

September [X], 2022
Hon. Judge Ludivine Kerzmann
Tribunal de Premiere Instance Francophone
Palais de justice – Portalis
Rue des Quatre Bras 4 – 4th Floor
1000 Bruxelles

Via Diplomatic Channels

Dear Honorable Judge Kerzmann,

Re: "International Rogatory Commission" Request on the flotilla matter

(Your Ref No. 2021/004)

We write further to the International Rogatory Commission Request, dated November 22, 2021 (hereinafter: "**the Request**"). The Request, received by the Ministry of Foreign Affairs from the Embassy of the Kingdom of Belgium on December 23, 2021, asks the competent authorities in Israel to provide legal assistance, pursuant to the European Convention on Mutual Assistance in Criminal Matters 1959 (hereinafter: "**the Convention**").

In May 2010, the Israeli Defense Forces (hereinafter: "**the IDF**"), intercepted the passage of several vessels, that sought to illegally breach the maritime blockade, imposed by Israel in accordance with international law, in order to prevent the passage of weapons to the Gaza Strip by sea (hereinafter: "**the flotilla incident**"). The Request arises from a complaint lodged in the Kingdom of Belgium against Israeli officials in 2010, regarding this maritime interception, and requests that the Israeli authorities provide the following:

"We make request to the investigating judge/the competent authorities in Israel, or any competent authority, for the purpose of:

- 1. Request reports from Israeli military forces;*
- 2. Listen to the leaders of the Israeli military operation "Operation Sea Breeze";*
- 3. View images of the attacks (likely on the electronic media of passengers and journalists who were seized by Israeli soldiers);*

4. *Read the radio recordings between the flotilla and the Israeli forces on 30/05/2010 (around 10:30 pm);*
5. *Provide copies of any other documents, judicial, police or intelligence services, that may inform the facts of May 31, 2010;*
6. *Authorize the Belgian judicial authorities, in this case the investigating magistrate, the Federal Prosecutor and two investigators of the Federal Judicial Police to assist in the performance of duties by the judicial and police authorities responsible for the execution of this request for assistance;"*

After carefully examining the Request, the Israeli authorities have concluded that Israel is unable to provide the assistance sought. We note in this regard, that the Israeli authorities do not consider, that the assistance sought, falls within the scope of the Convention, as the Convention does not apply to matters relating to a State's military operations. Therefore, there is no obligation to accede to the Request in light of the terms of the Convention, including Article 2.¹

With regard to the Belgian authority's examination of the abovementioned complaint, and while acknowledging the Israeli authorities' deep respect for our Belgian counterparts, we wish to respectfully convey the following:

1. The acts, as alleged by the complainants and described in the Request, are acts of Israeli government officials, performed in their official capacity, and therefore, embody the sovereign functions of the Government of Israel. Accordingly, pursuant to the long-standing principle of sovereign immunity under customary international law, Israeli officials enjoy immunity from civil and criminal proceedings outside their nation state, with respect to the acts alleged by the complainants and reflected in the Request.
2. Israel expressly asserts its sovereign immunity, on behalf and in favor of all Israeli officials, acting in their official capacity, from the exercise of

¹ "Assistance may be refused: (a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence; (b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country."

jurisdiction in this matter by the Kingdom of Belgium, and notes in this regard, that this letter does not constitute a waiver of immunity.

3. Consideration should further be given to the principles of comity and subsidiarity, according to which deference should be accorded to foreign states, before exercising jurisdiction over crimes allegedly committed outside their sovereign territory by foreign nationals, even if a State's domestic criminal law enables them to do so. These entrenched legal principles, express the mutual respect due between sovereign states. In this regard, Israel and the Kingdom of Belgium's long-standing bilateral relationship and cooperation in the legal sphere, reflects mutual respect for the independence and impartiality of our respective legal systems.
4. The Request seeks information related to a military operation undertaken by the Israeli authorities and the IDF. The materials collected in the flotilla incident, are subject to privilege by virtue of Section 539A of the Israeli Military Justice Law, 5715-1955. Additionally, such materials, including the information available to the IDF forces in real time, contain classified information, which in the interest of national security is protected by law, and cannot be disclosed.
5. Therefore, Israel is unable to provide the assistance requested in this matter.

We wish to take this opportunity to express our assurances of the highest consideration.

Kind regards,

Efrat Greenboim,
Director, Department of International Affairs
Office of the State Attorney
Ministry of Justice
State of Israel