

Israel – Hamas 2023 Symposium – Delivery of Humanitarian Aid from the Sea

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by [Martin Fink](#) | Dec 13, 2023



In response to the current situation in Gaza, several States have directed their naval forces into the eastern Mediterranean. For instance, the United States redirected aircraft carrier strike groups to the region and the United Kingdom sent a Royal Navy Task Group “to support Israel and reinforce regional stability.” Apart from their warfighting ability and naval diplomacy role, other possible tasks these forces could undertake are non-combatant evacuation operations and the delivery of humanitarian aid. In light of these potential tasks, warships from France and the Netherlands left their home ports for the eastern Mediterranean region. Meanwhile, the European Union is exploring the possibility of a maritime corridor from the sea, backing a Cypriot plan dubbed as the “Amalthea Initiative.”

Israeli military operations related to the conflict include striking targets in Gaza from the sea. Also, in January 2009, Israel established a naval blockade off the coast of Gaza, which is still in place. The Israeli blockade controls Gaza’s maritime border and attracted much legal debate after the *Mavi Marmara* incident in May 2010. This blockade poses a challenge to any naval activity by other States, specifically aid delivery. Such activity would also likely

require a pause in hostilities as a practical matter. The *Financial Times* [notes](#), “Negotiations are still under way to determine exactly how a sea route [to deliver aid to Gaza] would work, according to people familiar with the talks, and the scheme may not come to fruition.”

This post addresses the international legal rules governing blockades and the delivery of humanitarian aid by sea, issues which could have practical effects on current, ongoing negotiations relating to the delivery of humanitarian relief to Gaza.

Humanitarian Aid from the Sea

Ori Pomson’s and Marina Sharpe’s posts (linked [here](#) and [here](#)) have elaborated on the law regulating the obligation to allow and facilitate humanitarian relief to civilians in need. Apart from underlining that the rule is considered to be customary in nature (see also Rule 55 of the International Committee of the Red Cross *Customary Law Study*), for the purposes of this post it suffices to note that the law on humanitarian relief does not stipulate how this relief should be delivered. It makes no difference whether humanitarian aid is delivered by truck over land, airlift, or from the sea. Therefore, if a requirement exists to allow and facilitate humanitarian relief, subject to consent and technical agreements, it could also be delivered via the sea when operational circumstances permit.

What makes the situation in Gaza somewhat more complex is the existence of the naval blockade controlling Gaza’s maritime border. A blockade is a method of naval warfare with distinct requirements for its establishment and enforcement, which also comes with particular rights for the blockading State. In other words, the existence of a naval blockade adds another—and very specific—legal regime to the situation: the law of blockade.

The legality of the Israeli blockade, which has been ongoing for many years, has been much [discussed](#) in the past. Because a naval blockade is meant to be a method used against another State during an international armed conflict, the case of Gaza raises important conflict classification issues that this post will not revisit. The fact is that the Israeli naval blockade of Gaza is ongoing and a number of vessels have been seized and brought before an [Israeli Prize Court](#). For the purpose of this post, I accept the fact that the blockade is there, if only as a factual matter that cannot be ignored. The post focuses on potential international legal requirements to permit humanitarian aid from the sea in the context of an existing naval blockade.

With regard to humanitarian relief in relation to the existence of a blockade, the [San Remo Manual on International Law Applicable to Armed Conflicts at Sea](#) (SRM) states in Rule 103,

If the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must provide for free passage of such foodstuffs and other essential supplies, subject to:

(a) the right to prescribe the technical arrangements, including search, under which such passage is permitted; and

(b) the condition that the distribution of such supplies shall be made under the local supervision of a Protecting Power or a humanitarian organization which offers guarantees of impartiality, such as the International Committee of the Red Cross.

The SRM commentary notes that this rule is drawn from Article 70 of the 1977 First Additional Protocol to the Geneva Conventions (AP I) which relates to relief actions. SRM Rule 103, therefore, did not surface in the *Manual* as a generally accepted norm of traditional blockade law, but resulted from efforts to combine humanitarian obligations under international humanitarian law (IHL) with the law of blockade.

While the SRM is widely accepted as a reference on the law applicable to armed conflict at sea, it is not a treaty. Even so, SRM Rule 103 has been incorporated in various State manuals. In addition, looking at practice and reports that emerged from Mavi Marmara incident, the UN Panel of Inquiry (Palmer report) refers to the rule as part of the law of blockade. The report of the Turkel Commission (The Public Commission to Examine the Maritime Incident of 31 May 2010) is elaborate in dealing with humanitarian obligations, basing its analysis on the SRM rules. The Commission concludes, “In sum, the steps taken in this regard by Israel are consistent with customary international law as provided in articles 102(a) and 103 of the San Remo Manual,” thereby ascribing the status of customary law to these SRM rules. The first rule (102(a)), which is also a combination between humanitarian obligations (Article 54 API) and the law of blockade, concerns the prohibition of starvation in relation to blockades. Lastly, the Harvard HPCR Manual on International Law on Air and Missile Warfare spins off of the SRM and has developed a rule, in Section 158, that is similar to SRM Rule 103, but which is applicable to air blockades.

But we also see some possible hesitation to accept SRM Rule 103 as a reflection of customary international law. The authors of the recent Newport Manual on the Law of Naval Warfare did not incorporate SRM Rule 103 in their *Manual*, and only state that there is “no exception from blockade enforcement for vessels carrying humanitarian materials intended for the civil population of the blockaded area.” While the *Newport Manual* goes on to state that belligerents may declare arrangements for humanitarian relief of a blockaded area, the degree to which the *Newport Manual's* position is consistent with the rule set forth in the SRM remains unclear.

While it appears to adopt a more restrictive position, the text in the *Newport Manual* is too brief to fully understand the authors’ position, which is left largely unexplained. Moreover, the *Manual* fails to explain the relationship between the humanitarian relief obligation in IHL and the law of blockade. Some hold the view that the law of blockade can be left uninfluenced by protective rules in IHL, mainly because Article 49(3) of AP I states that the rules in Part IV Section I relating to general protections during hostilities apply to sea warfare that may affect

the civilian population but “do not otherwise affect the rules of international law applicable in armed conflict at sea. . . .” In this context, therefore, absent a specific rule in the law of blockade, one possible view could be that there is no obligation similar to Article 70 AP I (or its customary law equivalent) to allow and facilitate humanitarian relief from the sea.

There are textual arguments, however, against this interpretation. For instance, one can question whether a blockade is an “attack” or whether it “affect[s] the civilian population, individual civilians or civilian objects on land,” such that it would be within the scope of AP I. In addition, Article 70 is, in fact, situated in Section II rather than in Section I of AP I, Part IV, which places it outside of the limiting scope of Article 49(3). These points underline the idea that the law of blockade can be influenced by protective IHL rules. Furthermore, it is hard to ignore the existence of the customary law on humanitarian relief, which continues to exist alongside the law of blockade. In this regard, it is interesting to note that SRM-Rule 102(a) on starvation in relation to blockades does not attract much discussion anymore in terms of its acceptance as a rule of law. Difference however exists between Article 54 API that prohibits starvation as a method of warfare and the prohibition in Rule 102(a) SRM to establish a blockade if the sole purpose is to starve the civilian population.

Non-Belligerent Warships Facilitating Aid Delivery or Conducting Non-Combatant Evacuation

Lastly, the present situation involves States standing ready to facilitate aid delivery or evacuation with warships. One of the three key requirements for establishing and enforcing a blockade is that the blockade must be enforced impartially. In other words, the blockade must be applied against all vessels of all nations, irrespective of flag.

Allowing non-belligerent warships to enter and subsequently depart from the blockaded ports, however, does not affect the impartiality requirement. It is, as Tucker notes, “within the discretion of the commander of the blockading force to decide whether or not he will permit such entrance and departure, and under what conditions permission will be granted.” Both the *San Remo* and *Newport Manual* note that neutral warships, on a case-by-case basis, may be allowed to enter and leave the blockaded area, without affecting their neutrality.

First, this implies the need for permission by the blockading State, rather than a positive right to enter and leave. Although non-belligerent warships cannot be seized in exercise of the right to capture vessels that breach a blockade, unauthorised passing may impact the neutrality of States that attempt to sail through a blockade, which could ultimately implicate the *ius ad bellum*. Second, it underlines that impartiality is not absolute and that even within the boundaries of the law of blockade possibilities exist to pass while still upholding a naval blockade. If a narrow view on the relationship between humanitarian relief and blockades is taken, this would possibly be another avenue worth exploring.

Conclusion

The Israeli naval blockade of Gaza remains a significant issue in the ongoing Israel-Hamas conflict. As debates continue whether to permit humanitarian aid through the naval blockade, it is important to consider the international legal requirements relating to the law of blockade and the delivery of humanitarian aid by sea. If one takes the view that the law of blockade has developed in a way that incorporates humanitarian principles—where SRM Rule 103 is accepted as a rule of customary international law—then Israel (the blockading party) would be legally obliged to provide for free passage of humanitarian aid subject to certain requirements. This international legal question, therefore, is of critical importance to these current, ongoing discussions.

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