

Legal expert: Israel flouted international law with flotilla raid

By Sébastien Malo

BEIRUT: With the dust slowly settling on Israel's fatal raid earlier this week, governments and observers have started to brandish the specter of international law to either denounce or defend the operation.

The Daily Star spoke with renowned international law expert **Marcelo Kohen** to shed some light on the intricacies of the case. Kohen – both a professor at the Geneva Graduate Institute and a defense counsel regularly involved in cases at the International Court of Justice – is adamant Israel has flouted the law, but he is skeptical at the probability the state will be held to accountability by existing legal mechanisms.

Q. Was Israel's intervention to stop a flotilla bound for Gaza a few days ago legal, or illegal under international law?

A. In my view it was not in accordance with international law, and this is not a matter of proportionality or not of the action itself. The action seems illegal because the naval blockade is illegal, and this was the ground invoked for Israel to legally justify the action against the flotilla.

The blockade is not in accordance with international law first because Israel invokes the existence of an armed conflict, or a state of war, between Israel and Hamas. According to Israel, if there is a state of war, it is entitled to establish a naval blockade. This is not accurate for many reasons. First of all, there is a ceasefire between Hamas and Israel. Secondly, Hamas is not a state. Even if there were violations of the ceasefire, this would not entitle Israel to declare a naval blockade.

Indeed, a naval blockade is an act of aggression itself. This is what the General Assembly Resolution 3314 established. The resolution contains a definition of aggression and among the examples of aggression is the fact of a blockade against the ports or the coast of another state. In this case, there is no Palestinian state, but the international community and Israel have recognized the existence of a Palestinian territory and the fact that the Palestinian people are entitled to self-determination, that is to create their own state.

I would also add that the paradox of this Israeli argument is that it is at odds with what Israel invoked just before the six-day war in 1967. At that time, there was a naval blockade established by Egypt against Israel in the Gulf of Aqaba. Any ship trying to reach Eilat was forbidden to enter the Gulf of Aqaba. The argument of Egypt was that there was a state of war between Israel and Egypt. And Israel was against this notion, it condemned the blockade, it required that it be stopped. And now Israel is using exactly the same arguments it combated in 1967.

Q. But does the law of the sea not recognize a right to arrest ships in international waters under certain circumstances?

A. Yes, there is a possibility envisaged in the UN Convention on the Law of the Sea. But this possibility is completely different from what Israel did some days ago. It is just a right of visit by warships in cases of serious clues that a ship is apt in the field of piracy, or slavery, things of the kind. According to this convention, there is a possibility to stop a ship and to inspect it. But this was not what Israel did. Moreover Israel invoked that the

purpose of its actions was not to examine what the flotilla was transporting into Gaza, but to prevent it from entering Gaza's territorial waters and to go to Gaza. Israel's position was to maintain the blockade, and to prevent the flotilla to breach it.

Q. Does international law authorize countries to use force – as Israel did – when intercepting a ship in international waters?

A. In the case I mentioned, where there is a kind of right of visit because there is suspicion about illegal acts, it must be done in a way that is not forcible.

Q. Could Israel's actions be considered as an act of piracy, as some activists have claimed?

A. No, these are wrong qualifications of Israel's actions. This is not at all piracy. Israel has acted under the Israeli flag. This has nothing to do with piracy.

Q. Does the UN Convention on the Law of the Sea allow for sanctions when violations, such as this one, are perpetrated?

A. No, there are no particular sanctions in the UN Convention on the Law of the Sea. But there is a possibility to settle disputes concerning the law of the sea by using jurisdictional means – that is arbitration, the International Court of Justice, or the International Tribunal of the Law of the Sea. But neither Israel or Turkey are party to this convention. So this possibility does not exist in the present case.

Q. Are there other legal means to hold Israel to accountability, if the law was indeed flouted?

A. There is no possibility of enforcement. Obviously, the Security Council, if it wishes, has a possibility to adopt sanctions under Chapter 7 of the UN Charter. But at this stage, it is quite obvious that this will not be the case.