

**The Public Commission Investigating the Maritime Incident of the 31<sup>st</sup> of May 2010 (Turkel**

**Commission)**

**Meeting number 12, of the 13<sup>th</sup> of October 2010**

**Participants:** Chairman, Judge (ret.) Jacob Turkel

Prof. Miguel Deutsch

General (ret.) Amos Horev

Ambassador Reuven Merhav

**Observers:** Lord David Trimble

Brig. Gen. (ret.) Kenneth Watkin

Commission Coordinator, Hoshea Gottlieb

**Witnesses:** Representatives of Betzelem: Jessica Montel, Eyal Hareuveni.

Representatives of Doctors for Human Rights: Prof. Tzvi Bentowitz, Ran Yaron, Dr.

Mustafa Yassin.

Representatives of the Gisha organization: Adv. Tamar Feldman, Adv. Sari Beshi

The Chairman, Judge (ret.) Jacob Turkel: Ms. Feldman. Who else?

The Gisha organization, Adv. Sari Beshi: Adv. Sari Beshi.

The Chairman, Judge (ret.) Jacob Turkel: Are you also testifying before us?

The Gisha organization, Adv. Sari Beshi: I will sit beside her.

The Chairman, Judge (ret.) Jacob Turkel: Good. Ms. Feldman, you are warned to state the truth, and we would like to hear you regarding the humanitarian situation in Gaza, insofar as you know, and in particular, in relation to the actions of the system for transferring cargo between the Gaza Strip, between Israel and Gaza. If you please.

The Gisha organization, Adv. Tamar Feldman: Good afternoon. My name is Tamar Feldman. I am the director of the legal department at the Gisha organization. The Gisha organization in a few words, is a registered non-profit organization in Israel which was established by Adv. Sari Beshi, who is the CEO of the organization today as well, together with Prof. Kenneth Mann. The organization deals with the promotion of human rights in Israel and

in the territories under Israel's control, and mainly deals with legal and public activities whose aim is the protection of the right to freedom of movement and the various rights connected with access to resources for protected Palestinian residents who live in the territories, and particularly in Gaza.

As part of its work, Gisha assesses the ramifications of Israel's closure policies, both in relation to the passage of cargo and in relation to the passage of people, and works to fulfill Israel's obligations pursuant to international law and to Israeli law.

In this framework Gisha has been active since the closure on Gaza was put in place in the Summer of 2007, opposite the authorities and in legal spheres in order to clarify and make clear the closure policies in relation the passage of cargo to the Gaza Strip, and in this regard, I would like to relate to the presentation before you.

The presentation will be divided into four main parts. The first part deals with how Israel relates to the Gaza Strip after the Disengagement. This will be a short part of the review. Afterwards, I will talk about the closure policy beginning in the Summer of 2007, about its effects on the civilian population, and then we will move to a legal analysis of the legality of the closure.

In order to touch upon some of the points that were raised in the earlier presentations, I would just say at the outset that I will relate to the connection between the maritime closure and the general closure as well as the distinction between closure and siege.

Furthermore, in response to the question from Lord Trimble in the previous presentation, we will also relate to the factual disputes between us and the Coordinator of Government Activities in the Territories that were put in writing in the framework of the last response that we sent, but I will indicate you in the framework of the presentation as well.

I will begin with a short discussion of how Israel relates to the Gaza Strip after 2005, after the Disengagement.

The map that is being presented here was taken from a report by OCHA (?) and the World Food Organization. It's a little small and difficult to see, but this is the Gaza Strip, which is some 41 kilometers long. After the Disengagement, Israel withdrew its military forces from the Gaza Strip and evacuated the residents there, but continued to manage several of the essential civilian systems in the Gaza Strip, led by three: The first is the

population registry, the second is the taxation system, and the third is the system of borders and crossings.

These things are presented in greater detail in the report “Disengaged Occupiers”, which is also attached to our presentation to you.

Prof. Miguel Deutsch: Are you claiming that this is enough for the purpose of control, and so forth?

The Gisha organization, Adv. Tamar Feldman: At the time that “Disengaged Occupiers” was written, the claim was that the elements of the control that Israel is wielding over the Gaza Strip constitute effective control in the Strip.

I will just go over these elements in brief which, as stated, were also in place after the Disengagement in 2005. First, the population registry. There, despite the Oslo Accords, Israel never transferred control over the population registry to the Palestinian Authority, and basically every listing, every update, and every change in the population registry required, and still requires, the approval of Israel, and is not made in its absence. This is true for the Gaza Strip as it is true for the West Bank, and it has many effects on the lives of the residents. For instance, if a child is born in the Gaza Strip, the Palestinian authorities must report his live birth to the Israeli authorities, who are supposed to register it. If they don't register it, it's as if the child never was. The significance of this is that if someone, for instance, wants to leave the Gaza Strip through the Erez Crossing, he simply won't appear in the computer at the terminal. He won't appear on the lists, and therefore, he won't be able to move. This person does not exist without his registration in the Israeli population registry.

As such, Israel's control over the population registry is full and absolute and decisive.

The Chairman, Judge (ret.) Jacob Turkel: One moment. I would like to understand. In other words, what you are saying now is not a registration in the Israeli registry. As I understand it, it is a registration in the Gazan registry, but it is subject to Israeli supervision, or am I mistaken?

The Gisha organization, Adv. Tamar Feldman: I would like to correct and be precise. According to the Oslo Accords, the control over the population registry was supposed to move to the Palestinian Authority, but this was never done, and basically, Israel continues to hold full control over the population registry even after Oslo and after the Disengagement, both

regarding the West Bank and regarding the Gaza Strip. Basically, the Palestinian population registry that Israel manages is one, and it manages the populations in the Gaza Strip and the West Bank by lists of addresses which, again, it also manages exclusively, it controls this exclusively. There is no meaning to a registry that is done unilaterally by the Palestinian authorities, whether it is in Gaza or in the West Bank.

Ambassador Reuven Merhav: But there is a registry of Palestinian residents. They are registered for elections, they have their registration system which is certainly active. I don't know if you have heard my question.

The Gisha organization, Adv. Tamar Feldman: I have heard it. Again, I refer to our report "Disengaged Occupiers", where there is a more detailed description of the population registry and how this is done. We can read about this, but in order to answer your question, the Palestinian population registry is controlled by Israel. It cannot be updated without the update passing Israel's approval, and this is significant for the movement of people both in Gaza and in the West Bank, and for the services that they receive from the military authorities opposite them.

Ambassador Reuven Merhav: One moment. Perhaps this is regarding what relates to movement to Israel, but regarding the registry of residents, the Palestinians both in the West Bank and in Gaza, have held elections, they have a registry of residents, they have identification cards. This means that there is a registry of their own. Now, it's a different question regarding the crossings. But the expression that you used earlier, the mention you made as if they are orphans in the world and there is no registration and if Israel doesn't register them the children don't exist. In my opinion, I am not sure that this is accurate.

The Gisha organization, Adv. Tamar Feldman: This is the situation, Your Honor. This is the situation.

Ambassador Reuven Merhav: I would suggest that you check this again. But I am not sure that it matters now.

The Gisha organization, Adv. Tamar Feldman: This is the situation. Israel controls the registry. The physical issuance of identification cards is done by the Palestinian authorities, but the registration itself is under full Israeli control.

Ambassador Reuven Merhav: I suggest to you that you check into this again.

Mr. Watkin: Could I just clarify one thing? Because, and sort of not at the very detailed level about,

you know, one of the examples you used, just the notion of effective control. Is it your position that two bodies can have effective control of the same territory at the same time? And so my question relates to clearly there is the Hamas, which was elected to be in control of the territory, and there's Israel who's obviously controlling the borders and has a blockade. So I just wonder whether you have a position in terms of the relative responsibilities in terms of who's actually exercising control over the territory of Gaza. And, you know, I think this is one of the struggles in the *Basyuni* case, right, which was that the High Court of Justice accepted that there was a continuing obligation, but that was different than the notion of exercising control over the territory. So I just, and is it equal control? Is it overlapping control? Or does one control more than the other when you talk about territorial control?

Prof. Miguel Deutsch: The concept of control, if I can say another word, the concept of control is obviously a very gripping theoretical concept from a legal standpoint in all contexts, and in this context, the question arises as to whether control over the crossings is sufficient in order to serve as control where there is no effective control within the territory. So these are good questions. It just seems to me that basically, there is a jurisdictional decision on our part in this matter. It's just that the question that also arises as a result of this is whether this jurisdictional decision is binding on us here as a commission. This is also a legal question.

The Gisha organization, Adv. Tamar Feldman: The questions that relate to control are very important questions. With your permission, I will come to this at a later stage in the presentation. I will come to exactly these points. Regarding the measure of responsibility and the measure of control, there is also mention in the "Disengaged Occupiers" report, but I will come to this later in the presentation and also, obviously, to the *Basyuni* decision and the significance that it has for the legal analysis that we need to make in the context of this Commission, obviously, and its mandate.

Ambassador Reuven Merhav: I also want to go back to the question that I raised earlier regarding the Palestinian registry. There is a central bureau of statistics in the Palestinian Authority. There is a cross-reference between its data and the data from UNRWA. There is a cross-

reference between it and the Palestinian electoral system. There is a very precise registry of residents, and I again suggest not to make such a declaration that there is no such thing and that everything depends on Israel, when the facts, insofar as they are known, and this has also been published in all the newspapers, from the 1976 elections onwards, that this is not exactly true.

The Gisha organization, Adv. Tamar Feldman: I say these things on the basis of unequivocal declarations by the State, even before the Court in many cases. In other words, there is no argument and no dispute over the point that Israel maintains full control over the population registry, and I say this with foundation. This is not some kind of invention of ours. This is a clear declaration by the State.

The second element, the second civilian life system that Israel continues to hold control over even after the Disengagement, is taxation. In this sense, Israel determines the Palestinian customs envelope. It supervises all the goods that are permitted to enter the West Bank and Gaza, and it collects the taxes and the VAT, obviously pursuant to the Israeli rates, for the Palestinian Authority. The significance is that Israel has significant control over the fiscal and economic policies in the Gaza Strip, and the decision on whether to transfer the tax money or not is also its decision. The significance can be tremendous for the public services.

I will provide an example. Between March 2006 and June 2007, Israel prevented tens of millions of shekels collected from tax money, and this was half of the Authority's operating budget. As a result of the non-transfer of the funds, certain public services were harmed in Gaza. The power to decide which goods to tax has also remained in Israel's hands, and the significance of this could be that, for not-for-profit organizations for instance, to receive tax exempt donations is dependent on the approval of the Israeli authorities, and this can sometimes, in certain cases, eliminate their operations.

The third and most significant element is the continued management of the borders and crossings by Israel.

Since 1967, Israel has controlled the borders and crossings of the Gaza Strip, on land, sea and air, and it has always prevented movement in the air and sea spaces of the Gaza Strip.

At sea, Israel has held constant and full physical control throughout the entire period from 1967 until

today. Its presence at sea is conducted through vessels of the Navy which patrol there and carry out policing operations. Throughout the period, they keep maritime vessels entering the Gaza Strip at a distance, and prevent the exit of maritime vessels outside of the Gaza Strip. It also constantly limits fishing activities in the waters along the Gaza Strip for a distance of up to 3 nautical miles currently, despite the obligation in the framework of the Oslo Accords to enable fishing to a distance of up to 20 nautical miles from the Gaza Strip coast.

In the Oslo Accords, Israel committed to act to establish a sea port, but never carried this out. In 2001, after the work began on constructing the sea port, it blew up the building site at which the sea port was being built, and later on, in 2005, it undertook as part of the crossings agreement, not to become involved in the construction of the sea port and to provide guarantees of this, but it never did this. In other words, throughout the years, Israel has actively prevented the construction of a sea port and prevented the existence of a maritime shipping lane throughout the period.

In the air, throughout the period, Israel has prevent the entry of aerial vehicles. Basically, cargo has never entered the Gaza Strip by air. In 1999, an airport was build that was in operation for a short time until 2000, and in 2001, Israel blew it up. Since then, there is no air traffic.

Ambassador Reuven Merhav: Excuse me. When you talk about these things, you note them in a dry manner as facts, and this is correct, but they are not disconnected. The story of Dahaniye is not disconnected from the air. Things happened there. Things also happened concerning the deep water port. I assume that you are aware of these things. If you are aware of them, then perhaps it would be proper to say that based on incidents that happened in the field in some way, you can interpret them as you wish, but you cannot ignore them.

The Gisha organization, Adv. Tamar Feldman: Certainly. These things are connected to incidents that happened in the field, and they are not disconnected.

Prof. Miguel Deutsch: I assume that you are not dealing now with questions of the legitimacy of the operations.

The Gisha organization: Adv. Tamar Feldman: Absolutely not.

Prof. Miguel Deutsch: From the standpoint of the agreements, but rather with a description of what you see as control, correct? With a description of the factual situation of control.

The Gisha organization, Adv. Tamar Feldman: Exactly. I am trying to describe the scope of control and the level of control, because this also affects the description of the closure policy afterwards, and also regarding the question of legality. I am not at all dealing with questions of legitimacy, of whether it was justified to blow up or not justified to blow up. That is outside of the discussion for now. I am only trying to outline the level of control. Obviously these things are connected to incidents that occurred during those periods.

On land, a number of land crossings operated. The passage of people from Gaza into Israel was enabled and is enabled up to now through only one crossings, the Erez crossing that is in the northern Strip. The passage of cargo was done in the past through two main crossings, the Karni crossing and the Sufa crossing in the south, through which more than 10,000 trucks a month passed in 2005. Fuel, including industrial diesel,

General (ret.) Amos Horev: Can you translate this into tons and not trucks?

The Gisha organization, Adv. Tamar Feldman: I don't have that data here with me. I can send it.

General (ret.) Amos Horev: Trucks don't tell me anything.

The Gisha organization, Adv. Tamar Feldman: When I compare it later to the number of trucks that passed later on, we will be able to see the comparison, but I can also send it to the Commission later in tons.

General (ret.) Amos Horev: I am simply asking because trucks could be large or small and this is not a concept at all.

The Gisha organization, Adv. Tamar Feldman: No problem. We will send the data.

Fuels, as stated, including industrial diesel, diesel for transportation, benzene and oil for cooking passed through Nahal Oz.

Another crossing is the Rafiah crossing between Gaza and Egypt which, until 2005, Israel had full control over. In 2005, the crossings agreement was signed, and prior to the Disengagement, in which Israel agreed to transfer to the Palestinian Authority most of the control over management of the Rafiah crossing, with its close control and supervision and while maintaining veto rights over the opening of the crossing.

In addition, it explicitly set forth that the passage of cargo would not be allowed through the Rafiah



crossing. This agreement, in all things connected with the passage of cargo, is basically in force until today. The crossings agreement was active between November 2005 and June 2006, until Gilad Shalit was taken captive, when Israel used its veto right, and since then, basically, Rafiah is closed, other than ad-hoc openings once every two months or so. I will present the data connected to this later on. It is also detailed in the report on the Rafiah crossing that was issued by the Gisha organization, and which can be found on the organization's Internet site.

Throughout this period after the Disengagement, Israel has continued to claim over and over again, consistently, that the crossings are open to the best of its ability, and this is subject to specific security risks that exist at the crossings. In other words, it closes a crossing only when there is gunfire from belligerent parties from Gazan territory toward the crossings or when some terrorist attacks are taking place there.

General (ret.) Amos Horev: How many times have the crossings been attacked?

The Gisha organization, Adv. Tamar Feldman: I don't have this data with me.

General (ret.) Amos Horev: Do you have the data?

The Gisha organization, Adv. Tamar Feldman: I can send it to the Commission.

General (ret.) Amos Horev: By whom were they attacked?

The Gisha organization, Adv. Tamar Feldman: By belligerent forces in the Gaza Strip. All kinds.

General (ret.) Amos Horev: By the controlling force in Gaza?

The Gisha organization, Adv. Tamar Feldman: If you are referring to Hamas, not just by Hamas forces.

General (ret.) Amos Horev: Who controls Gaza?

The Gisha organization, Adv. Tamar Feldman: We are talking about the period of 2005 and 2006. Before Hamas took power.

Prof. Miguel Deutsch: How exactly do you relate to Basyuni in this matter? In Section 12, the Court says that there is no effective control. That is its determination. Do you think that the Commission here, I assume is basically not tied to the judicial ruling in this issue? Because we are dealing with questions of international law, and in this context, we are discussion international law not necessarily from the restrictive point of view of Israeli precedent or something of that type. That is to say, how do you make the connection between these things? Because this question was apparently decided, at least as far as

Israeli law is concerned.

The Gisha organization, Adv. Tamar Feldman: The ruling of the Supreme Court is critical. It is very, very relevant, and obviously we relate supreme importance to it. I will relate to it and I will get to it. I understand that this is a burning, and very important, question, and I would like to get to it later. If a specific need arises to relate to points, I will do so.

Ambassador Reuven Merhav: When you get to the crossings, when you get to the maritime matter that you already began to note, I assume that you will also connect it with the issue of the humanitarian assistance.

The Gisha organization, Adv. Tamar Feldman: Certainly.

Ambassador Reuven Merhav: Its effectiveness and the effectiveness of the maritime matter as a matter of humanitarian assistance.

The Gisha organization, Adv. Tamar Feldman: Yes. I will also relate to this context.

Okay. In the Summer of 2007, something changed in Israel's policy and in the way that it exercises that control. It continues to hold the same control over the crossings and the borders that it held beforehand, but something changed in the way in which it exercised that control.

As a result of the takeover of power in the Gaza Strip by Hamas, Israel declared an almost hermetic closure on the Gaza Strip, and in September 2009, a cabinet decision was made determining that additional limitations would be placed on the Hamas regime, such that the passage of goods to the Gaza Strip would be limited, the supply of fuel and electricity would be reduced, and a limitation would be placed on the movement of people to and from the Strip. The limitations were implemented after a legal assessment, taking into account the humanitarian aspects that prevailed in the Gaza Strip and with the intention of preventing a humanitarian crisis.

The deputy defense minister at the time, MK Matan Vilnai, said the following regarding the purposes of the closure: "We are assessing the matter, and we will apparently need to reduce the scope of cargo, thus creating pressure on the Hamas organization which, intentionally, is not taking steps to advance the negotiations." He said this in September 2008 in the framework of contacts with Hamas, indirect contacts for the release of the captured soldier, Gilad Shalit, and his words show that the purpose of the closure was to put pressure on the civilian population in order that the latter would in turn put pressure on

Hamas. These things are also explicitly shown by the testimony of the Coordinator of Government Activities in the Territories as he brought it here. He said, one of the aims of the Coordinator of Government Activities in the Territories is to bring about the weakening of Hamas through putting pressure on the civilian population.

These things also arise very clearly in the State's affidavits in response to the appeal in the al-Basyuni case, the same appeal that was filed by the Gisha organization on behalf of 10 additional human rights organizations, and there, in its response from November 2007, the State wrote that "Israel sees a duty to enable the passage of essential goods for the survival of the civilian population, and only that." Already there, the State set forth that the standard for the passage of goods to the population needs to be a minimal standard.

Damage to the economy, wrote the State, "in and of itself is a legitimate tool in warfare and a relevant consideration even at the time of the decision to bring in assistance shipments. These are steps that are, from the standpoint of economic warfare, legitimate."

Mr. Watkin: So if I can ask a question, do you believe that's an incorrect statement?

The Gisha organization, Adv. Tamar Feldman: No. This is a correct declaration. That is to say, that is how the State views it, and in the eyes of the State, we are talking about economic warfare. In its eyes, its duty is to provide the minimum, and our dispute, which I will get to later in the presentation, is whether these are all of its duties and whether this is a legitimate target, whether this tool with which it is exercising its control is a legitimate tool for the exercise of control.

Prof. Miguel Deutsch: I understand that you have another question here that is perhaps more significant around January 2009. Are you including, in the paper that you submitted, are you including the maritime closure, its targets, with those of the land closure? The question is whether the purposes of the maritime closure are economic or security, and here this is a materially factual question. I don't know what you can present in this matter.

The Gisha organization, Adv. Tamar Feldman: I will also relate to this. The cabinet's decision does not relate specifically to sea or land. It relates to the policy of closure, and basically, there is no concrete mention of the limitations of the passage of cargo by air or by sea,

simply because these paths were blocked from the outset, so there was no reason to say that they would also limit the entry of cargo by sea.

Prof. Miguel Deutsch: Here, this was in 2007. We are talking about the maritime closure in 2009.

The Gisha organization, Adv. Tamar Feldman: Yes. I am saying that the closure decision in September 2007 related, as self-evident, to the fact that the air and sea lanes were blocked, so the policy on limiting the passage of cargo by land was the only practical significance of this decision.

Mr. Watkin: I would like to clarify one thing, though, just as a follow-on, because I'm just trying to be clear in my mind. The Israeli government has said that economic warfare is a purpose, and I just want to understand, you're not saying that the conduct of economic warfare is contrary to international humanitarian law, are you? I don't know. That's what I'm trying to understand as a starting point. Can you conduct economic warfare lawfully? And then is your concern the degree or how it's being conducted, or is your position you just can't do it? That's what I'm trying to clarify as you go forward, to understand what your argument is.

The Gisha organization, Adv. Tamar Feldman: I will give you the answer of a jurist. It depends. Any means that is used in the framework of an armed conflict, other than certain means that are prohibited under 'jus cognis', as a norm that cannot be unequivocally breached, they can be used to one extent or another, depending on the context in which the control is operated, and depending on the extent and the circumstances.

And I will also relate to this point. I can already say that the use of economic pressure for the purpose of subduing the civilian economy, in and of itself is not a legitimate target under international law.

Prof. Miguel Deutsch: It seems to me, however, that in a certain sense you are bound,

Mr. Watkin: Sorry, you said it is not legitimate?

The Gisha organization, Adv. Tamar Feldman: The attempt to harm and to subdue the civilian economy in and of itself, intentional harm to civilians in and of itself, is one of the basic principles of humanitarian international law, and this is absolutely prohibited.

General (ret.) Amos Horev: Is there (such at thing as) a non-civilian economy?

Mr. Watkin: Right. So as I, sorry, as I read Article 102(b) of the San Remo rules, which reflect the,

what law governs a blockade, it says a blockade's prohibited "if the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade." Inherent in that is that there will be damage to the civilian population. So I'm just trying to understand how you say that it's illegal to, I'm still not clear in my mind whether you're saying the fact that there's damage to the civilian population is illegal, or what we're talking about is a question of weighing that damage versus something else. That's,

The Gisha organization, Adv. Tamar Feldman: Once again, I very much ask to leave the legal discussion for a later stage, since it is dependent on the factual part of the presentation that I would like to show. However, just in order to answer directly, we need to distinguish between two different things under humanitarian international law. One is the peripheral damage caused among civilian population from a military operation, where the principles of proportionality and questions of excessive damage apply, as opposed to intentional harm to civilians, which is absolutely prohibited by international law. There are two different concepts.

Prof. Miguel Deutsch: You are relating to the issue of discrimination in this segment. Perhaps only if it would be possible in the segment of bringing together the targets. I see this as having significant problems, because the maritime closure changed the situation that had previously existed, or do you dispute this? That is to say, it is not possible to make what happened based on the declaration of the maritime closure in that decision of 2007 dependent. Something of a different kind is happening here. The question of what the targets are is a legitimate question for investigation, it's just not possible to hang the legal results of the maritime closure from the decision of 2007, which deals with the border crossings, where we are talking about a maritime closure with the possibility of positively stopping, for instance, a flotilla, as we know. This is another type of legal action. I don't think that we can say based on the decision in 2007 that it is clear to us that in January 2009, the target was economic. These are two different legal activities with targets of one kind or another. If it is proven that, factually, they were also economic, that's another story. But it is not possible to make this dependent.

The Gisha organization, Adv. Tamar Feldman: I will also come to this in depth. I am saying that in

our view, the declaration of the maritime siege, ‘Anavalcade’ is no more than another name for the same maritime closure that existed even beforehand, as part of which the same activities were enabled, the same factual reality basically existed, almost, other than perhaps certain elements that were slightly changed, but the same factual situation existed before and after the declaration of the siege, and therefore, all that this does is basically give another name to the factual situation and to the legal framework that had already existed then. I will relate to this a little more in depth later on.

Prof. Miguel Deutsch: We will hear what this is talking about according to the claim.

The Gisha organization, Adv. Tamar Feldman: I would like to go back, with your permission, to Israel’s closure policy on the Gaza Strip, and try to understand a little what this closure policy is. How is it conducted? What was the day-to-day life of the closure, and in this context, I would note, as we noted in our responses that we sent to the Commission, that the Gisha organization, for a year and a half has been trying to clarify precisely this, and to understand what the procedures are, what the criteria are, what the lists are, what the models are according to which the Coordinator of Government Activities in the Territories is operating.

In the framework of an appeal under the Freedom of Information Act in the Administrative Court in Tel Aviv, Gisha again asked to know what humanitarian cargo is. That is to say, what are the lists of products that are permitted or prohibited for entry into the Gaza Strip. How does Israel define this humanitarian minimum? That is to say, what is the model according to which it operates and according to which it assesses whether its actions are providing the necessities in the Gaza Strip or not. What are the criteria according to which it approves the entry of cargo and coordinates the entry of the cargo. And again, the questions were not answered. At first, the State denied that it had documents in its possession, and provided a general answer, stating that the term humanitarian cargo is not a term pursuant to a fixed definition. It depends on the variable needs of the population according to the principle of products essential for the survival of the civilian population. This is the standard according to which Israel worked, according to the response of the Coordinator of Government Activities in the Territories to the Freedom of Information appeal on the 13<sup>th</sup> of January 2010.

When we asked to know what “essential products for the survival of the population” means, what exactly is the benchmark, how is it defined – we didn’t get an answer. And only after the involvement of the Court did the State admit that it does have documents but it refused to provide them because it claimed that this would harm the State’s security. A discussion of the appeal was recently held, and the representatives of the State there agreed to send it to Gisha. In the next week, we are supposed to receive documents that will testify about the closure policy before the easing that resulted from the flotilla incidents, including a list of products that are prohibited and permitted, and some of the procedures that the Coordinator of Government Activities in the Territories has used.

Ambassador Reuven Merhav: If you had needed to determine the scale for the survival of the population, what would you have determined?

The Gisha organization, Adv. Tamar Feldman: I wouldn’t have been able to determine,

Ambassador Reuven Merhav: What is the scale of survival?

The Gisha organization, Tamar Feldman: I wouldn’t have been able to determine this scale since these scales are determined by authorized and professional people in the International Health Organization, etc. I can say that the International Health Organization has all kinds of definitions of baskets of products that are appropriate for different situations. There is a minimal basket, there is a basic basket, there is an adequate basket. The State did not say which type of scale it is relating to or according to what model it is working, but our impression of Israel’s policy is that it is working according to some kind of very minimal model that, if we go according to the standards of the International Health Organization, or to any standards of international law, is a model that is generally used for emergency periods, for emergency situations where you need to bring the population some kind of minimal necessities for a short period of time, and not some kind of benchmark to which the population will deteriorate over a long period.

Ambassador Reuven Merhav: Just to understand, in the framework of factual claims. I understand that you are not claiming that there was hunger, correct? In Gaza,

The Gisha organization, Adv. Tamar Feldman: Correct.

Ambassador Reuven Merhav: You are claiming that there is a lack of nutritional security. The next question is why there is a lack of nutritional security, and as you have heard here, those

preceding you say, they testified this way at least, that the lack of nutritional security is the result of problems of poverty and not from the problem of the crossings policy. Do you dispute them on this factual point? Do you dispute their position?

The Gisha organization, Adv. Tamar Feldman: I think that we do not dispute in this matter. I think that this point has simply not been sufficiently clarified in the prior testimony, and I would be pleased to review it. I will relate to this shortly.

Ambassador Reuven Merhav: I must say that these things were clearly stated in the document, but okay, the question is to the body of the matter.

The Gisha organization, Adv. Tamar Feldman: They were stated and we stand 100% by what was written in the document by ... human rights. The question is just the context. In what context have these data been analyzed and checked.

In order to sum up the previous point. Basically, for more than three years of conducting the closure on the Gaza Strip, the State has not revealed the lists of products that are prohibited or permitted, has not revealed the criteria or the procedures that direct the closure activities, the closure policy.

Basically, the economy of a million and a half people has been conducted with no transparency and with no clear procedures, without clear criteria and without lists.

General (ret.) Amos Horev: Conducted by whom?

The Gisha organization, Adv. Tamar Feldman: By the Coordinator of Government Activities in the Territories.

General (ret.) Amos Horev: You are using the passive syntax – was conducted. Israel conducted the economy?

The Gisha organization, Adv. Tamar Feldman: Unequivocally, yes.

General (ret.) Amos Horev: What does it mean, 'conducted'? Conducted by whom? There is a government there, it has better or worse control. There is an authority there. There is UNRWA there, there is the European Union there. There are donor countries. What does it mean 'the State conducted'? We conducted it? Israel conducted it?

The Gisha organization, Adv. Tamar Feldman: The policy on the entry of cargo to the Gaza Strip has been fully and absolutely conducted by Israel.



General (ret.) Amos Horev: You are saying that the economy has been conducted. This is not the economy.

The Gisha organization, Adv. Tamar Feldman: I will also relate to how this obviously affects the ability of the economy in Gaza. Israel is not responsible for determining the employment programs in the Gaza Strip, that is clear.

General (ret.) Amos Horev: Look ma'am. We are dealing with words, and words have a lot of power. When you say the economy is being conducted, and people sit and hear you, and it enters the protocol, it comes out that Israel, that Gaza is a colony of Israel, and just like Britain once managed the Fijian islands or I don't know what, and this is also not absolute, so in that way Israel is responsible for Gaza. That is not the situation. And then you use words like survival, where survival is a very strong word. We are not talking about a television program. And I very much think that we are trying very hard to be precise about things in order to know what is correct and what is not correct, and therefore the use of words needs to be very, very measured, and very, very precise.

The Gisha organization, Adv. Tamar Feldman: I agree with you, sir, 100%. The words "survivor of the population" are words that the State used in its response to the Court, not us. It was taken from the State's response in the Basyuni case. Regarding the economy of the residents of the Gaza Strip, I relate to it insofar as it is derived from the policy on the transfer of cargo to the Gaza Strip. Obviously, the civilian institutions in the Gaza Strip, in connection with employment programs and so forth, that are under the control of the institutions that currently control Gaza, obviously not under Israeli control. We are relating right now only to what exists, and insofar as it exists under Israel's control. Meaning, the crossings and the entry of cargo.

Ambassador Reuven Merhav: But you know, you, in your data and in the data from Betzelem, it was stated that 61% of the population in Gaza, first of all rely on the United Nations for food, and there was no harm at any stage in the transfer of things that the United Nations distributes. Such that this means, most of the population first of all, their basic needs are provided for. Afterwards, there are truly the other parts, and here we are talking about real numbers of trucks. General Horev is asking about tonnage. You don't know the answer to this. We are talking about 1500 trucks a month. Multiply this by 20, 30, 40 –

you get lots of tonnage.

You can talk about limitations, but you are giving a macro impression that we are really talking about limitations or difficulties, but this is not the whole world. This is something partial. Perhaps it's not pleasant, perhaps, but it's not the whole story. Therefore, I very much suggest again, to classify it.

The Gisha organization, Adv. Tamar Feldman: A hundred percent, I accept your comment, and regarding the data, I will soon, really just two or three more slides, I will present data precisely according to demand and consumption, etc.

I would like to say that, despite the fact that we did not receive official documents from the State throughout the period in which we asked to know what the procedures were and what the criteria were, due to the practicalities of Gisha's work, we were in constant touch with traders, with coordinating bodies and so forth, and we did manage to understand, to obtain some kind of picture of how the closure policy is carried out in practice.

We managed to put together some kind of partial list of prohibited and permitted products, and the way in which we comprised it was simply through the experiences of traders and coordinating bodies. They would, let's say, send it by fax, or would ask by telephone to bring in certain goods, they would get a refusal, and from there we could see that X goods were prohibited from entering. On the other hand, they would call, ask for goods of type Y, would get an approval, and they would know that goods of type Y were permitted. The full list, as we managed to comprise it, which is also apparently partial, is attached to the first response that we sent to you, and it also available on our Internet site.

And I would like here to present just a few examples that show, perhaps, how this policy is conducted. For instance, we know that coriander, and here I would like to emphasize, we are talking about the spice coriander and not the coriander plant. Coriander, for instance, was prohibited entry. On the other hand, hyssop was permitted. Sage was prohibited entry, chamomile was permitted. Cardamom was prohibited and cinnamon was permitted. Ginger was prohibited while sugar was permitted. Vinegar was prohibited, oil was permitted. Chocolate was prohibited and yeast was permitted. Nuts and seeds were prohibited while chick peas were permitted. Fresh meat was prohibited, while frozen meat was permitted. Industrial salt and industrial margarine were refused entry, while

salt and margarine in small packages were permitted entry. And this touches upon your question in relation to the effect on the economy. Israel methodically prohibited the entry of raw materials for the local industry and thus, and I will shortly get to the data, silenced a considerable part of the local industry in the Gaza Strip, with its direct influence. Not second and third level – direct influence on the economy in the Gaza Strip. Plastic, glass and metal boxes were also prohibited, while boxes of yeast themselves, with their contents, were permitted entry. Cloths for clothing were prohibited, while the clothing was permitted entry.

From the standpoint of the crossings,

General (ret.) Amos Horev: Can you tell me what was approved?

The Gisha organization, Adv. Tamar Feldman: These are examples of things that were approved,

General (ret.) Amos Horev: No. It's worthwhile hearing what was approved, for instance.

The Gisha organization, Adv. Tamar Feldman: The list is in the response that was sent to you on August 26, and is also on our website. All kinds of types of goods were permitted, mainly basic food products as Israel defines it,

General (ret.) Amos Horev: Basic things were approved.

The Gisha organization, Adv. Tamar Feldman: What Israel defined as basic products which, again, we don't know according to what criteria it determined what is basic and what is not basic, according to what models it worked. But things that it defined as basic, it permitted their entry. Medications and certain medical equipment were permitted to enter, as well as certain cleaning and hygiene products.

General (ret.) Amos Horev: What, in your opinion? Is coriander a basic item?

The Gisha organization, Adv. Tamar Feldman: Is that the question?

General (ret.) Amos Horev: I think not.

The Gisha organization, Adv. Tamar Feldman: Is cinnamon?

Ambassador Reuven Merhav: In any case, you are talking about the period before the change in policy.

The Gisha organization, Adv. Tamar Feldman: Before?

Ambassador Reuven Merhav: The change in policy.

The Gisha organization, Adv. Tamar Feldman: In June 2010. Yes.

Ambassador Reuven Merhav: That means you are talking about the period,

The Gisha organization, Adv. Tamar Feldman: About the period in which the flotilla took place, and it is relevant for the investigation of the Honorable Committee.

Ambassador Reuven Merhav: There is before and there is after, okay.

Prof. Miguel Deutsch: There is a general principle that General Mandelvitich testified about, and the question is how you respond, because it has ramifications on everything. We need to investigate whether the maritime closure is legitimate – the maritime. Now, the fact is, and this is obviously not under dispute, that there is no port in Gaza. In the absence of a port in Gaza, the question is how the humanitarian situation would be different as a result of maritime shipping where there is no practical possibility of shipping cargo to Gaza, at least not significantly. So it is possible that there is a sporadic or more problematic possibility to do something with very small quantities.

But here, there is a more basic point to this entire matter. Because even if there is a finding, and I obviously am not expressing any position regarding the finding. Even if there is a finding that the land crossings policy has caused irreparable damage from an international standpoint, from the standpoint of international law, the question still remains as to what the causal contribution of the maritime closure is. This is the cardinal point from the point of view of our discussions. The fact is that there is no port there. As such, the closure does not provide cause for any further significant damage.

The Gisha organization, Adv. Tamar Feldman: There is no port there for the main – but not sole – reason that Israel has prevented its construction and even actively blew it up in 2001, and then refused to enable its construction. This is all to say,

Prof. Miguel Deutsch: Now the question is a legal question. How does the claim regarding what you see as Israel's responsibility for the lack of a port affect the question of the legality of the maritime closure. The factual reality is that there is no port, and the legitimacy of the maritime closure, it seems to at least on its face, cannot be influenced by the question of why there is no port.

Ambassador Reuven Merhav: I would also like to note something in this context. There was never a port in Gaza, other than during medieval times some sort of small beach port, and even today there is an anchorage, and the construction of the port that was talked about

needed to begin in 1999. Had they started building it, it would have been built over 5-6 years or something like that, and then it would have been finished in 2006. So the entire problem is very much reduced, and I wouldn't hang the entire story on the matter of the port. It is really, it is factually incorrect from the point of view of building a port. Building a port is a very long process, and look how much time they built Ashdod, and look at how much time they built Haifa, which was a very small port at the time, not to mention other things. So it is worthwhile to stick to the facts here.

The Gisha organization, Adv. Tamar Feldman: I agree with you, sir, absolutely. That is to say, Israel, the point is that Israel controlled the maritime space of the Gaza Strip consecutively and consistently since 1967. The fact that it prevented the construction of a maritime port is part of this matter. That is not all. It is physically present in the Gazan sea, and it is actively preventing the entry of sailing vessels to Gaza or their departure from Gaza, as part of a declared policy. At first, throughout the years of the occupation, it admitted that it was occupying the Gaza Strip, it claimed that this was based on the laws of occupation. Later on, after the Disengagement, it claimed that this was based on the laws of armed conflict. Then it called it some kind of closed area. Then it declared a maritime siege. The constructs are somewhat different, but the factual situation is the same factual situation, and the legal framework that is appropriate for assessing this factual situation is, as we claim, the very legal framework that I will come to.

Ambassador Reuven Merhav: Look, the simple fact is, and it is worth remembering this, it is worth connecting these to the maritime activities off the Lebanese coast and off of other coasts, where they tried to smuggle things to Gaza and Israel took the steps that it took. These are factual things over which there is no dispute. After all, there were smuggling attempts, there were ships that were stopped. These things didn't just appear. These things had some kind of reason.

But I wanted again to say something regarding the policy on cargo. First, the rule was that whatever wasn't permitted was prohibited. Then, they changed it in a way that I think is reasonable. Whatever is not prohibited is permitted. This is a .... very serious change, and this is a fact.

The Gisha organization, Adv. Tamar Feldman: I agree. I will relate to it in brief. I want to again state

that we are not talking here about justifications for the prevention of maritime traffic of one kind or another, but about the security justifications that exist for preventing the entry of sailing vessels, insofar as such exist. Obviously Israel has the authority to prevent the entry of hazards, the entry of war materiel and so forth, whatever will harm Israeli security, and it has the authority to do this.

The question is, again, a question of the level of control and in what manner Israel uses it. This is the question that I am relating to right now, and I would like to continue.

I think that the table, that I will relate to, shows this quite clearly. General Horev asked whether coriander is essential or not. We can ask the same question about cinnamon, about chick peas, and so on. That is to say that there is some kind of determination that seems, on the face of it, to be quite arbitrary between what enters and what doesn't enter, and we have had difficulty interpreting the criteria behind it, so we asked for it from the State. As stated, we didn't get any answers.

From the standpoint of the crossings, there has also been a change as a result of Israel's closure policy on Gaza. The Karni crossings has been closed. Later on, the Sufa crossing was also closed, and the only crossing left for the passage of goods is the Kerem Shalom crossing. The entire cargo volume basically began passing through it.

Mr. Watkin: But if I took your argument to its full extent, and I'm just, you know, it sounds, what you're raising is issues of choices were made to bar some things and not others and you're questioning what those were. Major General Horev asked the question 'What is essential?' And, you know, the legal test is that what are essential goods is the test that has to be allowed through. And so it's not clear to me that you're arguing that what's not on the list is essential and should go on the list, is one. And two, I guess, and I'm just trying to understand your argument as you carry it fully, because if you're of the view that all food should be allowed in and out, then there's no restriction on commerce, and so there would be no economic warfare. And so I'm back to this question of whether you're accepting that economic warfare is a lawful means/method of warfare. What is, when you say, if you say, economic warfare is lawful, what would you allow one state to ban in its relations with another state? Now, let's forget about Gaza and Israel, but what does that mean, I guess, when you say it's economic warfare?

The Gisha organization, Adv. Tamar Feldman: Our claim is that Israel is required to ensure the necessities of the civilian population in the Gaza Strip. Insofar as there is a military necessity to prevent the entry of certain goods, to prevent the entry of war materiel, Israel has the authority to do so. It has the ability to check and to enforce the entry of cargo for an itemized security check. That is the basic assumption.

Ambassador Reuven Merhav: Is it the basic assumption that holds Israel's exclusivity with this obligation?

The Gisha organization, Adv. Tamar Feldman: Can you clarify the question?

Ambassador Reuven Merhav: Can you repeat the sentence that you said earlier?

The Gisha organization, Adv. Tamar Feldman: I say that our claim is that as long as there is a military necessity, Israel has,

Ambassador Reuven Merhav: No, before that. The preceding sentence. Do you believe that Israel has the obligation,

The Gisha organization, Adv. Tamar Feldman: That Israel has the obligation to ensure its needs, to enable to civilians of the Gaza Strip to lead their lives profitably. And I will get to this claim,

Ambassador Reuven Merhav: I am asking about this. If you think that this is Israel's exclusive responsibility.

The Gisha organization, Adv. Tamar Feldman: This responsibility is derived from the level of control, and as long as Israel controls the lives of the Gaza Strip, as long as, in the areas in which Israel has control over the proper livelihoods in the Gaza Strip, in these places and to that extent, it also has an obligation.

Ambassador Reuven Merhav: You are restricting.

The Gisha organization, Adv. Tamar Feldman: What I am trying, in response, what the table that I showed tries to show, is that it is possible to wonder whether there really are security reasons for the decision as to whether to allow cinnamon and prevent cardamom. Whether to permit hyssop and prevent coriander. Whether the motives there are security and what the real motives are that are behind such a policy, and according to what standards, according to what criteria they are applied.

Mr. Watkin: But I want to go back to just clarify in my mind the wording you used of what Israel's

obligation, what you say Israel's obligation is to do with respect to the civilian population, and it isn't to provide these, you didn't say it in the context, and I may have just misunderstood, you didn't say it in the context of objects essential; you said it had an obligation to provide for the welfare, or something? I'm just, it was the wording, it was a different wording than what I was suggesting the test was, and that's, and the reason I say that is, you know, in terms of making this legal argument, and I understand the collective punishment argument, which you're going to get to towards the end, but there are specific, you know, well-understood rules with respect to blockade, and one of them is that the declaration or establishment of a blockade is prohibited if it has the sole purpose of starving the civilian population or denying it other objects essential for its survival, and that's different than saying it has to provide for the welfare of, at least from, or is it? I guess what I'm trying to understand is what's your reaction to that wording that's set out as the legal rule under international humanitarian law? Do you see "providing for the welfare", if that's the wording you use, sorry, "providing for the welfare of the population" is the same thing as "objects essential for its survival"? Or I guess what I'm asking is how do you define "objects essential for its survival"?

The Gisha organization, Adv. Tamar Feldman: The obligation that I related to is an obligation pursuant to humanitarian international law, Regulation 43 of the Hague Regulations of 1907 that sets forth, according to the interpretation also of the Supreme Court in the Jamid Askan case, that Israel has an obligation to uphold the proper lives pursuant to Section, the same Regulation 43.

There are obviously limits to interpretation here, what is the measure of responsibility, etc. We are claiming that it is derived from the level of control, and I will come to this in depth. But this duty is, without a doubt, higher than the provision of the necessities required for the survival of the population, as written in the State's response in al-Basyuni, and in any case, our claim which I again, repeat again, will come to, our claim is that the laws of siege, specifically the laws of maritime siege, are not the appropriate legal framework for assessing the legality of the closure. The "manual" of San Remo is not the appropriate legal framework in our matter.

Ambassador Reuven Merhav: I don't think that there is any connection between these things, but that



is for my jurist colleagues to say. But let's say this. Even today, as you know, 61% of the population in Gaza receives its basic food from the United Nations. Let's say a hypothetical case, that tomorrow the Arab League would come, take up a collection among all of the petroleum producers, say that from now on until there is a solution for the Gaza Strip, all of the cargo for the population of the Gaza Strip is on us, not just oil, sugar, flour and rice, but everything, as they say, for three meals a day with protein and everything. And they would come to Israel in this matter and say, the responsibility is ours, we will make sure, you can do the control. We guarantee that such and such will be, be it under one kind of arrangement or another. For instance, we have a neighboring Arab country with whom we have security arrangements. I don't know if you have ever been on the Jordan-Israel border. It is completely open there. Okay. We the responsibility also be ours then if such a situation would occur? Because it is happening today in a large number of the cases. In a large number of the cases, there are international agencies that are making sure of it, and not us. Life is in their hands, we are not interfering with them in anything.

If such an hypothetical situation were to occur, that it was their community, that it was with them, and its religion and its flesh and it itself would take all this on themselves, or possibly that it would undertake and would do it. Would this bother you?

The Gisha organization, Adv. Tamar Feldman: I would like to emphasize that I am not relating here to the provision of goods in and of itself.

Ambassador Reuven Merhav: You did get into it.

The Gisha organization, Adv. Tamar Feldman: No. Israel does not provide goods to the Gaza Strip. It enables their entry. The cargo is financed,

Ambassador Reuven Merhav: But it enables the entry of the United Nations.

The Gisha organization, Adv. Tamar Feldman: The cargo is financed in whole either by international assistance organizations or by the Palestinians. Israel does not supply goods.

General (ret.) Amos Horev: You didn't intend that we should finance it?

The Gisha organization, Adv. Tamar Feldman: Certainly not. I am just correcting some impression that was perhaps created, as if Israel provides basic humanitarian cargo,

General (ret.) Amos Horev: We know that -, and the quantitative limitation is dependent on them, or on

the ability of the cargo to transfer through the Sufa crossing or another crossing. That's all.

The Gisha organization, Adv. Tamar Feldman: I would like to correct this impression as well, right a way.

General (ret.) Amos Horev: I have just one question. You are constantly avoiding the fact that the Gaza Strip is controlled by an organization that we would prefer would not have control there, but that the Authority be there, the Hamas regime, which in simple language declared war on us, and there is basically a state of war here between us them, and you are ignoring this fact completely. It's as if we are dealing with some body striving for peace that is a neighbor of ours who is having one kind of difficulty or another, and the problem is dependent, as it were, on us. Why are you ignoring this issue? It has immense significance.

You said this, basically, you outlined stages during which we stopped the construction of the port and we blew up the construction of the port, and so on, and so on, and so on, without relative to what happened during these stages. But these things didn't happen on their own.

The Gisha organization, Adv. Tamar Feldman: Certainly not.

General (ret.) Amos Horev: So your complete and full avoidance of this fact very much irks me.

The Gisha organization, Adv. Tamar Feldman: I did not intended to irk. There is really no avoidance of the factual reality as it happened.

General (ret.) Amos Horev: You aren't saying it.

The Gisha organization, Adv. Tamar Feldman: And I noted unequivocally and explicitly that the closure policy, for instance, was put in place after the Hamas takeover of the Strip.

General (ret.) Amos Horev: So perhaps the issue of the economic warfare belongs more to the nature of the Hamas administration in Gaza? And perhaps the pressure to free Shalit belongs more to this issue than something else? Perhaps it's not all exactly this way?

The Gisha organization, Adv. Tamar Feldman: I am not relating here to the political or diplomatic circumstances that were relevant to some decision or other. I am relating only to the factual reality and to the data that is relevant to what this commission is investigating.

General (ret.) Amos Horev: But you cannot ignore life. There is some kind of feeling that you are sitting in some kind of bubble, and everything that is outside the bubble has no effect,

and you are dealing with a theoretical issue. This is not theory.

Prof. Miguel Deutsch: I just want to note that the focus is on the obligations pursuant to humanitarian law, and there is a list of obligations that we need to investigate factually. And we are dealing with this segment.

The Gisha organization, Adv. Tamar Feldman: Correct. If it comes concretely to these humanitarian obligations that we see and what derives from them.

Prof. Miguel Deutsch: Earlier, you quoted Deputy Minister Vilani. First of all, this is an obligation and this is, in our opinion, we are somewhat acquainted, an obligation on the entire mechanism to examine itself every so often, and to be caught up in conventions, or to tread in its footsteps. But there is one word that floated here but was not heard, and that is sanctions. In the world, they did sanctions, and there are certain sanctions that are done to a regime. There is not situation where they did sanctions against a regime in order to weaken it where the population wasn't harmed. There is no such thing. The most prominent example for me is South Africa. Do you think that the population of South Africa was not harmed by the fact that there were no raw materials in the workshops and that unemployment there was higher, and is still higher than in the Gaza Strip? It's not nice, but like my colleague General Horev says, you can't remain disconnected from it. This is the reality with the regime there. Now, everyone wants it, that the elections are democratic, to bring democratization to the Middle East, and look at what has happened since. All of these things didn't happen in isolation. Beforehand there were industrial zones, there were crossings. Do you know how many times they opened fire on the fuel terminal and Israeli drivers were passing there to bring fuel for Gaza? You can't be disconnected from these things. What, are we not people? Do we not feel this? Do you think that the people who are sitting here don't understand these things? We understand them very well. But we want, first of all, to go back to the mandate and see plainly and truly how this maritime blockade connects to the humanitarian difficulties that exist in Gaza. And until now, I am having difficulty seeing this, and I am still waiting for you to tell me these things. Other things in one fashion or another, and I wouldn't suggest to get caught up on the cinnamon that was before June. It could be that the cinnamon before June needed to be cancelled long ago, I won't

dispute that. But it's also not my concern.

The Gisha organization, Adv. Tamar Feldman: Okay. We talked about the crossings. At Kerem Shalom, as stated, a closure was put in place. All of the passage of cargo was moved to Kerem Shalom, whose volume was low and Israel didn't take actions to expand the crossing. As a result, from the point of view of product and of lowering the volume of the crossing, the quantity of cargo that was passed to the Gaza Strip fell, on a monthly average, by 75%. That is to say that the number of trucks that entered the Gaza Strip from the time the closure was put in place was 75 percent of the quantity required that was registered in 2005, and this is even a relatively cautious estimate, because there were periods where the demand was higher. As of 2005, the demand in the Gaza Strip was 10,400 trucks per month. After the closure was put in place, we can see that in the first few months, there were a thousand and some trucks. Afterwards, the numbers increase a drop. We can move to 2007, this is 2008, and the next slide is 2009. The periods are September until September, where the monthly average stands at roughly 2000 or 2000 and some trucks per month, which is 25 percent of what is required in Gaza.

General (ret.) Amos Horev: I asked you to relate to tons not by chance. Because the trucks today are 40 tons per truck. 40 tons. So multiply the number you gave by 40 tons. How many tons do you have?

The Gisha organization, Adv. Tamar Feldman: Should I do the math?

General (ret.) Amos Horev: It's a completely different number. You take trucks from ten years ago, and trucks from today. They travel with two trailers, they are towing 40 tons. These are the trucks we are talking about.

Prof. Miguel Deutsch: I would also suggest, perhaps, during the matter of the response, I would suggest that we grab the bull by the horns. That is to say, I understand that this is the truck. The relevant legal question is the question, first of all, of whether there was harm to the nutritional security. What are the minimum means for defining nutritional security, and if it is factual, did what passed through the crossings supply the demand? First of all to this question. Are there numbers? What is nutritional security? For instance, we heard testimony from General Dangot, where he spoke, it seems to me,

about scales of 1700 calories per day, or something of that order.

Ambassador Reuven Merhav: No, no. He didn't talk about it. We didn't want to hear the word calories from him. Nutritional assessment, Prof. Bentowitz told me earlier, which is comprised of carbohydrates without protein.

Prof. Miguel Deutsch: No, no, there was testimony from General Dangot. But we will go back to the protocols and see it again.

Ambassador Reuven Merhav: We didn't want to hear it.

Prof. Miguel Deutsch: We didn't want to hear it, but we heard it. That is to say, there was, I remember, a number of calories of 1700, I don't know how much. In any case, the question is whether you have data on this point, because perhaps it is worthwhile from the standpoint of saving the time that we have for this discussion, that we focus on this aspect.

The Gisha organization, Adv. Tamar Feldman: I will get to the influences of the closure on the residents of Gaza immediately. I will focus on three main points, one of which is nutritional security. I will relate to it as much as I can in the framework of our knowledge and expertise, and I say at the outset that this is not the field that we are experts in. But here I will do the things. Just in order to sum up this point, during the testimony by the Coordinator for Government Activities in the Territories, Prof. Deutsch said, and rightfully so, that knowing how many trucks entered per month doesn't tell us anything. We need to compare it to need, and these graphs are intended to show precisely this. That is to say, how the closure policy affected the entry of cargo into the Gaza Strip, and numbers. What does this say. How many trucks entered, and we would be happy, obviously, to provide the number in tons. For the record, the size of the trucks did not change, meaning that if you compare (them), this graph will look exactly the same in tons, just that the number will be different. The number will be in tons and not trucks.

I would like to move now really to talk, with your permission, about the peripheral effects –

General (ret.) Amos Horev: Just one more question. Who is responsible for distribution? Who receives the goods and who is responsible for the distribution of the goods in Gaza?

The Gisha organization, Adv. Tamar Feldman: Within Gaza?

General (ret.) Amos Horev: Yes. See, we know what is going in. There is a full list, both monetarily and quantitatively. We don't know what is happening after it goes in. Who controls the cargo? Some of the cargo is under Hamas control. How does this work?

The Gisha organization, Adv. Tamar Feldman: It is hard for me to say exactly how it happens within the Gaza Strip? Perhaps the assistance organizations in the Gaza Strip or Palestinian coordinating bodies can really talk about it fully, but in general, there are two sectors that receive goods in the Gaza Strip. One is the international assistance bodies, and the second is private bodies. Most of the cargo goes to the assistance organizations, and they take care of their distribution. Mainly UNRWA.

Prof. Miguel Deutsch: And the rest?

The Gisha organization, Adv. Tamar Feldman: Excuse me?

General (ret. Amos Horev: Are there rich people in Gaza?

The Gisha organization, Adv. Tamar Feldman: If there are rich people in Gaza? Like in many communities, I don't have data regarding this, but just like very many very weak societies, there is a thin layer of people who profit from it. That is all I have to say, that I know to say.

The Chairman, Judge (ret.) Jacob Turkel: I find it necessary to say, from people who visit there, according to what I have heard in Gaza, the market looks like any flourishing market in any other city in the West Bank.

The Gisha organization, Adv. Tamar Feldman: The main point in this context, which it is important to emphasize, I will come to it again, but it is very, very important to understand, the problem is not with the availability of goods in the Gaza Strip.

The Chairman, Judge (ret.) Jacob Turkel: It is with purchasing power.

The Gisha organization, Adv. Tamar Feldman: It is with purchasing power. The Coordinator of Government Activities in the Territories also related to this in his testimony. The lack of purchasing power. The lack of purchasing power results directly, clearly, from the subjugation of the economy of the closure policy since the Summer of 2007 was a significant and decisive part of it. And this aim, both in the aim and in the result, the closure policy brought about a drastic weakening of the economy in the Gaza Strip, poverty and inadequacy, and I connect back to the data that the Doctors for Human

Rights organization presented.

The Chairman, Judge (ret.) Jacob Turkel: We received data that surprised me greatly regarding the result, regarding per capita income. They were pleasantly surprising. It could be that they were misleading, but they were pleasantly surprising. Data that was simply surprising. Not far from this?

The Gisha organization, Adv. Tamar Feldman: Perhaps I will present the data on the data that my predecessors from Betzelem and Doctors for Human Rights related to, but I would like to truly emphasize the significant data that is relevant. Unemployment since the closure increased more than 40 percent to more than 80%. Every so often the number of 60 or 70 was thrown out. No. More than 80 percent of the residents of the Gaza Strip are dependent on contributions for their existence. They related earlier to 60 percent, 61 percent, this was the number of people without nutritional security, and the number is somewhat different. 80 percent is compared to 63 percent that were supported by assistance from international organizations before the closure. There was an increase of 17 percent. Between 0 and 95 percent of the water in the Gaza aquifer is not fit for drinking. 35 percent of the worked land in Gaza is not accessible, mainly because of those barrier areas that the CEO of the Betzelem organization related to. 85 percent of the maritime territory that was permitted for fishing according to the Oslo Accords are blocked to the movement of fishermen, and therefore, there is no fishing activity there. Again, this is the place to go back and emphasize: There is no, and we did not claim that there is, hunger in the Gaza Strip. This is not the question. The question is what is the ability, what is the accessibility of the residents of the Gaza Strip to food that is coming in to them. It is correct that UNRWA is providing bags of rice. It is correct that UNRWA is providing sugar. But can the residents of the Gaza Strip allow themselves to purchase vegetables, to purchase meat, to purchase what comprises a humane diet in accordance obviously with the cultural background? The answer is, in most cases, no.

The Chairman, Judge (ret.) Jacob Turkel: What are really the food products that UNRWA is providing? Just sugar and rice?

Ambassador Reuven Merhav: Sugar, oil, rice and flour. Four things.

The Gisha organization, Adv. Tamar Feldman: yes, basic products of the type that Ambassador

Merhav noted. There are perhaps a few more, but it is in the UNRWA reports. You can look.

Prof. Miguel Deutsch: Concerning nutritional security, I would also like to emphasize what I always ask and note, just to be clear, I am not dealing now with the question of whether there is or is not nutritional security, but with the question of whether there is responsibility for the crossings policy, and obviously also with questions of the maritime closure on nutritional security. The question is whether there is causality, because that is the decisive question for the purpose of our topic.

The Gisha organization, Adv. Tamar Feldman: I think that part of the answer really does come from the numbers, a significant increase in the quantity of people who are supported by donations from external sources. The increase in the level of unemployment, the almost complete elimination of local industry in the Gaza Strip, which is connected with the level of unemployment, obviously, and the effect that all these have on the purchasing ability of the residents of the Gaza Strip, and on their access to food and other products. These data forge a direct connection between the closure policy on the Gaza Strip and the situation in practice, the result of it, and is the path of the absence of purchasing power, the absence of nutritional security as a result of it, and various ramifications on health that are derived from it. From this and from other things that I will get to right away.

Prof. Miguel Deutsch: There is a circumstantial omission here in one stage, because if we say that the crossings policy causes the fact that there is unemployment, let's say for the sake of argument, and as a result of unemployment there is a lack of nutritional security. You are not claiming, I assume, that the crossings policy is not legitimate, when talking about working power. That is to say, it seems to me, I don't know, you are apparently not claiming, at least, that there is a problem of legitimacy in the fact that they are not allowing workers from Gaza to work in Israel.

The Gisha organization, Adv. Tamar Feldman: In Israel?

Prof. Miguel Deutsch: Yes, and if this is so, then the unemployment is not a causal product in this sense of the crossings policy. It is a causal product of many other causes. It is not an "accusatory" causal product. That is the point.



The Gisha organization, Adv. Tamar Feldman: The question is what the unemployment results from, and as a result of what is there harm in the absence of purchasing power. Insofar as the question derives from the closure policy on Gaza, and we claim very significantly so, that the economy of Gaza has been very significantly harmed as a result of the closure, and this was also the intention of the closure, that is to say, it has achieved its goals.

General (ret.) Amos Horev: No, no. It was harmed as a result of the declaration of war on Israel. That is where the matter started. What is the closure? The closure was born out of the blue? We have here, so I remember the Erez industrial zone. It flourished, and provided work for people from Gaza. What happened? The closure was born of what? The security situation is a clear result of the declaration of war on the State of Israel. So we cannot ignore that. Then we want to both declare war and build a flourishing country of what? Of terror? There is a solution to the problem. A very quick solution. We used to prefer workers from Gaza to workers from Thailand or from some other place, from the Philippines. So we correct ourselves, we catch ourselves in the process at some point and from there we start the matter. For you the matter starts with the closure. For me the matter starts with the declaration of war on the State of Israel.

The Gisha organization, Adv. Tamar Feldman: I am focusing on the closure policy and its ramifications on the residents of the Gaza Strip, since that is the relevant question for us in this discussion here today.

General (ret.) Amos Horev: But why is there a closure? Is there not a lack of work there? Did you yourself not say that the problem is not the products, the problem is that the people have no money, the problem is one of a terrible, terrible lack of work?

The Gisha organization, Adv. Tamar Feldman: Not just. The problem is also in this.

General (ret.) Amos Horev: How do we solve this?

Ambassador Reuven Merhav: Agrexco had a representative in Gaza. There was proper export via Ashdod, an arrangement with Kawat to Holland and to all of the countries of the European Union, with a special agreement, and they went and blew this matter up. They blew up the crossing and opened fire from the containers that were unloaded in Ashdod, and this business was stopped. No one was prepared to deal with it. And then they blew

up the Erez industrial zone again. We were there. We saw it. What, we don't want them to work? We want a poor neighbor? We want a neighbor who will be happy with life. And then they left these greenhouses. Hundreds of people could have worked there, exporting whatever you want to Europe, and they went and burned them down. They blew them up. They left them with the taps, with everything. With the plastic coverings. So where does this matter start from? It's the egg and the chicken. Where is the egg and where is the chicken? You say that the egg is from the Arabs? The egg isn't from the Arabs, the egg is the fact that they had a chance. They had a chance, and you know what? We saw a territory in the world, of the same size, with more people who flourished and prospered because the people worked. They had a climate that was available for investments, they worked, they brought in industrial plants, they produced, they achieved and they flourished, and within 20 years, I didn't recognize the place. Is it not possible there? The people all went through professional schools, there is an education system there, UNRAW invests a lot in education, they did wonderful things.

Mr. Watkin: I have a question on the legal front. Just, you said very quickly in passing that you don't agree with the San Remo Manual. What is the source of the law that governs the law of blockade?

The Gisha organization, Adv. Tamar Feldman: Can I wait with this for the next stage in the presentation? I will get to the next stage.

Mr. Watkin: Well, I think it's important to this stage because I'm not sure whether you reject all of the San Remo Manual, or just the parts that relate to the civilian population. So if I was to ask you what's the source of the law with respect to the establishment of the blockade, that it has to be done impartially, it has to be effective, that there has to be notification, you know, there's the other parts of the San Remo Manual, are you saying that those aren't international law?

The Gisha Organization, Adv. Tamar Feldman: I don't reject the San Remo Manuals at all. It is part of international law. There are many scholars who claim that it is customary international law, meaning that it is binding on all the countries. I don't reject San Remo at all. I am just claiming that it is not the appropriate legal framework for analyzing the maritime closure. And I touched upon the framework and the explanation of why in short,

because I don't think that there was discussion here of a maritime siege, but rather of a prolonged maritime closure, and in the appropriate legal framework, I will get to it very soon, if you will be patient and wait another few minutes, we will get to it.

Prof. Miguel Deutsch: Can you discuss this from the point of view that the rule of human rights does not apply, but rather humanitarian law, because that is how we are outlining the convergence of the decision in this matter. In other words, what path do we take?

The Gisha organization, Adv. Tamar Feldman: I will get to this in short, but really.

Prof. Miguel Deutsch: There are the problems of saving time and we very much need to focus on a few more sensitive questions.

The Gisha organization, Adv. Tamar Feldman: One hundred percent.

Mr. Watkin: I'm just trying to understand what you say when you say it's not a blockade. You know, this is the purpose of this committee, is to look at whether the blockade was properly established, right, in accordance with the international law.

The Gisha organization, Adv. Tamar Feldman: There is some confusion between the terms blockade and closure. Never blockade. The laws of blockade in general, generally, are one type of laws. Closure is what we are talking about as a closure. This is a somewhat different legal construct, in which the manner that we need to assess it, in our opinion, is different, in the framework of somewhat different laws that place obligations and prohibitions on Israel.

Mr. Watkin: So are you saying, so the law that governs the naval blockade, which this committee is looking at, is set out in customary international law?

The Gisha organization, Adv. Tamar Feldman: Never blockade is a term that was taken from San Remo, and what Israel declared on the 1<sup>st</sup> of March 2009 is a never blockade, but our claim is that it is just another name for closure that was placed on the Gaza Strip even beforehand, and we need to examine this. The legality of the closure needs to be examined, and not of the blockade in and of itself, because that is very narrow and reduced.

Ambassador Reuven Merhav: In order for there to be closure, there needs to be what to close. There was nothing there to close at all. Cargo was not going there, there was no export. You are saying regarding the closure of the crossings, so a little went out and thousands of

tons went in. There, nothing went in. What went in, there was the fear that what was on the Karine A would go in, that a quarter of it would go into some boat and be brought into Gaza, and then everything that goes through the tunnels in two months would go in in two hours. That's the whole story. Because of this, it is simply a continuation of the surrounding security inspections, and there was a lacuna that was not covered. That is how I understand it. And I would ask, truly to receive your view, how this connects to the things you are saying. How did this affect the humanitarian situation in Gaza, the fact that they declared the maritime blockade.

Mr. Trimble: If I might just throw in my head as well. Looking at the document you gave us when we resumed, I find myself in agreement with the first part of paragraph 57, the very last paragraph, the opening bit, in which you say "We do not doubt Israel's authority to stop the traffic of ships to the Gaza Strip, so long as its goal was to prevent the entry of weapons, and provided it allows the adequate passage of civilian goods in both directions." A slight reservation about the last half of that sentence. But then where I part company from you is in the other part of that paragraph where you're saying that the closure, that the blockade's part of the closure of the Gaza Strip, and "the closure was enforced in order to pressure the civilian population as part of economic warfare, whose goal is to paralyze the economy and destruct normal life." And I would like you, and I think this is really the kernel of the argument that is being presented to us, and I'd almost like you just to focus on that particular argument that economic warfare in these terms is not that it vitiates the right to establish a blockade, because it strikes me as somewhat surprising, as economic warfare happens in every conflict and outside conflicts. It's happening at the moment with regard to the United Nations sanctions against Iran. It happened previously with regard to UN sanctions with regard to Iraq, and Ambassador Merhav mentioned earlier sanctions as well. So I have great difficulty with this proposition that you can't have economic warfare in those terms.

The Gisha organization, Adv. Tamar Feldman: I think that this is a critical point. Honestly, the question is what is economic warfare, and what this term is, and whether it even exists. I will precede the legal portion and say parenthetically now that there is no such term as economic warfare in international law. It is something that Israel, a title that Israel

provided. And basically, in international law, you can talk about a siege, you can talk about economic sanctions, you can talk about the possibility that Israel –

Prof. Miguel Deutsch: As a theoretical concept at least, it exists in international literature across all of the literature.

The Gisha organization, Adv. Tamar Feldman: As a theoretical concept, not a legal construct that has laws, limitations, that has rules according to which we can assess them. The closest thing to Israel

Ambassador Reuven Merhav: Tell me. The Arab boycott of Israel was not economic warfare? The Arab boycott of Israel for years was not economic warfare? (It was) the mother of economic warfare.

The Gisha organization, Adv. Tamar Feldman: This is closer, or particularly what you earlier declared regarding South Africa. This is economic sanctions. This is a concept that does exist in international law, and there is even the possibility that it permitted under international law to put economic sanctions in place when there is a country, when international law claims a situation such as the type in South Africa. There is a country that breaches international law, countries convene, some kind of conference of countries or an international organization that has the explicit authority to do so, and they decide to limit trade with the offending country, let's call it, in order to put pressure on it to adhere to international law. The decision of this group of countries is for all of them not to trade with the country. This is fundamentally different from the situation that we have before us here. Here, the situation is that Israel decided unilaterally not just not to trade on its own with the Gaza Strip, which it is obviously permitted to do, it can decide that it doesn't want to trade with the Gaza Strip, from the standpoint of a belligerent entity, and so forth. But it didn't just limit its own trade with the Gaza Strip, it absolutely prohibited Gaza's trade with the entire world, and it did so unilaterally just because it could. That is to say that it used its effective control, in order to prevent the departure from Gaza or the entry into Gaza of both cargo and of people. And this is a situation that is completely different than what international law imagines when it talks about economic sanctions. Israel is not the United Nations, it is not a group of countries that has the authority to do this. Insofar as it wants to limit trade between it and Gaza,

insofar as it wants to prevent the entry of prohibited products, of war materiel, it can do so. It has the authority to do so. Whether under the laws of occupation or under the laws of armed conflict, it has the authority to do so, unequivocally. But the distance between this and determining economic sanctions unilaterally is very great.

General (ret.) Amos Horev: Excuse me. The Middle East. I don't want to belabor you or us here, I can give three pages of explanations of economic warfare of one country vs. another. There are limitations of one kind or another that have been put in place at a certain time – not a group of countries and not shows. These things were done in an orderly fashion and this is part of international practice. There is literature about this. These things were done. Then it always connects to political things. There were cases where the Arab countries, including in Gaza, said that whoever trades with Israel is subject to the death penalty. Do you know about this? Did you hear about this in Lebanon? Did you hear about this in other countries? This exists even today. So what is this thing? It certainly exists, and the question here, I go back to the question, to connect to the matter that we have gathered here for, the legal matter of the flotilla and the influence of the maritime blockade on the humanitarian situation in Gaza, and I would very much like you to give your opinion on this.

The Gisha organization, Adv. Tamar Feldman: I would like to focus on three main elements where the closure policy significantly affects and defeats the civilian population. I will not repeat the things that were already said and presented by Betzelem and Doctors for Human Rights, and I will focus on three main issues that are within the field of our expertise, and which, in our opinion as well, have a significant impact on the lives of the residents of Gaza. The first is electricity, the second is local production and export, and the third is the traffic in women. I will relate to them in brief, to electricity somewhat longer and to the others really in brief, just to go over them.

Prof. Miguel Deutsch: It seems to me that electricity is actually the least. We have also seen, but this is an issue that the maritime closure doesn't affect, is it not? It doesn't affect electricity at all. So it is precisely that which we can give up in this context. We are not limiting electricity in the sea.

The Gisha organization, Adv. Tamar Feldman: Yes, but it has an effect to the same degree that it

affects the passage of any cargo. Because what we are talking about here is mainly the passage of industrial diesel for the purpose of manufacturing fuel for the power station.

Ambassador Reuven Merhav: Excuse me. We have read the material, and I concur with the opinion of my colleague. I don't think that it is worthwhile to go over this. We simply know the material.

The Gisha organization, Adv. Tamar Feldman: A question was asked here, and I would like to respond to it. What is the factual dispute between us and the Coordinator of Government Activities in the Territories, General Dangot, and the discussion of electricity is directly connected to this. If you are really interested in listening, it will take a few minutes.

Prof. Miguel Deutsch: Do you have written material on the matter?

The Gisha organization, Adv. Tamar Feldman: We have written material, certainly.

Prof. Miguel Deutsch: So submit them, Tamar, we have all kinds of documents here. I don't know if it includes precisely this, but if there is something missing, send it in writing. No problem.

The Gisha organization, Adv. Tamar Feldman: Okay. No problem. The relevant material was sent to you in part. There is the analysis that concerns the destruction of infrastructure in the Gaza Strip, which is also connected to the period of the war, but also to the closure policy and its effects on the electrical system in the Gaza Strip. A position paper (will be sent) later on the electrical system since May 2010, and we will submit completions in writing, if this is acceptable to you.

Prof. Miguel Deutsch: It is important that it be in the next few days, and as fast as possible.

General (ret.) Amos Horev: The issue of electricity came up before the Supreme Court.

The Gisha organization, Adv. Tamar Feldman: The issue of electricity came up before the Supreme Court.

General (ret.) Amos Horev: And there is a decision in this matter.

The Gisha organization, Adv. Tamar Feldman: Yes, that same famous case –

General (ret.) Amos Horev: With lots of reasoning.

The Gisha organization, Adv. Tamar Feldman: Basically, the Court determined there that the same minimum that the State committed to, which stands at 2.2 million liters of industrial fuel per week, is just sufficient, despite the fact that at the same time, the power station had been repaired, and basically the demand in the Gaza Strip was higher, it stood at 3.5

million liters per week, but even from the benchmark to which the State committed, this is the blue line that you see here, in certain periods they went below it, even below this minimum, and the significance for the electrical system in Gaza was critical: interruptions in electrical production and the absolute shut down of the power station during certain periods. It reached its apex during Cast Lead, when in the first week of the fighting, Gaza was in complete darkness, as a result of it. That is to say that the policy of cutting back on the transfer of industrial diesel to the Gaza Strip led to serious harm to the electrical system, electrical interruptions of 8 to 12 hours a day during periods when it did work, and this obviously affected the water system, the sewage, local industry, civilian consumption and the health system, and the effects were very, very much felt and detailed in our report on the destruction of infrastructure, and you can look at it.

General (ret.) Amos Horev: Can you relate to the dispute that there was between Hamas and the Palestinian Authority in the matter of the supply of fuel?

The Gisha organization: Adv. Tamar Feldman: Until 2010, only Israel was responsible for the explosion in industrial diesel. Basically, the foreign parties were prepared to pay all that was required in order to transfer what Israel allowed, and more. They also agreed to pay up to the maximal benchmark of 3.5 million liters per week. From the beginning of 2010, the situation changed somewhat because the foreign financing parties transferred control to the Palestinian parties, and as a result of some financial problems, the levels of supply of industrial diesel fell below the minimum, and not as a result of the involvement of Israel. But as a result of the internal financial problems, and this is as of the beginning of 2010. Until then, it was only because of Israel's limitations.

Prof. Miguel Deutsch: I see that you are claiming that the laws of blockade do not apply when talking about a general blockade that applies both to civilian cargo and military cargo. You have such a claim, I see, just you don't bring any supporting documentation for it. What does this rely on basically? Section 49 of the paper that you submitted, page 9. It talks there about a significant bifurcation from a legal standpoint.

The Gisha organization, Adv. Tamar Feldman: Yes. This section relates to the legal frameworks that could have been relevant, or that Israel claimed during certain periods that they were



relevant for an analysis of the closure on Gaza, including the maritime closure, and this section simply relates to a refuting of these frameworks, one of which is economic sanctions to which I referred, the second being the construct of a siege, to which I will also refer. Our point of departure is that there are obligations under humanitarian law that Israel needs to meet. Insofar as it meets them, it upholds the law.

Prof. Miguel Deutsch: No, that is clear. But the legal branch that applies, do you also dispute this? That the legal branch that applies to the maritime closure is the laws of blockade, because you are claiming that this is not a blockade from a legal standpoint? But something else?

The Gisha organization, Adv. Tamar Feldman: We are claiming that this is not a naval blockade as the term is defined. In other words, we are talking about a naval blockade as defined by San Remo, but this naval blockade is simply another term for a policy that was conducted even prior to the factual situation that also existed beforehand, and that the appropriate legal framework for analyzing it is humanitarian international law, and not the concrete laws of blockade that are detailed in San Remo, and from whose use must derive the obligations of Israel and the principle that we repeat

Prof. Miguel Deutsch: This is an important question, but what exactly does this derive from in your opinion, because again, the laws of maritime blockade as this term is fundamentally defined do not apply when we are talking about all-inclusive limitations.

The Gisha organization, Adv. Tamar Feldman: The laws of naval blockade are very specific. They talk about a method through which they imagine a very particular situation in which there are two parties, two countries, it is international law,

Prof. Miguel Deutsch: There is, obviously, the question of whether it also applies to non-countries, to conflicts that are not between countries, that is clear.

The Gisha organization, Adv. Tamar Feldman: Without getting into this, two parties get into a conflict. One party decides that, in order to realize its defined military goals, it needs to set up a naval, land-based, naval blockade, because we are talking about San Remo, we are talking about a naval blockade. According to international law, such a declaration is subject to all kinds of conditions, and it needs to fulfill all kinds of

conditions, in order for it to be legal. But this is a very, very particular situation. We are claiming that the situation before us is not this situation.

Prof. Miguel Deutsch: That is precisely the question. Why not?

The Gisha organization, Adv. Tamar Feldman: Not this situation, but a broader situation, in which there is a naval closure, but not a naval blockade, not a naval blockade, but a general closure that incorporates in the closure policy not just naval but also land-based. And therefore, the particular framework, that is reduced

Prof. Miguel Deutsch: In this matter, you are basically repeating the claim that everything is anchored in the decision from 2007?

The Gisha organization, Adv. Tamar Feldman: Yes.

Mr. Watkin: What's your, excuse me. Excuse me. I'm just trying to clarify your, what's your authority under international law to close off a coast from using naval forces at sea to stop the, to stop goods and people leaving a land mass?

The Gisha organization, Adv. Tamar Feldman: According to international law, there is authority based on the laws of occupation, or based on the laws of armed conflict, based on the humanitarian laws, there is authority and the possibility of limiting movement via the sea or via the air, or in any way, in order to serve defined military purposes for security needs. As long as the entry of goods is allowed in another way. That is to say, if you prevent the entry of civilian cargo in a particular way, you need to enable its entry subject to security inspections, etc. in another way.

Mr. Watkin: Right. The coast, on the coast of Gaza, on the dry land, not on the water, right? On the dry land, who was exercising effective control over the coast of Gaza, the terra firma?

The Gisha organization, Adv. Tamar Feldman: The question is who has effective control today over the physical sea coast of Gaza?

Mr. Watkin: Is it Israel or is it Hamas?

The Gisha organization, Adv. Tamar Feldman: The State of Israel currently has no land forces on the coast of Gaza. It has maritime vessels that are patrolling and moving around in the territorial waters of the Gaza Strip.

General (ret.) Amos Horev: At what distance?

The Gisha organization, Adv. Tamar Feldman: It can come at any distance.

Mr. Watkin: So where under occupation law, then, are you relying on Article 43 in maintaining order in the territory is the basis to maintain a naval blockade? Sorry, a naval closure. I understand what your argument is now. Okay. The second part I had was, you've talked about economic, in your paper, economic sanctions under Article 41. And I'm just trying to understand, we had lots of examples of economic sanctions; those are outside of armed conflict. It's the use, it's non-military force. UN Security Council declares that there would be a, variety of names for it, embargo, whatever, and that can have an effect on the population. And it can have such an effect on the population that there's a, that usually it does now all provide for humanitarian relief going through, not unlike a blockade, right, and a smart sanctions program that's been put in place under the United Nations. What your paper doesn't address is Article 42 of the charter, which makes specific reference to blockade, which could be authorized by the United Nations Security Council. So I'm just trying to understand that, outside of armed conflict, is your argument that the Security Council can put economic sanctions in place that can affect the civilian population and can have a significant effect on the civilian population, but if there's, if they use military force and they order a blockade, what would be their ability to do that to have economic impact against the entity or the state they awarded that blockade? Is your position that, because of the word "blockade", that you can't have any economic impact?

The Gisha organization, Adv. Tamar Feldman: The United Nations Charter, in a completely different legal framework, the authorities given to the United Nations are authorities that are not given to a State, and not for nothing. That is to say, the United Nations is a group of States that come together and decide, particularly in the Security Council, to take very serious steps against States that breach the law. These means can be economic sanctions, they can also be a military attack. We are not talking about this now. We are talking about a completely different legal framework. We are talking about the obligations of a specific State, the State of Israel, our country, under international law. Its obligations and how it fulfills them. And since it is one State and

not the Security Council, our claim is that it cannot determine economic sanctions of the type that the United Nations determines on Iraq or on South Africa.

Mr. Watkin: So, but the focus is on blockade, because in your paper you say that blockades can only be imposed for security reasons, as I read it, right? And so my question is, if the UN tomorrow directed that there would be a blockade under Article 42, and Israel took part in that blockade as part of a multinational force, what would be the law that would govern what the military force would do? And could that blockade impact on the economy and therefore the civilians of the state that that blockade's been put in place for?

The Gisha organization, Adv. Tamar Feldman: This is a somewhat theoretical question that deviates from the framework of the discussion, because it is connected with the obligations of the United Nations over actions that the United Nations declares toward states, and this is a very complex question, the answers to which in law are not clear. If you want, I would be happy to provide a separate response to this, to this theoretical question, because it doesn't concern the situation. It is not a good comparison to the situation that we are working with, because if there were such a situation, it would be backed up by a decision of the United Nations, under the authority of the United Nations, or the framework of authority would be completely different.

Ambassador Reuven Merhav: Look, Gaza is really a unique case. Very unique. There are international jurists here who have certainly gone over all the files, and I am not sure they have found anything like this. The blockade, the only example that I can think of that is even slightly similar, with all due respect to sizes, is the United States and Cuba. But I would like to go back to the matter of the effect of the blockade as declared at the time by the State of Israel, on the humanitarian situation in Gaza, which is basically a summary of our matter here, after we have finished this entire round, do you see, and we haven't received an answer to this, I asked this once or twice, was there a connection between the naval blockade that was declared as it was declared in 2009 and the humanitarian situation in Gaza in and of itself, on its own. Was there an effect on the situation?

The Gisha organization, Adv. Tamar Feldman: With your permission, I will pass over the legal part, to a legal analysis, and I will soon touch upon this.

The Chairman, Judge (ret.) Jacob Turkel: Adv. Feldman, how much more time do you think your words will take?

The Gisha organization, Adv. Tamar Feldman: My words can be completed in about a quarter of an hour, but it obviously depends on the questions from the Commission members.

The Chairman, Judge (ret.) Jacob Turkel: Try to summarize your words.

Prof. Miguel Deutsch: I also suggest that you start from the assumption that we read the materials, so that's okay. That is to say, what appears appears, and if you want to emphasize or complete.

Ambassador Reuven Merhav: We have read the materials.

The Gisha organization, Adv. Tamar Feldman: I am happy to hear it, and really, most of the factual data is in the responses that we have sent you. The legal analysis, since it is sensitive and nuanced, I would be happy to present it now, with your permission.

The Chairman, Judge (ret.) Jacob Turkel: It seems to me that you would do well to do the legal analysis in light of Mr. Merhav's question.

The Gisha organization, Adv. Tamar Feldman: Yes. That basically opens the legal claims. The question that we think needs to be asked in relation to the naval blockade is a relatively simple question from the point of view, that is to say a relatively direct question. Does the manner in which Israel has operated the naval closure as part of the general closure on the Gaza Strip fulfill its obligations pursuant to international law? I said,

Ambassador Reuven Merhav: No. Excuse me, excuse me. We need to answer this. I would like a specific answer to a specific question, and I very much request that you start with it, it is the heart of the matter: Do you believe that placing the naval closure at the time it was placed, and exercising it, has negatively affected the humanitarian situation in Gaza? On this I would like a precise answer.

The Gisha organization, Adv. Tamar Feldman: The placing of the naval closure, the declaration of the naval siege, if we can use terms, titles, I am referring to international law, the placing of a naval siege in translation, in January 2009, was a direct continuation of the closure policy. In 2008 as well, Israel prevented, the Chief Military Prosecutor related to this in

his testimony as well, there were ships that tried to get to the Gaza Strip even before the Marmara. Israel stopped some of them at a certain distance, and some not. In December 2008 it stopped two ships that tried to do the same action as the Marmara, to enter the Gaza Strip, and prevented their entry. That means that it used the same type of authority, the same type of control over the maritime space, even before it declared the naval siege. In addition, it limited the fishing and the activities in the territorial waters of the Gaza Strip even long before there was a declaration of the naval siege, and Ruth Bauer, assistant to the Minister of Defense, wrote this in one of her responses to the Gisha organization back in 2006. She said, in order to prevent terrorist attacks and the smuggling of weapons via the sea, limitations are placed on the fishing area off the coast of the Gaza Strip. That is to say, Israel saw itself as having the authority based on various sources in international law, to exercise control over the maritime space of the Gaza Strip, including the prevention of the arrival of sailing vessels to the Gaza Strip, and the prevention of fishing activities in the Gaza Strip. On January 2,

Prof. Miguel Deutsch: You are talking about a search regime, not in the framework of the maritime siege in 2007.

The Gisha organization, Adv. Tamar Feldman: In the framework of a regime of complete prevention of all sailing vessels to the Gaza Strip.

General (ret.) Amos Horev: And shipping it to Ashdod.

Prof. Miguel Deutsch: Just a minute, excuse me, regarding the period, further to the question, what period are you talking about now? 2007 to 2009?

The Gisha organization, Adv. Tamar Feldman: Yes.

Prof. Miguel Deutsch: In 2007 to 2009, the testimony that was before us, they spoke about the fact that the regimes view themselves are authorized to take visitant search steps, but they had a problem, since there was no declaration of a naval closure. They had a problem just simply stopping any ship, but they could only stop a ship where there was a reasonable suspicion that it was shipping weapons.

The Gisha organization, Adv. Tamar Feldman: Israel, the State viewed itself as having the authority to stop sailing vessels at a certain distance from the shores of Gaza beforehand as well. What the Chief Military Prosecutor also related to in his testimony, and that is the thing

that is really the significant change that took place, is that as a result of the naval siege, there is, perhaps, as it were, and there is a question mark on it, authority to operate in deep water. Even in international waters, far from the Gaza Strip. This means in a place where they were able before, say in 2008, to stop sailing vessels –

Prof. Miguel Deutsch: I understand where this is going, just simply as an informative note, he talked about two things explicitly, because I also examined the matter with him, and I asked him whether the only problem was a problem of distance. He clearly said no, the much more significant problem was the problem of an absence of a reasonable foundation to suspect that there were weapons, was a problem in stopping them. Obviously we can debate the “real” facts as they were, I hope that the facts that he provided were true obviously. From the standpoint of what he reasoned, this was the reasoning. That is the opinion of the military authorities, at least it was, regarding the significance of these things.

The Gisha organization, Adv. Tamar Feldman: I understand and accept. I read the testimony of the Chief Military Prosecutor in depth. Even if the Chief Military Prosecutor or the State wanted to stop sailing vessels, in practice sailing vessels were diverted from their sailing lane to Gaza, and no sailing vessel, other than one ship, was permitted to come to the shores of the Gaza Strip. From the factual standpoint, Israel viewed itself as authorized to stop sailing vessels before imposing the closure and afterwards, before the Disengagement and afterwards. From this standpoint, the level of control was broken. That is to say, for the residents of the Gaza Strip, nothing changed, not after the Disengagement, and not after the declaration of the closure, and not after the declaration of the naval siege in 2009.

In our opinion as well, there is nothing to prevent Israel from using its authority, first of all, obviously, to prevent military threats of one kind or another, and secondly, to decide what lane it wants to transfer the cargo to the Gaza Strip through. That is to say, its right was, if there was a maritime trading lane to the Gaza Strip, it had the right to say: I am not prepared for cargo to arrive this way to the Gaza Strip, I want them to come in by land. It's easier for me there to inspect it, where I don't have the danger of more attacks and smuggling, and so on. And that would be legitimate if it were to say such a thing, and basically,

until 2007, until the placement of the closure in the Summer of 2007, that is precisely what the situation was. Israel did not allow cargo to come either by air or by sea, but it channeled all civilian cargo shipments, subject to security inspections, over land. And that is the situation

Prof. Miguel Deutsch: According to this context, this is what happened with the flotilla itself. That is to say, according to this position, there is no dispute even over the fact that IDF forces announced that they were prepared for the ship to divert to Ashdod, and they were prepared to transfer the cargo over land.

The Gisha organization, Adv. Tamar Feldman: But not all of the civilian cargo. Again, subject to the framework that Israel outlined, which is the entry of very particular cargo, where the rule is as you noted, and rightly so, what is not permitted is prohibited. Just the particular items that were permitted, as a general rule, could enter the Gaza Strip. It didn't matter if they came by sea or if they came by land – there was no sea lane, and there was also no land lane. And that is basically what creates the framework for us. That is the reason –

Ambassador Reuven Merhav: I am sorry to tell you, in general, passage by sea or by air was not even an option. You say that they didn't allow passed by air or by sea, this wasn't an option at all.

The Gisha organization, Adv. Tamar Feldman: Correct, and until 2007

Ambassador Reuven Merhav: And you are saying they didn't allow passage. How is it possible to send something that doesn't exist?

The Gisha organization, Adv. Tamar Feldman: Correct, and that is precisely the heart of the matter.

Ambassador Reuven Merhav: That is just like saying that no ship came to the Canary Islands next to Tantara. There wasn't any. There isn't anything to talk about. There are no bells.

The Gisha organization, Adv. Tamar Feldman: Correct, but until 2007, until the Summer of 2007, it was possible to say that the effective prevention of a trading route, the existence of a maritime trading route, was perhaps okay because Israel allowed the entry of cargo through different ways. But as soon as Israel blocked the land route as well, then the naval closure turned into part of some more all-embracing policy. It doesn't stand on its own any more. And this sketch perhaps illustrates this. That is to say after the Summer



of 2007

Ambassador Reuven Merhav: The maritime closure had no significance from the standpoint of cargo. There was no port, and there was nowhere to bring it to. It wasn't even the Tel Aviv Port of 1938. There was no such thing. There was a small fishing anchorage with boats up to 15 tons that could come and go, that was it. There was none. Nothing. Nothing. What are you talking about at all? You can make legal claims from here until tomorrow, but there wasn't. You are talking about something that doesn't exist. Excuse me for tell you this, but I am really shocked by this claim. Not shocked, but surprised.

The Gisha organization, Adv. Tamar Feldman: I say once again that the reason there was no maritime route for all these years, despite the fact that in the Oslo Accords and despite the fact that in the crossings agreement, and so forth, they imagined, and they talked about the establishment –

Prof. Miguel Deutsch: This issue also came up before, and we will need to consider it. That's clear.

The Gisha organization, Adv. Tamar Feldman: That Israel very actively prevented the existence of a sea lane.

Ambassador Reuven Merhav: It doesn't matter.

The Gisha organization, Adv. Tamar Feldman: That is the reason that maritime trade didn't exist. In other words, I say again: There was no need for the declaration of a siege or a closure. Everyone knew through all the years that trade with the Gaza Strip by sea was impossible, because Israel did not enable it. Because in 2007 it imposed the closure, and again, didn't enable the entry of cargo through other routes, basically it didn't fulfill its obligations toward the civilian population, to enable the entry of civilian goods, as long as, obviously, they did not harm the security of the State of Israel, and now I want to relate really to Israel's obligations as we see them, which are derived from various sources in international law, since the occupation which, as far as we are concerned, are continuing obligations,

Prof. Miguel Deutsch: I suggest that you do this very quickly, and if there is a point that we want to clarify, we will simply direct your attention that we want to expand on it. We can make do with that.

The Gisha organization, Adv. Tamar Feldman: From the many-years' long dependency and from the continuing obligations of Israel even after the occupation, from human rights law and without getting into their applicability right now, in parallel or not to the humanitarian laws, in the Basyuni ruling that we have already mentioned a number of times, Paragraph 12 sets forth that the obligations of Israel in relation to the Gaza Strip are derived from the laws of armed conflict, from the dependence that was created in Gaza through four decades of occupation, and from its control over the crossings. In order to understand a little of what this means, the laws of armed conflict we understand what it means, the dependence that was created over the years, there are those who call it post-occupation, that is to say, the obligations that remain for the occupier even after it has stopped its control.

Prof. Miguel Deutsch: We know the issue, you can continue.

The Gisha organization, Adv. Tamar Feldman: What does the sentence control over the crossings say, so this is something that has various interpretations. Like you have already noted, the legal situation of Gaza is complex, and the opinions regarding the applicability of the various laws also vary, but there is no dispute and no objection as to what is clearly shown in the Basyuni rulings as well, that where there is control there is responsibility. That is to say, the guiding principle is control vs. responsibility, and this is our point of departure in assigning obligations on the Gaza Strip. IF so, what are the positive obligations that apply to the Gaza Strip? There is a reference here, and I would also be pleased to give references to the determinations of international law which strengthen this claim.

Prof. Miguel Deutsch: I suggest that you focus precisely on the branch that assumes that there is no control. We also need to remember that there is already a decision by the Supreme Court on this point, of the question of control. So perhaps if you want to emphasize points more, it is better to actually move to that branch.

The Gisha organization, Adv. Tamar Feldman: Just to be precise, the decision of the Supreme Court against Basyuni set forth that there is no effective control, meaning that there is no occupation in its broad understanding, but it certainly did determine that there is Israeli control over the crossings, and derived the measure of Israel's responsibility from its

control over the crossings, and this is our claim.

Prof. Miguel Deutsch: Okay. That is clear.

The Gisha organization, Adv. Tamar Feldman: Insofar as there is control in the fields where there is control, Israel is obligated to the required measure of responsibility.

Prof. Miguel Deutsch: But there are different obligations than those of effective control of the territory.

The Gisha organization, Adv. Tamar Feldman: They are different obligations, but not necessarily different obligations, perhaps their intensity, the measure of their applicability in a certain situation is somewhat different. But still, in our opinion, Regulation 43 of the Hague Regulations still applies, and it results, according to the interpretation of the Supreme Court, in an obligation for Israel to maintain proper life. Obviously, as I saw earlier, the obligation to maintain proper life is not in places where Israel doesn't control, because it doesn't have any influence on them. But in places where it wields its control, insofar as the lives of the residents of the Gaza Strip are influenced by Israel's closure and crossings policies, then in those places, Israel has an obligation to maintain proper life.

General (ret.) Amos Horev: I understand that every country has control over its (border) crossings. There is no country that doesn't have control over its (border) crossings. So what does this mean?

The Gisha organization, Adv. Tamar Feldman: Every country has control over its crossings opposite another country, but not of all of the crossings of a certain area under its control.

General (ret.) Amos Horev: At the crossings between countries within Europe, is there control over the crossings between the countries or not?

The Gisha organization, Adv. Tamar Feldman: Certainly. Certainly.

General (ret.) Amos Horev: They all have it. And they determine what they do enable to pass and what they don't enable.

Ambassador Reuven Merhav: There is some kind of treaty that puts these things in order.

The Gisha organization, Adv. Tamar Feldman: Yes, but Germany has a number of neighbors, and one of them,

Prof. Miguel Deutsch: The preferred claim is that when you control all of the borders, you control a people in a territory, or an alternative claim, that certain elements of obligations apply at

some strength or other even if you don't control the entire territory. That is the claim.

General (ret.) Amos Horev: Yes, but the control exists.

Ambassador Reuven Merhav: But you don't want to go back to the matter of the sea, to the effect and the worsening of the humanitarian situation, after all of this cycle?

Prof. Miguel Deutsch: That was already done before.

The Gisha organization, Adv. Tamar Feldman: This is it.

Prof. Miguel Deutsch: What was said was said, there are no other answers to this.

The Chairman, Judge (ret.) Jacob Turkel: No, she didn't answer this.

Prof. Miguel Deutsch: There were certain answers.

Ambassador Reuven Merhav: I would ask for, let's call it, Biblical dissertations in the language of the common people. I am asking you a simple question. We are simple people. Was there, as a result of the naval closure, the blockade, call it what you will, was there as a result of this a worsening of the humanitarian situation in Gaza?

Prof. Miguel Deutsch: If I may shorten the time a little, it seems to me that the answer is, and if not, then obviously there will be a different answer, the answer that was given is that we need to see this against the background of the over-all policy regarding the crossings, and when we see it this way, my learned sir, this is the answer that has been given.

Ambassador Reuven Merhav: I would like you to ask a simple question. This is the question that has been bothering me since the beginning of your testimony: We have been asked here to look into the naval blockade. You came here as a friend, as an honored witness, closing an honorable trio of three organizations to whom we really and truly attribute tremendous respect, and I am bothered truly and honestly by the question of whether the imposition of the naval closure and its exercise have caused damage to or a worsening of the humanitarian situation in Gaza. And for this, I think that after all of the legal reasonings, there is a yes or no response. That is what I want to know.

The Gisha organization, Adv. Tamar Feldman: The answer is yes.

Ambassador Reuven Merhav: Yes. Good. Okay. I would ask you to explain, provide details, provide reasons, but the Judge wants to make it short.

The Gisha organization, Adv. Tamare Feldman: The details in short are exactly what Prof. Deutsch said, and in length everything that I have said in testimony until now, and what I will

continue further to say.

Prof. Miguel Deutsch: Without expressing an opinion of my own, I just understand the claim.

Ambassador Reuven Merhav: I just want to tell you: The explanation is long, but the reasonings are not convincing, it's even twisting compared to this.

The Gisha organization, Adv. Tamar Feldman: Okay. Again, Israel has repeatedly said, the Coordinator of Government Activities in the Territories related to this in his testimony, that it relates to some kind of concept of a humanitarian minimum. The concept of a humanitarian minimum did not come up against the fulfillment of its obligations, to the best of our understanding of it, despite the fact that they didn't explain it in the past, it didn't get to the point of fulfilling its obligations, either pursuant to Regulation 43 of the Hague, or pursuant to Section 54 of the First Protocol of the Geneva Conventions, which determines that Israel, that there is an absolute prohibition on countries, including Israel obviously, since this is a Section that has become customary law, to attack, to destroy, to wipe out, or to make unusable the essential facilities for the survival of a civilian population. In my presentation, I skipped over the part that relates to electricity, but it is also clear from the responses that I submitted to you and also from the prior reports that we published, that there was very significant damage to installations essential for the civilian population, both to the economy and to electricity, and as a derivative of this, also to the water, sewage and health systems, and more. Israel also has the obligation to protect the lives, the physical safety, the health and the dignity of the residents of Gaza, and in all these, it has not sufficiently fulfilled the need I that it has imposed the closure policy on the Gaza Strip.

The concept of a humanitarian minimum, just to say, and I agree with the comment by Ambassador Merhav in the framework of the testimony by the Coordinator of Government Activities in the Territories that the term humanitarian is used broadly in places where it is out of place. International law doesn't really recognize such a concept when talking about some kind of benchmark which is aimed at downwards. It uses such a concept only when talking about the need to understand a population above some kind of humanitarian crisis or humanitarian disaster as it is called, in order to bring it to a level of minimum existence, not as a lower benchmark that we strive towards. To do such a

thing is to act against the required distinction, as a leading principle in humanitarian international law between combatants and civilians, and to make use of the civilian population in the framework of military combat or of another belligerent factor, and the Honorable former Supreme Court Judge Aharon Barak also related to this in the episode known as neighbor procedure.

The Chairman, Judge (ret.) Jacob Turkel: It is not clear to me. I don't want to open the discussion again. Perhaps I will say one summarizing sentence, about two central questions that were presented here, one by General Amos Horev regarding the starting point as it were, and the second, the last question that we went back to by Mr. Merhav. We did not get an answer to these two questions, and it seems to me that the Barak quote in this matter is not at all relevant in our context. But okay, one can always rely on Barak.

Ambassador Reuven Merhav: And I would like to tell you something else, when you said directed downwards, Heaven forbid, I wish that the residents of the Gaza Strip would flourish and prosper.

The Gisha organization, Adv. Tamar Feldman: I would like to relate to two frameworks that Israel customarily relates to, and that the State also presented in front of the Court in various contexts. Sometimes a closure is called a siege, and sometimes it is economic warfare, and I, really in brief, because I touched upon it, to mention why these frameworks are not relevant, the siege is not relevant since there is no defined military need here.

Prof. Miguel Deutsch: You can skip this. This is not what is being raised here.

The Gisha organization, Adv. Tamar Feldman: We talked about economic sanctions enough. And if it wasn't these legal constructs, so then what is it? In Basyuni, the State, as stated, said: economic warfare whose aim is harm to civilian life as a level to pressure Hamas. To that we say, and the International (Red) Cross also joins in and says that we are talking here, basically, about the use of a population as a means of pressure, and this is not legitimate. We are basically punishing a population of a million and a half people for acts that they have not done and for political circumstances that are beyond their control. And therefore, they say explicitly that the-: "Closure constitutes a collective punishment imposed in clear violation of Israel's obligations under international humanitarian law."

Prof. Miguel Deutsch: As you are aware, its true intention is whether this is really collective

punishment or not, and not what the results are, whether it is collective punishment or not.

Ambassador Reuven Merhav: I would like to add just one comment. You used the term siege. I commented to one of your predecessors that a siege is where they close a place for the purpose of conquering it. That is not the case in Gaza.

The Gisha organization, Adv. Tamar Feldman: I agree. Therefore, we are calling it a closure and not a siege.

Ambassador Reuven Merhav: No, you used the word siege earlier.

The Gisha organization, Adv. Tamar Feldman: My intention was that this is not a siege. This doesn't match the construct of a siege. It is precisely for this reason that we are using the term closure.

General (ret.) Amos Horev: I just wanted (to make) one more comment to remind us that the population that is suffering democratically chose a Hamas government.

The Gisha organization, Adv. Tamar Feldman: Just a few words in summation: I think

Mr. Watkin: Just before you, I'm looking at the notion of collective punishment in violation of your national humanitarian law. To what extent does that require a mental element, an intent? So if you put a blockade in place because another entity is threatening you, and you take action which is directed at weakening your enemy which is attacking you, and that includes if you accept that economic warfare is a lawful action, why, where does the intent come in order to say that this is a collective punishment against the civilian population? And in the evidence that you have, what would you point to that the intent is for the State of Israel to punish the 1.6 million people of Gaza? Because I'm talking about this in the sense of the war crime of collective punishment and the law around that.

The Gisha organization, Adv. Tamar Feldman: International law, as it relates to the explicit prohibition of collective punishment, does not include a mental element of what is called *mens rea*. It only includes elements of behavior. It doesn't set forth that there needs to be a clear intention to punish, but it does set forth that collective punishment is when you take an action against protected residents, or a population that is under the control of a certain power, and this action against the population is done not in response to actions that they have done or to circumstances that are not in their control, like we have here in this case.

Apparently, if we were talking about criminal or international law on personal responsibility, there would be a certain degree of intention required. But we are not talking here about personal responsibility. We are not talking about criminal law. I am talking here about the responsibility of a State, under humanitarian international law, and under rules that it sets forth. In this framework, some kind of constructive idea that these are the expected results of the actions is apparently sufficient, meaning that the result will be collective punishment, or some measure of negligence. No intention to punish is required. But from declaration from senior officials as we have seen at the beginning of the presentation, we see clearly that the closure on the Gaza Strip was intended to harm the civilian population, in order to weaken Hamas. And in certain periods during the *Tahadiye* (cease-fire) and when the *Tahadiye* fell apart, for instance, there were expressions –

Mr. Watkin: I'm sorry, you said it was, where was this intention to harm the civilian population? You said it was stated? Just to clarify for me? It's unfortunately in,

The Gisha organization, Adv. Tamar Feldman: In one of the first slides.

Mr. Watkin: Is it in the materials? I'll, I can look at it in the materials.

The Gisha organization, Adv. Tamar Feldman: I am sorry that you can't read the slide. This quote is not in English.

Prof. Miguel Deutsch: It is talking there about creating pressure in order to advance in negotiations. There is a very large difference between creating pressure to achieve a goal of conducting negotiations and punishment. Punishment has the aim of avenging the past. That is a different type of action. I don't think that there is an admission here of any kind of intention to punish. The intention is to achieve a certain goal and that is the advancement of negotiations.

The Gisha organization, Adv. Tamar Feldman: The relation here between punishment in the sense of repaying for actions that were done in the past, and punishment that is deterrent in its nature, is very thin. The message is clear. We are sending a message to a civilian population,

Prof. Miguel Deutsch: Even though in general, the distinction between permitted economic warfare and collective punishment is objectively problematic to a certain extent. That is to say,



this is not just the mental question of what we want to achieve, but what the factual life is that makes one result of another necessary.

The Gisha organization, Adv. Tamar Feldman: Correct, but there are also other expressions by senior officials that testify to an even closer connection with repayment actions in the narrow sense of what this is called. For instance, in the context of electricity, the minister at the time, Haim Ramon, said that we would set a price tag for every Kassam (rocket) of interrupting the infrastructure, and for a certain period, with the disintegration of the *Tahadiye*, the cut back in the industrial arrangement almost completely matched the rocket fire from the Gaza Strip.

Prof. Miguel Deutsch: This can also be easily understood, and it also looks exactly like a type of preventive protection. The intention is to prevent the next firing. That is to say, this is not a matter of punishment.

The Gisha organization, Adv. Tamar Feldman: The interruption of the industrial arrangements serves only for the purpose of the power station.

Prof. Miguel Deutsch: No. We will set a price tag for each Kassam, in order that there not be the next Kassam.

The Gisha organization, Adv. Tamar Feldman: We will prevent, the meaning of the words, we will prevent industrial diesel, we will cut back on the electricity of the residents of the Gaza Strip, of the civilian population, in response to the firing of rockets from the Strip.

Prof. Miguel Deutsch: In order to prevent the next firing. Not necessarily in order to repay and to punish for the previous firing.

The Gisha organization, Adv. Tamar Feldman: In order to prevent is both a deterrent matter and a repayment action. These are Ramon's words, not ours.

Prof. Miguel Deutsch: No, I am just saying, Ramon's words seem to me to absolutely reconcile with preventive action, not punitive action.

Ambassador Reuven Merhav: Look, whoever it was said that the difference between Israel and our neighbors is sometimes that we have many voices for one rifle, and they have many rifles for one voice. That means that we can bring, for Ramon's quote, we can bring another three different quotes. That's not the story. But the question that you raise or

the question that was raised here regarding the pressure on the population, this is a question that is being deliberated quite a lot, when do you break, when do you consider, it's a very large difficulty, there is no doubt about it. It is a very large hesitation. There is always the question of alternatives, let's suffice with this, there are no school time solutions, easy solutions. And we always need to see the environmental things. Therefore, my colleague and I said, we can't talk as if this is come out of nowhere, from some star. It's that all these things that are in some kind of reality with alternatives, with options, and sometimes they are very complex.

Mr. Watkin: The reason I was asking the question was, it's the question of targeting the civilian population, because that's how I understood you were putting it forward. And so if I'm thinking of, you know, just talk about it, I guess, in the context of targeting, which raises an issue of proportionality, if I shoot at a civilian, knowing they're a civilian, obviously, is the issue, that's a war crime, right? That's prohibited. If I shoot at a combatant, and a civilian may be injured or killed as a result of that, I have to go through a process of weighing that, right? The piece that's missing from the ICRC quote that I see from the news release is it says "Israel's right to deal with its legitimate security concerns must be balanced against the Palestinians' right to live normal dignified lives." And there's other references to this issue of collect punishment that used the term "disproportionate", "disproportionality assessment". And so what I'm trying to understand when you say that it's, it is collective punishment, are you saying that these, the closure is directed at the civilian population in the same way as if I was targeting them, or are you saying it's directed at the Hamas and they're being affected by it? Because when I hear you talk (sic) 'It's collective punishment,' it raises the question in my mind that that's directed at the civilian population, as opposed to their being impacted by, and that's why I raised the issue in the San Remo Manual that talked about this weighing of the two objectives. So I'm just trying to understand, when you say "collective punishment", in which way do you mean it? Do you mean that it's directed; the State of Israel has chosen to direct this at the civilian population? Or you agree the State of Israel has put this in place directed at its opponent; you just don't agree with what the effect is that it's having? That's what I'm trying to understand.

The Gisha organization, Adv. Tamar Feldman: The question of proportionality or measure is relevant in international law, when talking about one military action against another, where one side takes some kind of military action, the second side needs to respond proportionally, and the peripheral harm to civilians or to civilian facilities needs to be reasonable and proportional to the aims of the action and its results. This concept, or this scale, is not relevant when we are talking about intentional harm to civilians. There, there is no such thing as a measurement of proportionality. What we are saying about Israel's closure policy is that it is a clear and declared intentional to harm the civilian population in order to use it as a lever to apply pressure. The use of the civilian population as a lever to apply pressure on Hamas, according to its claim, constitutes collective punishment pursuant to international law, and therefore it is completely and utterly prohibited.

The Chairman, **Yaakov Feldman**: Good. That's it.

The Gisha organization, Adv. Tamar Feldman: If I could just say a few words of summation. Thank you very much for this opportunity to both present data and to present the work of the Gisha organization and of other organizations who are working on these issues every day for many years, and this is really the opportunity also for the Commission to consider these things in various perspectives and to say something significant about the closure on the Gaza Strip, something legal, founded and learned, that has not been said until now, and despite the fact that there was a change in the closure policy and an easing as a result of the flotilla events in June 2010, the closure in many senses still continues, and in our opinion, there could be an important message in this to the decision makers about where we need to take this policy, and how we can implement it in such a way that it fulfills Israel's obligations pursuant to international law, and the perspective that we need to look at this, in our opinion, is the historical perspective, not how people will look at these findings the day after, but really the perspective of ten or twenty years earlier. Thank you.

The Chairman, Judge (ret.) Jacob Turkel: Thank you very much. We have finished the meeting.

The Commission Secretary, Hoshea Gottlieb: I would like to note that the two witnesses who were called for today and confirmed their appearances did not appear to testify before the Commission. The Commission will consider its further steps in the matter. Thank you.