslim thugs for

centuries, nonetheless condemned the Israeli attack as “completely unacceptable.”

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Such was the hyperbole (not to mention hypocrisy) infusing the official statements. “Piracy”! “Terrorism”! “Massacres”! “Crimes against humanity”! “Violations of international law”! Oh, my!

Yet, by condemning Israel for lawfully defending itself against Islamist terrorist groups like Hamas (whose sworn goal is to destroy Israel³⁸) as well as against organizations that aid and abet Hamas (like the Free Gaza flotilla organized by the Turkish Islamist group IHH

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), world leaders actually encourage—whether by design or default—increased international lawlessness. Those leaders play into the hands of evil men (Islamist terrorists and their fellow travelers in an ever increasing axis of evil) who care not one whit for justice and the rule of law as we know them in the West, thereby encouraging them to repeat such actions given the huge propaganda victory they achieved at Israel’s expense.

III. PERTINENT FACTS ABOUT THE NAVAL CLASH

Although any loss of innocent life is regrettable, let’s review the facts to determine who bears actual culpability in this matter:

1. For a number of years, there has been an ongoing armed conflict between the State of Israel and Hamas (and other Islamist terrorist groups) located in, and firing rockets and mortars from, the Gaza Strip;⁴⁰
2. Because of the ongoing conflict, Israel has the inherent right under international law to defend itself and its citizens;⁴¹
3. Establishing a naval blockade during an armed conflict to interdict delivery of war materials to one’s adversaries is permitted under international law;⁴²
4. Pursuant to the establishment of a lawful blockade, Israel has the right to inspect cargoes bound for enemy-controlled territory, including the right to take ships into a nearby port for that purpose;⁴³
5. The so-called Free Gaza flotilla made no secret of its intent to breach the Israeli blockade and sail to Gaza;⁴⁴

6. Israel warned the Turkish government (and other governments whose nationals were participating in the flotilla) in advance that Israel would enforce its blockade;⁴⁵

7. In an attempt to avoid a confrontation at sea, Israel—publicly and in good faith—offered to allow the humanitarian cargo to be unloaded at the Israeli port of Ashdod for subsequent UN delivery to the Gaza Strip over land;⁴⁶

8. All such offers were summarily rejected by flotilla participants;⁴⁷

9. The flotilla set sail for Gaza on or about May 30, 2010;⁴⁸

10. On May 31, 2010, as the flotilla approached the area of the blockade, the Israeli Navy queried the ships by radio as to their destination and warned them that they were approaching restricted waters;⁴⁹

11. The ships responded that they were bound for Gaza and refused to either change course away from Gaza or divert to the port of Ashdod;⁵⁰

12. Following the ships' refusal to comply with Israeli Navy instructions concerning the blockade, Israeli military personnel began to board the ships to enforce the blockade;⁵¹

13. On five of the six ships, there was little or no resistance to the boarding, and only minor injuries occurred on either side;⁵²

14. On the sixth ship, the Turkish vessel Mavi Marmara, a group of passengers took up arms—metal rods, knives, and other weapons—and assaulted the Israeli commandos attempting to board the ship;⁵³

15. The Israelis boarding the Mavi Marmara were armed primarily with non-lethal paintball guns (yes! *paintball* guns!);⁵⁴

16. Only when the Israeli assault personnel began to sustain life-threatening injuries inflicted by the armed passengers did they resort to lethal weaponry for self-defense;⁵⁵

17. Some of the passengers aboard the Mavi Marmara had publicly stated prior to sailing that they hoped to become martyrs (i.e., *shaheed*);⁵⁶

18. In the melee that resulted on the Mavi Marmara, nine of the 581 passengers aboard the ship were killed⁵⁷ and 55 were wounded;⁵⁸

19. Nine Israeli military personnel were injured, some seriously, by passengers on board the Mavi Marmara who attacked them;⁵⁹

20. Despite the violence and the attempt to breach the blockade, Israel nonetheless unloaded the humanitarian cargo at Ashdod and attempted to deliver it to the Gaza Strip;⁶⁰

21. Only three of the six ships in the flotilla were carrying humanitarian cargo;⁶¹

22. The Turkish group that organized the flotilla, the Foundation for Human Rights and Freedoms and Humanitarian Relief (whose initials are IHH in Turkish), is a group known (by the Turkish government and others) to have ties to Islamic terrorist groups⁶² opposed to Israel, including Hamas (whose sworn goal is to destroy Israel);

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and

23. The flotilla was bound for the Gaza Strip, a territory controlled and dominated by Hamas, a

group recognized as an international terrorist organization by the United States, the European Union, and others.⁶⁴

IV. DID ISRAEL COMMIT OF ANY OF THE OFFENSES CHARGED? Given the foregoing facts, of what, if anything, is Israel guilty?

A. The Charge of Piracy

How about the charge of piracy?⁶⁵ Hardly! In the simplest terms, piracy is “an act of robbery on the high seas.”

⁶⁶ No robbery occurred in this matter—in fact, once the flotilla’s ships were brought into the port of Ashdod, the Israelis unloaded and forwarded the humanitarian cargo to the Gaza Strip, just as they had offered to do prior to the clash at sea.

⁶⁷ According to the U.N.

Covenant on the Law of the Sea,
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piracy includes “any
illegal

acts of violence or detention, or any act of depredation, committed for
private
ends by the crew or passengers of a
private
ship.”

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Since the naval confrontation was lawful
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(as an act of enforcing a naval blockade in a zone of armed conflict) and was not carried out by private ships for private ends (it was carried out by a naval force executing government policy), it was not,

and indeed could not be

, piracy. Hence, accusations of piracy were clearly specious, as anyone making such a charge had to know. Why, then, would responsible world leaders use such inflammatory language? Why, indeed! Perhaps creating an international groundswell of criticism directed against Israel was intended (like what occurred to the Jew Dreyfus in France in the late 1800s).

B. The Charge of Committing a Massacre

So, what about the charge that Israeli forces committed a massacre on board the Mavi Marmara?⁷¹ No way! “Massacre” is defined as “the savage killing of many victims”⁷² or “the act or an instance of killing a number of usually helpless or unresisting human beings under circumstances of atrocity or cruelty.”

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Do these definitions fit the facts of the flotilla incident? Recall that Israel repeatedly requested (both before the ships set sail

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and

as they approached restricted waters
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) that the flotilla divert to the port of Ashdod to unload its cargo (for promised delivery to Gaza

by UN personnel) in order to avoid a confrontation at sea—something the flotilla participants rejected out of hand.

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Moreover, when the Israeli military finally acted, the commandos who boarded the ships were armed primarily with non-lethal weapons—
paintball guns

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There were few acts of violence or casualties on five of the six ships.

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On the sixth ship, casualties to
passengers
resulted
only after

a group of passengers assaulted Israeli forces with metal rods, knives, and other weapons, causing the Israeli forces to resort to lethal weaponry to defend themselves.

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Yet, despite the fierceness of the attacks, even after the Israelis resorted to use of lethal force, only nine of 581 passengers aboard the ship were killed (strongly suggesting focused self-defense, not a massacre).

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Further, those who assaulted the soldiers were clearly not “helpless or unresisting human beings.” Nor did the number of casualties amount to anything that a rational person could consider a “savagely killing of many victims.” Additionally, this was a completely avoidable situation. The flotilla organizers were seeking a confrontation (as they admitted before the clash even took place),

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and they got one, despite Israeli efforts to provide a reasonable, peaceful, alternative to deliver the goods to the Gaza Strip.

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There was no massacre, as any rational world leader would know. Once again, one wonders why so many world leaders were so quick to make such an unfounded accusation.

C. The Charge of Committing an Act of Terrorism

Okay, then, what about terrorism?⁸³ No—not that either. The FBI defines terrorism as “the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”

⁸⁴ First, the force applied in this matter was lawful (Israel was enforcing a validly established blockade, which is its right under international law in times of armed conflict).

⁸⁵ Second, the purpose was to ensure that no items of military contraband were to be delivered to Israel’s enemies in the ongoing armed conflict (also a valid purpose under international law).

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Moreover, Israel had publicly offered a reasonable, peaceful, alternative that would have precluded any application of force at all—
a significant indicator that Israel’s goal was not to intimidate anyone

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There was no terrorism here. All such accusations were absurd—and had to have been known to be absurd when made.

D. The Charge of Violating International Law

So, did Israel violate international law?⁸⁸ Three issues seem to be implicated in that question: first, whether the blockade of the Gaza Strip was lawful under international law; second, whether the force applied by Israel was proportional; and third, whether it was lawful to accost the ships on the high seas some distance beyond the restricted waters governed by the blockade. Regarding the legality of the blockade, the law of blockade (derived from international law that was codified in the 1909 *London Declaration*

Concerning the Laws of Naval War

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and subsequently updated in 1994 in the

San Remo Manual on International Law Applicable to Armed Conflicts at Sea

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permits the establishment of naval blockades during periods of armed conflict.

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Since there is an ongoing armed conflict between Israel and Hamas (and other Islamist terror groups) involving the Gaza Strip, the blockade was (and remains) lawful.

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Since the blockade is lawful under international law applicable to armed conflicts at sea, Israel did not violate international law by establishing the blockade. And, once lawfully established, under international law, the blockade must (repeat,

must

) be enforced against all vessels seeking to enter the restricted waters.

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That rule applied to the Free Gaza flotilla as well.

Regarding the issue of proportionality, it is a well-established principle of international humanitarian law that application of force during an armed conflict must not exceed what is required to achieve the military objective.⁹⁴ If more force were to be used than was necessary in the circumstances, it would be disproportionate and would violate international law.

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Yet, the principle does not require one-to-one proportionality—e.g., it does not mean that one must limit oneself to the same number or types of weapons or number and types of rounds expended.

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Being attacked with knives and metal rods does not require that defenders respond only with similar knives and rods. Hence, defending oneself with a firearm when being attacked by persons wielding knives and metal rods is proportional, unless defenders were to fire their weapons indiscriminately at all passengers, including those the defender

knows

are not participating in the attack.

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It must also be understood that, when engaging in legitimate self-defense, *mistakenly*

killing or wounding an innocent person—though clearly tragic—does not convert a proportionate response into a disproportionate one.

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In the naval clash, Israeli forces boarding the ships were armed primarily with non-lethal weapons (i.e., paintball guns).

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Only when certain passengers attacked them with metal rods, knives, and other life-threatening weapons did the Israeli forces respond with lethal force.

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Resort to lethal weaponry only after their lives were threatened, in and of itself, strongly suggests that the Israeli plan was to halt the attempt to breach the blockade with the least force necessary—exactly what proportionality would require. Further, Israel proactively sought to avoid the confrontation altogether by offering a good faith alternative for delivering the humanitarian goods to the Gaza Strip—something flotilla participants rejected.

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The Israeli offer reflects *an attempt to avoid even potential violence*

. A final point of consideration is that, under international law, a blockading state has authority to attack vessels that refuse to honor a lawfully established blockade.

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Regarding the location of the clash, the blockading state is not limited to interdicting ships attempting to breach a blockade solely at the site of the blockade. Instead, once it is established that a vessel intends to breach a lawfully established military blockade, the blockading state may interdict such vessels wherever the state deems appropriate.¹⁰³ In the case of the Free Gaza flotilla, there was no doubt about what the ships intended to do—the flotilla participants proclaimed their goal repeatedly and publicly.

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As such, Israel's decision to interdict the flotilla on the high seas was permissible under international law.

In light of the foregoing, Israel did not violate international law, as responsible world leaders had to know. Their contrary charges suggest either willful ignorance (which is doubtful) or intentional malice (one wonders why).

E. The Charge of Committing a Crime Against Humanity

Well, then, did Israel's actions amount to a crime against humanity?¹⁰⁵ Oh, please! Crimes against humanity are offenses of the most serious nature in the hierarchy of international crimes. One of the most widely cited definitions of "crime against humanity" today is the definition found in the Rome Statute:

[A] "crime against humanity" means any of the following acts *when committed as part of a*

widespread or systematic attack directed against any civilian population

...:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender . . . , or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.¹⁰⁶

None of these occurred. The naval clash that took place on May 31, 2010, occurred because a flotilla of self-described human rights activists sought to breach an Israeli blockade lawfully established to interdict military goods bound for the Gaza Strip, the territory from which Hamas and its Islamist terrorist allies were attacking Israel.¹⁰⁷ That nine of the activists were killed was regrettable. It was also avoidable. Israel offered an alternative solution, whereby the humanitarian goods could have been delivered to the Gaza Strip over land.

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Despite their repeated claims that their purpose was delivery of humanitarian goods to Gaza, the flotilla participants rejected Israel's good faith offer and sought to breach the blockade instead.

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Even then, casualties were not inevitable—five of the six vessels were boarded relatively peacefully, with only a few minor injuries on either side.

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Unlike what occurred on the other five ships, a large group of persons on the sixth vessel took up weapons to resist by force, and it was only on the sixth vessel where numerous casualties on both sides occurred.

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Some on the sixth ship claimed (before sailing) that they were seeking martyrdom and, doubtless, some will claim that they achieved their goal.

¹¹²

When persons seek “martyrdom”
by attacking others

, they are inviting their own deaths, and there is little that the victims of such attacks can do but defend themselves with lethal force.

¹¹³

That is what occurred on the Mavi Marmara. That only nine passengers were killed (out of a total of 581 on the ship) is a tribute to the training and discipline of the Israeli forces. The Free Gaza flotilla sought a confrontation, and they got one—but not because Israel wanted it. Israel sought to avoid a confrontation up to the very end, but the flotilla refused to either change course away from Gaza or divert into the port of Ashdod to unload its humanitarian goods there for subsequent shipment to Gaza over land.

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Charging that what occurred in the May 31st clash at sea constituted a crime against humanity is both ludicrous and scurrilous, as any reasonable world leader would know. Once again, one wonders what would motivate world leaders to make such outlandish accusations.

V. CONCLUSION

The prophet Isaiah has given mankind a solemn warning about integrity and sound judgment that we all—world leaders included—should heed: “Woe to those who call evil good, and good evil”¹¹⁵ When one realistically looks at the Middle East, no other nation in the region even remotely approaches Israel’s fidelity to the rule of law. ¹¹⁶ Moreover, Israel’s principal opponents in the Middle East (and around the world) care not one whit about such things. World leaders—especially those in the West who come from political systems committed to justice and the rule of law—acted shamefully regarding Israel with their unfounded and irresponsible accusations of wrongdoing. Israel sought to live up to its responsibilities under international law in all that transpired. In fact, it sought to go the extra mile by offering a good faith alternative to ensure delivery of the humanitarian goods without the threat of confrontation with the flotilla. Israel’s actions were transparent for the whole world to see. It was flotilla participants who sought violent confrontation. Many aboard the Mavi Marmara brought weapons aboard in anticipation of engaging in violence with Israeli forces that they knew would arrive to enforce its blockade. ¹¹⁷

Only a blind man—or those intentionally blinded by prejudice or malice—could conclude otherwise.

One can easily discount the views of loons on the world stage like Venezuela’s Hugo Chavez or the North Korean foreign ministry in condemning Israel, but why would otherwise responsible leaders mimic them? Woe to world leaders who rushed to condemn Israel and give the Islamist terrorists a pass! Such was not justice; it was a gross perversion of justice. Because so much of the world—including too many leaders of western democratic states who should have known better—so blithely and readily condemned Israel, the innocent party in the May 31, 2010, naval clash, I am compelled by justice and the rule of law to follow in the footsteps of Émile Zola in expressing righteous indignation at such an open and notorious injustice. For the sake of justice and the rule of law, I gladly take my stand with Zola. ***J'accuse!***

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- ENDNOTES**
1. Émile Zola, *J'Accuse . . . ! Lettre au Président de la République*, L'AURORE, Jan. 13, 1898, Translation and Notes by Shelley Temchin and Jean-Max Guieu, Geo. Univ., 2001, <http://www9.georgetown.edu/faculty/guieuj/others/IAccuse/Jaccuse.htm> (last visited Jul. 29, 2011).
 2. JEAN-DENIS BREDIN, *THE AFFAIR: THE CASE OF ALFRED DREYFUS* 245–57 (Jeffrey Mehlman trans., George Braziller, Inc. 1986) (1983).
 3. *Id.*
 4. *Id.* at 170–78.
 5. *Id.* at 3–8.
 6. *Id.* at 96–97, 124–33.
 7. Zola, *supra* note 1.
 8. BREDIN, *supra* note 3, at 232, 237–242, 407–430.
 9. *Id.*
 10. Although the naval clash at issue directly involved Israeli armed forces and ships of the Free Gaza flotilla, the fundamental legal issue concerned Israel's right to defend itself against Hamas *and its allies*. In this matter, the flotilla was, in effect, seeking to aid Hamas, Israel's enemy in the ongoing conflict. As such, the flotilla had allied itself with an enemy of Israel. Hence, when I speak in this article of the ultimate party world leaders were supporting when they condemned Israel's actions, it was really the Hamas terrorist organization—the flotilla simply served as an extension of Hamas for purposes of applying international law.
 11. *See infra* Part II.
 12. *See infra* Part IV.
 13. *See, e.g.*, Rory McCarthy, *Hamas Murder Campaign in Gaza Exposed*, THE GUARDIAN, Feb. 13, 2009, <http://www.guardian.co.uk/world/2009/feb/13/hamas-gaza-murders-abduction-torture>.
 14. ISRAEL'S FIRST FIFTY YEARS 67-94 (Robert O. Freedman ed., 2000).
 15. *Id.* at 58, 71–72, 75–80, 84, 91, 99–100, 107, 147, 152–54, 162–63, 165–66, 189, 192, 194.
 16. *Id.* at 44–46, 61–62, 65–68, 87–90.
 17. *Id.* at 58, 71–72, 75–80, 84, 91, 97, 99–100, 107, 130, 143, 147, 152–54, 162–63, 165–66, 189, 192, 194.
 18. *See infra* Part II.
 19. *See infra* Part II.
 20. With apologies to Yogi Berra, this is not a case of Mantle and Maris at the plate, but a case of prejudice that parallels the accusations against Alfred Dreyfus. Consider Émile Zola's account of the outcry against Dreyfus:

The public was astounded; rumors flew of the most horrible acts, the most monstrous deceptions, lies that were an affront to our history. The public, naturally, was taken in. No punishment could be too harsh. The people clamored for the traitor to be publicly stripped of his

rank and demanded to see him writhing with remorse on his rock of infamy. Could these things be true, these unspeakable acts, these deeds so dangerous that they must be carefully hidden behind closed doors to keep Europe from going up in flames? No! They were nothing but the demented fabrications of Major du Paty de Clam, a cover-up of the most preposterous fantasies imaginable.

. . . I defy decent men to read it without a stir of indignation in their hearts and a cry of revulsion, at the thought of the undeserved punishment being meted out there on Devil's Island. He knew several languages. A crime! He carried no compromising papers. A crime! He would occasionally visit his birthplace. A crime! He was hard-working, and strove to be well informed. A crime! He did not become confused. A crime! He became confused. A crime! And how childish the language is, how groundless the accusation!

Zola, *supra* note 1.

21. *Flotilla Raid, 'Banditry and Piracy,'* PRESS TV (May 31, 2010, 11:33 PM), <http://www.presstv.ir/detail.aspx?id=128571§ionid=351020204>.

22. *As It Happened: Israeli Raid on Gaza Flotilla,* BBC NEWS (May 31, 2010, 1:01 PM), <http://www.bbc.co.uk/news/10196585>.

23. Ashley Bates, *Hamas Takes the Low Road,* GLOBAL POST (June 10, 2010, 6:16 AM), <http://www.globalpost.com/dispatch/israel-and-palestine/100609/gaza-hamas-israel-raid-flotilla-peace>.

24. *Jordan's King Blasts Israel's Flotilla Attack as a 'Crime,'* TREND (June 1, 2010, 16:23) <http://en.trend.az/regions/met/arabicr/1697541.html>. The Jordanian minister of communication and media affairs, Nabil al-Sharif, called the incident an "ugly, unacceptable crime." Gregg Carlstrom, *Live Coverage: Israel's Flotilla Raid*, AL

JAZEERA BLOG (May 31, 2010), <http://blogs.aljazeera.net/middle-east/2010/05/31/live-coverage-israels-flotilla-raid>.

25. *Syria: The Heinous Israeli Crime Against Freedom Fleet a Message to International Community, Must Not Keep Silent Over*, DP NEWS (May 31, 2010), <http://dp-news.com/pages/detail.aspx?l=2&articleId=40219>.

26. Prime Minister Erdo_un head of government of a nation that has historically and repeatedly suppressed its own Kurdish population. See, e.g., Dorian Jones, *Discovery of Kurdish Mass Graves Leads Turkey to Face Past*, VOA NEWS (Feb. 9, 2011), <http://www.voanews.com/english/news/Turkey-Facing-Past-with-Discovery-of-Kurdish-Mass-Graves-115640409.html>.

27. *Global Rallies Continue Over Israel,* AL JAZEERA, <http://english.aljazeera.net/news/middleeast/2010/06/2010618503229683.html> (last modified June 1, 2010, 16:54 GMT).

28. President Abbas is a man whose doctoral dissertation claimed that the holocaust was a Zionist conspiracy with the Nazis. See *Yael Yehoshua, Abu Mazen: A Political Profile*, MIDDLE

EAST MEDIA RESEARCH INST. (MEMRI), pt. V (Apr. 29, 2003),
http://www.memri.org/report/en/0/0/0/0/0/0/856.htm#_ednref69

Abu Mazen's doctoral dissertation, submitted to the Oriental College in Moscow in 1982, concerned Zionism, and was titled "The Connection Between Nazism and Zionism 1933-1945." Abu Mazen later published a book with a slightly different title: *The Other Face: The Secret Connection Between the Nazis and the Zionist Movement*

. In the book, Abu Mazen sought to de-legitimize the Zionist movement, citing the 1935 agreement, between the Nazi authorities and representatives of the Zionist movement, which facilitated the escape of part of German Jewry to Palestine in exchange for their property. According to Abu Mazen, this agreement proves that the entire Zionist movement collaborated with the Nazis in the annihilation of the Jewish people because it saw Palestine as the only appropriate destination for Jewish emigration.

Id. (footnote omitted). "Abu Mazen" is an alias of Mahmoud Abbas. See Abu Mazen, ANSWERS.COM, <http://www.answers.com/topic/abu-mazen> (last updated Dec. 14, 2010).

29. Reuters, *Palestinian Abbas Calls Israeli Killing at Sea "Massacre,"* WORLD BULL., <http://www.worldbulletin.net/>

[news_detail.php?id=59265](http://www.worldbulletin.net/news_detail.php?id=59265) (last updated May 31, 2010, 10:50 AM).

30. *World Shocked, Outraged at Raid,* KUWAIT TIMES, June 1, 2010, http://www.kuwaittimes.net/read_news.php?

[newsid=OTE2NTM1Nzlw](http://www.kuwaittimes.net/read_news.php?newsid=OTE2NTM1Nzlw) (accessed by searching Google by title to find cached version)(author has copy).

31. *Saudi Arabia Denounce [sic] Massacre Committed by Israel,* SAUDI NEWS TODAY (June 1, 2010, 3:06 AM),

http://www.saudinewstoday.com/article/14735__Saudi+Arabia+Denounce+Massacre+Committed+By+Israel.

32. *'Israel Committed an Act of War,'* PRESS TV (June 1, 2010, 1:38 AM), <http://edition.presstv.ir/detail/128578.html>.

33. Korean Central News Agency, *DPRK Slams Israel's Military Attack on Freedom Flotilla,* TONGIL KOR. NET (June 3, 2010),

<http://tongilkorea.net/2010/06/03/dprk-fm-slams-israels-military-attack-on-freedom-flotilla/>.

34. Press Release, President of the European Parliament, President Buzek on Attack on Flotilla Heading to Gaza (May 31, 2010),

http://www.europarl.europa.eu/president/view/en/press/press_release/2010/2010-May/press_release-2010-May-25.html.

35. President Sarkozy was a key supporter of banning burqas in France, in part, because of the requirements of French state security. See, e.g., Emma Jane Kirby, *Sarkozy Stirs French Burka Debate*, BBC NEWS (June

22, 2009, 19:27 GMT), <http://news.bbc.co.uk/2/hi/europe/8113778.stm>.

36. Yet, unlike the burqa-averse French, the Israelis were acting to deter actual and ongoing—not hypothetical—threats to their national security. See Shmuel Rosner, *What's to Investigate?*

SLATE (June 1, 2010, 10:52 AM), <http://www.slate.com/id/2255572>.

37. *Flotilla Attack 'Completely Unacceptable' Says Cameron*, INDEP., June 2, 2010, <http://www.independent.co.uk/>

[news/uk/politics/flotilla-attack-completely-unacceptable-says-cameron-1989727.html](http://www.independent.co.uk/news/uk/politics/flotilla-attack-completely-unacceptable-says-cameron-1989727.html).

38. See Hamas Charter pmb., Aug. 18, 1988, *available at*

http://avalon.law.yale.edu/20th_century/hamas.asp (“Israel will exist and will continue to exist until Islam will obliterate it” (quoting Hassan al-Banna)).

39. TURKEL COMM’N, THE PUBLIC COMMISSION TO EXAMINE THE MARITIME INCIDENT OF 31 MAY 2010, REPORT PT. 1 ¶ 162 nn.681-705 (Jan. 2010) [hereinafter TURKEL REPORT], *available at* <http://www.turkel-committee.gov.il/files/wordocs/8808report-eng.pdf>.

40. See *New Gaza War 'Only a Question of Time'*, BBC (Dec. 23, 2010, 6:08 ET),

<http://www.bbc.co.uk/news/world-middle-east-12064775>; Tim Butcher,

Hamas Ends Ceasefire with Israel

, TELEGRAPH, Dec. 18, 2008,

<http://www.telegraph.co.uk/news/worldnews/middleeast/palestinianauthority/3834450/Hamas-ends-ceasefire-with-Israel.html>;

Hamas War Against Israel

, ISR. MINISTRY OF FOREIGN AFF.,

<http://www.mfa.gov.il/mfa/terrorism-%20obstacle%20to%20peace/hamas%20war%20against%20israel/> (last visited Aug. 2, 2011);

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<http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Missile+fire+from+Gaza+on+Israeli+civilian+targets+Aug+2007.htm> (last visited Aug. 2, 2011).

41. U.N. Charter art. 51, *available at* <http://www.un.org/en/documents/charter/chapter7.shtml>.

42. San Remo Manual on International Law Applicable to Armed Conflicts at Sea, ¶¶ 93–104,

June 12, 1994, [hereinafter San Remo Manual], *available at*

<http://www.ilrg.com/subject/lawofwar/13sanremomanual.html>.

43. *Id.* ¶¶ 97–98.

44. Michal Zippori, *Convoy of Ships Heads to Gaza in Attempt to Break Blockade*, CNN (May 27, 2010, 13:44 GMT),

<http://edition.cnn.com/2010/WORLD/meast/05/27/gaza.aid.convoy/index.html?iref=allsearch>

(“The objective of the boats is to break Israel’s siege on Gaza, to break Israel’s blockade on Gaza,” said Greta Berlin, co-founder of Free Gaza movement.”); se

e also Humanitarian Flotilla Heads to Israel

, SYDNEY MORNING HERALD, May 24, 2010,

<http://www.smh.com.au/multimedia/world/humanitarian-flotilla-heads-to-israel/20100523-w3wt.html> (containing video footage of a passenger who states his purpose is to “breach Israel’s Naval blockade of Gaza”).

45. See TURKEL REPORT, *supra* note 39, ¶ 118; *Gaza Aid Fleet Undeterred as Israel Steps Up Warnings*, RADIO NETHERLANDS WORLDWIDE AFRICA (May 27, 2010),

<http://www.rnw.nl/africa/bulletin/gaza-aid-fleet-undeterred-israel-steps-warnings>.

46. Isabel Kershner, *Defying Blockade, Cargo and Passenger Vessels Head for Gaza*, N.Y. TIMES, May 28, 2010, at A10, available at <http://www.nytimes.com/2010/05/28/world/middleeast/28mideast.html?fta=y> [hereinafter Kershner, *Defying*].
47. *Id.*; see also TURKEL REPORT, *supra* note 39, ¶ 124.
48. *TIMELINE—Main Events in the Gaza Flotilla Affair*, REUTERS (June 1, 2010, 12:07 PM), <http://www.reuters.com/article/idUSLDE6500LB>.
49. *Id.*; TURKEL REPORT, *supra* note 40, ¶¶ 123–25; see also *Unedited Radio Transmission Between Gaza Flotilla and Israeli Navy*, YOUTUBE (June 4, 2010), http://www.youtube.com/watch?v=9dE2StbDL_Q.
50. *TIMELINE*, *supra* note 49; TURKEL REPORT, *supra* note 40, ¶ 124.
51. *TIMELINE*, *supra* note 49.
52. *Id.*; TURKEL REPORT, *supra* note 39, ¶¶ 146–51.
53. Isabel Kershner, *Deadly Israeli Raid Draws Condemnation*, N.Y. TIMES, May 31, 2010, <http://www.nytimes.com/2010/06/01/world/middleeast/01flotilla.html> [hereinafter Kershner, *Deadly*];
see also
TURKEL REPORT,
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54. Dan Williams, *Paintballs to Pistols, Israel Admits Ship Blunders*, REUTERS (Jun. 1, 2010, 12:44 PM), <http://www.reuters.com/article/idUSLDE650280>; see also TURKEL REPORT, *supra* note 39, ¶¶ 121, 127–140, 214, 227.
55. Kershner, *Deadly*, *supra* note 53; see also TURKEL REPORT, *supra* note 39, ¶¶ 127–40.
56. Anath Hartmann, *Activists Aboard Gaza-bound Flotilla Wanted to be 'Martyrs,'* WASH. TIMES BLOG (June 3, 2010), <http://www.washingtontimes.com/blog/watercooler/2010/jun/3/activists-aboard-gaza-bound-flotilla-wanted-be-mar/>. This news story includes a video of a passenger stating, “When I went on the first convoy, I wanted to be a shaheed [martyr]. I wasn't that lucky. Second time, I wanted to be a shaheed. Didn't work. Third time, lucky, [with the help of God] I will be a shaheed.”
Id.
.;
see also
Richard Spencer,
Gaza Flotilla Attack: Turkish Activists Killed in Raid 'Wanted to Be Martyrs,'
TELEGRAPH, June 2, 2010, <http://www.telegraph.co.uk/news/worldnews/europe/turkey/7798493/Gaza-flotilla-attack-Turkish-activists-killed-in-raid-wanted-to-be-martyrs.html>. Seeking martyrdom is hardly a convincing indication of peaceful intent on the part of those passengers.
57. *Factbox: Details of Activists Aboard Gaza Flotilla*, REUTERS (June 1, 2010, 1:41 PM), <http://www.reuters.com/article/2010/06/01/us-israel-flotilla-passengers-idUKTRE6504L020100601>;
see also TURKEL REPORT, *supra*
note 39, ¶ 155.
58. TURKEL REPORT, *supra* note 39, ¶ 156.

59. *Id.*, ¶ 157.

60. Bill Varner, *UN to Deliver Aid Flotilla's Cargo to Gaza Strip Under Accord With Israel*, BLOOMBERG (June 15, 2010, 1:25 PM),

<http://www.bloomberg.com/news/2010-06-15/un-to-deliver-aid-flotilla-s-cargo-to-gaza-strip-under-accord-with-israel.html>.

61. TURKEL REPORT, *supra* note 39, ¶¶ 145, 147-51.

62. Associated Press, *Turkish Charity Behind Flotilla Had 'Ties to Terrorism and Jihad,'* FOXNEWS (June 2, 2010),

<http://www.foxnews.com/world/2010/06/02/french-judge-says-turkish-charity-gaza-flotilla-terror-ties/> (interviewing the former lead anti-terrorism investigating judge from France, Jean-Luis Bruguiere, regarding IHH's "clear, long-standing ties to terrorism and Jihad").

63. See Hamas Charter, *supra* note 38 at pmb1 ("Israel will exist and will continue to exist until Islam will obliterate it" (quoting Hassan al-Banna)).

64. See OFF. OF THE COORDINATOR FOR COUNTERTERRORISM, U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2008 *passim* (2009), *available at*

<http://www.state.gov/documents/organization/122599.pdf> (detailing the United States' categorization of Hamas as a terror organization); Regulations Establishing a List of Entities, SI/2008-143 (Can.),

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<http://www.gazette.gc.ca/rp-pr/p2/2008/2008-12-10/html/si-tr143-eng.html> (listing Canada's classification of Hamas as an entity that "has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity or is knowingly acting on behalf of, at the direction of or in association with such an entity"); Council Common Position (EC) No. 67/2009 of 27 Jan. 2009, pmb1., arts. 1-4, annex, 2009 O.J. (L 23) 37, 41, *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:023:0037:0042:EN:PDF> (stating the European Union's classification of Hamas as an entity that employs terrorism as a tactic).

65. See *Flotilla Raid, 'Banditry and Piracy,' supra* note 21.

66. *Piracy*, MERRIAM-WEBSTER ONLINE DICTIONARY,

<http://www.merriam-webster.com/dictionary/piracy> (last visited Aug. 2, 2010).

67. Varner, *supra* note 60. Notably, only three of the six vessels in the flotilla were carrying humanitarian goods.

See TURKEL REPORT, *supra* note 39, ¶¶ 145, 147-51.

68. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter *Law of the Sea*], *available at*

http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

69. *Id.* art. 101(a) (emphasis added).

70. See U.N. Charter, *supra* note 41; San Remo Manual, *supra* note 42.

71. See *Palestinian Abbas Calls Israeli Killing at Sea "Massacre," supra* note 29; *Saudi Arabia Denounce*

[sic]

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72. WEBSTER'S II NEW COLLEGE DICTIONARY 673 (2001).

73. *Massacre*, MERRIAM-WEBSTER ONLINE DICTIONARY,

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74. See TURKEL REPORT, *supra* note 39, ¶ 118; *Gaza Aid Fleet Undeterred as Israel Steps Up Warnings*, *supra* note 45.

75. See TURKEL REPORT, *supra* note 39, ¶¶ 123–25; TIMELINE, *supra* note 48; see also *Unedited Radio Transmission Between Gaza Flotilla and Israeli Navy*

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note 49.

76. See *supra* notes 45 & 46 and accompanying text.

77. See *supra* note 54 and accompanying text.

78. See TIMELINE, *supra* note 48 and accompanying text.

79. Kershner, *Deadly*, *supra* note 53 and accompanying text.

80. See Spencer, *supra* note 56.

81. Zipori, *supra* note 44; *Humanitarian Flotilla Heads to Israel*, *supra* note 44.

82. See *supra* notes 45 & 46 and accompanying text.

83. See *As It Happened: Israeli Raid on Gaza Flotilla*, *supra* note 22; Bates, *supra* note 23.

84. W. MICHAEL REISMAN ET AL., INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE 329 (2004) (quoting 28 C.F.R. § 0.85).

85. See U.N. Charter, *supra* note 41; San Remo Manual, *supra* note 42.

86. See *infra* Part IV.D.

87. See *supra* notes 45 & 46 and accompanying text.

88. See *Global Rallies Continue Over Israel*, *supra* note 27; *Saudi Arabia Denounce [sic] Massacre Committed by Israel*, *supra*

note 31; Press Release, President of the European Parliament,

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note 34.

89. Declaration Concerning the Laws of Naval War, Feb 26, 1909, *available at*

<http://www1.umn.edu/humanrts/>

[instree/1909b.htm](http://www1.umn.edu/humanrts/instree/1909b.htm).

90. San Remo Manual, *supra* note 43.

91. *Id.* ¶¶ 93–104.

92. *Id.*

93. San Remo Manual, *supra* note 42, ¶ 100 (“A blockade must be applied impartially to the vessels of all States.”); *see also id.* ¶ 98 (“Merchant vessels

believed on reasonable grounds to be breaching a blockade may be captured. Merchant vessels which, after prior warning, clearly resist capture may be attacked.”).

94. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts arts. 51(5)(b), 57(2)(b), 57(3), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I], *available at*

<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>.

95. *Id.*

96. In summary, when a commander identifies a lawful military objective commingled with

civilians or civilian property, the commander is permitted to attack that objective even with knowledge that the attack will cause collateral damage or incidental injury to civilians or civilian property. The only limitation on this permission is that the commander must refrain from the attack if he assesses that the collateral damage or incidental injury will be excessive in relation to the concrete and direct advantage anticipated from the attack. See JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT'L COMM. OF THE RED CROSS, 1 CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: RULES 47 (2005).

97. Additional Protocol I, *supra* note 94.

98. *Id.*

99. See *supra* note 54 and accompanying text.

100. See Kershner, *Deadly*, *supra* note 53.

101. See *supra* notes 45 & 46 and accompanying text.

102. San Remo Manual, *supra* note 42, ¶ 98, ("Merchant vessels believed on reasonable grounds to be breaching a blockade may be captured. Merchant vessels which, after prior warning, clearly resist capture may be attacked.").

103. *Id.* ¶ 146(f).

104. See, e.g., Zippori, *supra* note 44 and accompanying text.

105. See *Syria: The Heinous Israeli Crime against Freedom Fleet*, *supra* note 25; Korean Central News Agency,

supra

note 33.

106. Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 3 (entered into force July 1, 2002) (emphasis added), *available at* <http://untreaty.un.org/cod/icc/statute/romefra.htm>.

107. *Understanding the Gaza Blockade*, WEEK (June 18, 2010, 11:29 AM), <http://theweek.com/article/index/204143/understanding-the-gaza-blockade>;

Fact Sheet # 62: The Gaza "Blockade", JEWISH VIRTUAL LIB., http://www.jewishvirtuallibrary.org/jsource/talking/62_Blockade.html (last updated Jan. 15, 2009);

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, ISR. MINISTRY OF FOREIGN AFF. (May 25, 2010),

http://www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/Israeli_humanitarian_lifeline_Gaza_25-May-2010.htm.

108. See *supra* note 45 and accompanying text.

109. See *supra* note 49 and accompanying text. Note also *that* no humanitarian goods were found on three of the six ships in the flotilla, placing in doubt the flotilla's claims of serving a humanitarian purpose.

See, e.g.,

TURKEL REPORT,

supra

note 39, ¶¶ 145, 147-51.

110. See *supra* note 52 and accompanying text.

111. See TIMELINE, *supra* note 48.

112. See *supra* note 56 and accompanying text.

113. See U.N. Charter, *supra* note 41; See, e.g., *supra* note 56.

114. See *supra* notes 45-46 and accompanying text.

115. Isaiah 5:20 NASB.

116. See World Bank Development Research Group, *Governance Matters VIII: Aggregate and Individual Governance 1996–2008*, at 92–94 (June 29, 2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1424591&.

117. See, e.g., TURKEL REPORT, *supra* note 390, ¶¶ 165-67 nn.715-45.