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**‘We Didn’t Want to Hear About
Calories’: Rethinking Food Security,
Food Power and Food Sovereignty -
Lessons from the Gaza Closure**

Aeyal Gross & Tamar Feldman

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Abstract¹

The notion of food sovereignty was developed based on the notion that if the population of a country must depend for their next meal on global economy, on the goodwill of a superpower not to use food as a weapon, or the unpredictability of shipping, then that country is not secure in the sense of food security. It has thus been argued that food sovereignty goes beyond the concept of food security. But while the emphasis in the development of the concept of food sovereignty was on the idea that people, rather than corporate monopolies, make the decisions regarding food, our paper, through the case study of the Gaza closure by Israel illustrates the need to expand this notion, to guarantee that people will have the sovereignty to make the decisions regarding food. The Gaza case also illustrates that the right to produce its own food in its own territory, may not always be the only means to exercise food sovereignty: it may be more important to put the emphasis on the right to exercise sovereignty regarding both the growing and the importing of food. So to the extent that food sovereignty proposes not just guaranteed access to food, but democratic control over the food system and is about self-determination including nutrition self-determination, the term may help realize how the exercise of food power by Israel, negates this sovereignty from the residents of Gaza.

Since 2007, Israel has been imposing a closure over the Gaza Strip, which restricts the passage of goods into and out of the Strip and limits the movement of people in both directions to the “humanitarian minimum”. By maintaining a level of “just above minimum”, which was sustainable largely due to the massive involvement of international aid organizations, Israel managed to relax the international demand to lift or ease the restrictions.

The Turkel Committee, appointed to investigate the events of the flotilla of May 2010 determined that since the closure was never intended to starve the civilian population and given Israel’s monitoring and protection mechanisms designed to prevent a humanitarian crisis in the Gaza Strip, the closure cannot be said to be unlawful and that the proportionality requirement is met. While doing so, the committee largely downplayed the data presented before it by human rights organizations attesting to extremely high levels of food insecurity in the Gaza Strip.

Our paper explores the blind spots in Israel’s stance, which alludes to the minimum standard. These, we will argue, ignore power relations, and overlook the larger context. We will propose instead that food power can be exercised not only through direct control over food supply and food availability, but also by effecting people’s ability to access adequate food. Arbitrary

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restrictions on entry of foodstuff undoubtedly played an important role in Israel's demonstration of power. But also by successfully crippling Gaza Strip's economy, Israel's closure policy has impoverished the civilian population, considerably decreased food security in the Gaza Strip and respectfully increased dependency on international aid. Using this analysis, we will examine how food power mechanisms work and are sustained over time and explore the relations between "food security", "food power" and "food sovereignty."

Introduction

"Everybody is hungry, nobody is starving"

(Chirster Nordhal, Director of UNRWA Gaza Operations, cited in The Gaza Kitchen, page 26).

Since the summer of 2007, consequent to Hamas' taking of power, Israel has been imposing a closure over the Gaza Strip, which restricts the passage of goods into and out of the Strip and limits the movement of people in both directions to the "humanitarian minimum". Israel framed its policy "economic warfare" which it believes to be lawful under international law, as long as it meets the humanitarian minimum standard and provides what is necessary for the survival of the population. By maintaining a level of "just above minimum", which was sustainable largely due to the massive involvement of international aid organizations, Israel managed to relax the international demand to lift or ease the restrictions. Israel repeatedly stated that there is no starvation or hunger in the Gaza Strip and that there is therefore no humanitarian crisis which deems international intervention. In other words: it is much ado about nothing.

The Israeli Supreme Court approved the humanitarian minimum standard and refrained from legally examining and criticizing the closure policy as a whole on a number of opportunities presented before it. The Turkel Committee, appointed to investigate the events of the flotilla of May 2010 and establish the legality of the naval closure, also concurred with Israeli line of arguments. The committee determined that since the closure was never intended to starve the civilian population and given Israel's monitoring and protection mechanisms designed to prevent a humanitarian crisis in the Gaza Strip, the closure cannot be said to be unlawful and that the proportionality requirement is met. While doing so, the committee largely downplayed the data presented before it by human rights organizations attesting to extremely high levels of food insecurity in the Gaza Strip resulting from the complete brake down of the Gaza economy by the closure policy. The UN appointed Palmer committee reached similar conclusions.

This article takes the case study of the Gaza closure, especially in the form it took between 2007-2009 and as examined by the Turkel and Palmer commissions, and explores the blind spots and legal deficits in Israel's stance and in the respective reports, which alluded to the minimum standard and examined legality by using reductive cost-benefit and causality tests. These, we will argue, ignore power relations, overlook the larger context and disregard in-depth and nuanced analyses. We will propose instead, in addition to an examination from the perspective of international humanitarian law (IHL), to examine the issue from the perspectives of the right to food, focusing on the frameworks of food security, food power, and food sovereignty.

In Part 1 we will discuss the Israeli policies concerning the entry of foodstuff into the Gaza Strip and describe the legal struggle to disclose these policies. In Part 2 we will present data and analysis concerning food insecurity in the Gaza Strip and its relation to the closure policy, establishing the point that "starvation" or "humanitarian crisis" may not be appropriate frameworks for understanding the closure's profound impact on the lives of over million and a half residents of the Gaza Strip and especially on their food security. In Part 3 we will delve into the Turkel committee's findings concerning the legality of the naval closure and the closure as a whole and also into the finding of the UN appointed Palmer commission. In Part 4 we will discuss the alternative frameworks within we suggest the issue should be examined, pointing to the failures of the "humanitarian minimum". We will consider that the concept of *food security*, corollary to the *right to food*, is crucial to understand the violations of human rights involved in the Gaza closure, but that focus on food security in the context of Gaza should be shifted from the discussion of which foodstuffs were allowed into Gaza, to a discussion of the effect of the closure on the population's buying power: Arbitrary restrictions on entry of foodstuff undoubtedly played an important role in Israel's demonstration of power and effect food security, which also includes people's preferences. But restrictions on raw materials, construction materials, exports and movement of people were more significant in their long-term effect and in their effect on the population's buying power. By successfully crippling Gaza Strip's economy, Israel's closure policy has impoverished the civilian population, considerably decreased food security in the Gaza Strip and respectfully increased dependency on international aid. The Gaza closure provides a unique opportunity to examine the concept of food security, because it involved policy that aimed to undermine food security, rather than to establish it.

Using this analysis, we will examine how *food power* mechanisms work and are sustained over time: in discussing the concept of food power we will argue that this concept, usually considered as archaic and desolate, should be expanded and revised to include situations such as Israel's exercise of power over food in Gaza, in a way that violates the right to food. While

this term has usually been used to describe situations where governments seek a coercive advantage by manipulating the volume and timing of their food exports, such as by imposing a selective embargo on food exports in hopes of punishing a target country or coercing a policy change, we will point to the need to revive it by encompassing a broader context of situations. Regarding the newer concept of “*food sovereignty*”, we will argue that this concept, as usually articulated today, has too narrow a scope and that the Gaza case study points to the limits of this scope and to the need to shift the emphasis in the discussion of food sovereignty from the ability to locally produce food and get protection from globalization, to an emphasis on the ability to make decisions about food in ways that in fact guarantees food security. In the Conclusion we will point to how the story of the Gaza closure and food security is a story about food, but not only about food: on one hand the restrictions on entry of foodstuff was but a factor and not necessarily the biggest one in effecting food security; on the other hand access to food is effected by many other factors beyond that of the supply of food.

1. The closure on Gaza – a case study

On September 19th, 2007 Israel's Security Cabinet issued a decision declaring the Gaza Strip a hostile territory and imposing a closure upon it.² The decision validated a policy which had already been enforced on the ground since Hamas took over power in the Gaza Strip in June 2007 and which restricted the passage of goods and movement of people into and out of the Gaza Strip to the "humanitarian minimum". Israel's declared intention was to block goods beyond what it considered "essential for the survival of the civilian population", halting export, economic activity and production and preventing the passage of items deemed to be a "luxury".³ The policy was framed as "sanctions" and later as "economic warfare"⁴ and in essence was designed to put pressure on Gaza Strip's residents, so that they will in turn pressurize Hamas to stop firing rockets on Israel and release the Israeli soldier Gilad Shalit, who has been imprisoned by Hamas since June 2006.⁵

² Security Cabinet declares Gaza hostile territory, September 19th 2007, *available at* <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm>

³ Letter on file with authors, Coordinator for Government Activities in the Territories (COGAT) to Gisha, January, 13, 2010.

⁴ The State's response to the Al-Bassiouni petition (HCJ 9132/07), para. 43-44. English non-official translation: <http://www.gisha.org/UserFiles/File/Israelusestheclosureaseconomicwarfare.pdf>.

Full document in Hebrew:

http://www.gisha.org/UserFiles/File/LegalDocuments/fueloct07/state_response_2_11_07.pdf

⁵ Gilad Shalit was released as part of a prisoner deal in exchange of 1,027 Palestinian prisoners on 18 October 2011. See: Ethan Bronner "Israel and Hamas Agree to Swap Prisoners for Soldier" NYT (11 October 2011), *available at*

http://topics.nytimes.com/top/reference/timestopics/people/s/gilad_shalit/index.html?inline=nyt-per

Israel's ability to enforce its closure policy and determine almost entirely what and who enters or leaves the Gaza Strip owed to its control over the Gaza Strip's borders and crossings. Since it occupied the Gaza Strip in 1967, Israel has been in control of the Gaza Strip's land crossings as well as its airspace and territorial waters. Over the years, Israel exercised its control in various manners and to different degrees in order to adhere to changes in policy and enforce different restrictions, which it normally justified by referring to security needs. Despite Israel's "disengagement" in 2005 and its consequent declaration that it thereby ended its occupation of the Gaza Strip, Israel has in fact maintained control over the Gaza Strip's borders as well as on other significant elements of civilian life, most notably the population registry and major components of the tax system.⁶ As part of its closure policy, all border crossings between Israel and the Gaza Strip were shut down except for the Erez crossing, through which the passage of Palestinian residents has been reduced to a minimum and Kerem Shalom crossing, which is the only pathway for consumer goods. The Rafah crossing connecting Gaza with Egypt never served for regular passage of merchandise but rather for movement of people only, which was also highly restricted.⁷ It should be noted however that the tunnels underneath the Gaza-Egypt border, which were initially used for contraband during the intifadas, were gradually converted to smuggling goods in demand after the disengagement and increasingly so after the tightening of the closure in 2007.⁸ The tunnel-trade, which started off as an unregulated market, developed into a lucrative though dangerous enterprise governed by Hamas with some impact on the local economy, to which we will relate where relevant.⁹

The Israeli Security Cabinet decision of September 2007 stated that "[t]he sanctions will be enacted following a legal examination, while taking into account both the humanitarian aspects relevant to the Gaza Strip and the intention to avoid a humanitarian crisis."¹⁰ Hence, the

⁶ Disengaged Occupiers & Scale of Control (Gisha)

⁷ Israel had full control of the Rafah crossing until the disengagement in September 2005. The Crossing Agreement of 2005 established that the Rafah crossing will be used for movement of people only. Israel maintained a high level of influence over the openings of the crossing, which opened periodically and on an ad-hoc basis only for a few days at a time up. See: Gisha, "Rafah Crossing: Who holds the keys?" (March 2009), pg. 26-27. It should be noted that Israel's control over the opening of the Rafah crossing diminished after the events of the Flotilla in mid 2010 and further following the Egyptian revolution of 2011. Since then, the Egyptian authorities have generally kept the crossing opened for movement of people only, but occasionally closed it for security reasons. Lately, after the overthrow of Morsi and following the Islamic attacks on security forces in the Sinai, the border crossing was closed by the Egyptian Army and has since been operating under restricted conditions. See: Gisha, "Restricted access at Rafah Crossing blocks Gaza residents' main route abroad" (July 15, 2013) http://www.gisha.org/item.asp?lang_id=en&p_id=2037

⁸ WFP, "The Impact of Closure and High Food Prices on Performance of Imported Staple Foods and Vegetable and Fruits Market in the oPt" 31-32 (December 2009). Also see Gaza Kitchen, p. 127.

⁹ Matt Duss, "Smugglers' tunnels are Hamas' lifeblood" SALON (27 Feb 2012), *available at* http://www.salon.com/2012/02/27/smugglers_tunnels_are_hamas_lifeblood/

¹⁰ Supra note 1

closure policy was designed to damage the Gaza economy and bring its population of the Gaza Strip to the *verge* of a humanitarian crisis, (a term we discuss below) by preventing “luxuries” yet ensuring the “humanitarian minimum”. From the outset, the closure policy was largely characterized by ambiguity and concealment. Other than the Cabinet decision itself, no information or documents on the policy and its implementation on the ground were made public and attempts to uncover what the “minimum” included and why were met with very vague, general responses. The Coordinator of Government Activities in the Territories (COGAT)¹¹ office repeatedly stated that the Israeli “policy changes from time to time, in response to security and political circumstances,” and that in general Israel allows entry of basic commodities which are required for the survival of the population, including basic foodstuff, medicine and hygienic products.¹²

These underlying principles were challenged early on by a group of human rights organizations together with residents of the Gaza Strip in a petition brought before the Israeli High Court of Justice (HCJ), which focused on the restrictions on the supply of fuel and electricity to the Gaza Strip – the Al-Bassiouni case.¹³ The petition argued that the deliberate deterioration of the population of the Gaza Strip to a state of minimal existence for the sole purpose of pressurizing Hamas constitutes collective punishment, which is strictly prohibited under international law, regardless of whether or not a humanitarian crisis exists on the ground.¹⁴

The State claimed in response that its closure policy is a legitimate form of “economic warfare” and presented a series of calculations it used to establish the minimum humanitarian need for fuel, including industrial diesel for the power plant, in the Gaza Strip.¹⁵ The numbers the State presented were consciously lower than the average (rather than minimal) need for electricity in the Gaza Strip and therefore reflected a policy that had knowingly created a chronic shortage of electricity in Gaza.¹⁶

The HCJ in its decision referred to Israel’s positive obligations toward the Gaza Strip, stemming from its control over the crossings and borders as well as from the dependency Gaza had developed in its services over the course of the prolonged occupation and from the situation of

¹¹ A high-ranking officer in charge of the implementation of the Government policy vis-à-vis the occupied Palestinian territory, including the closure imposed on the Gaza Strip.

¹² Reference to COGAT’s responses

¹³ HCJ 9132/07 Bassiouni v. The Prime Minister

¹⁴ See Art. 43 of the VI Geneva Convention, which explicitly prohibits collective punishment. Also see Al-Bassiouni petition (unofficial translation), *available at*

http://www.gisha.org/UserFiles/File/LegalDocuments/fueloct07/english/ElectricityPetition9132-07_English.pdf

¹⁵ State responses in Al-Bassiouni. *Supra* note 4

¹⁶ Reference to Gisha’s responses, including calculations of electricity consumption.

belligerency.¹⁷ In the end, however, the Court authorized the electricity and fuel cuts, based on the State's calculations, thereby giving a stamp of approval to the closure policy as a whole and *de facto* accepting the "humanitarian minimum standard" as a legitimate benchmark.¹⁸

The Al-Bassiouni case raised a host of legal questions concerning the legitimacy of using closure aimed at weakening a civilian population as a means of war and regarding the obligations that come with power and control. It also brought up questions concerning the "humanitarian minimum" bar itself: while the litigation on this case revealed how the minimum bar was calculated with regards to fuel supplies, it did not address many questions concerning the limitation on foodstuff and other civilian commodities.

Even though it was not officially published, over time the closure policy became clearer through practice. Coordinators and merchants from the Palestinian side gradually learned from direct experience what was permitted and what was forbidden into the Gaza Strip.¹⁹ As the lists of banned and allowed good unfolded, different aspects of the closure policy revealed. Looking at the lists, some products seemed to have been excluded because they were perceived as "luxury", such as chocolate and sweets. Other choices, such as banning industrial margarine while allowing margarine in small consumer packaged, could be explained by the attempt to impair local industry and cripple the economy. However, some of the choices seemed completely arbitrary and could not be explained by any of the proclaimed or attributed rationales for the closure. Such was the case with the ground coriander, which was prevented from entering Gaza while other herbs like hyssop were allowed in.²⁰ Likewise, cardamom was banned whereas cinnamon was approved and biscuits were excluded while yeast was included. These as well as other examples expose the arbitrary nature of the closure policy. The list of goods was not fixed, but continually subject to change with some products added and others omitted from it, which instilled a sense of uncertainty and complete lack of control.

¹⁷ Al-Bassiouni verdict; Yuval Shany

¹⁸ Al-Bassiouni verdict

¹⁹ Merchants as well as Palestinian coordination officers learned about Israel's policy by way of trial and error and gradually adjusted their orders to match Israel's restrictions. A local merchant who knew that for a long time Israel had not been allowing the transfer of biscuits or stationary simply stopped ordering those products. The coordination officers who knew that Israel was systematically preventing the transfer of toys, for example, simply did not make requests for their transfer. According to the Palestinian coordination officers, they occasionally made requests for products which they knew Israel had been denying for a long time in order to check whether the policy had changed. If their requests were denied they stopped requesting those items again. See: Gisha, "Partial List of Items Prohibited/Permitted into the Gaza Strip" (June 2010), *available at* http://www.gisha.org/item.asp?lang_id=en&p_id=1110

²⁰ "Why won't Israel allow Gazans to import coriander?" Haaretz, May 7, 2010 *available at* <http://www.haaretz.com/print-edition/news/why-won-t-israel-allow-gazans-to-import-coriander-1.288824>

Generally, the list of allowed items expanded with time: in the beginning, import was restricted to a list of fifteen very basic items,²¹ which gradually expanded to approximately 30 items in 2008 and to 41 items by 2009.²² Starting from June 2009, the list expanded at an increasing rate, until the flotilla incident of May 2010 and its deadly outcomes induced a shift in Israel's closure policy.²³ Some additions were made to accommodate Israeli economic interests, such as those of local farmers with excess agricultural produce who needed to expand their market.²⁴ Other products were added purely because of international political pressure, as was the case with pasta, which Israel banned from entering the Gaza Strip continuously, until United States' Senator John Kerry intervened on its behalf, after discovering it was prohibited while rice was allowed.²⁵

Other products were dropped from the list at some point for no apparent reason. Fresh meat and cattle, which were allowed in initially on a strict quota, were banned all together after "Cast Lead" military operation in early 2009.²⁶ This ban, coupled with the damages caused to a

²¹ Wheat and flour; sugar, frozen foods (including frozen meats), dairy products (Tnuva); rice; vegetables and fruits; vegetable oil; drugs, and fuel supplies. See: WFP, Rapid Food Security Needs Assessment in Gaza Strip: Effect of Import Restrictions and Freeze on Exports on the Food Security in Gaza Strip – Survey Report (December, 2007), pg. 6.

²² The expansion to 30 items is based on information from the PA's coordination and liaison office. From 2009 onwards, there are more accurate lists compiled by PALTRADE and Gisha. References TBC. http://www.gisha.org/item.asp?lang_id=en&p_id=1110

²³ http://www.mfa.gov.il/mfa/pressroom/2010/pages/prime_minister_office_statement_20-jun-2010.aspx. Also see Gisha's report of December 2010, "Reconstructing the Closure: Will recent changes to the closure policy be enough to build in Gaza?" available at http://www.gisha.org/item.asp?lang_id=en&p_id=1106

²⁴ See the article "Gaza Bonanza" by Uri Blau and Yotam Feldman in Haaretz (11 June, 2009) which exposes the different Israeli economic interests involved in the closure policy and identifies its beneficiaries, *available at* <http://www.haaretz.com/gaza-bonanza-1.277760>. As the article notes: "Summaries of the discussions about entry of food into Gaza show just how deeply the captains of the defense establishment seem to care about the income of Israeli farmers. Hence, in a discussion that took place in the office of Deputy Minister Vilnai, it was decided that every day, 15 trucks filled with agricultural produce would be brought in. 'The problem right now is the emphasis on melons and fruit in general,' Agriculture Ministry Director General Yossi Yishai said at the meeting. At the conclusion of the discussion, Vilnai instructed that three trucks with melons be brought into Gaza each week, 'So as not to cause a market failure in Israel.'" As senior officer from COGAT was quoted saying in the article: "There was a vague, unclear policy, influenced by the interests of certain groups, by this or that lobby, without any policy that derived from the needs of the population... What happened was that the Israeli interest took precedence over the needs of the populace."

²⁵ "When Senator John Kerry visited the Strip, he learned that many trucks loaded with pasta were not permitted in. When the chairman of the Senate Foreign Affairs Committee inquired as to the reason for the delay, he was told by United Nations aid officials that 'Israel does not define pasta as part of humanitarian aid - only rice shipments.' Kerry asked Barak about the logic behind this restriction, and only after the senior U.S. official's intervention did the defense minister allow the pasta into the Strip." <http://www.haaretz.com/print-edition/news/clinton-warns-israel-over-delays-in-gaza-aid-1.270882> (Feb 2009)

²⁶ Initially Israel restricted cattle entry into Gaza to 300 calves per week, with some exception, for example in the month of the Ramadan. However, after "Cast Lead" operation Israel decided to halt all imports of calves into the Gaza strip, except for occasional "humanitarian gestures" on Muslim holidays. Consequently, an Israeli company

large number of livestock, sheep and poultry farms in Gaza during the military operation,²⁷ reduced the availability of fresh meat in Gaza significantly.²⁸ The frequent power cuts in Gaza, again resulting from Israel's "humanitarian minimum" policy,²⁹ also contributed to the shortage since meat and dairy products could not be stored properly.³⁰ Although limited numbers of cattle and small ruminants have been transferred through the tunnels, many of these animals have been diseased and presented health risks, made worse by the inconsistent veterinary vaccinations available in Gaza consequent to the closure.³¹

As a result of all these, fresh meat became scarce and unaffordable to most households,³² who had to depend on frozen meat, thereby reducing the quality of their food. Furthermore, frozen meat is considered tainted and inferior by Palestinians, who therefore consumed less of it.³³ Israel's policy disregarded, at best, this kind of cultural culinary preferences. As policy makers repeatedly stated, the basic "food basket" was designed to meet the "humanitarian needs" in Gaza.³⁴ No more, no less.

Another example is Tahini. Sesame seeds entered in some periods mostly through the tunnels, driving the price above that of Israeli produced tahini imported into Gaza. But in Gaza the staple Tahini is red Tahini made from toasted sesame, with a distinct color and rich flavor, which became unaffordable for those who cherish it. The dependency on Tahini imported from Israel thus undermined local traditions,³⁵ in a way that as we explore below is part of the undermining of food security.

called Mitrael and its Palestinian business partner in Gaza, Al-Afana Brothers, petitioned the High Court of Justice to revoke the ban (HCJ 2650/09 Mitrael et al. vs. The Ministry of Agriculture et al.). The Court rejected the petition saying that the closure policy is a matter of political-security nature and that since the humanitarian needs of the population are not compromised there is no reason that the Court should interfere with the Government's decision.

²⁷ <http://home.wfp.org/stellent/groups/public/documents/ena/wfp232398.pdf>, p.16

WFP & FAO "Report of the Rapid Qualitative Emergency Food Security Assessment (EFSA) Gaza Strip", February 2009

http://www.ochaopt.org/documents/opt_food_wfp_fao_rapid_food_security_assessment_efs_a_feb_2009.pdf, p. 4, 12

²⁸ References

²⁹ Refer back to discussion on fuel and electricity – Al-Bassiouni

³⁰ <http://electronicintifada.net/content/food-prices-double-besieged-gaza/3343>

³¹ The Impact of Closure and High Food Prices on Performance of Imported Staple Foods and Vegetable and Fruits Market in the oPt ... OCHA, Locked-In, p. 10

³² Ibid OCHA

³³ <http://www.islamic-relief.com/Qurbani/gaza-etaaf-hijayir.aspx>.

³⁴ State response to Mitrael petition (HCJ 2650/09), para. 3. [Hebrew]

³⁵ The Gaza Kitchen at 5, 31.

The state of Israel denied having lists of allowed and forbidden products for over two years, until a Freedom of Information petition forced it to admit to their existence and make them public, together with other documents.³⁶ The documents were released only after the closure policy was amended consequent to the flotilla incident of May 2010 and exposed in retrospect the mechanisms behind the closure. The list of allowed and banned items the state presented was the expanded one, dated to the eve of the flotilla incident (May 30, 2010) and already includes significant relieves compared to the 2008-2009 restrictions.

The two other documents that were disclosed together with the list – entitled "Permission to transfer goods into the Gaza Strip" and "Procedure for monitoring and assessing inventories in the Gaza Strip" – describe a policy on entry of goods from Gaza and present formulas that should be used for its implementation. Both documents were classified as drafts, but in effect served as instructions for Israeli authorities and were considered valid until a government-implemented policy change.³⁷ The rules and formulas were meant to allow in goods that would "supply the basic humanitarian needs of the Palestinian population," as the first of the two maintains. It then lists seven considerations to weigh when determining which goods should be permitted. Security was one. The others were as follows:

- The necessity of the product for maintaining humanitarian needs, including consequences for public health (in Israel and the Gaza Strip).
- The perception of the product (is it perceived as a luxury).
- Legal obligation.
- Consequences of product use (will it be used for preservation, reconstruction or development) with an emphasis on the impact of its transfer on the status of the Hamas government.
- Sensitivity to the needs of the international community.
- The existence of alternatives.

These rules explain why, for example, imports of cloth and thread, which were considered "development" products, were barred, thereby destroying Gaza's textile industry.³⁸

³⁶ Tel Aviv-Yafo Administrative Court 2744/09 Gisha v. Ministry of Defense.

http://www.gisha.org/item.asp?lang_id=en&p_id=517. An unofficial translation of the documents:

<http://www.gisha.org/UserFiles/File/HiddenMessages/DefenseMinistryDocumentsRevealedFOIAPetition.pdf>

³⁷ <http://www.haaretz.com/print-edition/news/israel-releases-papers-detailing-formula-of-gaza-blockade-1.321154>

³⁸ <http://www.haaretz.com/print-edition/news/israel-releases-papers-detailing-formula-of-gaza-blockade-1.321154>

Based on these principles and considerations, formulas were developed to determine the "breathing space," a term used by the Coordinator of Government Activities in the Territories (COGAT) authorities to refer to the number of days remaining until a certain supply runs out in Gaza, to determine allowed quantities. There were two types of warning lines. The "upper warning line," which identified surpluses, was defined as an inventory exceeding 21 days for products with short shelf lives or 80 days for those with long shelf lives, but COGAT argued it was not put to any practical use. The "lower warning line," which identified shortages, was defined as an inventory of less than four days for products with short shelf lives and of less than 20 days for those with long shelf lives. If the stocks went below the determined threshold, there was a set of procedures in place to reinforce its entry into Gaza, unless the produce in question was one to which there is a purported policy of restriction. The data was based on information regarding the goods entering Gaza as well as local produce, and was calculated every week regarding food, animal feed, and fuels. The general formulas were:³⁹

The daily consumption per capita per product = A.

The population of the Gaza Strip = B.

Daily consumption = C.

$$A * B = C$$

The daily quantity entering the Gaza Strip of the relevant product = X.

The existing reserves in the Gaza Strip (without the amount transferred that day) = Y.

The quantity of reserves in the Gaza Strip = Z.

$$X + Y - C = Z$$

Breathing space (in days) = D.

$$Z / C = D$$

The documents further reveal that the state of Israel approved "a policy of deliberate reduction" for basic goods in the Gaza Strip, even below the "lower warning line".⁴⁰ The state claimed that in practice the reduction of "basic goods" below the "lower warning line" was never authorized, but it did not define what these "basic goods" were.⁴¹

³⁹ See Appendix B of the "Procedure for monitoring and assessing inventories in the "Gaza Strip" Document: <http://www.gisha.org/UserFiles/File/HiddenMessages/DefenseMinistryDocumentsRevealedFOIAPetition.pdf>

⁴⁰ See art. 4.h.4. to the "Procedures for monitoring and assessing inventories in the Gaza Strip" doc.

⁴¹ http://www.gisha.org/item.asp?lang_id=en&p_id=517

COGAT was also eventually forced to reveal another document entitled "Food Consumption in the Gaza Strip – Red Lines",⁴² which was first exposed in an investigative report published in Haaretz magazine in June 2009,⁴³ but was fully and formally released only in September 2012.⁴⁴ This document, prepared in January 2008, summarizes work conducted by the security establishment in cooperation with the Israeli Ministry of Health which analyzed ordinary food consumption by Gaza Strip residents. The presentation includes calculations made by the Ministry of Health in order to determine the number of calories and the weight of various basic food items Gaza residents require, according to age and gender. These figures are translated into the number of trucks needed daily and the specifics of their contents, taking into account local production of vegetables, milk and meat.⁴⁵

Even though COGAT claimed that this document was only a draft which was never used for actual decision making,⁴⁶ the quantities calculated and presented in this document precisely match some of the quotas that were actually set for bringing in goods at the time. In fact, in the early days of the closure, immediately after Hamas seized control of the Strip, the quantities that were cleared for entry were even smaller than those set by the "red lines document". The calculations made in the presentation led to the conclusion that the "daily humanitarian portion" Gaza's residents needed would require bringing in 106 trucks from Israel five days per week.⁴⁷ In the first year following Hamas' takeover of the Strip and the tightening of the closure (July 2007 to June 2008), an average of 90 trucks entered each scheduled working day.⁴⁸

These heavy restrictions, entitled by Israel's officials "economic warfare" did indeed cause the collapse of local economy in Gaza. The closure policy not only created shortages of basic affordable commodities, but also instilled a constant uncertainty as to their future availability,

⁴² Reference to appeal to SC

⁴³ Gaza Bonanza reference

⁴⁴ http://www.gisha.org/item.asp?lang_id=en&p_id=1699 This was following the Supreme Court judgment in APA 3300/11 which held that the army must release the document under the Freedom of Information Act. The unofficial translation of the presentation by Gisha can be found here:

<http://www.gisha.org/UserFiles/File/publications/redlines/red-lines-presentation-eng.pdf>

⁴⁵ Gisha "Reader: Food Consumption in the Gaza Strip - Red Lines" (October 2012), *available at* <http://www.gisha.org/UserFiles/File/publications/redlines/redlines-position-paper-eng.pdf>. see unofficial translation of the presentation, slides 6-7.

<http://www.gisha.org/UserFiles/File/publications/redlines/red-lines-presentation-eng.pdf>

⁴⁶ The state argued in its appeal to the Supreme Court, contesting the District Court's decision to reveal the "red lines presentation", that rather than adopting the "red lines' model, it adopted a uniform model relating the passage and assessment of stocks of essential goods in the Gaza Strip, while locating the existence of deficiencies and determining lines that will cause alarm, as was elaborated in the documents revealed previously. See Judgment, paragraph 16.

⁴⁷ Unofficial translation of the presentation:

<http://www.gisha.org/UserFiles/File/publications/redlines/red-lines-presentation-eng.pdf>

⁴⁸ http://www.gisha.org/item.asp?lang_id=en&p_id=1699

which was exacerbated due to the devastating impact closure policies have had on local industry and other means of self-provision. The prevention of raw materials for local industries resulted in over 90 percent of Gaza's factories belonging to the Palestinian Federation of Industries to either close shop or work at minimum capacity.⁴⁹ This significantly diminished self-reliance and increased dependency on imported products, primarily Israeli products.⁵⁰

In addition to restricting entry of goods, Israel also restricted access to farmlands located along on the Gaza Strip's side of the 'Green Line'⁵¹ and to fishing areas off the coast of Gaza,⁵² for

⁴⁹ Immediately after the enforcement of the closure policy, between June and October of 2007, half the food production plants that belonged to the Palestinian Federation of Industries in Gaza ceased operating. The rest operated at 30% of their capacity. The Palestinian Central Bureau of Statistics documented a 26.6% drop in the rate of employment in the agriculture and fishing sectors. See: Gisha, "Reader: Food Consumption in the Gaza Strip - Red Lines" (October 2012), p. 7, *available at*

<http://www.gisha.org/UserFiles/File/publications/redlines/redlines-position-paper-eng.pdf>

Then, after the partial easing of the closure in June 2010, access to formerly restricted goods, including raw materials, resulted in a limited reactivation of the manufacturing sector. According to PCBS, between the second and fourth quarter of 2010, approximately 1,200 new jobs were added to the manufacturing sector, increasing the number of employees from 7,300 to 8,500. This, however, is less than half the equivalent number of workers in second quarter of 2007, prior to the blockade (18,500 people). See: OCHA, "Special Focus: Easing the Blockade – Assessing the Humanitarian Impact on the Population of the Gaza Strip" (March 2011), p.5, *available at*

http://www.ochaopt.org/documents/ocha_opt_special_easing_the_blockade_2011_03_english.pdf

⁵⁰ According to Gisha, as part of its "economic warfare" on Gaza, Israel forbade the transfer of large blocks of margarine intended for industrial usage yet allowed in small packages of margarine for household consumption; it banned the transfer of rubber, glue and nylon which are used in the production of diapers in the Strip, yet allowed the transfer of diapers produced in Israel; and it prevented the transfer of industrial salt, glucose and plastic containers used to produce tahini paste but allowed in Israeli-made tahini paste. See: Gisha, "Three Years of Gaza Closure – By the Numbers" (June, 2010), *available at*

http://www.gisha.org/item.asp?lang_id=en&p_id=537

⁵¹ OCHA & WFP "Between the Fence and the Hard Place: The Humanitarian Impact of Israeli-imposed Restrictions on Access to Land and Sea in the Gaza Strip" (Special Focus, August 2010).

The Gaza-Jericho agreement also provided for the establishment of a 1,000 meter-wide "security perimeter" on the Gaza side of the Green Line, designed to prevent the entry of people into Israel, and the introduction of arms or ammunitions into that area, without coordination with the Israeli army. In practice, restrictions on access to land have gradually expanded since the beginning of the second Intifada in September 2000. Israel has been enforcing a "no go zone" of 0-500 meters where access is totally prohibited and poses an extreme threat to life if entered from the fence, and a "high risk zone" which covers the area located between 500 to 1,000-1,500 meters from the fence, depending on the area. See also: OCHA, "The Monthly Humanitarian Monitor" (November 2011), p. 6.

http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2011_12_15_english.pdf

Following the Egyptian-brokered ceasefire agreement between Israel and Hamas, in early February Israel announced that farmers could access land up to 100 meters from the fence, but a few weeks later drew the line at 300 meters and clarified that those wanting to work closer needed to coordinate with the authorities. See: Fares Akram and Jodi Rudoren, "Gaza Farmers Near Fence With Israel Remain Wary" NYTimes June 7, 2013, *available at*

http://www.nytimes.com/2013/06/08/world/middleeast/palestinian-farmers-in-gaza-buffer-zone-remain-wary.html?_r=3& Since 21 November 2012 until August 2013 five Palestinians were killed by Israeli forces and 125 injured. See: OCHA, "Protection of Civilians Weekly Report, 6-12 August 2013", *available at*

http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2013_08_15_english.pdf

proclaimed security reasons.⁵³ Overall, the land restricted area was estimated in 2010 at 17 percent of the total land mass of the Gaza Strip and 35 percent of its agricultural land. At sea, fishermen are totally prevented from accessing some 85 percent of the maritime areas they are entitled to access according to the Oslo Agreements.⁵⁴ These restrictions affect many household directly and impair self-reliance in the Gazan market.⁵⁵

In June 2010, following the flotilla incident, in which Israeli forces killed 9 persons present on a boat which was part of an attempt to symbolically break the siege, and bowing to international pressure this incident created, Israel published a long list of banned goods, including an expanded list of dual-use items and additional commodities such as construction materials, and declared that all other civilian goods would since then be on allowed into Gaza.⁵⁶ Thus, instead

⁵² OCHA & WFP "Between the Fence and the Hard Place: The Humanitarian Impact of Israeli-imposed Restrictions on Access to Land and Sea in the Gaza Strip" (Special Focus, August 2010). Restrictions on access to sea areas have been imposed in variations throughout Israel's occupation of the Gaza Strip, but the Gaza-Jericho agreement between Israel and the Palestine Liberation Organization (PLO), signed in 1994, established that maritime areas 20 nautical miles off Gaza's coast into the Mediterranean Sea would be open (under certain conditions) to Palestinian use for fishing, recreation and economic activities. However, over time fishing area was further restricted, reducing first to 12 miles, then 10, then 6 and up until recently even 3. Violations are punishable by violent harassment, boat seizure, arrest and gunfire.

⁵³ Israel claims that these measures are necessary for security reasons, particularly for prevention of contrabands from sea. However, the frequent changes of the restrictions and their inter-relation with the general trends in the closure policy indicate that these restrictions are used as another measure of control and that they are not aimed only at achieving a concrete military objective. For example, in November 2012, a ceasefire agreement between Israel and Hamas following operation Pillar of Defense, eased the restrictions on the movement of farmers and fishermen in the Gaza Strip. Among other things, it was agreed that the Israeli military would permit Gaza farmers to cultivate plots located up to 100 meters from the Israel-Gaza perimeter fence and that fishermen would be able to fish up to six nautical miles from the Gaza coast, compared with the 3-mile limit imposed prior to operation Pillar of Defense. See: B'Tselem "Access eased for Gaza farmers and fisherman" (Feb. 2012), *available at* http://www.btselem.org/gaza_strip/20121127_restrictions_eased; Also Gisha, "The Gaza Cheat Sheet: Real Data on the Gaza Closure", January 21, 2013, *available at* http://www.gisha.org/UserFiles/File/publications/Info_Gaza_Eng.pdf

⁵⁴ The deep channel used by great schools of fish in their migration runs 9 miles off the shores of Gaza, so the limitations dramatically reduce available catches, "forcing today's fishermen to cull from shoreline waters the undersize and juvenile fish that would guarantee future prosperity." Gaza Kitchen, p. 108. However, in response to rockets fired toward south Israel by Palestinian armed groups, Israel re-imposed heightened restrictions on Gaza in March 2013. Then, in May 2013 it loosened the restrictions again. See: OCHA, "Humanitarian Monitor Monthly Report" (March 2013), *available at* in March 2013. Also see: Gisha, "Israel expands fishing zone from three to six nautical miles" (May 2013) http://www.gisha.org/item.asp?lang_id=en&p_id=1984

⁵⁵ According to a UN's study conducted in 2010, an estimated 178,000 people - 12 percent of the population of the Gaza Strip - were directly affected by the access regime implemented by the Israeli military. "Between the Fence and the Hard Place" *ibid*, p. 5. Currently, according to the fisherman's union in Gaza, more than 12,000 individuals earn their living directly from the fishing industry and many others earn their living indirectly from it, such as carpenters, boat owners and merchants. Gisha, "Gaza 2013: Snapshot" (June 2013), *available at* <http://www.gazagateway.org/2013/06/gaza-2013-snapshot/>. Inland fish-farms have been attempting to compensate for the lack of sea fish, but the local population is less inclined to consume them, as quoted in the book "Gaza Kitchen", locals have said that "it tasted like mud!". Gaza Kitchen, p. 108

⁵⁶ Reference to the list on COGAT website

of prohibiting the entry of all commodities, except those specifically permitted, the new policy generally permitted the transfer of all civilian commodities, unless particularly prohibited. Further reliefs have been given over the last couple of years and recently a quota of construction materials for the private sector has been allowed following the last ceasefire in November 2012.⁵⁷

Food is no longer restricted from entering the Gaza Strip and Israel is no longer counting calories. However, many restrictions remained, mainly on export from the Gaza Strip,⁵⁸ the marketing of goods from the Gaza Strip in Israel and the West Bank,⁵⁹ and on movement of people between Gaza and the West Bank.⁶⁰ Kerem Shalom, connecting Gaza to Israel, is still the only crossing open for the transfer of goods into and out of the Strip, apart from the underground tunnels connecting Egypt and Gaza. Nowadays, the tunnels are used mainly for bringing in fuel (which is much cheaper in Egypt than in Israel) and construction materials (which are still highly restricted by Israel).⁶¹

So while there is no shortage of food in Gaza, the poverty rate, which reached a peak of almost 50 percent in 2007,⁶² remains high at 38.8 percent in 2011,⁶³ because of commerce and movement restrictions that prevent rehabilitation of infrastructures and economic development. More than 70 percent of the population currently receives humanitarian aid.⁶⁴ This dire economic situation, caused to a large extent by the Israeli closure, is the major cause for food insecurity in the Gaza Strip, as will be discussed in the next chapter.

2. Food insecurity in Gaza: “On the verge of humanitarian catastrophe”

While much of the debate on food security in Gaza focused on the prohibitions of the entry of some foodstuffs into Gaza, as discussed in the previous section, food insecurity in Gaza Strip is first and foremost actually a result of a lack of economic access to, rather than availability of

⁵⁷ <http://www.thedailybeast.com/articles/2013/01/17/what-s-changed-since-the-gaza-ceasefire.html>

⁵⁸ in 2012, approximately 22 truckloads of goods exited Gaza per month, about 2% of what exited monthly before the closure.

http://www.gisha.org/UserFiles/File/publications/gaza_info/Info_Gaza_Eng.pdf

⁵⁹ Ibid

⁶⁰ Reference gisha

⁶¹ http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_01_28_english.pdf.

⁶² The World Bank, "Coping with Conflict: Poverty and Inclusion in the West Bank and Gaza" available at <http://go.worldbank.org/JKWJB8XGB0>.

⁶³ According to information from the Palestinian Central Bureau of Statistics (PCBS) for 2011, available at http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/int_Pop_2012e.pdf. According to the United Nations Development Programme, in 2012 79.4 percent of the Gaza Strip population lived below the poverty line (2\$ per day): UNDP Fact Sheet, Nov. 2012, available at

<http://www.undp.ps/en/newsroom/publications/pdf/other/Gazafactshheet2012.pdf>.

⁶⁴ http://www.gisha.org/UserFiles/File/publications/gaza_info/Info_Gaza_Eng.pdf

food in the local markets. This derives from food price inflation, livelihoods deterioration and erosion of coping mechanisms, such as proper healthcare.⁶⁵ To the extent the availability of food plays a role in food insecurity, it is more because of the lack of *security* about its availability, which is mostly dependent on import and aid, rather than because of a shortage of food at any given time. But as we will discuss below, shortage of food, or lack thereof, only tells a part of the story of food security. Of course there are elements where the denial of certain food stuff has symbolic meanings and affects preference in food, which is also part of food security. However at the core of food insecurity in the Gaza Strip, is the overall impoverishment, caused by import and export restrictions as well as restricted access to agricultural and fishing areas and the destruction of local industries and other means of self-provision.⁶⁶ This has created major problems of affordability for many households and increased overall dependency on humanitarian aid.⁶⁷

While food insecurity in Gaza predated the blockade,⁶⁸ the problem increased substantially during its harsh years, from 2007 to 2010, and especially after Operation Cast Lead in 2009,

⁶⁵ FAO, URWA, WFP PCBS, Socio-Economic and Food Security Survey – oPt 2011, May 2012, available at <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp249301.pdf>

OCHA, *Fragmented lives: Humanitarian Overview 2011* (May 2012), at p. 56-57, available at http://www.ochaopt.org/documents/ocha_opt_framgmented_lives_annual_report_2012_05_29_english.pdf.

"The definition of food insecurity in the oPt combines income and consumption levels measured in USD per adult equivalent per day. It also includes whether there has been no change or a decrease in food and non-food expenditures. As such, the measurement of food insecurity considers only the problem of economic access to food and essential non-food items resulting from the lack of income-earning possibilities for Palestinian households. Other dimensions of food security, including food availability and food consumption, are generally less problematic. Food is generally supplied in sufficient quantities and with an acceptable variety in local markets, mainly from imports. Yet, current availability of food on the market could be hampered given the volatility of the peace process and the high dependency on Israeli and international markets." (WFP, FOA "oPt 2010 Socio-Economic and Food Security Survey", p.5

<http://home.wfp.org/stellent/groups/public/documents/ena/wfp232398.pdf>)

The annex of that report (p.23) specifies the criteria used by international aid agencies to categorize households into one of the four groups identified: food insecure, vulnerable, marginally secure and food secure. For example, in 2010 a household would be considered food insecure if it has income and consumption below USD 5.1 per adult equivalent/day or if it is showing a decrease in total food and non-food expenditures, including households unable to further decrease their expenditure patterns. According to FAO and WFP Gaza residents' economic access to food is constrained by a combination of: (i) artificially high food prices due to inflated transportation costs and dependence on Israeli imported goods, and (ii) low purchasing power due to the lack of well-paid jobs, business and investment opportunities. WFP, FAO, oPt: *Food Security and Vulnerability Analysis Report* (December 2009).

⁶⁶ Data on the effects of the closure on local industries

⁶⁷ Socio-Economic and Food Security (SEFSec) Survey Report – Gaza Strip November 2009 (Data collected by the Palestinian Central Bureau of Statistics, April-June 2009)

⁶⁸ *The Right to Food*, Report by Special Rapporteur, Jean Ziegler, Addendum: Mission to the Occupied Palestinian Territories, 31 October 2003, UN E/CN.4/2004/10/Add.2 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/164/89/PDF/G0316489.pdf?OpenElement>, See the Israeli response in Note Verbale dated 5 November 2003 from the Permanent Mission of Israel to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights, 26 November 2003, UN E/CN.4/2004/G/14 available at

when 60 percent of the population (957,639 persons) was defined as food insecure,⁶⁹ compared to 53 percent in 2006⁷⁰ and 41 percent in 2003.⁷¹ Additional 9 percent (143,645 persons) were vulnerable to food insecurity in 2009,⁷² which means a total of 69 percent of the households in Gaza were either food insecure or vulnerable to food insecurity, around half of them were also defined as having poor diets.⁷³

As one of the UN aid agencies' report poignantly noted:

"Economic access [to food] is constrained by a combination of: (i) artificially high food prices due to inflated transportation costs and dependence on Israeli imported goods, and (ii) low purchasing power due to the lack of well-paid jobs, business and investment opportunities. Restrictions on the mobility of goods and people within and outside the OPT imposed by the Israeli authorities are the main cause of high prices and low incomes."⁷⁴

Unemployment rates in the Gaza Strip, which stood at 16.9 percent in 1999 rose to an average of 29.7 percent in 2007.⁷⁵ 13,000 people lost their jobs immediately after the implementation of the closure in June 2007.⁷⁶ Consequently, by the end of 2007, 71 percent of the surveyed

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/169/14/PDF/G0316914.pdf?OpenElement>

Violations of the right to food in the OPT were addressed by the SR also in an earlier report: The Right to Food: Report by the Special Rapporteur on the Right to Food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2001/25, 10 January 2002, UN E/CN.4/2002/58 available at

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/100/79/PDF/G0210079.pdf?OpenElement> paragraphs 100-105

⁶⁹ WFP, FAO, PCBS, Socio-Economic and Food Security Survey – oPt 2010: (July-August)

⁷⁰ OCHA, "Special Focus: Locked In: The Humanitarian Impact of Two Years of Blockade on the Gaza Strip" (August, 2009), pg. 9.

⁷¹ WFP, FAO, Report on the Food Security Assessment West Bank and Gaza Strip, 2003

⁷² WFP, FAO, PCBS, Socio-Economic and Food Security Survey – oPt 2010: (July-August)

⁷³ WFP, FAO, Socio-economic and food security survey report 2, November 2009. According to some estimations the levels of food insecurity and vulnerability were even higher in the aftermaths of 'Cast Lead' operation and reached a peak of approximately 75 percent of the households. See OCHA, "Locked In: The Humanitarian Impact of Two Years of Blockade on the Gaza Strip" (August, 2009), p. 9; 77 percent according to WFP, FAO, Food Security and Vulnerability Analysis Report, December 2009. Food insecurity levels were highest among the rural population, with 69 percent of the households suffering from food insecurity, in addition to 10 percent who were vulnerable to food insecurity. This was largely attributed to the massive destruction of assets this population suffered during Operation Cast Lead, in addition to Israel's direct and restrictive control over one third of rural areas ('no-go zone')⁷³ and over Gaza's territorial waters. WFP, FAO, PCBS, Socio-Economic and Food Security Survey – oPt 2010: (July-August), pg. 11-12

⁷⁴ WFP, FAO, oPt: Food Security and Vulnerability Analysis Report (December 2009), pg. x, available at <http://home.wfp.org/stellent/groups/public/documents/ena/wfp213663.pdf>

⁷⁵ PCBS :Labour Force Survey, 2011, p. 79, available at

http://pcbs.gov.ps/portals/_pcbs/downloads/book1878.pdf

⁷⁶ WFP-oPt "Rapid Food Security Needs Assessment in Gaza Strip: Effects of Import Restrictions and Freeze on Exports on the Food Security in Gaza Strip" (December, 2007)

households by WFP reported a reduction in their ability to produce or purchase enough food to eat since June 2007.⁷⁷ The most frequently mentioned food items which have been cut by the households visited are: fruits, sweets, and meat products.⁷⁸

After operation "Cast Lead", certain basic food products, such as chicken, red meat and eggs, were unaffordable to many households due to their scarcity and rising prices.⁷⁹ The levels of unemployment reached a peak of over 40 percent in 2008 and fluctuated around 36-37 percent in 2009,⁸⁰ when households dedicate at least half of their total expenditures to food, making them highly sensitive to variations of food prices and income levels.⁸¹ As a result, consumption patterns shifted towards cheaper food commodities and an overall reduction in quantity of food purchases by consumers. Many households, having lost their source of income due to private sector lay-offs, were reported to reduce the number of meals they consume, eat smaller quantities of food and sell disposable assets.⁸²

As some evaluation reports noted, the restriction imposed by Israel on commercial access for the import and export of goods and people towards labour markets induced a state of de-development in which the shrinking of the private sector and a stagnated economy was reeling the population into high levels of poverty and food insecurity.⁸³ Due to the dire economic situation and the deteriorating purchasing power of most households in the Gaza Strip, the majority of Gaza Strip's residents became dependent on aid, primarily provided by United Nations Relief and Works Agency for Palestinian refugees in the near east (UNRWA), in addition to other international aid agencies.⁸⁴ Mass dependency on humanitarian pre-dates the

⁷⁷ WFP, "Rapid Food Security Needs Assessment in Gaza Strip" (December 2007), p. 12, *available at* <http://imeu.net/engine2/uploads/world-food-program-gaza-strip.pdf>

⁷⁸ *Ibid*, pg. 15

⁷⁹ FAO, WFP, Report of the Rapid Qualitative Emergency Food Security Assessment (EFSA) Gaza Strip, February 24, 2009, pg. 14

⁸⁰ WFP, FAO "Socio-Economic and Food Security Assessment in the Gaza Strip" (November 2009), p. 15, *available at* http://reliefweb.int/sites/reliefweb.int/files/resources/CBCD0E051E978998C125766A0039933D-Full_Report.pdf

⁸¹ WFP, FAO, oPt: Food Security and Vulnerability Analysis Report (December 2009), pg. x, *available at* <http://home.wfp.org/stellent/groups/public/documents/ena/wfp213663.pdf>

⁸² FAO, WFP, Report of the Rapid Qualitative Emergency Food Security Assessment (EFSA) Gaza Strip, February 24, 2009 http://unispal.un.org/pdfs/FAO-WFP_EFSAreport.pdf. UNRWA's chief in Gaza reported that families reduced the number of meals they eat per day, cut back on the amount of food at each meal and forgo basic products due to the high prices and noted that a huge portion of the population would have been vulnerable to hunger without food allocations from the agency. See Gaza Kitchen, p.

⁸³ *Ibid*, p. 6

⁸⁴ References. In the past decade, UNRWA provided humanitarian aid to approximately three thirds of Gaza's population, who are registered refugees (almost 1.2 million people out of about 1.7 million residents as of January 2012) and it is the biggest relief agency operating in the Gaza Strip. Operating through more than 11,000 staff in over 200 installations across the Gaza Strip, UNRWA delivers education, health care, relief and social services, microcredit and emergency assistance to registered Palestine refugees. The US is its largest single donor followed by the European Commission. See: <http://www.unrwa.org/etemplate.php?id=64>

tightening of the closure in June 2007, but was exacerbated by it and reached a peaking of 85 percent at crisis points such as immediately after the Israeli offensive on Gaza in early 2009.⁸⁵ In the second half of 2009, 71 percent of the households were receiving aid.⁸⁶

The easing of import restriction through Israel in mid-2010 triggered a significant increase in the volume and variety of goods entering Gaza, as well as a decline in the prices of some products. Overall, in the second half of 2010, the monthly average of truckloads entering Gaza increased by 66 percent, compared to the first half, but represented just 35 percent of the equivalent figure during the first five months of 2007, before the imposition of the blockade. Moreover, the share of non-food items among all imports continued to be disproportionately low, ranging between 40 and 50 percent, compares to over 80 percent before the imposition of the closure.

Despite the improvement in the availability of consumer goods and some raw materials, the positive effect on the access of the population to sources of livelihood has remained limited. As a result, the majority of the population has continues to suffer from food insecurity and has remained critically dependent on food assistance. During the second half of 2010, the unemployment rate in Gaza decreased by less than two percentage points (from 39.3 to 37.4 percent) and the levels of food insecurity reduced only slight to 65 percent who were either food insecure (fifty-two percent) or vulnerable to food insecurity (additional thirteen percent).⁸⁷ The percentage of household expenditures devoted to food remained a very high 56 percent, and increased to 62 percent among food insecure households, signaling that food

⁸⁵ FAO, WFP, Report of the Rapid Qualitative Emergency Food Security Assessment (EFSA) Gaza Strip, February 24, 2009

⁸⁶ WFP, FAO, Socio-economic and food security survey report 2, November 2009.

⁸⁷ This slight drop in food insecurity levels compared to 2009 was attributed to the partial rehabilitation after Operation Cast Lead with massive support from international aid agencies. On the other hand, as a comprehensive food security survey done in 2010 showed, the prevalence of the population who were food secure has fallen from 24 to 19 percent over one year (between 2009 and 2010), suggesting that there is also a potential exhaustion of coping mechanisms for those who were better off. OCHA, "Easing the Blockade: Assessing the Humanitarian Impact on the Population of the Gaza Strip" (March 2011), pg. 5. The unemployment rate decreased to 28.7 percent in 2011 (http://www.gisha.org/UserFiles/File/publications/gaza_info/Info_Gaza_Eng.pdf), but "new job opportunities are mainly in low pay jobs, meaning that more people are finding work but earning less than during the pre-blockade period." FAO, URWA, WFP PCBS, Socio-Economic and Food Security Survey – oPt 2011, May 2012, p. 14 available at

<http://documents.wfp.org/stellent/groups/public/documents/ena/wfp249301.pdf>. This explains why although food insecurity rates decreased in the Gaza Strip since the relaxation of movement restrictions in 2010, they remain high compared to the West Bank. The level of food insecurity in the Gaza Strip decreased in 2011, but remains at high at a level of 44 percent food insecure, compared to 17 percent in the West Bank. Furthermore, the level of food security stayed more or less stagnant over the last three years and remains at around 23 percent, which means that despite some improvement in livelihood conditions, people have not been able to reach the food security threshold. See: FAO, URWA, WFP PCBS, Socio-Economic and Food Security Survey – oPt 2011, May 2012, p. 20 available at

<http://documents.wfp.org/stellent/groups/public/documents/ena/wfp249301.pdf>

insecure families spend the same amount of cash on food than before the change in access regime.⁸⁸ About three quarters of the Gaza population continued to depend on humanitarian food assistance.⁸⁹

Bearing all this in mind, the Flotilla incident can be seen as somewhat of a miss. Even though its proclaimed objective was the lifting of the closure of the Gaza Strip all together, it focused attention on the restrictions on imports and pushed aside restrictions on export and commerce with the West Bank, which is the broader, deeper issue, in terms of development and self-reliance. The easing of the blockade created the façade that the blockade is over,⁹⁰ while in fact it was not. In this sense, the flotilla indirectly facilitated the continuation of the closure rather than its termination. This experience show that the focus on food per se, i.e. its entry into Gaza, misses the bigger story of food security, which remains an issue even after restrictions on import of certain types of foods have been lifted.

It is clear that no major food crisis occurred in Gaza throughout the years of the closure despite of Israel's policy and not because of it.⁹¹ The Israeli closure policy from 2007 to 2010, as reflected by the "red lines document", allowed the deterioration of living condition and human lives in the Gaza Strip to the minimum it deemed necessary for the existence of the population.⁹² As the document states: "it is necessary to stabilize the humanitarian effort in order to prevent sub-nutrition."⁹³

As Adi Ophir poignantly framed it, Israel has been keeping the occupied Palestinian territory, and particularly the Gaza Strip, on "'the verge" of a humanitarian catastrophe", A term first used by the UN Special Rapporteur on the Right to Food⁹⁴, while insisting that it would go out of

⁸⁸ WFP, "Gaza:eased or un-eased?: Changes on Gaza Market and Household Conditions following Israel's 20 June 2010 New Access Regime" 8 (June, 2011), available at <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp236891.pdf>

⁸⁹ Ibid. Dependency on aid remains high till this day. In January 2013 it was reported that more than 70 percent of the population still receive humanitarian aid (http://www.gisha.org/UserFiles/File/publications/gaza_info/Info_Gaza_Eng.pdf). As the Director of UNRWA Gaza Operations Christer Nordahl said in an interview: "It would be so easy to reduce the number of aid recipients. It would just be a matter of lifting the blockade and so many jobs would crop up! For example in the construction sector: there are thousands of projects on hold, and people waiting for work in construction. The day the blockade is lifted the food aid dependency will fo down immediately..." Excerpt from an interview with the Director of UNRWA Gaza Operations Christer Nordahl, in Laila El-Haddad & Maggie Schmitt, *The Gaza Kitchen: A Palestinian Culinary Journey* 2012, p. 26.

⁹⁰ Feldman

⁹¹ Reference PHR report

⁹² Feldman at 72-73.

⁹³ Reference to Red Lines doc.

⁹⁴ The Right to Food, Report by Special Rapporteur, Jean Ziegler, Addendum: Mission to the Occupied Palestinian Territories, 31 October 2003, UN E/CN.4/2004/10/Add.2 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/164/89/PDF/G0316489.pdf?OpenElement>, paragraph 8.

its way, if necessary, to avoid crossing the threshold of catastrophe.⁹⁵ A manifestation of this policy can be seen by the quote attributed to Dov Weisglass, advisor to the Israeli Prime Minister who reportedly said “The idea is to put the Palestinians on a diet, but not to make them die of hunger.”⁹⁶ This point is crucial for the understanding the status of the OPT, and more significantly of post-disengagement Gaza. Throughout the years, we kept hearing the supposedly relaxing mantra that there is no hunger [starvation?] in Gaza, which as discussed below was repeated by the Turkel Commission [To add:Palmer]. But while the observation is correct, the implied conclusion – that the situation is legitimate and is tolerable – is wrong. This framing cooled down both internal and international criticism regarding the closure policy and kept down pressure, which would have been significantly heightened if the threshold of "hunger" or "a humanitarian crisis" was crossed. Unfortunately, this binary perception of catastrophe overlooks subtler elements of control and subordination which may be just as catastrophic for the local population. So while Israel exercised its power to cripple Gaza's economy and bring its residents to very edge of catastrophe, with soaring poverty rates and extremely high levels of nutrition insecurity, it insistently continued to argue that its policy fall within humanitarian law standards.⁹⁷ This argument was brought to the test with the establishment of the Public Commission to Examine the Maritime Incident of 31 May 2010, also known as the Turkel Commission,⁹⁸ which determined that the requirements of the law were satisfied given that there is no hunger in Gaza, but left the question regarding lack of food security open. Since the Turkel Report is to date the central legal analysis of the closure that took place in an Israeli quasi-judicial forum, it merits further discussion.

3. The Turkel Commission – “We did not want to hear about calories”

The Turkel Commission was mandated, among other things, to examine the adequacy of the naval blockade that was declared in January 2009 to international law standard. In its analysis of the flotilla incident and more broadly the naval blockade, the Turkel Commission relied on San Remo Manual on International Law Applicable to Armed Conflict at Sea,⁹⁹ a 1994 “codification” of customary law on the matter. The Commission cited to the requirements in the San Remo Manual that prohibit naval closure if its sole purpose is starvation of the civilian population (TBC)¹⁰⁰ and includes the requirements of proportionality, i.e. that the damage to

⁹⁵ Adi Ophir, find published version; in any case: <http://www.mara-stream.org/think-tank/adi-ophir-the-politics-of-catastrophization>.

⁹⁶ <http://www.guardian.co.uk/world/2006/apr/16/israel> Weisglass denied saying this: <http://www.ynetnews.com/articles/0,7340,L-3216790,00.html>

⁹⁷ Ophir, Feldman. See more generally on the role of humanitarianism as speaking the same language of the military David Kennedy, *The Dark Side of Virtue*, Chapter 8.

⁹⁸ Government decision number 1796 of June 14, 2010.

⁹⁹ Reference

¹⁰⁰ [para 36 citing to rule 102(a) – check]

civilians should not be exaggerated in relation to the concrete and direct *military advantage* expected from the closure.¹⁰¹ Thus, the party imposing the blockade must, subject to certain conditions, allow the free passage of food and other essential products, to the extent that the civilian population does not have proper supply of these products.¹⁰² The Commission accepted the possibility of dual purpose, noting that while the *naval* blockade's purpose was security at its foundation, it was considered by decision makers in Israel as part of a "dual strategy" of Israel towards the Hamas in Gaza, i.e. political purposes and not only military ones. [para 48: Para 50: TBC]. The Commission found that the Blockade fulfilled the conditions under international law, even if contrary to the San Remo Manual the blockade did not specify a time to its end,(para 59-60).

Addressing the humanitarian requirements in San Remo including those relating to food, The Commission noted that it was difficult to identify the humanitarian effect of the blockade as it was difficult to identify this effect separately from the effect of Israel's policy concerning the land passages to Gaza.¹⁰³ The Commission therefore examined the closure policy as a whole and the humanitarian situation in Gaza. Regarding Israel's policies on entry of goods into Gaza, the Commission noted that the policies were aimed at reaching two goals: a security goal, but also a strategic goal of "indirect economic warfare".¹⁰⁴ The Commission looked into the policy as it stood during the flotilla before June 2010 when the change [described above] took place.¹⁰⁵

The Commission noted that the information provided to it seemed at times to describe two very different concepts of reality: the picture portrayed by human rights and humanitarian groups was one of a real humanitarian crisis, while the Israeli government representatives denied such a crisis existed. The Commission cited to data from the UN, according to which 60.5% of households in Gaza suffer from lack of food security [TBC: check in original cited by Turkel in FN 219 OCHA document], defined as a situation whereby "people lack sustainable physical or economic access to adequate safe, nutritious and socially accepted food to maintain a healthy and productive life":¹⁰⁶ The Commission noted that this situation was described as a result of inflation in food prices, poverty, reduction of income sources and "erosion ... [TBC: find and cite to original – footnote 241 in Turkel].¹⁰⁷

¹⁰¹ Para 36 citing to rule 102(b) - check

¹⁰² Para 26 citing to rule 108 –check

¹⁰³ Para 62

¹⁰⁴ Para 67

¹⁰⁵ Para 66-68.

¹⁰⁶ Para 72, the definition is cited from OCHA in footnote 239 – cite to original

¹⁰⁷ Para 72

More generally the Commission cited to the information according to which more than a million people in Gaza live on humanitarian assistance, and to the assessment made by human rights and humanitarian groups, that Israel's prohibition on export from Gaza as well as strict restrictions on import, paralyzed the private sector, and thus the collapse of Gaza's economy is a result of Israel's naval blockade as well as its land passages policy.¹⁰⁸

The Israeli authorities described their policies on entry (and exit) of goods from Gaza, as guided by two considerations: implementation of the restrictions made by the Israeli government, while considering the need to allow the transfer of goods needed for the Palestinian population.¹⁰⁹ The decisions were made on a daily basis, with restrictions on the products allowed to enter into Gaza in the form of a list of "humanitarian products" who are allowed into Gaza.¹¹⁰

The Israeli authorities emphasized this model [expand] was a supportive one for control, and was not a model under which decisions were made about what enters Gaza. Regarding the arguments on lack of food security, the Israeli authorities argued that usually the requests submitted by the Palestinian Authority match the Israeli determinations about the needs of the population,¹¹¹ and also argued that there are gaps between the positions of humanitarian groups expressed in working meetings with the Israeli authorities on one hand, and their public statements on the other hand. It was emphasized that the population does not suffer from starvation.¹¹²

Analyzing these positions the Turkel Commission looked both at the San Remo rules mentioned above and Article 54(1) to AP1 to the Geneva Conventions, which prohibits starvation of civilians as a method of warfare.¹¹³ The commission determined that nothing in the materials before it indicated that Israel attempted to deny the Gazan population food, or to annihilate or weaken the Gazan population through hunger. It emphasized that the humanitarian and human rights groups themselves described the situation in Gaza as one of lack of food security, in the meaning of lack of physical and economic access to food sources, rather than hunger in the sense of intentional prevention of food with the purpose of weakening of annihilating the population.¹¹⁴ The Israeli policies were planned to prevent starvation, said the Commission,

¹⁰⁸ Para 72

¹⁰⁹ Based on formulas described in length above – reference to previous chapter

¹¹⁰ Reference to testimonies before the commission

¹¹¹ This of course completely ignores the chilling effect the closure had on Palestinian merchants, who gradually adapted their invites to Israel's restrictions – see above.

¹¹² Para 73

¹¹³ Para 75 Put full cite of article

¹¹⁴ Para 77

while noting lack of food security is different from hunger or from causing starvation.¹¹⁵ Regarding the duty in the San Remo Guide to provide for means necessary for the civilian population for its survival, which, in accordance with the Geneva Conventions should include food, the Commission was convinced that Israel allows the entry of means necessary for the population's survival.¹¹⁶ This determination was crucial to the Commission's conclusion that the Blockade did not violate the principal of proportionality discussed above in the suffering it caused the civilian population., which the Commission noted is mostly to be measured in terms of the prohibition on starvation of the population: thus the lack of hunger in Gaza was crucial in determining the proportionality of the blockade.¹¹⁷ But the Commission examined the proportionality not only in the context of the security purpose of the blockade, but also in the context of its role as part of Israel's economic warfare, noting that the restrictions on goods which do not have an effect on security, such as food, are part of this strategy.

The Commission noted that the restrictions on food are "especially worrying", both because of the unequivocal prohibition on starvation, but also because of the widespread effect they may have on the civilian population. The Commission noted that this brings up the questions of the possibility to restrict access to food products when these restrictions do not cause starvation, as well as the question of the length of the naval blockade.¹¹⁸ But given the Israeli supervision procedures which monitored the entry of goods, did not find a violation existed.¹¹⁹ The Commission's attitude to the question of restricted access to food and the use of a "humanitarian minimum" as a benchmark is also reflected in the Protocols from its discussions. During a testimony by Gisha, one of the members of the Commission, Prof. Miguel Deutsch, wanted to know what defines "nutritional security"[food security] and how it can be measured. To explain and exemplify, he referred to major general Dangot's presentation and said that he had spoken of a scale of calories, "1, 700 calories per day, or something of that order." Ambassador Merhav, another member of the Commission, interrupted and said: "no, no. He didn't talk about it. We didn't want to hear the word calories from him." Prof. Deutsch insisted that even though they didn't want to hear it, the fact is that they did.¹²⁰ References to calories or details on the humanitarian minimum standard were not found in the protocol of Dangot's public testimony, but they may have been given behind closed doors in the confidential part of his testimony or appeared in the documents he submitted later on. In any case, the commission did not come back to this point and did not mention it in its final report.

¹¹⁵ Para 78

¹¹⁶ Para 80.

¹¹⁷ Para 90.

¹¹⁸ Para 91

¹¹⁹ Para 94-97

¹²⁰ Protocol, pg. 140-141

It should also be noted that the Commission decided not to examine the issue from the perspective of human rights law, holding that most of the core issues of human rights were examined through the discussion of humanitarian law.¹²¹ We will discuss the significant of this below.

As Shany and Cohen note, the Turkel report analysis is far from satisfying:¹²² As they say, the Commission fails to explain how economic warfare could meet the criteria of “concrete and direct military advantage” specified in article 102(b) of the San Remo Manual.¹²³ Shany and Cohen's critique is restricted to the naval blockade, but is of course connected to the land-imposed closure. As they note: “while Israel may impose (proportional) economic sanctions against Hamas-controlled Gaza on the land, its ability to utilize a sea blockade to support such sanctions is limited to those restrictions which are needed to achieve a concrete and direct military advantage”. We would argue that the effect of “the land” sanctions must also be measured only in accordance with military advantage, and that allowing damage to individuals in the name of economic warfare opens the door to an attack on the welfare of the civilian population that should not be allowed both under the law of belligerent occupation and the law of armed conflict. The land closure and the maritime closure should be understood and scrutinized as part and parcel of the same policy. Limiting the legal evaluation of the naval blockade to the bounds of the San Remo provisions creates an artificial differentiation between “two closures” that is factually unfounded and legally flawed.¹²⁴ It should be recalled, as the Commission's report states, that Israel has controlled the land, sea, and air space of the Gaza Strip since it occupied Gaza in 1967¹²⁵ and the fact that it declared a “naval blockade” in January 2009 does not alter the fact that Israel has actually imposed a maritime closure on the Gaza Strip since 1967. The Oslo agreements left the IDF with control of the territorial waters,¹²⁶ and the maritime closure has been enforced consistently and continuously by Israel throughout its occupation of the Gaza Strip, including the period following the implementation of the “Disengagement Plan” in 2005. As the Commission's report notes, after the disengagement the IDF considered that the authorities coming from the law of belligerent occupation ended, and considered, in light of the “armed conflict” with the Hamas regime in Gaza to examine the IDF's actions in regard to the law of naval warfare.¹²⁷ Eventually the IDF declared the area near Gaza

¹²¹ Para 100.

¹²² Reference

¹²³ Ibid, at ...

¹²⁴ Tamar Feldman "A Tale of Two Closures: Comments on the Palmer Report Concerning the May 2010 Flotilla Incident", EJIL: Talk! (Sep. 20, 2011), *available at* <http://www.ejiltalk.org/a-tale-of-two-closures-comments-on-the-palmer-report-concerning-the-may-2010-flotilla-incident/>

¹²⁵ Turkel para 20

¹²⁶ Turkel para 21

¹²⁷ Turkel para 23

as “combat zone”,¹²⁸ and later during the 2009 military operations in Gaza imposed a naval blockade of Gaza, thus prohibiting the entry of any vessel which violates the blockade.¹²⁹ This declaration remained in force after the end of the Israeli operations in Gaza.¹³⁰ With a few isolated exceptions in 2008, Israel has never permitted vessels to enter or leave the territorial waters of the Gaza Strip,¹³¹ and it has also enforced significant restrictions on fishing activities along the Gaza coast, as mentioned above.¹³² Consider then that actually we can see how the Israeli control of Gaza’s water continued in this narrative since 1967, each time assuming new legal clothes. But like the Emperor’s New Clothes, the most recent legal form, now supposedly a blockade as part of armed conflict, masks the fact that the blockade is a continuation of Israeli control of Gaza’s territorial waters, which started in 1967, and is not marked by a break from it. It rather signifies the continuation of the Israeli control of Gaza post-disengagement, now dressed up in new clothes. Considered this way we would suggest that Israeli control of Gaza’s territorial waters should have been examined in light of its duties as occupier and not only through the framework of the law of armed conflict. While going into the details of the debate about the nature of Gaza post-disengagement, as occupied or not,¹³³ would be beyond the scope of this paper, we contend that at the least Israel has the duties of occupier wherever it continues to exercise power, and within this “functional approach” suggested by Gross¹³⁴ it certainly continues to have those duties in relations to the effects of the control it has of movement on certain rights. This can find support within the Bassiouni case itself which held that Israel continues to have obligations not only from the situation of belligerency and from the relationship created during the Israeli military rule, but also from the “degree of control exercised by the state of Israel over the border crossings between it and the Gaza Strip”¹³⁵. However as we shall discuss below, Israel’s duties regarding food security in Gaza also derive from international human rights law, applicable in this case regardless of the exact classification of the Israeli form of control over Gaza.

The closure of the territorial waters enabled Israel to manage its control of the land crossings as it wished and, accordingly, the consistent enforcement of the maritime closure does not imply that it is a separate and distinct tool. If anything, it undermines that the two are complementary instruments of the same policy. The International Red Cross has

¹²⁸ Turkel para 25

¹²⁹ Turkel para 26

¹³⁰ Turkel para 27

¹³¹

¹³² Reference to discussion above

¹³³ See for example for the position Gaza is still occupied Iain Scobbie, *An Intimate Disengagement: Israel’s withdrawal from Gaza, the Law of Occupation and of Self-Determination*, YIMEL (6-7?). FIND PUBLISHED VERSION, PAGES ETC, for the position that it is not Shany Faraway So Close

¹³⁴ Aeyal Gross in opinion juris, the gisha report, Aeyal Gross forthcoming book

¹³⁵ Bassiouni para 12.

established that this policy amounts to collective punishment, which is absolutely prohibited by international humanitarian law. Any enforcement of a blockade or maritime closure must be examined as part of this policy. If the overall policy fails to meet the requirement of proportionality, the maritime closure also fails to meet this requirement, regardless of how it is packaged.¹³⁶

The inability to separate between the naval and the land blockade is apparent in Shany and Cohen's discussion of the rejection by the Commission of the argument that the blockade amounted to prohibited collective punishment¹³⁷. They write: "It rather appears to us that parts of the economic warfare introduced by Israel – in particular, the restriction on the importation of "non-essential" food items, can only be understood as directed against the civilian population of Gaza (in the hope that the population's support of the Hamas will be eroded consequently)" and "So if indeed the maritime blockade and the land restrictions are interlinked, the latter's collective harm features could affect the legality of the former – again, to the extent that the application of the blockade exceeded the requirements of strict military necessity in order to support the more problematic aspects of the land restrictions." Indeed, the discussion of collective punishment and the interlinking they point to, illustrates that because of the effect on the civilian population, any distinction here between economic warfare and collective punishment collapses.¹³⁸

Unfortunately, the Palmer Report, commissioned by the UN Secretary-General following the Turkel Commission's report,¹³⁹ also embraced this distinction between the land closure and the naval blockade and addressed maritime closure as if it began only in January 2009.¹⁴⁰ For the examination of the legality of the naval blockade, the Committee relied on the San Remo Manual, much like the Turkel Commission, and determined that: first, the blockade was not intended to starve or collectively punish the civilian population but rather that it was imposed for military objectives (*compare with the Turkel Report, which stated that there was a dual purpose*) and, second, that it was proportionate in the circumstances.¹⁴¹ The Palmer Committee therefore concluded that "the naval blockade was imposed as a legitimate security measure in order to prevent weapons from entering Gaza by sea and its implementation complied with the

¹³⁶ A Tale of two closures

¹³⁷ Turkel Commission at

¹³⁸ <http://www.ejiltalk.org/the-turkel-commissions-flotilla-report-part-one-some-critical-remarks/> TBC [To add on the UN report and Yuval Shany's critique of it : <http://www.ejiltalk.org/know-your-rights-the-flotilla-report-and-international-law-governing-naval-blockades/>]

¹³⁹ Reference to letter of appointment and the report and explain that the findings of the committee are non-binding.

http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf

Report: http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf

¹⁴⁰ Palmer report, para. 70.

¹⁴¹ Palmer report, paras. 77-78.

requirements of international law."¹⁴² Notwithstanding, the Panel recommended that Israel keep the naval blockade under regular active review, in order to assess whether it continues to be necessary and proportionate.¹⁴³

The land closure and the humanitarian situation in the Gaza Strip were discussed separately in the last chapter of the report, entitled "How to Avoid Similar Incidents in the Future." There, the Panel noted that indeed "the situation in Gaza, including the humanitarian and human rights situation of the civilian population, was unsustainable, unacceptable and not in the interests of any of those concerned."¹⁴⁴ And directly linked this dire situation to the Israel's closure policy: "It is clear that the restrictions Israel has placed on goods and persons entering and leaving Gaza via the land crossings continue to be a significant cause of that situation."¹⁴⁵ Nevertheless, the report refrains from passing judgment on the legality of the land closure and instead commends the steps Israel took to ease the closure following the flotilla incident and encourages it to continue its efforts to ease its restrictions on movement with a view to lifting its closure."¹⁴⁶

Furthermore, the Palmer Committee opined that the land closure and its impact on the humanitarian situation in Gaza should not be calculated into the proportionality equation with regards to the naval blockade. The reports notes that the specific impact of the naval blockade on the civilian population in Gaza is difficult to gauge, given the overall closure on Gaza, but considers the absence of a commercial seaport in Gaza to be a determining factor in establishing that the naval blockade itself had a marginal impact, if any, on the humanitarian situation in Gaza.¹⁴⁷

Considering then these two reports - the Turkel Commission's report and the Palmer Committee's report – we can discern that both accepted the Israeli position that damage to civilians is allowed as long as it is proportional, and that given the lack of planned starvation or existence of hunger, the blockade did not violate international law. They did not make findings on food security, just noted the existence of arguments concerning food insecurity, and the existence of a general statement from Israeli authorities denying its existence and separating artificially between the land and naval blockade.

¹⁴² Palmer report, para. 82.

¹⁴³ Palmer, para. 150

¹⁴⁴ Palmer, para. 151

¹⁴⁵ *ibid*

¹⁴⁶ Palmer, para. 154-156

¹⁴⁷ Palmer, para. 78

Therefore, the separate evaluation of the naval blockade under the legal framework applicable to armed conflict at sea regrettably shifts the focus from "adequacy" to "catastrophe"; from "food insecurity" to "starvation", thus lowering the bar for assessment of the lawfulness of the closures in a way that, to a large extent, replicates Israel's "humanitarian minimum" approach.

4. Food security, food power and food sovereignty

Food security and the right to food

We wish then to introduce food security, the missing piece of the puzzle, into the analysis, as part of a broader human rights framework. We will consider food security in tandem with the right to food, agreeing it should in fact form a part of the right to food, or as "corollary" to it¹⁴⁸. After discussing this aspect and revisiting the relevant IHL provisions, we will introduce the frameworks of food power and food sovereignty into the discussion, seeing them as frameworks that need revision from their current articulation, but in revised forms to their prevalent use, as frameworks that can serve as complementary ones for our purposes to those of the right to food and food security, and can actually be integrated into the concept of the right to food.

The right to food is recognized in international law¹⁴⁹ as part of the right to a standard of living adequate for the health and well-being that everyone is entitled to under Article 25 Universal

¹⁴⁸ The UN Special Rapporteur on the Right to Food noted that food security is the corollary of the right to food. See *The Right to Food: Report by the Special Rapporteur on the right to food*, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10, 7 February 2001, UN E/CN.4/2001/53, paragraph 15, available at

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/110/35/PDF/G0111035.pdf?OpenElement>

¹⁴⁹ For a comprehensive discussion see Laura Niada, *Hunger and International Law: The Far-Reaching Scope of the Human Right to Food*, 22 Conn. J of Int'l Law 131 (2006); Flavio Luiz Schieck Valente and Ana Maria Suarez Franco, *Human Rights and the Struggle Against Hunger: Laws, Institutions, and Instruments in the Fight to Realize the Right to Adequate Food*, 13 Yale Human Rights and Development Law Journal, 435 (2010); George Kent, *Freedom From Want: The Human Right to Adequate Food*, (Georgetown UP2005) 45-59; Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 Columbia Journal of International Law 691 (2006). On the development of the right see also Fairbairn, *supra* note, at 19-21; Bart Wernaart, *The Plural Wells of the Right to Food*, in Otto Hospes & Irene Hadipray, *Governing Food Security: Law, Politics and the Right to Food* (2010) 43-79; Bernd van der Meulen, *The Freedom to Feed Oneself: Food in the Struggle for Paradigms in Human Rights Law*, in Otto Hospes & Irene Hadipray, *Governing Food Security: Law, Politics and the Right to Food* (2010) 81-104; Asbjorn Eide, *State Obligations for Human Rights: The Case of the Right to Food*, in Otto Hospes & Irene Hadipray, *Governing Food Security: Law, Politics and the Right to Food* (2010) 105-121. Jean Ziegler, Christophe Golay, Chalire Mahon & Sally-Anne Way, *The Fight for the Right to Food – Lessons Learned* (2011); Wench Barth Eide and Uwe Kracht, *The Right to Adequate Food in Human Rights Instruments: Legal Norms and Interpretations* in Wench Barth Eide and Uwe Kracht (eds) *Food and Human Rights in Development: Volume 1* (2005) 99-118. For a discussion on the right and ways for its fulfillment see Susan Randolph and Shareen Hertel, *The Right to Food: A Global Perspective*, 21-60 in Lanse Minkler, ed. *The State of Economic and Social Human Rights: A Global Overview* (2013). For recognition at the state level see Lidija KnOuth and Margret Vida, *Constitutional and Legal Protection of the Right to Food Around the World* (2011) available at <http://www.fao.org/righttofood/publications/publications-detail/en/c/80544/>. For a d discussion of the

Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESR).

The latter states in Article 11(1):

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”.

While Article 11 (2) states:

“2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

We can see then that the right to food as recognized in international human rights law is not confined to freedom from hunger (Article 11(2)) but also includes the broader right to “adequate food”.¹⁵⁰ As a matter of fact we should recall when addressing food security that indeed often crisis situation get more attention than widespread and persistent vulnerabilities

connection between the right to food and food security and the respective development of the concepts see Wench Barth Eide, From Food Security to the Right to Food, Interpretations in Wench Barth Eide and Uwe Kracht (eds) Food and Human Rights in Development: Volume 1 (2005) 67-97.

¹⁵⁰ On the relationship between the two parts of Article 11 ICESCR and on the limits of the freedom from hunger part, see Fairbairn, supra note xx, at 20

that effect food security.¹⁵¹ While people in hunger “look the part”, points out Carolan, malnourished individuals, whose diets are insufficient in certain essential micro-nutrients, don’t look the part, even if the result of malnutrition is a shortened life and reduced well-being.¹⁵² The words of the Director of UNRWA Gaza Operations resonate here, when he said: “Here you don’t see kids with blown up bellies... , here they are not starving. But if you do a little research on the medical side you will find that there is malnutrition and a very high prevalence of anemia which as to do with the diet...those who are keeping a very good household economy are eating, perhaps, one meal a day. Many families are eating every two days. But nobody is starving. Everybody is hungry, nobody is starving”.¹⁵³ From this perspective we can see how the situation of “on the verge of humanitarian disaster” discussed in the previous part is one where the part is not played, and the viewers - be they the courts of law or the courts of public opinion – are not alert as they would have been had the part been played.

It is important to recall in this context that the human rights standards apply, as is commonly accepted today, extraterritorially, i.e. states are bound by them not only within their territory but also when they act outside it.¹⁵⁴ In the context of armed conflict and occupation, human rights norm co-apply alongside IHL.¹⁵⁵ Regarding extraterritorial application, specifically the right to food has been interpreted to include state obligations to third countries concerning the right to adequate food based on a concept of shared responsibility.¹⁵⁶ As a matter of fact while

¹⁵¹ See McDonald, at 26

¹⁵² Carolan at 4.

¹⁵³ The Gaza Kitchen at 26.

¹⁵⁴ On the extraterritorial application of the right to food see Hauter, at 1092-1096; Narula, supra note xx, at 727-737 (expand). On extraterritorial application of human rights See Al-Skieni case, supra, paragraphs. See generally Marco Milanovic, *Extraterritorial Application of Human Rights Treaties* (2011). Malcolm Langford, Wouter Vandenhoe & Martin Scheinin (eds), *Global Justice, State Duties: The Extraterritorial Scope of Economic Social and Cultural Rights in International Law* (2012).

¹⁵⁵ This position has been taken by the International Court of Justice concerning Armed Conflict in General (Nuclear Weapons Advisory Opinion, paragraph...) and specifically concerning occupation (Wall Advisory Opinion, paragraphs 102-114; Case Concerning Armed Activities on the Territory of the Congo, Armed Activities case, paragraph 178). It has also been taken by the European Court of Justice in a few cases notably Al-Skieni v United Kingdom, paragraph.. and by the Israeli Supreme Court in a few cases, including HCJ 769/02 The Public Committee Against Torture in Israel v Government of Israel paragraph.... A Similar position was taken by the UN Treaty Bodies. For discussion and references see Orna Ben-Naftali and Yuval Shany, *Living in Denial: The Application of Human Rights in the Occupied Territories*, 27 *Israel Law Review* 17 (2003-2004); Noam Lubell, *Human Rights in Military Occupations*, 94 *IRRC* 317 (2012); Yutaka Arai-Takahshi, *The Law of Occupation: Continuity and Change of International Humanitarian Law* (2009) 399-547. The literature on this topic is extensive and these are but a few examples.

¹⁵⁶ See Loreto Ferrer Moreu, *Food Aid: How it Should be Done* in Olivier de Schutter and Katilin Y Cordes (eds), *Accounting for Hunger: The Right to Food in the Era of Globalization* (Oxford, Hart Publishing 2011) 239-264 at 241-242, and 246-247 where the FAO Voluntary Guidelines are discussed which include the duty to take positive action through international assistance to fulfill the right to food elsewhere.. On these duties see also Hauter *ibid*, Narula *ibid*.

the notion of international cooperation appears in the ICESCR as a general duty¹⁵⁷ the right to food is the only specific one to which a duty of “international co-operation” is attached.¹⁵⁸ However, in the context we are discussing, we should emphasize that the prevailing duties are obviously much more specific than those owed to third countries through the duty of international cooperation: The duties deriving from international law, both IHL and human rights law, are owed as a result of the continuing Israeli control of relevant aspects in regard to Gaza.¹⁵⁹

General Comment 12 issued by the UN Committee on Economic, Social and Cultural Rights as an interpretation of Article 11¹⁶⁰ notes that “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The *right to adequate food* shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.”¹⁶¹. Thus the understanding of the right to food in international law rejects the minimal approach which is manifested in the “red lines” document and in the “no starvation” position of the Turkel [And Palmer-TBD] Committee and indeed is corollary to food security: According to the General Comment, the core content of the right to adequate food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; and the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights¹⁶². As noted by the Committee, the notion of *sustainability* is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generation, and incorporates the notion of long-term availability and accessibility¹⁶³. (emphasis added).

“Food security” has been defined by the FAO, as adopted in the 1996 World Food Summit¹⁶⁴, in the following terms:

“Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to met their dietary needs and food preference for an active and healthy life”.¹⁶⁵

¹⁵⁷ Article 2(1)

¹⁵⁸ ICESCR Article 11.

¹⁵⁹ See Bassiouni case, Aeyal Functional Approach, Gisha reports.

¹⁶⁰ <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/3d02758c707031d58025677f003b73b9?Opendocument>

¹⁶¹ GC 12 para 6

¹⁶² GC12 paragraph 8

¹⁶³ GC 12 paragraph 7

¹⁶⁴ http://www.fao.org/wfs/index_en.htm

This definition was readopted in the 2009 World Food Summit, which declaration adds to the above a sentence pointing to the four pillars of food security: “The four pillars of food security are availability, access, utilization and stability. The nutritional dimension is integral to the concept of food security.”¹⁶⁶ The definition cited above incorporating the four pillars was reiterated in the FAO Voluntary Guidelines¹⁶⁷.

In Part 2 we showed how food security was violated, or rather “food insecurity” – i.e., the absence of food security,¹⁶⁸ created in Gaza. Food insecurity happens when a person has enough food to survive, but not more than that; when his food source comes from donations so that he is dependent upon aid; and when he does not have the possibility to choose food in accordance with his preferences.

The framework of food security rescues us not only from the limited discussion of whether hunger exists, but also from a perspective that measures the questions at stake from the dimension of whether there was enough food available at Gaza: as we have discussed in Part 2 food insecurity itself in Gaza is the result of broader policies and more of the general effects of economic pressure, rather than the restrictions on certain types of foods. From this perspective the Gaza story fits in with Sen’s famous observation that food insecurity is fundamentally an issue of buying power, not only of production or total supply of food: food insecure people suffering poverty cannot afford to purchase available food. While Sen’s observations were actually made in the context of starvation rather than food insecurity, they are relevant also to food security.¹⁶⁹ “Starvation”, noted Sen, “is the characteristic of some people not *having*

¹⁶⁵ World Food Summit Plan of Action, Article 1, <http://www.fao.org/docrep/003/w3613e/w3613e00.htm>, About the history of the term and previous definitions see FAO Policy Brief, June 2006, Issue 2, Food Security, “Changing Policy Concepts of Food Security” (page 1) at ftp://ftp.fao.org/es/ESA/policybriefs/pb_02.pdf; Simon Maxwell, Food Security: a post-modern perspective, Food Policy Vol 21 No 2, 155 (1996); Edward Carr, Postmodern Conceptualizations, Modernist Applications: Rethinking the role of society in food security, Food Policy 31 (2006) 14; Johan Pottier, The Anthropology of Food: The Social Dynamics of Food Security (1999) at 11-40.. For comprehensive analysis and the history of the concept see Bryan McDonald, Food Security (2010); For a critique of the directions the term took and suggestions to “reclaim” it see Michael Carolan, Reclaiming Food Security (2013).. For discussion of other definitions of food security, drawing g on the World Banks’s definition, see Daniel Maxwell & Keith Wiebe, Land Tenure and Food Security: A Review of Concepts, Evidence, and Methods, LTC Research paper 129, Land Tenure Center, University of Wisconsin-Madison, 1998 at 7-8.

¹⁶⁶ World Summit on Food Security, Declaration of the World Summit on Food Security, <ftp://ftp.fao.org/docrep/fao/Meeting/018/k6050e.pdf>

¹⁶⁷ Guideline 15.

¹⁶⁸ McDonald at 3..

¹⁶⁹ On food insecurity as stemming from unevenness in accessing food because of poverty or other social and political barriers such as war or ethnic conflict, rather than by insufficient amounts of food in the global food system, see McDonald, at 88. Accordingly malnutrition generally resulting not from lack of food in the community but from skewed distribution of available food, resulting from the fact that some people are too poor or two

enough food to eat” and not of there “*being*” not enough food to eat: it is about the relationship of the persons to food (rather than about food on its own),¹⁷⁰ and starvation is a function of entitlements and not of food availability as such.¹⁷¹ Food supply is only one influence among many in the totality of entitlements relations that governs whether a person will have the ability to acquire enough food to avoid starvation. and income and purchasing power are relevant as giving entitlement to food in most cases. But as Sen points out, starting the story with the shortage of income and of purchasing power, is to leave the tale half-told, as we should consider how come people did not have the income¹⁷² In our case it is clear that the occupation and closure play a major role in reducing people’s income and more generally their entitlements, in a way that effects their food security - no less, and probably more – than the question of the availability of food. Famines, noted Sen, and we suggest that food insecurity as well, should be viewed as *economic* disasters, not as just *food* crises.¹⁷³ What Sen calls “the entitlement approach” provides better analysis of food security than an approach that considers only if there is enough or not enough food in Gaza. Indeed Sen points to how an approach that considers food availability rather than entitlements has lead to disasters policy failures.¹⁷⁴ As the authors of “The Gaza Kitchen” cookbook point out “[w]ell-intentioned activists representations of Gaza as starving and tattered because goods do not enter are false. Which is not to say that a large part of Gaza is not tattered and suffering malnutrition, but this is a question of poverty and distribution.”¹⁷⁵

Accordingly, as it has been argued that to successfully combat hunger, we must not focus only on improving supply, and see it as a question of supply and demand, [TBC] but rather take as a departure point an identification of the obstacles faced by those who are victims of hunger, with hunger being primarily a problem of lack of access to productive sources or insufficient safety nets,¹⁷⁶ the same analysis should be applies to food insecurity. Indeed in our context Gazan economist Omar Shaban argued that it wasn’t so the absence of products that was the

powerless to make an adequate claim on the food that is available. George Kent, *Freedom From Want: The Human Right to Adequate Food* (Georgetown University Press, 2005) at 21.

¹⁷⁰ Amartya Sen, *Poverty and Famines; An Essay on Entitlement and Deprivation* (1981). Sen points to the way a person’s ability to avoid starvation depends both on his ownership and on the exchange entitlement mapping that he faces. *Ibid* at 4.

¹⁷¹ *Ibid* at 7.

¹⁷² *Ibid* at 155-156.

¹⁷³ *Ibid* at 162

¹⁷⁴ *Ibid* at 162. See for discussion of Sen’s position and of researchers that support Sen’s approach David Castle, Keith Culver and William Hannah, *Scenarios for Food Security*, In David Kaplan (ed), *The Philosophy of Food* (University of California Press, Berkeley 2012) 250-268 at 254-256.

¹⁷⁵ *Gaza Kitchen* at 95.

¹⁷⁶ See Olivier de Schutter and Katilin Y Cordes, *Accounting for Hunger: An Introduction to the Issues*, in Olivier de Schutter and Katilin Y Cordes (eds), *Accounting for Hunger: The Right to Food in the Era of Globalization* (Oxford, Hart Publishing 2011) 1-24 at 6-7

problem, but rather the people's inability to buy them. In his words, "It doesn't matter how many varieties of sodas there are. What matters is people can't buy them"¹⁷⁷. More generally, to understand food security it is clear that we have to focus, as the Gaza case shows, on not only food per se, but rather, at economic, social, political and other interwoven relations.¹⁷⁸ As in many other cases, the way food security in the Gaza case was often addressed, both in the Israeli position that there is enough supply and in the Israeli documents dealing with enough supply, but also in what the flotilla, aiming to bring goods to Gaza, symbolized, has been to tackle issues of supply – which can be seen leaving largely untouched issues of demand, e.g. improving incomes and employment opportunities.¹⁷⁹ Food security, Michael Carolan noted, is about more than just food. It's not a thing you can just "have"¹⁸⁰ but rather a process [that makes people (and the planet) better off.]¹⁸¹

A food security perspective helps in exposing another problematic aspect of the Israeli position, as reflected in the "red line" document but also in the position, upheld by the Turkel Commission that there is no "hunger" in Gaza: Food security, has been adequately described as including the *adequacy* of the food supply as determined by nutritional adequacy, food safety and quality, and cultural acceptability along with the *stability of the food supply and access* as determined by environmental sustainability and social sustainability.¹⁸² Both adequacy, cultural acceptance which relates to the notion of preference, and stability are of special relevance here. When it comes to adequacy, as Michael Carolan notes food security should not be "calorized", i.e. be only about a number of calories – rather the "calorie-ization" of food security in his words reduces food to quantities terms, at the expense of things like culture, tastes and local socio-ecological conditions,¹⁸³ and food security has to be viewed through what he calls a "*through food*" lens, where human well-being is the end measured and not calories per capita.¹⁸⁴ All of these aspects of food security are not caught in the position that counts calories and checks if hunger exists or not.

Regarding cultural acceptance, dependence on aid agencies created because of the closure leads to dietary changes: for example, these agencies distribute more white flour and less of the traditional grains like frika (green wheat), burghul and barley, so the reliance on donor

¹⁷⁷ The Gaza Kitchen page 95

¹⁷⁸ See Pottier, at 27.

¹⁷⁹ On the solution to food security as mistakenly [?] tackling supply rather than demand see Carolan at 44.

¹⁸⁰ Carolan at 155

¹⁸¹ Carolan at 142.

¹⁸² Eide, cited in Lawrence, Chan and Goodman, : Poverty, Food Security, and the Right to Health, 15 Geo. J. Poverty Law & Pol'y 583

¹⁸³ Carolan at 13

¹⁸⁴ Carolan at 4.

agencies almost entirely eliminated these nutritive grains from the Gazan diet.¹⁸⁵ This clearly affects nutrition but not less importantly only a food security analysis, as opposed to a humanitarian minimum approach, captures this as a violation of food security which includes preference and cultural elements, similar to the example of white v. red tahini discussed above. We can see here then an additionally component of food security which is effected alongside the effect on buying power by the availability, or lack thereof, of certain products.¹⁸⁶ As to the requirement of stability, these requirements points to another relevant contribution of the food security framework, which considers anticipated conditions which will guarantee the stability of the food supply and access.. George Kent points to the need to distinguish between “status” and “security”: *security* means freedom from fear or harm, and refers to anticipated conditions, whereas *status* refers to current conditions.¹⁸⁷ The distinction, notes Kent, is particularly useful when assessing different kinds of interventions intended to respond to nutrition problems: feeding programs may be helpful to improve people’s current nutrition status, but they do nothing to improve their nutrition security¹⁸⁸, as they respond to symptoms rather than to the underlying sources of the problem, and actually may weaken nutrition security if people become depended on them and sustain problems rather than end them. Thus, improving nutrition security would require a change in institutional arrangements that will have effects in the long run¹⁸⁹.

This distinction is useful if we consider the role of humanitarian assistance in Gaza: this assistance may address the food and nutrition *status* issue, but not the food and nutrition *security*. Indeed, the dependency on aid, as well as the arbitrary nature and changes in policy

¹⁸⁵ The Gaza Kitchen, page 56,

¹⁸⁶ It is not only the availability of food itself that effects what’s on the table: electricity cuts make refrigeration in Gaza unreliable, leading to proliferation of old conservation techniques, and lack of gas leads to return to clay ovens which have been abandoned. Laila Al-Khadad and Maggie Schmitt describe these processes in their book The Gaza Kitchen as ones that create “forced self-reliance” The Gaza Kitchen page 24. On cooking gas shortage see “Israeli Imposed Restrictions Punish the People of Gaza”, PNN, 27 June 2013 <http://english.pnn.ps/index.php/human-rights/5051-%E2%80%99Cisraeli-imposed-restrictions-punish-the-people-of-gaza%E2%80%9D>

¹⁸⁷ Kent thus prefers the term “food *inadequacy*” over “food *insecurity*” to describe the conditions of inadequate food supplies when assessing conditions that are current at a given point of time, rather than conditions anticipated from that moment in time. Kent at 21-23. Kent also points to food status as being only one factor, albeit a major one, determining nutrition status, and suggest addressing “nutrition security”. “*Nutrition Security*” has been defined as “the appropriate quantity and combinations of inputs such as food, nutrition and health services, and caretaker’s time needed to ensure and active and healthy life at all times for all people”, with food security being a necessary but not a sufficient condition for nutrition security. Lawrence Haddad, Eileen Kennedy and Joan Sullivan, Choice of Indicators for food security and nutrition monitoring, Food Policy 19(3) 329 (1994) at 329-330. For a discussion of the significance see Kent at 21-22. For comprehensive discussion of food security, nutrition security, and human rights as a normative basis for both see Arne Oshaug, Wenche Barth Eide and Asbjorn Eide, Human Rights: A Normative basis of food and nutrition-relevant policies, 19 Food Policy (1994) 491.

¹⁸⁸ For the use of the term “nutrition security” as broader than food security see supra note xx.

¹⁸⁹ Kent at 21-23

and the fact that Israel enjoys the power to make these decisions, attests to the *lack* of food and nutrition security, (food insecurity), even regarding individuals whose food and nutrition status at a certain time may seem adequate. While discussing the issue of aid to Gaza and its residents in detail is beyond the scope of this paper, we should point to the point, well made in the Rome Declaration, that food aid should not stand as a substitute for long term strategies aimed for food security, but rather has to be directed toward rehabilitation and development, and to create capacities to satisfy future needs.¹⁹⁰ Food aid, say the Voluntary Guidelines issues by the FAO, should be provided with a clear exit strategy and avoid the creation of dependency.¹⁹¹ The case of Gaza seems one of the cases where in reality food aid has been eschewed as an instrument to address the root causes of food insecurity and advance sustainable development.¹⁹²

IHL

We have seen then how the framework of food security and the right to food releases us from the limited framework that only examines whether hunger exists or not; that checks supply rather than demand and counts calories, all deficient measures to determine food security, and that may check status but miss on the “security” in food security, that is violated when food supply is depended on aid. This focus on human rights comes should come in addition to the perspective of IHL, including, as discussed above, that of the law of occupation. Of special relevance is Article 55 of the Fourth Geneva Convention which determines : “To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.”. We can see that like Article 12 of the ICESCR Article 55 of the Fourth Geneva Convention also uses the standard of “adequacy.”¹⁹³ The IHL duties including the occupier’s duty to ensure food supplies of the population¹⁹⁴ were reiterated in the FAO Voluntary Guidelines.¹⁹⁵

¹⁹⁰ Rome Declaration on World Food Security, <http://www.fao.org/docrep/003/w3613e/w3613e00.htm> For a discussion of this element see Moreu at 245. In the context of Gaza on the limit of food rations given as aid see The Gaza Kitchen, at 34.

¹⁹¹ See Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, FAO 2005, <http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm>, Guideline 15 determines that food aid should be provided with a clear exit strategy and avoid the creation of dependency. For a discussion se Moreu at 246-247.

¹⁹² For a discussion of this use of food aid see Moreu at 249-250.

¹⁹³ See also Article 59 paragraph 1 of the Fourth Geneva Convention which determines that if the whole or part of the population of an occupied territory is “inadequately supplied”, then the occupying power has the duty to agree to relief schemes on behalf of the population and shall facilitate them by all the means at its disposal. For a discussion of the relevant provisions see Pejic 1104-1105. Another provision of relevance to food in IHL include Article 23 of the Fourth Geneva Convention (the duty to all for the free passage and consignment of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases). See Pejic 1102-1103. This narrower article is not specific to situations of occupation where the broader provisions of Articles 55 and 59 would apply. Additional provisions relevant to relief action of basic needs in occupied territories

While we have pointed generally in this article to how food security as the corollary of human right can offer a better framework to analyze the Gaza situation and release us from the “humanitarian minimum” analysis that international humanitarian law, as captured by the Turkel Committee, can limit us to, we can see thus that there is also a correlative duty for “adequate food” when it comes to occupiers. Also, it has been argued that actually IHL has some features which make it “stronger” than human right law in regard to the right to food, notably that it contains specific and detailed rules to the parties to armed conflict, which are to be implemented immediately (unlike the “progressive realization” framework of the ICESCR), and cannot be derogated from.¹⁹⁶ While indeed the IHL provisions offer some concrete duties, as we have seen in some respects the human rights and food security framework may be broader. This is especially relevant when considering the relevant clauses in IHL deal with prevention of starvation of individuals as a method of warfare¹⁹⁷: even if as Pejic notes¹⁹⁸ these provision apply not only to starvation leading to death but also to any situation of population suffering from hunger [TBC], they still shift, as we have seen in Part 3, the discussion to a narrower framework from that of human rights and of food security.¹⁹⁹

Food power

When considering the role of aid, we have to look at it in tandem with addressing the effect of the Israeli power on food. In doing so one should consider that the Israeli policies, which have the effects on food security discussed throughout the article, are thus a troubling exercise of *food power*. While this term has usually been used to describe situations where governments

appear in Article 68-71 of Additional Protocol 1 to the Geneva Conventions, to which Israel is not a party. See Pejic 1103-4. There are parallel provisions in Article 18 of the Second Protocol Additional to the Geneva Conventions which is applicable in non-international armed conflicts, and to which Israel is also not a party. For an overview of the provisions regarding the right to food in international humanitarian – as well as international human rights – law, see George Kent, *Food Is a Human Right*, June 13 2004.; on the humanitarian law provisions see in detail Jelena Pejic, *The Right to Food in Situations of Armed Conflict: The Legal Framework*, 83 IRRC 1097 (2001) , also Narula, *supra* note xx at 782-784

¹⁹⁴ Guidelines 16.2, and 16.3

¹⁹⁵ Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, Adopted by the 127 Session of the FAO Council, November 2004, FAO <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e.pdf>

¹⁹⁶ Jelena Pejic, *The Right to Food in Situations of Armed Conflict: The Legal Framework*, 83 IRRC 1097 (2001) at 1097-1098.

¹⁹⁷ AP1 Art 54(1); AP 2 Art 14, discussed by Pejic *supra* at 1099

¹⁹⁸ Pejic at 1099

¹⁹⁹ For the argument that the application of human rights law in occupation in addition to IHL can show that the occupier’s obligations in term of the right to food are not limited to the minimum defined by IHL and must be viewed from a perspective which encompasses the complementary contribution made by human rights see . Sylvian Vite, *The Interrelation of the law of occupation and economic social and cultural rights: the examples of food, health and property*, 90 IRRC 629 (2008) at 642. For the relationship between human rights and IHL examining how human rights actually may sometime undermine protections guaranteed by IHL, see Aeyal Gross, *Human Proportions: Are Human Rights the Emperor’s New Clothes of the Law of Occupation*, 18 EJIL (2007) 35.

seek a coercive advantage by manipulating the volume and timing of their food exports, such as by imposing a selective embargo on food exports in hopes of punishing a target country or coercing a policy change²⁰⁰, it may be applicable to the case of the Israeli closure of Gaza, as restrictions on entry of food into Gaza (from various sources, not only from Israel), and imposing selective embargo on food imports into Gaza, as part of the more general closure, was done in this case in the hopes of punishing the population and trying to weaken the Hamas regime, and to coerce changes concerning the Hamas regime, the firing of rockets, and the release of Gilad Shalit. This type of exercise of food power is in fact prohibited by international law as interpreted by the Committee on Economic Social and Cultural Rights in GC 12.

In order to consider this we should recall that the right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to *respect*, to *protect* and to *fulfill*. In turn, the obligation to *fulfill* incorporates both an obligation to *facilitate* and an obligation to *provide*: “The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfill (facilitate)* means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfill (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters”.²⁰¹

The obligation to fulfill [respect TBD] is especially relevant to a determination, appearing in General Comment 12 on the right to food holding that “*States parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure*”.²⁰² The duty to abstain from using food as a means of political and economic pressure is reiterated in the FAO Voluntary Guidelines.²⁰³ General Comment 12 also determines that “*States parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries.*

²⁰⁰ Robert Paarlberg, Food Politics, - What Everyone Needs to Know, at 77-80

²⁰¹ GC 12 para 15

²⁰² GC 12 para 37 Additionally, the GC (or guidelines determines that that “States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.” Paragraph 36.

²⁰³ GC 12 para 36

Food should never be used as an instrument of political and economic pressure".²⁰⁴ This in addition to the determination that *"States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required."*²⁰⁵

The concept of food power which as we can see is in fact prohibited by current norms, is considered by many an outdated and failed one: Robert Paarlberg argues that governments seldom manipulate food exports in search of a coercive advantage, because markets for food tend to provide little coercive leverage to exporters, because food is a renewable resource that most countries can and do produce for themselves or can begin to produce²⁰⁶. Margaret Doxey in her discussion of food power similarly argues that agricultural products do not fulfill the conditions necessary for effective embargoes, as a variety of staples exist which can be substituted for each other and most countries have some food growing capacity.²⁰⁷ However, in the case of Israel and Gaza, unlike in the case of food power used by an exporting country which withholds the export of certain kinds of foodstuff, (such as for example the US partial embargo on grain exports to the Soviet Union following the invasion of Afghanistan)²⁰⁸ we see a situation where because of the Israeli control of most of the entry and exit into Gaza (with the exception of the Rafah crossing and of smuggling through the tunnels), and also given the limited possibility to produce all the required foods in Gaza, The coercive power is much stronger: it was a weekly meeting of Israeli army officials where it was decided that certain foodstuff (e.g. bananas and apple) are essential food stuff which should be allowed into Gaza, while other (e.g. apricot and grapes) are not²⁰⁹. Indeed, the Gaza case illustrates the limits of the current discourse on food power and the need to articulate a broader understanding of the term to incorporate such situations and revive the analysis of the use of food as power.

Addressing food power, and the use of food as a weapon, which is only one of other possible cases where an economic commodity is turned into a weapon, Peter Wallenstein noted that as economic commodities are essential to maintain life and give life a material form, if "effectively used" economic commodities can be as disastrous to human life as military weapons, with food

²⁰⁴ GC 12 para 37

²⁰⁵ GC 12 para 36

²⁰⁶ Ibid at 80

²⁰⁷ Margaret Doxey, *Oil and Food as International Sanctions*, 36 Int'l J. 311 1980 at 326. Doxey however points out that food can be used as a "weapon" also through embargoes on the purchase of exports of primary produce from targets of pressure, in a way that is designed to reduce foreign-exchange earnings and produce economic hardship: they do not select food or food products because of their intrinsic character but because of their importance in the foreign trade of the target. Ibid at 328. While Israel did not block the export of food or specific foods from Gaza, it is indeed the general blockade with its economic effects creating hardship that as we discuss in the text effected food security more than any items missing on the supply side.

²⁰⁸ Ibid at 78-79

²⁰⁹ Feldman at 133

having a particular role in this connection, and they can also achieve other targets that weapons aim to achieve, i.e. to punish enemies and reward friends. “The siege of a city is far less dramatic”, Wallenstein notes, “than an attack on it”, with the economic means working through long-term and indirect effects²¹⁰.

But food is not only an economic commodity, and this is another area dimension where the discussion of food power should be expanded. Not only because of its essentiality to life, but also because of its significance to our existence as humans: to our cultural experience, our family life, our pleasures and our bodies.

Food power thus should be redefined from its traditional limited understanding, as “the manipulation of international food transfers in the effective pursuit of discrete diplomatic goals”²¹¹ and thus as a failed concept, to encompass also the manipulation of food transfers as means of warfare, punishment and humiliation of civilian population.

“Food should not be used as an instrument for political and economic pressure”, stated the Rome Declaration on World Food Security, which further reaffirmed “the necessity of refraining from unilateral measures not in accordance with the international law and the Charter of the United Nations and that endanger food security”.²¹² These principles were violated by the restrictions on food put by Israel, even if these restrictions were only a component in the broader violation of food security. An analysis of the exercise of food power by Israel regarding Gaza also points to the transformation (rather than the end) of Israeli control of Gaza post-disengagements: food power allowed Israel to arbitrarily determine the entry and exit of food, and to control the life and body of Gaza’s residents. Thus the food power framework in a broader context points to the new forms of post-disengagement control that Israel exercises in Gaza, and how this transformed control aims to release it from its responsibility to ensure food

²¹⁰ See Peter Wallenstein, *Scarce Goods as Political Weapons: The Case of Food*, *Journal of Peace Research* Vol 13: 277 (1976) Wallenstein points to four factors which create the structural conditions for applying economic commodities as means of influence: scarcity; supply concentration; demand dispersion and action independence. While he articulates and analyzes these factors from the perspective of export restrictions, rather than food power used in other contexts such as the warfare contexts he alludes to himself, they can be used *mutatis mutandis* to situations such as the ones in Gaza. See also on use of food power as weapon Robert Paarlberg, *Food as an Instrument of Foreign Policy*, *Proceedings of the Academy of Political Science*, Vol 34 No 3, *Food Policy and Farm Programs* (1982), 25.

²¹¹ Robert Paarlberg, *The Failure of Food power*, *Policy Studies Journal*, Volume 6 Issue 4 p 537 (1978)

²¹² <http://www.fao.org/docrep/003/w3613e/w3613e00.htm>. Philip Alston also discussed the use of food sanctions as something that has been frowned upon and points to the duty to cooperate and specific provisions in Article 11 of the ICESR which support the view that there is a general duty not to use foods as an international sanction. Philip Alston, *International Law and the Human Right to Food*, 9-68 at 45-46 in Philip Alston and K. Tomasevski (ed) *The Right to Food*(1984). Alston’s text precedes the existing more specific prohibitions on such measures in the general comment and the FAO documents cited above.

security, and reduces its obligations as interpreted by the Israeli government (as well as the Turkel committee, and the Israeli Supreme Court²¹³) to the bare minimum. Whether we examine this from a perspective of the exercise of “bio-power”²¹⁴ or the neglect of the Palestinian population to “bare life”²¹⁵, it points to the need to reject this model of control as a legitimate one under international law.

Food sovereignty

The third and final framework we would like to introduce into the discussion, is that of food sovereignty, which may be seen as the antithesis of the exercise of food power by others: Israel’s policies denied the rights of the residents of Gaza to enjoy food sovereignty,

The idea of “food sovereignty” emerged in the context of globalization, with the alliance La Via Campesina proposing it as a policy paradigm, which starts with the concept of the right to food, but goes further arguing there is a corollary right to land and a “right to produce” for rural peoples. The term entered the discourse in the Via Campesina Declaration on Food Sovereignty 1996 where it was stated that the right to food can only be realized in a system where food sovereignty is guaranteed, with *food sovereignty* defined as “the right of each nation to maintain and develop its own capacity to produce its basic foods respecting cultural and productive diversity”, including the right to ‘produce our own food in our own territory”, with food sovereignty declared as “a precondition to food security”²¹⁶ Food sovereignty has been

²¹³ In the context of fuel – the Bassiouni case

²¹⁴ Foucault as used by Fedman ADD

²¹⁵ To borrow from Agamben, see *Homo Sacer*.

²¹⁶ Available <http://www.connexions.org/CxLibrary/CX8459.htm>. The United Nations Special Rapporteur on the Right to Food noted the development of the strategy of food sovereignty as « an alternative vision that puts food security first », See Report of the Special Rapporteur on the right to food, Jean Ziegler, 10 January 2008, UN A/HRC/7/5 availability at

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/100/98/PDF/G0810098.pdf?OpenElement>, paragraphs 71-75 ; Report of the Special Rapporteur on the right to food, Jean Ziegler, 9 February 2004, UN E/CN.4/2004/10 available at

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/107/77/PDF/G0410777.pdf?OpenElement>, paragraphs 24-34

For a discussion of “food sovereignty” see Grain, *Food Sovereignty: Turning the Global Food System Upside Down, Seeding* – April 2005, <http://www.grain.org/article/entries/491-food-sovereignty-turning-the-global-food-system-upside-down> ; On the idea of “food sovereignty” and its development see also Wayne Roberts, *The No-Nonsense Guide to World Food* (NI&BTL, 2008) 52-58

For a discussion of the relationship between the “right to food”, “food security” and “food sovereignty” see Maggie Ellinger-Locke, *Food Sovereignty Is a Gendered Issue*, 18 *Buff. Envtl. L.J.* 157 (2010-2011) 175-184, citing to Raj Patel who argues that food sovereignty adds the dimension of control and power lacking in the idea of food security. See *Dig In!* Raj Patel *On Food Sovereignty and Women Rights*

Raj Patel, http://www.youtube.com/watch?v=cl_F9n_c4yY; On the connection between the three see also James Thuo Gathii, *Food Sovereignty for Poor Countries in the Global Trading System*, 57 *Loy. L. Rev.* 509 (2011) at 529-536; Wenonah Hauter, *The Limits of International Human Rights Law and the Role of Food Sovereignty in Protecting People from Further Trade Liberalization Under the Doha Round Negotiation*, 40 *Vand. J. Transnat’L* 1071 (2007) a 1083-1099; Madeleine Fairbairn, *Framing Resistance: International Food Regimes and the Roots of*

described as both a reaction to and an intellectual offspring of the earlier concepts of the “right to food” and “food security”,²¹⁷ but while Madeleine Fairbairn points to the way it emerged from a “grass roots” movement which rejected the way the concept of “food security” was framed by the global political elite within the neo-liberal framework and not as a challenge to it²¹⁸, we consider and use the concepts as complementary rather than contrasting, and see food sovereignty, in a revised form, as potentially adding a layer of analysis required to achieve food security.

While there has been revisions and further definitions to the notion,²¹⁹ for our purpose it’s important to note that food sovereignty argues that feeding a nation’s people is an issue of sovereignty: it is about the right of nations and peoples to control their own food systems, including their own markets, production modes, food cultures and environments.²²⁰ The idea was developed based on the notion that if the population of a country must depend for their next meal on global economy, on the goodwill of a superpower not to use food as a weapon, or the unpredictability of shipping, then that country is not secure neither in the sense of national security or of food security. It has thus been argued that food sovereignty goes beyond the concept of food security, which says nothing about where food comes from or how it should be

Food Sovereignty in Hannah Wittman, Anette Aurelie Desmarais & Nettie Wiebe (eds), *Food Sovereignty: Reconnecting Food, Nature and Community*, (2010) 15-32; ; Raj Patel, *What Does Food Sovereignty Look Like*, in Hannah Wittman, Anette Aurelie Desmarais & Nettie Wiebe (eds), *Food Sovereignty: Reconnecting Food, Nature and Community*, (2010) 186-196. William Schanbacher, *The Politics of Food: The Global Conflict between Food Security and Food Sovereignty*, (2010). While Schanbacher sees food security and food sovereignty as being in fundamental antagonism about the way hunger and malnutrition are conceived (ibid at ix), as discussed in the text we consider the two frameworks as potentially complementary rather than contrasting.

²¹⁷ Fairbairn supra at 15

²¹⁸ Ibid at 26-31.

²¹⁹ See ” see Michael Windfuhr and Jennie Jonson, *Food Sovereignty: Toward Democracy in Localized Food Systems*’ (ITDG Publishing & FIAN, 2005) available at <http://www.ukabc.org/foodsovpaper.htm> at 11-17; Raj Patel, *What does Food Sovereignty Look Like*, 36 *The Journal of Peasant Studies* 663 (2009). Notably later definitions incorporated an understanding of food sovereignty as also an individual right. The Declaration of Nyéléni, adopted by the Forum for Food Sovereignty in *Sélingué, Mali* in 2007 defined “food sovereignty” as “the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems”.. Declaration of Nyeleni, 2007, available at <http://www.nyeleni.org/IMG/pdf/DeclNyeleni-en.pdf>. For our purposes this definition may be too narrow as it does not put a strong enough emphasis on the freedom from the use of food as a weapon and food power, but also too broad in its emphasis on ecologically sound and sustainable methods, which as important as they are, may be of less relevance in situations such as that of Gaza, where the essential need of food sovereignty is the more basic need of allowing the Palestinian population to take control of its food system. However as discussed in the text below the Declaration did mention the need to fight against occupations and economic blockades – relevant notions for our purpose.

²²⁰ Hannah Wittman, Anette Aurelie Desmarais & Nettie Wiebe, *The Origins & Potential of Food Sovereignty*, in Hannah Wittman, Anette Aurelie Desmarais & Nettie Wiebe (eds), *Food Sovereignty: Reconnecting Food, Nature and Community*, (2010) 1-14.

produced.²²¹ But while the emphasis in the development of the concept of food sovereignty was on the idea that people, rather than corporate monopolies, make the decisions regarding food,²²² our case study case illustrates the limits of the current food sovereignty discourse, and the need to revise and expand this notion, to guarantee that people will have the sovereignty to make the decisions regarding food, as mentioned above not dependent on the goodwill of another power, (not only a super power but just any other controlling country), which may exercise food power and use food as a weapon. In this regard Israel's denial of food sovereignty from Gaza undermines the Israeli argument that it has relinquished control over Gaza and is not bound any more by the duties of an occupying power: In Israel's eyes it no longer occupies Gaza, but then, nor is Gaza actually allowed to exercise food, as well as other forms, of sovereignty, by itself or as part of Palestine as a whole.

An important declaration on food sovereignty from 2007, the Nyeleni declaration, actually mentioned that the fight for food sovereignty should include the fight against inter alia occupations and economic blockades,²²³ While this is of relevance to our case study, the Gaza case also illustrates that the right to produce its own food in its own territory on which much focus is put in the food sovereignty movement, may not always be the only means to exercise food sovereignty: it may be more important to put the emphasis on the right to exercise sovereignty regarding both the growing and the importing of food. The ability to grow your own food may not be enough to guarantee food security, especially, but not only, where food power is exercised of the sort discussed here. So to the extent that food sovereignty is a "much deeper concept than food security because it proposes not just guaranteed access to food, but democratic control over the food system",²²⁴ and is about self-determination including

²²¹ Fred Magdoff and Brian Tokar. *Agriculture and Food in Crisis: Conflict, Resistance, and Renewal* (Monthly Review Press 2010) 191-192.

²²² Magdoff and Tokar at 212

²²³ Declaration of Nyeleni, supra note. A statement by one of the delegations is on point: it said: "Food sovereignty is more than a right; in order to be able to apply policies that allow autonomy in food production it is necessary to have political conditions that exercise autonomy in all the territorial spaces: countries, regions, cities and rural communities. Food sovereignty is only possible if it takes place at the same time as political sovereignty of people". Cited in, Nyeleni 2007: Forum for Food Sovereignty available at

www.foei.org/en/resources/publications/nyeleni-forum-for-food-sovereignty page 16

²²⁴ Magdoff and Tokar at 212. For a comprehensive discussion of the ideas of "food security" and "food sovereignty" as well as of "food enterprise" and "food justice" and how they relate to each other, see Eric Holt Gimenez and Annie Shattuck, *Food Crises, Food Regimes and Food Movements: Rumbly of Reform or Tides of Transformation*, *Journal of Peasant Studies*, 38:1 (2011) 109, 115-131; Eric Holt Gimenez, *Food Security, Food Justice or Food Sovereignty?*, *Food First Backgrounder*, Vol 16 No 4 (2010); For a discussion of the relationship of "food sovereignty" to the ideas of the "right to food" and "food security" see Michael Windfuhr and Jennie Jonson, supra (*Food Sovereignty*): *Toward Democracy in Localized Food Systems* at 19-24. See also Annie Shattuck and Eric Holt-Gimenez, *Moving From Food Crisis to Food Sovereignty*, 13 *Yale Human Rights & Development Journal* 421 (2010); Hans Morten Haugen, *Food Sovereignty – An Appropriate Approach to Ensure the Right to Food?*, 78 *Nordic Journal of International Law* 263 (2009); Jacqueline Mowbray, *The Right to Food and*

nutrition self-determination,²²⁵ the term may help us realize how the exercise of food power by Israel, negates this sovereignty from the residents of Gaza. This is another block in Israel's continuing control over Gaza, even after disengagement. In this context we should recall that as discussed above, Israel's closure over Gaza, including its continued control of its waters, although in the framework of the Turkel Commission is portrayed as related to the armed conflict between Israel and Hamas, actually existed continually as discussed above. The Gaza case study then as this discussion shows also points to the limit of the current food sovereignty discourse, with its focus on the ability to produce food, and points to how that ability may not be enough to achieve food security.²²⁶

Conclusion

Throughout the article we have seen how examining the case of the Gaza closure in terms of the right to food and food security will release us from the "hunger" framework of the Turkel Commission, from the minimal approach of the "Red Lines" document and from the limits of the proportionality centered restrictive humanitarian analysis. It will point to the need to create accountability for the infringement on food security, the exercise of food power, and the denial of food sovereignty. In a broader context it will point to the new forms of post-disengagement control that Israel exercises in Gaza, and how this transformed control aims to release it from its responsibility to ensure food security, and reduces its obligations as interpreted by the Israeli government (as well as by the Israeli Supreme Court and the Turkel and Palmer Commissions) to the bare minimum. Whether as we mentioned above we examine this from a perspective of the exercise of "bio-power"²²⁷ or the

the International Economic System: An Assessment of the Rights-Based Approach to the problem of World Hunger, 20 Leiden Journal of International Law 545 (2007).

²²⁵ See Peter Halewood, Trade Liberalization and Obstacles to Food Security: Toward a Sustainable Food Sovereignty, 43 U. Miami Inter-Am. L. Rev. 115 (2011) at 115-116, 134-136

²²⁶ Kevin Danaher notes in another context, that the idea of "food as a human rights" does not primarily mean a right to charity hand-outs of food, and it signifies the right to food-producing resources. Danaher, which addresses food power and whose writing pre-dates the food sovereignty movement,, is concerned that most of the food producing resources in the world are controlled by market forces, bought and sold as commodities and addresses the need to partially de-commodity food producing resources, through shifting land, credit and agricultural inputs from market control to guidelines that will allow people willing and able to farm to do so. Kevin Danaher, US Food Power in the 1990's, Race Class 1989 30:31, at 44 But as discussed in the text, the story of the Gaza closure illustrates more broadly the risk that can come from the control over food being held not by the relevant population but by an external power, and the need to protect food sovereignty and to consider it as including the right of Palestinians to control their food while not being dependent on charity in the form of humanitarian assistance. As the discussion in the text shows, achieving this control cannot be limited to the ability to grow your own food.

²²⁷ Foucault as used by Feldman

neglect of the Palestinian population to “bare life”²²⁸, it points to the need to reject this model of control as a legitimate one under international law.

As noted above the exercise of direct food power is only one element that affects food security in Gaza, along other forms of exercise of power which effect Gaza’s economy. The regulation of which foods were allowed to enter and which were not are exercise of food power which deny food sovereignty, contrary to the prohibition in on the use of food as an instrument of political and economic pressure. As we have seen through the article the Gaza closure is a form of political and economic pressure and the restrictions of certain types of food as part of it amount to using food as an instrument, against this prohibition.

Introducing the notions of food security, food power and food sovereignty into the discussion, the latter two in their revised versions we suggest, as frameworks for the analysis, thus helps to release the discussion from the restrictive approach that sees no violation of international law when hunger is not created, and from the tendency of current humanitarian law, with its focus on proportionality, to conduct cost-efficiency means-ends tests for the legality of actions, which does not take into account power relationships²²⁹. Instead of the Turkel’s Commission conclusion that the Blockade did not violate the principal of proportionality which the Committee noted is mostly to be measured in terms of the prohibition on starvation of the population, we suggested to put an emphasis on food security as part of human security²³⁰, of food power as part of power relationships, and of food sovereignty as pointing to the denial of sovereignty. But not least important, the Gaza case study also helps us understand these concepts better, by seeing a case study where policies aim at violating food security rather than at achieving it, *both* through the arbitrary limitation of certain foodstuff *and* through economic warfare which effects food security not only through the food restrictions but rather through the general economic situation; by considering how the concept of food power, if released from the limited framework it was articulated within is still relevant and actually finds resonance in the evolving human rights norms; and by pointing to the limits of the current food sovereignty concept, which in order to seriously tackle food security, especially where *sovereignty* in its most core meaning is actually denied, requires a much broader outlook.

As was made clear during this discussion, the effects of the closure of Gaza on food security should not be measured solely through the issues of the types of foodstuff that were allowed and prohibited at any given time. If at all, the arbitrary nature of this list points to the absolute arbitrary nature of the occupation, to the deprivation of control from the residents of Gaza into a

²²⁸ To borrow from Agamben

²²⁹ For such criticism see Kennedy, *The Dark Side of Virtue*, Chap 8; Gross, *The Construction of a Wall* LJIL. Add Weizman. Azoulay. Ophir.

²³⁰ On food security as component of human security see McDonald at 27.

mechanism that has no understandable rationale and whose decisions can be changed without any clear reasoning.²³¹ Thinking, in Carolan's term, "through food" allows us to see how the story of food security in Gaza is not only about which food was allowed in, and on the other hand the story of which foods were allowed in is not only about food security: Food is interwoven here in the bigger story.

²³¹ See Amir Paz-Fuchs examination of whether the legal regime employed by Israel in the OPT is a legal system or, following Fuller's terms, an arbitrary system of power. Based on Fuller's criteria Paz-Fuchs points to a few relevant elements among them publication, clarity and lack of contradictions which seem to be lacking in the Israeli system in the OPT. The story of the regulation of which food was allowed and which was not may fit into this framework.

FOOD SOVEREIGNTY: A CRITICAL DIALOGUE INTERNATIONAL CONFERENCE PAPER SERIES

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A fundamentally contested concept, food sovereignty has — as a political project and campaign, an alternative, a social movement, and an analytical framework — barged into global agrarian discourse over the last two decades. Since then, it has inspired and mobilized diverse publics: workers, scholars and public intellectuals, farmers and peasant movements, NGOs and human rights activists in the North and global South. The term has become a challenging subject for social science research, and has been interpreted and reinterpreted in a variety of ways by various groups and individuals. Indeed, it is a concept that is broadly defined as the right of peoples to democratically control or determine the shape of their food system, and to produce sufficient and healthy food in culturally appropriate and ecologically sustainable ways in and near their territory. As such it spans issues such as food politics, agroecology, land reform, biofuels, genetically modified organisms (GMOs), urban gardening, the patenting of life forms, labor migration, the feeding of volatile cities, ecological sustainability, and subsistence rights.

Sponsored by the [Program in Agrarian Studies at Yale University](#) and the [Journal of Peasant Studies](#), and co-organized by [Food First](#), [Initiatives in Critical Agrarian Studies \(ICAS\)](#) and the [International Institute of Social Studies \(ISS\)](#) in The Hague, as well as the Amsterdam-based [Transnational Institute \(TNI\)](#), the conference “Food Sovereignty: A Critical Dialogue” will be held at Yale University on September 14–15, 2013. The event will bring together leading scholars and political activists who are advocates of and sympathetic to the idea of food sovereignty, as well as those who are skeptical to the concept of food sovereignty to foster a critical and productive dialogue on the issue. The purpose of the meeting is to examine what food sovereignty might mean, how it might be variously construed, and what policies (e.g. of land use, commodity policy, and food subsidies) it implies. Moreover, such a dialogue aims at exploring whether the subject of food sovereignty has an “intellectual future” in critical agrarian studies and, if so, on what terms.

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