

Israel is not Above the Law: “Not as Untouchable as Before”

Interview with International Legal Expert Berdal Aral

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Berdal Aral, an international law expert who teaches at Istanbul's Fatih University, has said that Israel has been increasingly criticized by the world community and that it is more vulnerable than before because of its actions.

“Israel now has committed new crimes and is not as untouchable as before. Almost all countries in the world have been critical of its latest attack in one way or another,” he told Today's Zaman for Monday Talk regarding Israel's attack on May 31 which killed nine people and wounded several dozen on an aid ship carrying activists from more than 30 countries.

Israel claims that it acted in self-defense while attacking the ship, which was in international waters and carrying humanitarian aid to the people of Gaza.

The Turkish government said that it will implement several measures against Israel and will seek options to have the Israeli officials responsible for the tragedy tried in court.

Aral responded to our questions regarding what those options might be.

Would you first explain what legal violations occurred in Israel's attack on the aid flotilla?

There are two dimensions to it. One of them is the dimension of piracy. There was a military attack on a vessel in international waters. At the end of the attack, the ship was confiscated, people were dead and wounded, force was used while bringing people to the Israeli port, the freedom of communication of the people in the vessel was restricted, they were arrested and they were badly treated while under arrest. And we know that the nine people who were killed were Turkish. So we can talk about the applicability of the Turkish Penal Code (TCK) here. There is a great harm inflicted on the Turkish citizens.

What is the second dimension?

In international law, there is a category of “crimes against humanity.” We know that there were at least nine people murdered and about 50 people wounded. Indeed, this is state

terror against people who were carrying out a nonviolent humanitarian mission.

The Turkish prosecutors have taken the testimonies of the activists who were released by Israel and returned Turkey. Do you expect them to file a case?

In order to open an investigation, the Justice Ministry must request one under the relevant TCK article. The defendants here would all be officials, from the Israeli defense minister and other high-level officials who made the decision to the generals who implemented that decision. The TCK's Article 76 — on genocide crimes — and Article 77 — crimes against humanity — allow action against Israel's crimes, but again a request from the Ministry of Justice is needed. These articles exist in Turkey's recently revised TCK as part of its efforts to come in line with universal legal standards. As a result of any decision to try Israeli officials, those Israeli officials would be banned from entering Turkish territory, and of course there would be political consequences.

We see that there has not yet been such a demand from the Justice Ministry. What does that indicate?

There has not been yet a widespread realization that you can go to national courts for crimes against humanity. This is a fairly new phenomenon. And there is another factor in that Turkey has become a more democratic country in the last 10 years and has adopted universal legal norms in its laws. I don't know if the Justice Ministry would act out of concerns regarding the law or if it will make a political decision. Turkey's decision will also depend on Israel's stance. If Israel continues its stubborn stance and does not care about international law, refuses to apologize and does not accept an international investigation into the incident, then Turkey could bring Israel to court. This also depends on whether Turkey wants to burn bridges with Israel or not.

What can Turkey do in the international arena?

The government has some options. Turkey already went to the United Nations Security Council, which released a statement, although it was not as harsh of a condemnation as Turkey had demanded. UN Secretary-General Ban Ki-moon condemned the violence, called for "a full investigation to determine exactly how this bloodshed took place" and urged Israel to "provide a full explanation [of the matter]." He also said that the underlying problem behind the raid was the blockade of Gaza, which he described as "counter-productive, unsustainable and wrong." Turkey also demanded removal of the blockade of Gaza. Turkey has seen this crisis as an opportunity to lead to the lifting of the blockade of Gaza. The Turkish Parliament's declaration states that "economic, political and military actions are expected to be taken."

Can Turkey ask the UNSC to consider sanctions on Israel?

This is possible, but the United States would not support it. And if one permanent member of the UNSC opposes a UNSC draft resolution, that resolution does not pass. Turkey could go to the UN General Assembly. There were nationals from 32 countries in the vessel; Israel committed crimes against humanity there. As there has been a huge reaction from the world, if the UNSC could not pass a resolution regarding sanctions against Israel, then the General Assembly could be called to convene to discuss how to handle this act by Israel. The General Assembly can pass a resolution recommending an embargo against Israel with a two-thirds majority. This embargo can be economic, political or can be about suspending

diplomatic relations with Israel.

Ankara plans on appealing to the International Crimes Court [ICC] in The Hague to ask it to launch an investigation into the Israeli raid of the Gaza aid flotilla. Are there any problems with that?

Neither Turkey nor Israel endorsed the Rome Statute of the ICC; 110 states are party to the statute. The court can exercise jurisdiction only under some circumstances: where the person accused of committing a crime is a national of a state party or where the person's state has accepted the jurisdiction of the court; where the alleged crime was committed on the territory of a state party or where the state on whose territory the crime was committed has accepted the jurisdiction of the court; or where a situation is referred to the court by the UN Security Council. Israel is not a party to the statute and the crime was committed in international waters. The UNSC could refer the situation to the court, but will it happen? Turkey is probably going to request that.

But is it possible to be taken seriously while Turkey still refrains from endorsing the Rome Statute of the ICC?

The important thing here is the endorsement of the statute by the defendant, which is Israel. If Israel had endorsed the statute, it would not matter whether or not Turkey did. There is no legal aspect of this discussion, but there is of course a moral argument.

'UNSC has had more than 230 resolutions against Israel since its foundation'

Can other states file cases in their own countries regarding the situation?

They can because this is a crime against humanity. Every country has authority in that regard. Additionally, different civil society groups all over the world could come together and enforce an embargo on Israel by not using Israeli products, or academics all over the world could choose not to communicate with Israeli academics. In the UK, for example, some British unions do not communicate with their Israeli colleagues. The logic is that a majority of the Israeli public supports Israel's policies of aggression. Public opinion polls show that 90 percent of the Israeli public had supported Israel's brutal attack on Gaza.

What does international law say about interference on a vessel in international waters?

International law does provide that warships may interfere with the passage of ships flying the flag of another state in limited circumstances on the high seas, such as if there are reasonable grounds to suspect it of engaging in piracy or the slave trade. This provision is included in the 1958 Convention on the High Seas, to which Israel is a party.

The London-based Lawyers for Palestinian Human Rights group says that the International Maritime Organization's 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation — to which Israel is also a party — likely also renders the Israeli navy's actions unlawful.

The convention indicates that any person commits an offense if that person unlawfully and intentionally seizes or exercises control over a ship by force or threat thereof or any other form of intimidation or performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship or injures or kills any person.

In the end the important thing would be what was done rather than what was intended, right? Israel would not care much about just words.

Israel has not been punished by the international community for its reckless acts. The UNSC has passed more than 230 resolutions against Israel since its foundation. In these resolutions Israel was either condemned or banned for doing something — it condemned Israeli's attacks against Lebanon, demanded immediate Israeli withdrawal from Lebanon and deplored Israel's changing of the status of Jerusalem. These are the resolutions. There are also a number of draft resolutions vetoed by the United States. The issue which probably kept the UNSC the most busy in the last 60 years is the actions of Israel, which has only 25,000 square kilometers of land. The UNSC has also adopted a number of resolutions saying that the strategic relationship with the United States encourages Israel to pursue aggressive and expansionist policies and practices.

Meanwhile, the European Jewish Congress (EJC) has called on the European Union and European governments to immediately ban the Humanitarian Aid Foundation (IHH) on the basis that "organizations affiliated with and used as a front for terrorist groups like Hamas and al-Qaeda must be outlawed, with immediate effect." How do you evaluate this?

The IHH is not an armed group. Everybody knows that. It is a civil society organization that has aid operations in more than 100 countries. It does not bring aid only for Muslims. It has done many surgical operations in Africa to aid the impoverished. It digs wells and provides educational activities in Latin American countries. The Jewish organization's efforts show that they lack morality and respect for the law. They have the courage to say the complete opposite of the facts that are known by everybody. This is very bad news for Israel, that some organizations supporting Israel's policies are drifting far away from the international community.

'Goldstone report demanded end to Gaza blockade'

When there are brutal killings by Israel, which has all the weapons and power, it is hard to talk about the other side's sins. But there is an issue that remains open for discussion. It is about how leaders or countries are selective regarding it. The famous Goldstone report details how brutal Israel's attacks were in Gaza, and at the same time it accused both Israel and Hamas of committing war crimes. Prime Minister Recep Tayyip Erdoğan talks about only one side's wrongs. Doesn't he need balance here?

The Goldstone report talks about Hamas' rockets that fall on Israelis. No matter how primitive those rockets are, they have a psychological effect on the Israeli side even if they don't always kill people. Erdoğan must have told Hamas not to launch such attacks. The thing is that Israel forces Palestinians to respond to its brutality, and when Palestinians do respond the Israeli side tells the world, "See, I told you they are terrorists."

What do you expect next? Is there a possibility that Israel could accept an international investigation into its latest attack?

Israel already said that it wouldn't accept an international investigation. Israel did not cooperate at the time the Goldstone report was prepared. But the report created a worldwide uproar. It is an important report because it was accepted at the UN General Assembly. Secondly, Richard Goldstone is of a Jewish background, he has had close ties with some Israeli institutions before, he has prestige and credibility. His report was 600 pages

and detailed Israel's war crimes, supported by evidence. The report demands that the Gaza blockade by Israel should end. It also demanded that the issue of Israel's war crimes in Gaza should be independently investigated in Israel, and if not the issue should be brought to the UNSC, and that the UNSC should open the way for an ICC trial. Israel, now that it has committed new crimes, is not as untouchable as before. Almost all countries of the world have been critical of its latest attack in one way or another. Some of them responded harshly — like Nicaragua, which severed its diplomatic ties with Israel — and some of them were not so harsh in their reactions, like the European states. But Israel was morally condemned, and intellectuals and the press were critical of it. It is the beginning of an end for Israel. Turkey also had a big role as a catalyst to spur the international community to action in that regard. We have to wait and see what else the Turkish government is going to do.

What are the expectations?

If the government does not implement the measures that it has been talking about, it would lose its credibility. If Israeli soldiers continue to train in Turkish airspace, if Israeli firms continue to be selected for defense projects, if Israel has communication stations in Turkey, etc., then the government's believability would be harmed.

Berdal Aral has been a professor at Fatih University since 2000 concentrating on international law. He earned a Ph.D. from the University of Glasgow in 1994. His first book, "Uluslararası Hukukta Meşru Müdafaa Hakkı" (Right of Self Defense in International Law), was published in 1999. He also published "The Geopolitical and Economic Transition in Eurasia: Problems and Prospects" in 2004 (together with Vildan Serin and Hızır Murat Köse). His most recent publications are "Reading International Law through the Invasion of Somalia" in Text Vol. 5, No. 1, Nov. 2009, and "Turkey in the UN Security Council: Its Election and Performance" in Insight Turkey, Vol. 11, No. 4, Nov. 2009.

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