

On the Legal Front Lines



Implementing the US Neutrality Act to Prevent Support for Hamas

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Some organizations, such as the US based Free Gaza Movement, are actively working to generate support for additional flotillas to Gaza. Several new ones are being planned for this Spring. Non Governmental Organizations in the US for example are engaged in gathering people to take part in breaching the Israeli blockade of Gaza, sometimes even in a violent manner, and soliciting funding for these ventures from financial backers. The stated goal of the Free Gaza Movement, even goes so far as to call for hostile action against Israel as a means of breaching the blockade (stating for example that the Israeli authorities around Gaza be completely ignored).

It is worth considering whether such organizations are engaging in potentially illegal activity when leading the charge to create new flotillas. In particular, these organizations can be found to violate the US Neutrality Act.¹ The Neutrality Act provides that:

Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined under this title or imprisoned not more than three years, or both.

Thus, no “military expedition” to engage another state with which the US is at peace is allowed. The disallowed activity broadly includes as well financial backers supporting violent engagement or raising funds to support an expedition. In fact, the Neutrality Act maintains a universal jurisdiction clause, as it applies to all persons, regardless of their nationality, assuming the US has jurisdiction over the individual or group.

The Neutrality Act is one of the oldest US laws (as described by then Attorney General Robert Kennedy in 1961 when discussing the potential for US individuals to engage Cuba, a precursor to the ensuing Bay of Pigs disaster) having been passed by Congress in 1793 (at the behest of then President George Washington). The underlying reason for the law was to prevent individual actions against foreign states

¹ 18 USC 690

at peace with the United States, thus removing individual interference of US relations with foreign countries and potential disruption of US foreign policy.

Through the years, courts have adopted a rather vigilant enforcement of the law.² The policy for this approach is linked to the desire to ensure the constitutional mandate that Congress control declarations of war against another state and also to uphold the US' responsibility as a state in the international framework, especially to engage in peaceful relations with other states. Such policy reasons regarding the importance of protecting US interests and its foreign policy have served to negate challenges against the claim that the law is subject to discriminate or selective enforcement.³

In the context of the Gaza blockade, it is important not to forget why Israel initiated the blockade to begin with. Hamas was (and still is) involved in military activities against Israel. They are a terrorist organization, as deemed by the US, engaged in direct military action against not only a state (Israel) that is at peace with the US, but a long-term US ally who clearly serves the foreign policy purposes of the US in the region. Thus, non-governmental organizations calling on people to support a physical breach of the Gaza blockade and raising funds to that effect are quite close to violating the US Neutrality Act.⁴

Note as well that under the Oslo Accords signed by both Israel and the PLO, the Gaza coastline is under strict control of Israel until a Palestinian state is created. Israel acted to protect its security against an entity bent on engaging in military conflict with Israel. The 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip states in Article XIV that Israel has "the responsibility for defense against external threats, including for defense against external threats from the sea and from the air." Moreover, in Article XIV of the Interim Agreement titled "Security along the Coastline to the Sea of Gaza" Israel and the Palestinian Authority agreed that foreign vessels would "not approach closer than 12 nautical miles from the coast" unless specifically authorized pursuant to jointly agreed regulations, and that in the absence of such conditions, all foreign vessels would be required to dock at Israeli approved ports. Finally, in a letter to Prime Minister Sharon on April 14, 2004 shortly before Israel's withdrawal from the Gaza Strip, President Bush confirmed "[t]he United States understands that after Israel withdraws from Gaza and/or parts of the West Bank, and pending agreements on other arrangements, existing arrangements regarding control of airspace, territorial waters, and land passages of the West Bank and Gaza will continue."

A blockade is certainly allowed under international law, especially when an enemy is using force against the state. Indeed, the Israeli naval blockade of Gaza is particularly

² Comment, *Nonenforcement of the Neutrality Act: International Law and Foreign Policy Powers Under the Constitution*, 95 Harvard Law Review 1955 (1982)

³ See e.g. *US v. Khan* 461 F3rd 477 (4th Cir. 2006) (Court upheld charges of conspiracy under the Neutrality Act – among other laws as well - against defendants who furnished financial support to a group planning and preparing an expedition to Afghanistan to provide military support to the Taliban forces)

⁴ Note that Shurat HaDin initiated this notion of engaging the Neutrality Act by writing a letter in June, 2010 to both American Attorney General, Eric Holder, and the Attorney General of California (where the "Free Gaza Movement" is situated), informing them of the potential violation of the law and the need for, at the very least, an investigation to determine if there has been a violation of the Neutrality Act.

important in light of previous attempts by the Iranian government to transfer weapons to Palestinian militants at sea, such as occurred in January 2002 when the Israeli navy seized the "Karine A" ship that was loaded with 50 tons of Iranian supplied weaponry.

As a result, current efforts in the US to organize and support a boat flotilla and to attempt to run the blockade (and smuggle possibly weapons, and certainly supplies, to the Hamas controlled entity in Gaza) jeopardizes Israeli security, in direct violation of the U.S. Neutrality Act. It interferes with US foreign policy and runs counter to the US' stated desires to involve the two sides in ongoing negotiations. Engaging the US public to fund such initiatives should be investigated and prosecuted by US law enforcement to the full effect of the law.

February, 2011.

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