

## The Turkel Commission and the Maritime Closure of Gaza

January 23, 2011 – The Turkel Commission was asked to examine the May 31, 2010 maritime flotilla incident and determine whether the maritime closure of the Gaza Strip and its enforcement were in accordance with international law. In this position paper we outline Gisha's position that **the overall closure imposed on the Gaza Strip is illegal and that the maritime closure is part of this illegal policy.**

Gisha does not dispute Israel's right to intercept ships en route to the Gaza Strip as long as this is done with the goal of preventing the smuggling of weapons into Gaza and on the condition that Israel allow sufficient movement of goods into and out of Gaza to meet the needs of the civilian population according to the principles of international humanitarian law. Israel is authorized to perform detailed security checks as well as to determine that commercial goods may only enter through certain routes (by land and not by sea, for example). However, it must keep an adequate access corridor open, interfering with access only for reasons of security and subject to balancing the rights and needs of Palestinians in Gaza to send and receive goods.

The maritime and aerial routes of access into and out of Gaza were closed, and the land-route was open (subject to concrete security concerns<sup>[1]</sup>), until the overall closure was imposed in June 2007. From that point on, **the question of the legality of the maritime closure cannot be examined separately from the question of the legality of the overall closure.** Once Israel imposed an overall closure aimed not at security but rather at exerting "pressure", the entire closure policy, of which the maritime closure was part, became illegal.

**We disagree with the claim, put forward by the military, that Israel should not be held accountable for the maritime closure, because there are no seaports in the Gaza Strip.** This claim is a bit cynical. A maritime corridor to Gaza has never been developed because Israel has actively and openly prevented it and not because there is no need, wish, or funding for a seaport. In 2000, Israel allowed construction to commence on a seaport in the Gaza Strip, but following the outbreak of the second Intifada (uprising), Israel bombed the site in 2001, destroying the construction that had begun. In the wake of the disengagement, the November 2005 [Agreement on Movement and Access](#) determined that construction on the seaport could resume, and Israel agreed in principle to provide guarantees to donors that it would not intervene in the construction or operation of the seaport. However, Israel subsequently refused to provide the donors with these guarantees, and thus construction never resumed. Moreover, an airport that was built in 1999 and operated briefly until 2000, was bombed by Israel in 2001. There hasn't been any air traffic since. There is no active seaport or airport in Gaza, because Israel has destroyed them and refuses to allow them to be rebuilt.

The closure policy, especially as in place until June 2010, was illegitimate since its purpose was to punish, not just to protect security. Once Israel began to [restrict the passage of commercial goods](#) through the land crossings for reasons other than security concerns, namely to collectively punish the civilian population and to put pressure on the Hamas government, the maritime restrictions became illegitimate, seeing as they are a part of an overall policy of preventing the passage of commercial goods. Even though some of the restrictions have been lifted as a result of the flotilla incident, Israel continues to restrict the passage of commercial goods into and out of the Gaza Strip thereby neglecting to fulfill its legal obligations.

Gisha notes that Israel owes [obligations](#) to Palestinian residents of Gaza in the specific areas of the Strip where it continues to exert control. This obligation to the welfare of the residents of Gaza is consistent with the scope and extent of its control. Israel fully controls the crossings used for the transfer of commercial goods. It partially, yet significantly, controls the movement of persons. The airspace, as well as the sea corridor, is entirely under its control. Additionally, Israel controls the [Palestinian population registry](#), the customs envelope, and the buffer zone in the Gaza Strip that runs along the border with Israel. The Israeli High Court of Justice has ruled that control over movement, as well as Gaza's dependence on Israel for Gaza's electricity, translates into continued responsibility for Gaza on the part of Israel.

Israel has explained on several occasions that the restrictions it imposes are a response to the Qassam rocket fire aimed at civilian targets in the south of Israel. It imposes these restrictions **in order to paralyze the economy** in Gaza and put pressure on the civilian population, by causing it to suffer, as part of a policy that is aimed at pressuring the Hamas government. Israel has gone on record saying, "A strike at the economy in of itself is a legitimate tactic in warfare, even while deciding on whether to allow the entry of a relief package". Thus, in June 2007, the Security Cabinet approved a decision restricting the passage of civilians and commercial goods into and out of the Gaza Strip to a "humanitarian

minimum". Israel refused to allow entry of commercial goods that were not considered "essential to the survival of the civilian population", refused to allow items considered "luxuries" **and banned the sale of goods outside of Gaza**. As part of this policy, between 2007 and 2010, all border crossings between Israel and the Gaza Strip were shut down except for Kerem Shalom crossing, which is open for the passage of consumer goods, a conveyor belt at Karni crossing, and the Erez crossing, through which the passage of Palestinian residents has been reduced to a minimum.

Israel claims that this is a legitimate form of "**economic warfare**". [We reject this claim](#) and point out that Israel's actions in the Gaza Strip do not meet the legal definition of a sanctions regime nor do they meet the legal definition of unilateral sanctions, since they not only prevent people in Gaza from trading with Israel but rather forcibly prevent people in Gaza from trading with the entire world – including the West Bank.

Using civilians as a means of pressuring a government violates international humanitarian law, which distinguishes between civilians and combatants and prohibits intentionally harming civilians. "Punishing" civilians violates the international law prohibition on collective punishment – as was also determined by the [International Committee of the Red Cross](#) in reference to the flotilla event. We maintain that by preventing the passage of commercial goods to and from Gaza with the goal of debilitating the economy and pressuring the Hamas government, Israel has neglected to fulfill its obligations to the civilian population according to international law. By doing so, it is collectively punishing the population of over 1.5 million residents for a crime they did not commit and for political circumstances beyond their control.

In defiance of the requirements of the **Freedom of Information Act**, Israel refused to publish a list detailing the commercial goods that are "allowed" into Gaza and those that are "prohibited" and the criteria used to make those determinations. Following Gisha's request to review the documents, the state first denied their existence, and only later admitted their existence but claimed that revealing them would compromise national security and/or negatively impact foreign relations. Finally, in October 2010, as a result of a legal battle waged by Gisha, the state [disclosed](#) for the first time [official Defense Ministry documents](#) containing administrative and operational guidelines for the closure in Gaza. A close consideration of these documents, which include mathematical equations used by the Ministry of Defense to calculate the amount of food it would allow Gaza residents to acquire, reveal that this was not an attempt to prevent the smuggling of weapons into Gaza but rather a deliberate plan to reduce 1.5 million people to a "minimal" existence while depriving them of their right to earn a dignified living.

Gisha emphasizes that, according to the information in our possession, there is not nor has there been a quantitative shortage of basic food products in Gaza, as a large majority of the population relies on humanitarian relief from UNRWA and other aid organizations. Food exists in the Gaza Strip, but people don't have money to buy it. The decline in purchasing power is a direct result of the success of the closure policy in bringing about a collapse of the economy in Gaza. The economy in Gaza has been brought to a resounding halt – a ban on export and trade of goods outside Gaza, dwindling local production and dramatically reduced agricultural output. At least 80% of the population is dependent on donations by aid organizations in order to survive (compared with 63% in 2006) and **unemployment** has risen to around 40%.

Gisha warns that despite the welcome "easing" following the flotilla incident, **significant aspects of the closure are still in place**. Israel continues to prohibit the entry of [construction materials](#) and certain raw materials, selling goods outside Gaza is still mostly prohibited, and the passage of civilians is [severely restricted](#). The Coordinator of Government Activities in the Territories continues to refuse to reveal the current closure documents, a fact that makes an informed public discussion on the topic extremely difficult. The severe restrictions on exports and trade and the entry of construction materials raise questions about the motives at the heart of the current policy. We hope that Israel learns from past mistakes and restricts movement of goods and civilians into and out of the Gaza Strip only to address necessary security concerns.

For the protocol of the testimony by Gisha's representative to the Turkel Commission, [click here](#).

For a Power Point presentation summarizing Gisha's testimony to the commission, [click here](#).

For the letter that Gisha sent to the Turkel Commission, [click here](#).

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<sup>[1]</sup> Throughout the years prior to June 2007, Israel claimed that the only restrictions on the movement of goods were those based on concrete

security needs (i.e. threats to the crossings or emanating from a particular kind of item entering or leaving Gaza). Human rights groups often disagreed, arguing that while the stated rationale was security, the real motivation for the closures of the commercial crossings was to "pressure" the civilian population in Gaza, in response to the firing of rockets or other armed activity. Prior to June 2007, however, the State of Israel claimed that the only restrictions it placed on movement of persons and goods into and out of Gaza were those based on concrete security threats. See, e.g. HCJ 2990/06 Mezan Center for Human Rights v. Defense Minister, State response of 26/4/2006 available at <http://www.gisha.org/UserFiles/File/karni-state-respond.pdf>.