

# **UN Secretary-General Ban Ki Moon Should be Fired. Upholds the Violation of International Law. Abuses his UN Mandate**

Reneges Findings of UN Human Rights Council Report on Gaza

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United Nations Secretary General, Ban Ki-Moon has taken the unusual decision of pressuring member governments to respect the “legal channels of the Israeli government pertaining to the flow of goods and aid to the Gaza Strip”. In this regard, Ban Ki-moon has called upon governments to prevent the Freedom Flotilla scheduled for June from heading to the Gaza Strip:

The Secretary-General has sent a letter to Governments of countries around the Mediterranean Sea. In these letters, the Secretary-General indicated that he was following with concern media reports of potential flotillas to Gaza. He expressed his belief that assistance and goods destined to Gaza should be channelled through legitimate crossings and established channels [controlled by Israel]. ...

The Secretary-General called on all Governments concerned to use their influence to discourage such flotillas, which carry the potential to escalate into violent conflict. He further called on all, including the Government of Israel, to act responsibly and with caution to avoid any violent incident.

The Secretary-General reiterated that, while he believed that flotillas were not helpful in resolving the basic economic problems in Gaza, the situation there remains unsustainable. He urged the Government of Israel to take further meaningful and far-reaching steps to end the closure [blockade] of Gaza, within the framework of Security Council resolution 1860 (2009). In particular, he underlined that it was essential for the operation of legitimate crossings to be adequate to meet the needs of Gaza’s civilian population. (United Nations, Spokesperson of the Secretary-General on Letters by the Secretary-General about Possible Flotillas to Gaza, May 27, 2011 emphasis added)

By recognizing Israel’s “legitimate crossings” into Gaza via Israeli territory, Ban Ki Moon is condoning rather than condemning the violation of international law pertaining to the sovereign borders of Palestine.

Ban Ki Moon’s statement came as “the new flotilla launched on the one-year anniversary of the deadly Israeli attack against the Freedom Flotilla when nine activists were killed after the Israeli navy violently boarded the Turkish ship; dozens were injured....The new Freedom Flotilla will be heading to Gaza in the second half of next month, and at least ten ships from several European countries, and one from the US, will be part of it....”

## **The Spirit of Rachel Corrie and the Freedom Flotilla**

The Spirit of Rachel Corrie currently stranded in the Egyptian Port of Al Arish set sail from Piraeus on May 11, preceding the Freedom Flotilla which is scheduled for June.

The ship is the first ship this year to challenge the Israeli blockade. On May 16 it penetrated Gazan territorial waters undetected before being fired on by the Israeli navy:

The Spirit of Rachel Corrie (officially known as FINCH) carrying a humanitarian cargo to Gaza was attacked by an Israeli naval patrol within the so-called Palestinian Security Zone on May 15.

After a shoot to kill with automatic weapons by the Israeli navy, the ship changed course and was escorted by an Egyptian navy patrol into Egyptian territorial waters, within a short distance of the port of Al Arish.

....The Spirit of Rachel Corrie is carrying 7.5 kilometers of UPVC (plastic) sewage pipes to help restore the devastated sewerage system in Gaza.

The Egyptian authorities are sitting on their decision. Since May 16th, the Spirit of Rachel Corrie is stranded in Egyptian territorial waters off the coast of the port of Al Arish.

The Egyptian government has been contacted through diplomatic channels. The post-Mubarak government, which claims to be committed to "democracy", is collaborating with Tel Aviv. Cairo's resolve is to serve Israeli interests and enforce the embargo on Gaza by both land and sea. ([Global Research, May 19, 2011](#))

The decision by Egypt to prevent the boat from docking in the port and enabling the mission to proceed by land to Gaza was taken after consultation with Tel Aviv.

Israel, whose navy patrols attacked the Rachel Corrie, is portrayed as the victim. According to the Jerusalem Post, Tel Aviv filed a protest with the UN Security Council "over a Malaysian ship... that tried to run the sea blockade of the Gaza Strip Monday night, but was turned back by the navy."

The Spirit of Rachel Corrie Mission is sponsored by Malaysia's Perdana Global Peace Foundation, headed by former Prime Minister Mahathir Mohamad.

The Egyptian authorities have categorically refused that its cargo proceed through the Rafah crossing, insisting that it should be sent through an Israeli controlled checkpoint. This decision by Egypt is in line with Ban Ki Moon's insistence that trade and aid be channelled through "legitimate" Israeli checkpoints.

## **Ban Ki Moon's Violates UN Norms and Procedures**

Ban Ki Moon visibly takes his orders from Tel Aviv and Washington rather than from the UN General Assembly in derogation of his mandate.

His decision is not only in violation of international law, it is in defiance of United Nations internal norms and procedures. Ban Ki Moon has ignored the report of the United Nations Human Rights Council's independent fact-finding mission, commissioned by the United Nations General Assembly. The conclusions of this report are unequivocal: The actions of the

Israeli Defense Forces (IDF) in intercepting and attacking the Gaza Flotilla (May June 2010) in international waters were in violation of international humanitarian law:

“The conduct of the Israeli military and other personnel towards the flotilla passengers was not only disproportionate to the occasion but demonstrated levels of totally unnecessary and incredible violence. It betrayed an unacceptable level of brutality. Such conduct cannot be justified or condoned on security or any other grounds. It constituted a grave violation of human rights law and international humanitarian law.

the Mission considers that several violations and offences have been committed....[T]here is clear evidence to support prosecutions of the following crimes within the terms of article 147 of the Fourth Geneva Convention:

There is clear evidence to support prosecutions of the following crimes within the terms of article 147 of the Fourth Geneva Convention:

- Wilful killing;
- Torture or inhuman treatment;
- Wilfully causing great suffering or serious injury to body or health.

The Mission also considers that a series of violations of Israel’s obligations under international human rights law have taken place, including:

- Right to life (art. 6, International Covenant on Civil and Political Rights);
- Torture and other cruel, inhuman or degrading treatment or punishment (art. 7, International Covenant; Convention against Torture);
- Right to liberty and security of the person and freedom from arbitrary arrest or detention (art. 9, International Covenant);
- Right of detainees to be treated with humanity and respect for the inherent dignity of the human person (art. 10, International Covenant);
- Freedom of expression (art. 19, International Covenant).

The right to an effective remedy should be guaranteed to all victims. The mission must not be understood to be saying that this is a comprehensive list by any means.

266. The Mission notes that the retention by the Israeli authorities of unlawfully seized property remains a continuing offence and Israel is called upon to return such property forthwith. (para. 265

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf)

The decision of the Secretary-General of the UN upholds the legitimacy of the Gaza blockade by Israel in defiance of the UN General Assembly.

Ban Ki Moon refers to “legitimate crossings and established channels” into Gaza through Israeli territory and Israeli controlled checkpoints, thereby denying to Palestine the most important right of a sovereign nation, namely the right to control its international borders by land and by sea.

Ban Ki Moon's decision denies the right to Palestine to trade and transact with foreign countries. It obliges Palestine to seek the authority and permission of Israel in receiving humanitarian aid as well as conducting commodity trade.

The opening of the Rafah land border on May 28 pertains to the movement of people. It allows people to leave the Gaza Strip, which has become a de facto prison, while preventing Palestine to trade with the outside world.

Ban Ki Moon upholds the jurisdiction of Israel over the borders of Palestine in violation of international law:

"...Sovereignty means first and above all control of borders.

A sovereign state without sovereign borders is a self-contradiction, a nonsense.

Israel can decide to withdraw its army, its administration and its settlers from the entire West Bank – as it did from the Gaza Strip; Israel can allow the formation of a government (or even two), a flag, a national anthem and even a seat at the United Nations General Assembly – and as long as it doesn't recognize Palestinian sovereignty on the borders, the West Bank will remain an occupied territory and not a sovereign entity, the same way the Gaza Strip is still, according to international law, an occupied territory." (Alternative News, [Sovereign Palestinian State Requires Sovereignty Over Borders](#), 25 April 2010

Ban Ki Moon's decision also upholds Zionism in derogation of the UN General Assembly's 1975 Resolution entitled 'Zionism is Racism' (Resolution 337

The UN Secretary-General is appointed by the General Assembly, "on the recommendation of the Security Council".

Ban Ki Moon is in violation of his mandate. He should be fired from his job by the General Assembly.

UNITED NATIONS GENERAL ASSEMBLY  
Human Rights Council

Fifteenth session

Agenda item 1

Organizational and procedural matters

[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](#) (pdf)

Below are the Conclusions of the UNHRC Report

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf)

260. The attack on the flotilla must be viewed in the context of the ongoing problems between the Government of Israel and the Palestinian Authority and people. In carrying out its task, the Mission was exposed to the depth of conviction on both sides of the correctness of their respective positions. Similar disasters are likely to reoccur unless there is a dramatic shift in the existing paradigm. It must be remembered that might and strength are enhanced when attended by a sense of justice and fair play. Peace and respect have to be earned, not bludgeoned out of any opponent. An unfair victory has never been known to bring lasting peace.

261. The Mission has come to the firm conclusion that a humanitarian crisis existed on the 31 May 2010 in Gaza. The preponderance of evidence from impeccable sources is too overwhelming to come to a contrary opinion. Any denial of this cannot be supported on any rational grounds. One of the consequences flowing from this is that for this reason alone the blockade is unlawful and cannot be sustained in law. This is so regardless of the grounds on which one seeks to justify the legality of the blockade. 262. Certain results flow from this conclusion. Principally, the action of the Israel Defense Force in intercepting the Mavi Marmara on the high seas in the circumstances and for the reasons given was clearly unlawful. Specifically, the action cannot be justified in the circumstances even under Article 51 of the Charter of the United Nations.

263. Israel seeks to justify the blockade on security grounds. The State of Israel is entitled to peace and security like any other. The firing of rockets and other munitions of war into Israeli territory from Gaza constitutes serious violations of international law and of international humanitarian law. But any action in response which constitutes collective punishment of the civilian population in Gaza is not lawful in any circumstances.

264. The conduct of the Israeli military and other personnel towards the flotilla passengers was not only disproportionate to the occasion but demonstrated levels of totally unnecessary and incredible violence. It betrayed an unacceptable level of brutality. Such conduct cannot be justified or condoned on security or any other grounds. It constituted a grave violation of human rights law and international humanitarian law.

265. The Mission considers that several violations and offences have been committed. It is not satisfied that, in the time available, it has been able to compile a comprehensive list of all offences. However, there is clear evidence to support prosecutions of the following crimes within the terms of article 147 of the Fourth Geneva Convention:

- Wilful killing;
- Torture or inhuman treatment;
- Wilfully causing great suffering or serious injury to body or health.

The Mission also considers that a series of violations of Israel's obligations under international human rights law have taken place, including:

- Right to life (art. 6, International Covenant on Civil and Political Rights);
- Torture and other cruel, inhuman or degrading treatment or punishment (art. 7, International Covenant; Convention against Torture);
- Right to liberty and security of the person and freedom from arbitrary arrest or detention

(art. 9, International Covenant);

- Right of detainees to be treated with humanity and respect for the inherent dignity of the human person (art. 10, International Covenant);
- Freedom of expression (art. 19, International Covenant).

The right to an effective remedy should be guaranteed to all victims. The mission must not be understood to be saying that this is a comprehensive list by any means.

266. The Mission notes that the retention by the Israeli authorities of unlawfully seized property remains a continuing offence and Israel is called upon to return such property forthwith.

267. The perpetrators of the more serious crimes, being masked, cannot be identified without the assistance of the Israeli authorities. They reacted in a violent manner when they thought that anyone was attempting to identify them. The Mission sincerely hopes that there will be cooperation from the Government of Israel to assist in their identification with a view to prosecuting the culpable and bringing closure to the situation.

268. The Mission is aware that this is not the first time that the Government of Israel has declined to cooperate with an inquiry into events in which its military personnel were involved. On this occasion the Mission accepts the assurances of the Permanent Representative of Israel that the position which he was directed to defend was in no way directed towards the members of the Mission in their personal capacities. It is nonetheless regrettable that, on yet another occasion of an enquiry into events involving loss of life at the hands of the Israeli military, the Government of Israel has declined to cooperate in an inquiry not appointed by it or on which it was significantly represented.

269. The Mission regrets that its requests to the Permanent Mission of Israel for information were not entertained. The reason initially given was that the Government of Israel had established its own independent panel of distinguished persons to investigate the flotilla incident. The Mission was told that for that reason, and also because the Secretary-General had announced the establishment of another distinguished panel with a similar mandate, that “an additional Human Rights Council initiative in this regard [are] both unnecessary and unproductive”.

270. The Mission did not agree with that position and for that reason suggested to the Permanent Representative of Israel that he should direct to the Council and not the Mission a request that the Mission defer submitting its report to permit other enquiries to complete their tasks. The Mission has not received any direction from the Council to date and considers that it would have been obligated to respond positively to any such directive from the Council.

271. In the light of the fact that the Turkel Committee and the Secretary-General’s panel have not concluded their sittings, the Mission will refrain from any remarks which are capable of being construed as not allowing those bodies to complete their tasks “unfettered by external events”. The Mission confines itself to the observation that public confidence in any investigative process in circumstances such as the present is not enhanced when the subject of an investigation either investigates himself or plays a pivotal role in the process.

272. Elsewhere in this report the Mission has referred to the fact that it found it necessary to



reinterpret its mandate because of the manner in which the resolution appointing it was couched. It is important in the drafting of matters of the sort that the impression is not given of the appearance of any prejudgment. The Mission took particular care at the first opportunity to indicate that it interpreted its mandate as requiring it to approach its task without any preconceptions or prejudices. It wishes to assure all concerned that it has held to that position scrupulously.

273. All the passengers on board the ships comprising the flotilla who appeared before the Mission impressed the members as persons genuinely committed to the spirit of humanitarianism and imbued with a deep and genuine concern for the welfare of the inhabitants of Gaza. The Mission can only express the hope that differences will be resolved in the short rather than the long term so that peace and harmony may exist in the area.

274. Nine human beings lost their lives and several others suffered serious injuries. From the observations of the Mission, deep psychological scars have been inflicted by what must have been a very traumatic experience not only for the passengers but also the soldiers who received injuries. The members of the Mission sympathize with all concerned and in particular with the families of the deceased.

275. The Mission is not alone in finding that a deplorable situation exists in Gaza. It has been characterized as “unsustainable”. This is totally intolerable and unacceptable in the twenty-first century. It is amazing that anyone could characterize the condition of the people there as satisfying the most basic standards. The parties and the international community are urged to find the solution that will address all legitimate security concern of both Israel and the people of Palestine, both of whom are equally entitled to “their place under the heavens”. The apparent dichotomy in this case between the competing rights of security and to a decent living can only be resolved if old antagonisms are subordinated to a sense of justice and fair play. One has to find the strength to pluck rooted sorrows from the memory and to move on. 276. The Mission has given thought to the position of humanitarian organizations who wish to intervene in situations of long-standing humanitarian crisis where the international community is unwilling for whatever reason to take positive action. Too often they are accused as being meddlesome and at worst as terrorists or enemy agents.

277. A distinction must be made between activities taken to alleviate crises and action to address the causes creating the crisis. The latter action is characterized as political action and therefore inappropriate for groups that wish to be classified as humanitarian. This point is made because of the evidence that, while some of the passengers were solely interested in delivering supplies to the people in Gaza, for others the main purpose was raising awareness of the blockade with a view to its removal, as the only way to solve the crisis. An examination should be made to clearly define humanitarianism, as distinct from humanitarian action, so that there can be an agreed form of intervention and jurisdiction when humanitarian crises occur.

278. The Mission sincerely hopes that no impediment will be put in the way of those who suffered loss as a result of the unlawful actions of the Israeli military to be compensated adequately and promptly. It is hoped that there will be swift action by the Government of Israel. This will go a long way to reversing the regrettable reputation which that country has for impunity and intransigence in international affairs. It will also assist those who genuinely sympathise with their situation to support them without being stigmatized.

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