



PAL COMMISSION
ON WAR CRIMES, JUSTICE, REPARATIONS, AND RETURN

LEGAL BRIEFING

ISRAELI DECLARATION OF PLANNED INTERCEPTION OF THE *MADLEEN* IS A CRIMINAL VIOLATION OF INTERNATIONAL LAW AND EU TREATY OBLIGATIONS:

EU STATES ARE LEGALLY OBLIGATED TO PREEMPTIVELY PROTECT THEIR NATIONALS

The planned Israeli interception of the Freedom Flotilla Coalition's *Madleen*—a civilian humanitarian vessel navigating international waters and bound for Gaza—constitutes a direct and grave violation of international law, including the law of the sea, international humanitarian law, international criminal law, and binding legal instruments of the European Union.

Where, as here, atrocity crimes are openly threatened and imminent¹, international law imposes a duty to act, and failure to do so triggers both State responsibility and individual liability. Any Israeli detention or forcible transfer of EU nationals to areas under Israeli military or penal control would not only breach international law but would also activate affirmative legal duties of protection and diplomatic intervention by EU institutions and Member States.

Notably, the Israeli government's public threat to intercept the *Madleen* is itself unlawful under international law, as it constitutes incitement and a preparatory act toward war crimes and obstruction of protected humanitarian relief, and thereby triggers EU State legal obligations to act to protect their nationals, even in advance of any act by Israeli forces.

We remind all States and civil society that the rote regurgitation of the mantra, "Israel has a right to defend itself" serves only as an illegal and direct cover for genocide, starvation, and crimes against humanity.

Under the governing legal regime, the territorial waters of Gaza remain, as affirmed by the International Court of Justice (ICJ) in its July 2024 Advisory Opinion, part of the occupied Palestinian territory, and Israeli control thereof constitutes a belligerent illegal occupation. The Court further reaffirmed the duty of all States not to recognize or assist in the maintenance of this unlawful situation. Accordingly, any interception of a humanitarian vessel headed toward Gaza constitutes participation in the enforcement of an illegal regime.

¹ https://www.timesofisrael.com/liveblog_entry/katz-says-hes-instructed-idf-to-prevent-greta-thunbergs-boat-from-breaching-gaza-blockade/



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The *United Nations Convention on the Law of the Sea* (UNCLOS), recognized as customary international law and binding on all States, provides in Article 87 that “the high seas are open to all States,” and in Article 89, that “no State may validly purport to subject any part of the high seas to its sovereignty.” Moreover, under Article 92, ships are under the exclusive jurisdiction of their flag State while on the high seas. Thus, interdiction is permitted only under the limited conditions set forth in Article 110, such as piracy or the absence of nationality, none of which are met in the case of the *Madleen*. Therefore, any Israeli attempt to seize or board the vessel would constitute an unequivocally illegal assertion of extraterritorial enforcement power, in violation of established international law. Such conduct is also clearly prohibited under the law of armed conflict at sea. The *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (1994), widely recognized as reflecting customary law, prohibits blockades intended to starve civilians (Rule 102(a)) and requires free passage for humanitarian relief (Rules 103–104).

The Israeli government’s public declaration of its intent to intercept the *Madleen* in and of itself constitutes an incitement and preparatory act toward the commission of war crimes under Article 8(2)(b)(xxv) of the *Rome Statute*, which criminalizes the starvation of civilians as a method of warfare, including by willfully impeding humanitarian relief— and likely constitutes incitement to genocide under Article III(c) of the *Genocide Convention*, given the foreseeable and intended outcome of mass civilian death by forced starvation. Thus, the Israeli declaration—even without and before any physical act or attack—may arise to a prosecutable offense under international law as it furthers a policy of extermination or deliberately obstructs life-saving humanitarian aid.

These violations are compounded where the affected individuals are nationals of the European Union. Under the *Charter of Fundamental Rights of the European Union*, EU citizens enjoy the right to liberty and security (Article 6), protection from torture or inhuman treatment (Article 4), and protection against removal to states where such treatment is a real risk (Article 19(2)).

The *European Convention on Human Rights* (ECHR) reinforces this obligation via Articles 3, 5, and 6 prohibit inhuman treatment, arbitrary detention, and denial of due process. These provisions apply extraterritorially where EU citizens are detained abroad, and a European State has diplomatic means to intervene. Failure of European States to act may result in State liability under the jurisprudence of the European Court of Human Rights.

Any Israeli detention or transfer of EU nationals to areas under its control would violate international law and compel EU institutions and Member States to take protective action.

Moreover, under Article 21 of the *Treaty on European Union* (TEU), the EU is legally required to uphold international law, protect human rights, and maintain consistency in its external actions. This



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duty is binding and includes implementation of the *EU Guidelines on Promoting Compliance with International Humanitarian Law*, activation of the *Global Human Rights Sanctions Regime* under Council Regulation (EU) 2020/1998, and, where necessary, the use of Article 215 of the *Treaty on the Functioning of the European Union* (TFEU) to impose sanctions on violators.

Under international humanitarian law, the *Fourth Geneva Convention* (Articles 23, 55, and 56) and *Additional Protocol I* (Articles 70 and 71) impose binding obligations on occupying powers to permit the free passage of humanitarian aid and ensure the survival of the civilian population. Israel's obstruction of such aid—including the declared intent to seize the *Madleen* and the drone strike on the vessel *Conscience*—constitutes grave breaches of these obligations and may amount to international crimes under *the Rome Statute*. As the ICJ held in *Bosnia v. Serbia* (2007), the duty to prevent genocide arises as soon as a State is aware, or should be aware, of a serious risk of its commission. In Gaza, where Stage 5 famine conditions have been confirmed by the IPC, starvation is not incidental but a deliberate policy.

The declared intent to intercept the *Madleen* must therefore be understood as part of a systematic campaign to destroy a civilian population by depriving it of the means to survive. This threat is not isolated but is rather a part of a documented pattern of unlawful Israeli attacks on humanitarian vessels, from the 2010 assault on the *Mavi Marmara*,² and the May 2025 bombing of the *Conscience*, attributed to Israeli forces by Forensic Architecture's investigation. Together, **these Israeli acts constitute a premeditated campaign against humanitarian relief, placing States on clear legal notice and precluding any claim of ignorance.**³

No Viable Israeli Claim or Defense Exists

While Israeli officials may seek to justify their declared intent to intercept the *Madleen* by invoking naval blockade rights under the law of armed conflict at sea any such claims collapse under customary law as outline in Rule 102(a) of *The San Remo Manual*, which prohibits blockades aimed at starving civilian populations, and as affirmed by the ICJ's 2024 Advisory Opinion, which held that Israel's control over Gaza constitutes an unlawful occupation.

² The UN Human Rights Council found evidence of willful killing, torture, and inhuman treatment vav Israeli raid on the *Mavi Marmara* (A/HRC/15/21, para. 261).

³ Under Article 8(2)(b)(xxv), the starvation of civilians as a method of warfare—including through the willful impediment of relief—is a war crime. In conjunction with Articles 7(1)(b) and (k), which define extermination and inhumane acts as crimes against humanity, the deliberate obstruction of aid deliveries during conditions of mass famine exposes perpetrators to individual criminal liability.



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Assertions that the Flotilla is politically motivated or provocative are legally irrelevant, as humanitarian relief remains protected under Articles 70–71 of Additional Protocol I, so long as its objective purpose is to relieve civilian suffering—a fact indisputably true in light of Gaza’s IPC-confirmed famine.

Claims of security threats likewise collapse where Israel offers no credible evidence of weapons smuggling, especially when pre-inspection has been offered, and where indiscriminate denial of aid constitutes a grave breach of the *Fourth Geneva Convention* and Article 8(2)(b)(xxv) of the *Rome Statute*, which prohibits starvation as a method of warfare.

Any argument that Gaza’s waters lack sovereign status is moot: under *UNCLOS* Articles 87, 89, and 92, high seas freedoms and exclusive flag-State jurisdiction apply irrespective of sovereignty, and the ICJ Advisory opinion reaffirms this, making Israeli enforcement therein an unlawful extension of an illegal occupation.

Finally, Israel’s claim that its declaration of interception is merely political ignores that, in the context of mass civilian starvation, a public threat to seize a humanitarian vessel constitutes incitement and preparatory action toward the commission of atrocity crimes, prosecutable under Article 25(3)(e) of the *Rome Statute* and Article III(c) of the *Genocide Convention*.

Accordingly, each of Israel’s potential legal justifications is not only untenable under international law but reinforces the unlawfulness of its declared intentions.

Neither the Israeli government nor any State or actor may lawfully invoke the mantra that “Israel has a right to defend itself” to justify acts in Gaza, which is occupied territory under active conditions of extermination, starvation, and genocide. Under Article 51 of the *UN Charter*, the right to self-defense does not apply to an occupying power against the population it occupies, and as affirmed by the ICJ in its 2004 Advisory Opinion (para. 139). In the context of the grim reality created by obscene Israeli war crimes, **such statements serve solely as political cover and legal complicity in atrocity crimes and are thus prohibited** under the *Genocide Convention* and the *Rome Statute*.

WHEREFORE, in light of the above, we respectfully but urgently demand that all European Union Member States and relevant EU institutions:

1. **Immediately and directly contact Israeli authorities to demand that no attempt be made to intercept, board, or detain the *Madleen* or any of its passengers**, particularly EU nationals engaged in protected humanitarian activity;



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2. **Take all necessary diplomatic, legal, and consular measures to ensure the safe and unconditional release of any EU nationals** detained or otherwise subjected to unlawful treatment, should any such interception or seizure occur;
3. **Initiate and implement appropriate punitive, protective, and accountability measures**—including sanctions, public condemnation, and legal action—to deter Israeli officials and institutions from engaging in such violations of international and European law, and to fulfill their binding duty to prevent complicity in atrocity crimes.

