PhD Dissertation – Maayan Amir

Registration No. 33180051

Extraterritorial Images:

Visual Presence and Absence

in the Representation of the Gaza Freedom Flotilla

PhD DISSERTATION SUBMITTED 2015

BY MAAYAN AMIR

FIRST SUPERVISOR

PROFESSOR EYAL WEIZMAN

SECOND SUPERVISOR

DR. SUSAN SCHUPPLI

MPHIL/PHD PROGRAMME

CENTRE FOR RESEARCH ARCHITECTURE

DEPARTMENT OF VISUAL CULTURES

GOLDSMITHS, UNIVERSITY OF LONDON

Date: May 25, 2015

Declaration:

I hereby declare that the work presented here in this thesis is my own.

Maayan Amir

Acknowledgments

In the course of my research I conducted a series of interviews with some of the key figures who shaped the Gaza flotilla incident, including the flotilla's organisers, those involved in the military operation to stop it, and those involved in the ensuing legal actions.

For their willingness to be interviewed, I particularly thank Knesset member Haneen Zoabi, who participated in the flotilla; retired IDF General Tal Russo, who was the direct commander of the takeover operation; Gülden Sönmez, a senior executive board member in the IHH Humanitarian Relief Foundation (the main Turkish organization behind the flotilla) and both a testifying witness and a lawyer representing the victims at the trial held in Istanbul against the former commanders from the IDF ; and S. E. Bourhane Hamidou, President of the Assembly of the African Muslim Republic of the Union of Comoros, also involved in bringing charges against the IDF commanders. I have also received several refusals to interview requests, for instance by the IDF Spokesperson and by retired Supreme Court Justice Jacob Turkel, head of Israeli commission appointed to investigate the Gaza flotilla incident. I nevertheless thank them for considering my requests and for their meaningful replies.

I would like to express my deep gratitude for the inspirational guidance of my main supervisor, Professor Eyal Weitzman. His intellectually exciting observations helped me throughout my research. I wish to offer my great appreciation to Dr. Susan Schuppli for her insightful advice and attentive support. I am also very grateful to my colleagues at the Centre for Research Architecture at

Goldsmith University of London for their stimulating discussions over these last four years. I immensely thank artist Ruti Sela for her ongoing collaboration with me on the 'Exterritory Project'. I owe a special debt of gratitude to Oran Moked for his wise editing of this work. I also owe special thanks to my friend Tal Yahas, and my brother Michel Amir for their valuable comments and encouragement. I am greatly indebted to the help I received from translator and interpreter Gennady Kurin in Turkey. For her kindness and further assistance in translation, I am grateful to Y. Can Gümüş. I will be forever grateful to the generosity of Vivian Ostrovsly and the Ostrovsky Family Fund which supported this research. I also wish to give special thanks to Carolina Ben Shemesh for her friendship and kind hospitality, which enabled me to study in London. Finally, my appreciation goes out to all my colleagues at the Exterritory Project and to all those who have supported the project over the years.

Abstract

My thesis examines contemporary manifestations of extraterritoriality and the logic of extraterritorial representation by looking at a concrete study case: the Gaza Freedom Flotilla. On May 31, 2010, a convoy of six vessels carrying humanitarian aid and protesting the Israeli seige of Gaza was attacked in the international waters of the Mediteranean. The Israeli attack began with an attempt to shut down all satellite connections to and from a flotilla, and marked the beginning of a conflict of images. On board the largest vessel, the *Mavi Marmara*, the confrontation resulted in the death of ten activists. After taking control of the ships, the Israeli military confiscated all memory cards of cameras, mobile phones, and hard discs. The flotilla has been the subject of national and international procedures ever since, including a court case brought before the Criminal Court at Istanbul in 2012 against senior Israeli commanders, which has been taking place since *in absentia*. My dissertation investigates the complex logic of the event and its aftermath, focusing on the notion of *extraterritoriality*—geographical, legal and political, but also visual—in order to reflect on the effort to control vital visual documentation. Viewed from this perspective, extraterritoriality applies not only to *people* and *spaces*, as the concept has traditionally been understood, but also may be applied to *images* when the latter are excluded or exempted from one law system and subjected to another. In the flotilla case, important visual documentation has been kept at a legal distance precisely in order to keep it away from investigations in which it may potentially serve as vital evidence. My suggestion is that the concept of extraterritoriality may help us understand the way in which these images have been legally excluded from public scrutiny, especially in cases involving a conflict between competing legal systems.

Table of Contents

Table of Figures

Ruti Sela & Maayan Amir, **Exterritory Project**, 2010, Video Documentation.

Ruti Sela & Maayan Amir, **Exterritory Project**, 2010, Video Documentation.

Ruti Sela & Maayan Amir, **Exterritory Project**, 2010, Video Documentation.

Ruti Sela & Maayan Amir, **Exterritory Project**, 2010, Video Documentation.

Preface

The analysis presented in this dissertation is deeply motivated by my art research and practice. The two fields of textual inquiry and artistic activity dynamically inform, correspond and orient each another. For the most part, I mobilise questions and responses between the two according to the needs I recognise, based on my experiences in the world and the political contexts in which I operate.

In general, I view neither theory nor practice as pre-given, closed structures. My use of these two modes of investigation in the context of this thesis and the accompanied works may be described, however, as follows: In my research and writing, I tell the story of images of vital evidentiary value that were created only to turn missing, images produced in the knowledge that they will be expropriated and removed from view; I then probe the logic of their expropriation and explain why this makes them "extraterritorial." My practice seeks sometimes to experiment with, and sometime to invent, situations and representations that evoke the absence of the images and the gaps in our visual knowledge.

Moreover, by engaging with these images, both theoretically and in my artistic practice, I try to establish the connections between the broad possibilities they educe and the particular judicial procedures and decisions provoked by an extraterritorial logic of representation. It is important to add that although my work navigates the margins of the legal-judicial, the political, and the visual (rather than simply reconstructing the events according to the available evidence and assessing their legal status), my goal is to understand how the outcome is shaped, not by the *presence*, but by the *absence* of visual evidence. I attempt to trace the appearances of

the absent images and the ways in which their absence produces and incites a new set of representations that interweave manifestations of processes that may have legal-judicial, spatial and representational effects.

To put it more broadly, my work attempts not only to articulate the ways in which violence exercised in the name of law is maintained through a regime of images or a set of restrictions imposed over the representation of such images, but also to confront the political, conceptual and representational limits that sustain this regime and protect it legally. Often these limits are preserved through certain relations between law, representation and space which the phenomenon of extraterritoriality both produces and represents. Investigating the notion of extraterritoriality may therefore help to better comprehend these relations.
In my work, I examine how the notion of extraterritoriality can shed light on a particular piece of current Middle Eastern history—the case of the 2010 Gaza Freedom Flotilla. The flotilla case has also been at the center of my attention as a practicing artist, and my practical-artistic engagement with the flotilla has raised a range of questions which the current dissertation explores from a more theoretical point of view. The theoretical exploration presented in this dissertation may be viewed, then, in the larger context of my artistic practice before and after the flotilla events and the pressing ethical questions it involved.

In 2009, together with artist Ruti Sela, I initiated the "Exterritory Project." This art project was conceived when we decided to screen a video compilation of works by Middle-Eastern artists onto the sails of boats sailing in the extraterritorial waters of the Mediterranean, as a response to the enduring Israeli–Palestinian conflict. We wished to create an image of art exhibited in a neutral space, unrestricted by any single set of national constraints. Extraterritorial waters seemed

to us a space that could offer the suspension of the neighboring states regimes. The naval limits of sovereign territories were originally demarcated in order to establish trade relations between nations. In the Western legal tradition, as articulated in the early seventeenth century, the high seas have been perceived as a space of "experiential unruliness."[1] Originally defined by the range of a cannon shot fired from a state's land territory out to sea, in ensuing centuries territorial waters became increasingly determined by the technological limits of a nation's ability to wage war and exercise its control.[2] For these reasons, we wanted to launch the project in extraterritorial waters, at the point at which the sovereignty of the state is no longer effective, if only symbolically.

We commenced the project wishing to bring together artists and thinkers from conflict areas where such meetings are normally forbidden. We decided to initiate a meeting in the extraterritorial waters of the Mediterranean, to which we openly invited people from diverse disciplines to offer their interpretation of the concept of extraterritoriality and to project their art works onto the sails of the participating boats. By using this unoccupied space and exploring different ideas of extraterritoriality, we wished to emphasise the need to create unstable sites that could depart from familiar ways of experiencing political concepts. Under the usual, territorial conventions of art exhibition, national politics and market interests intersect, exploiting works of art to promote national agendas and profits. In doing so, they often de-politicise the works of art themselves. By exhibiting works of art in an extraterritorial space, we sought to challenge and re-contextualise these conventions.

After long months of intense research and production and a few days before our planned departure date, the Israeli military intercepted the Gaza Freedom

Flotilla in extraterritorial waters, raising once again—in a very real way—the questions that preoccupied us in the context of this project. In the course of the military takeover operation, the flotilla satellite connection was cut off from the outside world, ten activists were killed, many were wounded, and thousands of passenger cameras memory cards were confiscated by the Israeli army (and have remained inaccessible since). In the aftermath of this event, the importance of realising the project became even clearer. Despite the real danger involved in launching our own flotilla and staging our event, we decided to set out on our journey as planned. The conjunction in time and space of the two flotillas—both politically motivated, both placing image production at their centre, both marked by the crucial role of extraterritoriality—urged me to look further into the complex politics of extraterritorialities.

My research set out, then, with the goal of liberating images from the control of national sovereignty and exploring the potential of extraterritorial maritime space to do so. The Gaza flotilla incident revealed, however, the way in which armed forces can use the very same space—an unruly and therefore relatively unprotected space—in order to *expand* sovereign national power and achieve absolute control over the production and distribution of images.

A year later, in light of the intervening events, we planned to join the next Gaza flotilla. We teamed up with a group organised by a Dutch branch of the NGO Free Gaza, which was planning a gathering in extraterritorial waters of boats coming from different destinations. Initially, we sought to contribute by adding an intervention to the already-planned gathering and by filming the entire process. The resultant work, "Scenarios Preparations" (2015, 35:00 minutes) was composed of footage we had shot in 2011. The work was completed four years later, around the

time I was finalizing the dissertation and was exhibited alongside part of the research.[3] Together, the two projects provide diverse entry points into the complexity of the extraterritorial image. While the dissertation aims to provide a systematic analysis of extraterritorial images, the artwork sheds light on the heterogeneous ways in which such images may affect and shape events and their aftermaths.

The work "Scenarios Preparations" depicts a series of imagined rehearsals: improvisational exercises meant to prepare the participants for their anticipated encounter with the Israeli army in extraterritorial waters. These exercises were for the most part guided by a Dutch theater director and were held at a fringe theater venue in Amsterdam. Other improvisation exercises, led by one the of the organisation's representatives who had also participated in the 2010 flotilla, took place at a secret location on the Greek island from which the Dutch boat was to set sail; these exercises were dedicated to practising the actual scenarios of engagement with the Israeli army, including specific behaviour guidelines determined by the organisers. "Scenarios Preparations" also focused on an intense internal discussion among the participants a day before the planned departure, concerning a leak to a Dutch newspaper with secret details about the sailing plan.

Filmed only few months before I started to work on my dissertation, the video work "Scenarios Preparations" echoes core entanglements that would shape my theoretical work. To illustrate this, let me briefly describe two scenes from the work. In the first, a quarrel is shown over the proper limits of image production and distribution, as the participants disagree whether the training sessions should be documented, and if so, under which restrictions and ownership conditions—for example, whether the sessions may be documented exclusively by the organisers or

also by outside filmmakers or even journalists, and whether release of the filmed footage should be immediate or postponed until after the journey. Those opposing transparency expressed the concern that the footage may prematurely reveal to the public the activists' personal stress as well as give the Israeli army a tactical advantage when planning the takeover operation. Many were in favour of greater lenience, however, since they themselves intended to film the sessions as news footage or for documentary filming purposes, in effect serving simultaneously as actors and directors. Furthermore, one of the film directors present argued that since the documentation of the actual encounter with the Israeli military would in all likelihood be confiscated, the improvised scenarios would remain the only evidence of the struggle and could later serve as evidence to the non-violent nature of the mission. The debate underscored and epitomized the tension between political action and documentation and the dilemma which takes precedence. Image production and political action merged and cross-pollinated; limiting the images became indistinguishable from limiting the political action that these images documented. Moreover, in a situation where the visual documentation that could had served as vital evidence will be eventually seized, the prospect of loss of control over image production and distribution leaves the documentation of performances as only accessible evidence in case of suspect of human rights violation.

The dilemmas exhibited in this scene re-emerge in another scene from our work, filmed the following day. When asked to freely envisage and prepare for the violent confrontation, an activist playing the role of an Israeli soldier entered the room holding an imagined camera. "Would you like cookies?" asked the organiser/instructor who was also improvising the role of a fellow Israeli soldier. Another activist, playing himself, repeatedly answered: "We need medical

attention". Then we could talk about food." The imagined camera, so it seems, was meant to capture staged images that would serve to exonerate the Israeli army from responsibility for its violent acts. This specific kind of image production was added to the arsenal of the traditional weapons of war. Staging conduct according to the laws of war in front of the camera—turning the law of war into a mere script—became a combat technology in itself. In this way, the work "Scenarios Preparations" allowed us to show how the state's projected control over the production and distribution of images annulled the images' ability to help reconstruct violations, reducing the accessible visual evidence into mere illustrations of the degree to which each side adhered to rules of wartime conduct.

In the following days, due to sabotage suffered by the boats as well as restrictions imposed by the countries from which the boats were to set sail, the flotilla was cancelled. This further underscored how the fate of the initiative was predominantly decided on the level of images—in the realm of documented intentions, rather than resultant actions. Instead of physically departing with the flotilla in order to produce images in extraterritorial waters, I embarked on the present theoretical investigation.

The above-described scenes call attention to the ways in which the extraterritorial laws applied in maritime space may transform into a regime of visual representation, manifesting itself in the production of what I will propose to understand as "extraterritorial images." Both my practice as an artist and my theoretical research have been dedicated to asking what extraterritorial images are and how they operate.

Some final methodological clarifications are important. The first has to do with constraints I confronted with regard to resources, which, however, turned out

to enrich my research and made possible for new insights. Whereas in conventional research one can examine one's subject matter in an archive, my study—focusing as it does on images that were removed from visibility and placed out of reach—pushed me to look at what remained present and discover in it the logic of expropriation. Since many of the images were not available, I had to trace the ways in which they re-appeared in discursive forms and to initiate attempts at their alternative representation. Following the absent image trails, rather then examining the images in the national archives in which they are physically kept, enabled me to grasp the extraterritorial quality of these images.

Finally, as a practitioner my work method has always been open to change and taken diverse forms, as the enclosed appendix attests. Specifically, the Exterritory Project, which was expanded in 2010 to an ongoing art project dedicated to the exploration of ideas concerning extraterritoriality, has involved the creation of artwork, public symposia, scientific experimentation, and other interdisciplinary experimentation. While each of us also engages in her own separate practice, the Exterritory Project has been the joint initiative of myself and Ruti Sela, my intermittent collaborator for over a decade. Since we started developing the Exterritory Project, the need to conceptualise extraterritoriality and to investigate the ties between images and extraterritoriality has become an even more urgent an impetus, which, naturally, has also fuelled the theoretical endeavour presented herein.

Ruti Sela & Maayan Amir, 2015, Scenarios Preparations, Video, 35:00 min.

Introduction

My dissertation explores contemporary manifestations of extraterritoriality and the logic of extraterritorial representation. In what follows I explain these terms and show how they help to shape contemporary legal cultures. In order to study these concepts, I examine a specific event in which various performances of extraterritoriality, politics, and representation intersect: the Israeli army raid of the Gaza Freedom Flotilla in 2010.

In the small hours of May 31, 2010, in the extraterritorial waters of the southeastern Mediterranean, large forces of Israeli military commandos were preparing to raid a group of six boats sailing together as the Gaza Freedom Flotilla. Carrying food, medical supplies, and hundreds of international activists, the flotilla declared two aims: to deliver humanitarian aid to the people of Gaza besieged by Israel, and to protest Israel's stranglehold over the Palestinian territory. Once Israel had decided to raid the flotilla, a confrontation between the activists and the military was all but inevitable. Few expected, however, that the ensuing skirmish would devolve into a lethal clash that would leave ten Turkish activists dead and many more on both sides wounded, among them nine soldiers.[4]

Though the physical raid on the flotilla began around 5 a.m. on May 31, the takeover effort was launched already during the preceding evening, when Israeli forces began to interrupt satellite transmissions to and from the boats. This focus on communications was not incidental. From the onset, media and publicity concerns were at the heart of flotilla campaign. Eager to publicise the event, the flotilla organisers had invested in live broadcast infrastructure and had journalists and

broadcasters on board the vessels. In addition, many of the individual activists brought video equipment and were ready to document the event.

As soon as the violence erupted, images of the confrontation began to reach viewers worldwide, and more images circulated in the media in the days, weeks, and months to come. In fact, much of the violence on board the vessels seems to have been shaped by the adversaries' media concerns and publicity goals. Since the flotilla's organisers planned the event as a live performance of sorts, some of the violence was affected directly by their attempt to defend the communications and transmissions equipment on board the boats. The military, for its part, made an effort to document the event for its own propagandist purposes, striving to become the director, sole editor, distributor and archivist of the resulting material.

The battle over the images was not limited to their production, however, but also to their circulation and interpretation. The Israeli troops who raided the *Mavi Marmara* strove to locate and confiscate any footage shot by the activists almost as forcefully as they struggled to apprehend the activists themselves. An estimated sum of 2600 storage devices were confiscated that night. As a result, the co-authored archive of images of violence was expropriated from its activist authors and subjected to the exclusive control of the Israeli military and government.

Ever since, the flotilla has been the subject of ongoing national and international judicial inquiries. In Israel, inquiry results were reported in the Eiland Report,[5] the Turkel Commission Report,[6] and the Israel State Comptroller's Report.[7] Internationally, the United Nations Human Rights Council [UNHRC] launched a fact-finding mission,[8] and the UN Secretary-General commissioned a Panel of Inquiry (headed by Sir Geoffrey Palmer) to investigate the events.[9] An investigation was also conducted by the US Congress.[10] Investigations were also

reportedly launched in the Republic of South Africa, Spain, Belgium, and recently in Sweden.[11] In Turkey, investigations were conducted by the Turkish National Inquiry Committee[12]; a civil trial to obtain compensation for the victims was held in the city of Kayseri; and criminal charges were pressed against senior Israeli commanders. The latter are now being tried *in absentia* at Istanbul's Çağlayan Criminal Court.[13] Following a request submitted by the Istanbul-based law firm Elmadag in May 2013, the International Criminal Court conducted a preliminary examination "in order to establish whether the criteria for opening an investigation are met."[14] (On November 6, 2014, however, the ICC prosecutor announced that since the legal requirements under the Rome Statute have not been met, the court would not open an investigation."[15]) More recently, one of the commandos injured on board the Marmara pressed charges against the Israeli military, claiming it was negligence on the part of the IDF that enabled his photos from the ship to be distributed abroad.[16]

The flotilla has also received extensive attention in the world media, in books,[17] essays, and movies, in Youtube clips and exhibitions, and even in a theatrical play.[18]

Removed from national and international public scrutiny, all these investigations—except the one conducted by the State of Israel—have taken place in the absence of visual documentation of the event. Consequently, despite the presence of many witnesses, what happened on board remains highly disputed.[19]

Extraterritoriality designates modes of relations between space, law and representation. In my analysis I aim not only to draw on existing notions of extraterritoriality but also to reload them with a new meaning: my thesis proposes that the legal-judicial concept of extraterritoriality, normally applied to people and to spaces, may be extended to refer to other objects and spheres of activity, such as

regimes of representation and information. Regimes are used here in reference to Michel Foucault's concept of "regimes of truth", marking the ways in which "systems of power produce and sustain truths." Control over such regimes is often achieved via discursive and representational practices that may affect not only what is seen and what is not, but also what can be perceived in general, and specifically as veridical.[20]

One important insight emerging from my analysis of the flotilla incident is that the concept of extraterritoriality applies not only to the political situation in Gaza, to the legal status of the maritime environment in which the flotilla incident took place, and to the legal actions taken in its aftermath, but also to the battle for and over the images which raged both during and after the violent confrontation. These images constitute a digital archive of violence co-authored, in a sense, by Israel's armed forces and by the activists they tried to suppress. These archives remain out of reach even though their content—the visual evidence they contain—continues to play a role in public life; in that sense, they follow an extraterritorial logic of representation.

To demonstrate how the concept of extraterritoriality may be applied to these images, a theoretical and historical overview of the concept is needed. Since the establishment of the state system from the sixteen century onwards, the notion of extraterritoriality emerged in various fields of knowledge, where it has been differently imagined, articulated, understood, preformed, and applied. Often in such discussions, extraterritoriality is defined dialectically, in relation to and as a result of *territoriality*. That is, extraterritoriality is understood as a corollary of the post-Westphalian division of the globe into distinct sovereign territories. In reality, however, the relations between the two seem to be much more complex. A more

careful look at the history of extraterritoriality shows that its origins were not simply derivative of territorial definitions. On the contrary, the notion of extraterritoriality and its applications have often been the product of attempts to evade territorially based laws (including those regulating the circulation of images). To understand the notion of extraterritoriality as it is deployed today, we must therefore conceptualise it, also outside of the strictly "territorial" prism.[21]

I begin **Part 1** of the dissertation with a survey of historic conceptions of extraterritoriality.[22] In **Chapter 1**, "**Extraterritoriality: A Historical and Conceptual Overview**," I provide a short survey of legal forms historically recognised as "extraterritorial." I begin by reviewing the concept's history in what may be called the "pre-territorial" era, that is, in the era before the world was carved up almost entirely into sovereign territorial jurisdictions. The review does not attempt to be comprehensive, rather it samples several key examples which illustrate what I take to be the two predominant categories of extraterritoriality in the pre-modern, pre-territorial age: extraterritoriality (1) as a *personal legal status* applicable to persons or individuals within a juridical system and (2) as *the assignment of separate geographical locations within which people are allocated with such status*. By focusing on these manifestations, I suggest not only that extraterritoriality is a pre-modern concept, but also that neither in pre-modernity nor in modernity should it be understood exclusively in the two ways outlined above. Rather, it should be understood as applying not only to people and to spaces or territories, but also to the *things* that are capable of occupying such spaces. Wherein "things" should be understood as encompassing a broad category including physical objects but also more ephemeral entities such as visual images, recordings of events, and so forth.

In the last decade, the concept of extraterritoriality has been discussed most frequently in relation to Giogrio Agamben's definition and conceptualisation of the "state of exception." However I will argue, this framework is limited by its focus on a model of suspension of laws dominated by a single sovereign—a model adequate to capturing certain contemporary manifestations of extraterritorialities, but not others. I then examine the complexity of this approach, which might blur features that are unique to extraterritoriality. To the extent that extraterritoriality is often the result of the encounter between legal systems and different politics that enables their co-existence while producing complex regimes of representation, it can be understood only partially through the perspective of the "state of exception," which is conceptualise within western politics and emerge as a zone in which "violence without any juridical form acts."[23] As I will later demonstrate, Agamben's own use of the concept of extraterritoriality in his discussion of Jerusalem and the Israeli–Palestinian conflict indicates that he himself is aware of the difference between the two phenomena, extraterritoriality and the "state of exception." I end **Part 1** with a second chapter, **"Extraterritorial Images,"** in which I explain from a theoretical point of view the application of the concept of "extraterritoriality" to the realm of visual images.

In **Part 2** of the dissertation I apply the concept of extraterritoriality and extraterritorial images, first to the events and aftermath of the Gaza Freedom Flotilla, and then to the Mavi Marmara trial that followed it. I begin my discussion on the Gaza Freedom Flotilla in **Chapter 3** by providing some background on the initiative. In 2005, Israeli forces withdrew from the Gaza Strip and Israeli settlements were evacuated. In the democratic legislative elections held in Gaza the following year, Hamas came to power, replacing the secular Fatah. In real terms, however, Gaza has

remained under Israeli control. With Egyptian collaboration, Israel continues to control all land, naval and aerial pathways to and from Gaza. In 2007, invoking security concerns, Israel aggravated its restrictions policy: imposing a closure on the Gaza Strip, severely limiting the movement of goods into the region. Since then, territorial restrictions have only intensified, sometimes to the extreme of keeping Gaza's inhabitants confined in their homes.[24] This process is surveyed with special attention to the diverse legal language employed to describe it: "embargo," "siege," and "blockade."[25] In this chapter I propose that by tracing the distinct conceptions of spatiality entailed by each of these territorial practices, we find not only that they are perceived differently by Israel and by the activists; we also find that the extension of the territorial conflict into extraterritorial waters has shaped both the violent confrontation and its judicial-legal aftermath.

Chapter 4, "**The Flotilla Interception and the Capture of the Images in Extraterritorial Waters**," focuses on a central feature of the military interception of the Gaza Freedom Flotilla: the Israeli military's takeover of images of the event. In this chapter I reconstruct the complex logic of the event from hundreds of testimonies by those involved, as provided in various legal reports and elsewhere. In this chapter I argue that the battle over the images was not only the major symbolic motivation for the confrontation, but also what shaped the concrete manner in which it unfolded, turning it into a deadly physical conflict. I then explore two more relevant aspects of the event. First, I discuss the fact that the event was documented from multiple perspectives and using varied technologies, from aerial photography by the Israeli military and helmet cameras worn by the soldiers onboard, to video cameras held by the activists and the boat's own security cameras. Second, I discuss the denouement of the confrontation, in which the Israeli military indefinitely

confiscated most of the footage, selectively publicising only those parts of it that could serve as for propaganda purposes.[26] I then turn to analysing what remained of the visual documentation. Of the hundreds of hours of video footage in existence, only a few clips—brief and heavily edited—have been released by the IDF Spokesperson and Advocacy Department. A few images shot by the activists were smuggled and released after the event. As a result, the publicly available footage amounts to no more than a few minutes of videotaped materials.[27] The inaccessible images, of which we know from testimony alone, have become an "extraterritorial" prism through which we can view and try to understand the few images that are publicly available—a void that opens up interpretative and speculative space.

The few images that remain publicly available have served both as visual evidence in official inquiries and as the visual basis for multiple rival attempts to "expose the truth." **Chapter 5**, "**Extraterritoriality and the Battle over the Images**," describe the emergence of a unique geography of vision, created by the state's confiscatory and exclusionary actions. These actions have resulted in a vast archive of expropriated images, co-authored by both sides to the conflict but kept away from public view. In this chapter I introduce the notion of such an archive, and set up the discussion that follows in the dissertation's second part.

The following chapters elaborates upon the logic of extraterritorial representation by looking at a court case brought before the 7th Court of Serious Crimes in Istanbul, Turkey against four Israeli senior commanders, in allegedly the leaders of the military interception of the Gaza Freedom Flotilla.[28] Ongoing since 2012, the trial has taken place *in absentia*, without the defendants.[29] Already before the trial commenced, it was announced that contrary to usual juridical procedures in Turkey, the proceedings would be videotaped but not broadcast.[30] The Turkish court

has reserved exclusive shooting, editing, and distribution rights, refusing to release its footage publicly. In the following chapters, I examine how the logic of absence and representation that characterised the visual documentation of the flotilla incident may also be applied both to the absent defendants and to the inaccessible court footage. Now, rather than focus on the *exclusion* of the images, as I did so far, I focus on their *production* by the court, based on my own attendance of the courtroom proceedings.

By choosing the confrontation on board the *Mavi Marmara* and the proceedings at the Turkish court as the canter of my analyses, I do not intend to draw symmetry between the two. Rather, I believe that both cases illuminate, from different perspectives, the prospects of applying the concept of extraterritoriality to images. The two cases do exhibit some similarities, however. In both cases, images that may reveal violation of human rights are excluded by the state and are used to validate its actions. While the Flotilla sailed under the claim of protesting the Israeli illegal blockade over Gaza, it was then pre-given that the struggle on-board manifested a dispute between legal jurisdiction systems. Moreover, from start, both sides designated to the image production a vital role in proving their justice causes and conduct; these conditions clearly constitute a situation in which images may transform extraterritorial. However, the existence of competing legal doctrines within the Turkish justice system and the production of court documentation as a tool in this conflict only unraveled in court. To establish the status of the court documentation as extraterritorial, it was thus necessary to compare the images I saw captured by the court camera to Turkish criminal laws and fair trial procedures. In **Chapter 6**, "**The Mavi Marmara Trial: From Absent Images to Absent Defendants**," I discuss how from the onset of the trial, the missing visual documentation played an

active role in shaping the legal proceedings. The alleged urgency of the trial, which was invoked to justify trying the defendants *in absentia*, was, in turn justified by the plaintiffs' lawyers precisely because of the absence of the confiscated visual footage. The trial, it was claimed, was urgently needed as a platform for the production of new recordings of witnesses attesting on what transpired—recordings which would then substitute for the inaccessible footage. The absence of the defendants was mirrored by the absence of the images, invoking them as images *in absentia*. The visual evidence was now to be transformed into filmed oral testimony—an audio-visually documented verbal description of the original visuals. Paradoxically, however, these new recordings of the testimonies were created, only to be excluded from the public sphere once again.

Based on my own first-hand observations of the trial, it appears that the court cameras are in a sense re-documenting the gap between the new EU-inspired judicial regulations and the court's actual conduct. Although Turkey, as part of its ongoing attempts to become an EU member, is officially committed to a series of legal reforms, the performance of the court reveals a different reality. I explore this claim in **Chapter 7, "Extraterritorial Images and 'Access to Justice**,'" based on selected examples from the trial. First, I discuss some spatial aspects of the trial, placing special focus on the physical setting of the trial. The building of the Istanbul Criminal Court was itself inaugurated as part of reforms undertaken to meet EU membership standards and its infrastructure designed specifically for the new court technologies.[31] I show how the production of audio-visual court records seems to be given precedence over actual public participation. Although the courtroom was very crowded and noisy, the microphones available are used as recording devices only, and not to amplify the proceedings in the room, making much of the exchange

inaudible for the public. As the witnesses face the judge while giving their testimonies, the audience can only view their image as it appears on the courtroom split-screen, as if watching a fragmented silent movie.

The following sections of Chapter 7 examine the sense in which territory itself, rather than individuals, was put on trial and the ways in which the court's audio-visual system captured further failures of the Turkish court. Although the Turkish criminal code prohibits legal entities other than individuals from being sentenced to criminal sanctions, the impression often given by the court procedure and the witnesses' testimonies is that it is the State of Israel, rather than the four individual defendants, that is being tried: the occupation is the crime, and the liberation of the Palestinians' land is the desired verdict.[32] The four individual defendants are almost never under discussion.[33] In fact, hardly any interrogative questions of any kind are asked. Consequently, no effort has been made to connect the accused to the felonies invoked. For the most part, the judge refrained from asking interrogative questions. As a result, the court's audio-visual records document a series of almost entirely unchallenged performances orchestrated by the prosecution. The court's audio-visual system is also the only record of the court's failure to provide translation services to dozens of international witnesses invited to give witness before the court.[34] I explore these shortcomings in the final sections of the chapter.

The **Postscript** added to the dissertation provides an historical survey of the exclusion and exemption of images as legal evidence. The Postscript beings with a discussion of two approaches to the *legal status of images*: images as substantial evidence, and images as mere illustration or visual aid. I survey the history of the use of visual images in court, mostly in the context of common law systems. From the

invention of the camera in the early decades of the nineteenth century, courts and legislators debated the reliability of photographic images' testimonial value and consequently their status as evidentiary tools. Photographs were initially conceptualised as "evidentiary aid" or "demonstrative evidence," a form of mere illustration equivalent to drawing and diagrams.[35] With the shift to "silent witness theory," photographic images were reconceived as substantial circumstantial evidence—a development aided by the advent of X-ray technology.[36] Later developments included various methods of authenticating photography in court, the introduction of CCTV, and legal theories acknowledging "machine-made" photography as "self-authenticating."[37]

The second part of the Postscript examines the history of courts as the producers, creators and archivists of audio-visual criminal records. I argue that the "genre" of court-made recordings of trials was motivated from the onset by the desire to create "images of fair trials"—to validate and legitimate the court's actions in juridically controversial or sensitive cases. I survey the production of court records, from the pre-electronic era to the introduction of film cameras into the courtroom, showing how such recordings were given the legal status of official court records in order to certify the court's conduct. I also raise questions about the authorship and ownership of such records. Examples discussed include some of the most visible international trials where images played a significant part: the Nuremburg Trials, the trial of Adolf Eichmann in Jerusalem, hearings held by the International Criminal Courts, the ICTY (International Criminal Tribunal for the former Yugoslavia), ICTR (International Tribunal of Rwanda), and the Joint Tribunal trials against the Khmer Rouge. These are of course different cases from different times and places, each with its own diverse circumstances, scale and nature of

crimes. They are similar, however, in the kind of hierarchy that is likely to have shaped and regulated their regime of image production and circulation and thus reflects a characteristic of their ethics of representation. By this I mean, and so I argue, that while these tribunals claimed adherence to standards of fairness and universal justice, their role as the §exclusive creators and distributers of court records kept open the possibility of prioritising national interests over universal impartiality.

Part 1

Extraterritoriality and Extraterritorial Images

1. Extraterritoriality: A Historical and Conceptual Overview

As with all legal and political concepts, the concept of extraterritoriality has acquired different meanings in different historical contexts, based on the myriad of ways in which it has been put to use. Etymologically, the term "extraterritoriality" is derivative of the Latin *extra territorium*—meaning literally, "outside the territory." An examination of the different definitions of extraterritoriality, both historical and contemporary, not only reveals a complex dynamic between the term's various early meanings ("being outside of one's territory," "having no territory," etc.), but also shows how new extraterritorial phenomena helped redefine these terms over time, imbuing them with new meanings.

In ancient Rome, the term was used to designate officials acting beyond their proper jurisdiction (as in the legal dictum *Extra territorium jus dicenti impune non paretur* —"one who administers justice outside his territory is not obeyed with impunity").[38]

According to early-twentieth scholarship, the concept's origins may lie even earlier in antiquity, however in an era when, on the one hand, non-community members were not fully subjected to the laws of the state in which they lived, and on the other, absolute territorial sovereignty was not yet emphasised. In this era, extraterritoriality functioned as a form of legal tolerance—a way to resolve conflicts between different justice systems.[39] Practices of extraterritoriality enabled foreigners

to be exempt from local laws (at least to some extent) and to retain their allegiance to the laws of their place of origin. Such arrangements were crucial for ancient communities, which needed to establish stable relationships with their surroundings; they were probably encouraged by trade, conquests, and migrations, which helped decrease fear of foreigners and attitudes of strict in-group exclusivity.[40]

Early practices of extraterritoriality can be divided into two categories. The first consisted simply in the ascription to foreigners of a special legal status; the second involved, in addition to such ascription, the allocation of special physical spaces to such people. Examples of the first type include the *proxenoi* in ancient Greece (citizens of one state appointed to serve the interests of another and awarded various honors and privileges in return—an early prototype of the modern consul),[41] and the Roman magistrates known as *praetor peregrinus* who applied the *Jus Genitum* (Law of the Nations) to decide legal cases between non-Roman foreigners.[42] Extraterritorial practices of the second type included, in addition to the allocation of a special legal status to foreigners, the designation of specific districts for them to inhabit. Under the reign of King Proteus of Egypt in the thirteenth century BCE, Phoenician merchants from the city of Tyre were allowed to dwell around a special precinct in Memphis known as the "camp of the Tyrians" and to have a temple for their own worship. [43] In other cases, foreigners remained subject to their own laws or were placed under special jurisdiction, as in the case of Jews and other tribes who were allowed to settle in Goshen under the eighteenth Egyptian dynasty (1580-1350 BCE).[44]

According to some, these early models of extraterritoriality existed in a pre-Westphalian world that was not carved up into sovereign territories, each under the exclusive authority of a sovereign political power and a unified system of laws.[45]

According to this view, extraterritoriality developed as the rejection of the uniformity of law, as a system of governance that resisted territorially-based laws.[46] It seems, however, that at least in some cases extraterritorial practices did develop within a territorial legal-political system in which definite geographical regions were under exclusive sovereign control. In such cases, extraterritoriality was a matter, not of certain *geographical regions* exempted from law, but of certain *people* enjoying special legal status.

Extraterritorial practices of both types seem to have developed in different times and places. In his early study of the history of extraterritoriality published in 1969, Shih Shun Liu claimed that extraterritoriality, while traceable "to the absence of absolute territorial sovereignty" in antiquity, was also rooted in the "tradition of the personality of laws." The latter tradition was that of the personal jurisdiction system of medieval Europe—the system in which "the law followed the person and not the territory".[47] Under this system foreign subjects were governed by the laws of their place of origin, not by those of their place of residence.[48]

The literature discusses many other historical instances of extraterritoriality. Shih Shun notes that in the times of Theodosius the Great (379-395) and Honorius (395-423), special magistrates, later known as Judge Consuls, were appointed to decide in cases of accidents at sea. According to Shih Shun, the practice further evolved between the tenth and thirteenth centuries, when special courts were authorised to judge in commercial disputes with foreigner merchants.[49]

Similar practices developed later in the Levant, where extraterritorial control took the form of the so-called "capitulations"[50]—different sets of privileges and immunities given to Christians by Muslim rulers. (As some have pointed out, the word "capitulations" is a translation of *sulh*—Arabic for truce, a state in which a

stranger or an enemy is allowed to preserve some degree of autonomy.[51]) Some trace the regime of capitulations back to the Caliph Omar Ibn-Khattab, who in 636 granted special legal status to Christian churches in Syria.[52] Capitulations were also granted to Christians living in Egypt: in a letter sent to Pisa in 1154, an Egyptian official guarantees to Pisans residing in Egypt legal and administrative autonomy on the condition that they live in special quarters in the cities.[53] Other Italian republics whose citizens enjoyed extraterritorial privileges in Egypt at that time were Venice, Genoa and Florence, and similar arrangements were instated in later centuries throughout the Ottoman Empire.[54]

More recently, scholars have taken a far more critical view of such extraterritorial arrangements, especially those of the nineteenth century, which are viewed as related to Western colonialist and imperialist expansion.[55] In many cases, extraterritorial practices were an instrument of legal inequality, allowing Westerners to abuse their exemption from local laws, either for personal gain or in the service of their respective national interests.[56] Thus, for example, in her account of capitulations in the Ottoman Empire, Eliana Augusti writes:

> Facing the raising of territorial sovereignty, the old principle of personality seemed to transmit in a principle of extraterritoriality… first, foreigners enjoyed extraterritoriality in the sense that even if they were on the Ottoman territory, they were by *fictio* out of it, i.e., *extra territorium*; second, they were considered as in their country, even if in fact they were not.[57]

As a form of simultaneous representation and non-representation, extraterritoriality was an instrument of Western superiority and privilege. In theory, extraterritorial arrangements ostensibly promoted a rational regime of international law—a "regulative ideal of an inclusive political pluralism of the international society"[58]; in practice, however, they supported a hierarchical order, which privileged Western interests. Such unequal legal arrangements were often justified by designating the

localities in which they were instituted as "uncivilised": Western imperial powers "legitimiz[ed] special agreements on jurisdiction in countries where institutions were 'inferior' or 'different' from the civilisation of most European and American States."[59]

Nineteenth- and twentieth-century extraterritorial arrangements for Westerners have been criticised as an imperialist device not only in the Ottoman Empire but also in China, Japan and Siam, to name some famous examples, where Westerners were exempted from the workings of the local justice systems and special extraterritorial courts for foreigners were set up to circumvent local law and sovereignty.[60] According to Turan Kayaoğlu, extraterritorial courts were used to extend Western authority in non-Western countries, eliminating the authority of the indigenous legal systems and turning these countries into semi-colonies. [61] Extraterritoriality functioned, then, as a form of Western privilege in non-Western regions. In Kayaoğlu's view, extraterritoriality in these countries served, then, as a way to consolidate territorial (in this case legal) norms. In support of this view, Kayaoğlu points out that it was only *after* territorial norms were consolidated that extraterritorial privileges were abolished.[62] Some scholars believe, however, that the various models of extraterritoriality deployed during the era of Western imperialism period cannot be reduced to simple power relations. In their view, extraterritoriality had a more benign role as well, positively contributing to the development of the societies in which it was exercised.[63]

As already noted, colonial extraterritoriality, for example in China, took the form, not only of privileges accorded to foreigners, but also of spatial divisions. "Exterritorial enclaves"[64] under the control of foreigners could be as small as a quarter or district within a city or as large as an entire municipal region. Shanghai, for example, was designated as a place where "foreigners or natives shall be exempt

from the interference of the Chinese Government."[65] Other extraterritorial regions were the so-called "concessions"—*de jure* colonies placed beyond the jurisdiction and effective control of the Chinese government, in which complete political and administrative authority was given to foreign governments.[66]

Interestingly, it was in the aftermath of the Second World War, as Anglo-American extraterritoriality in China was being abolished,[67] that a discourse of extraterritorial human rights began to develop as a response to wartime atrocities. This new discourse found expression in the European Convention on Human Rights, ratified in 1953.[68] Since then, human rights have become an integral part of international law. Unlike the system of reciprocal rights and duties among states, the human rights regime prescribes unilateral obligations of the state toward individuals. [69] The principle of human rights aims to protect individuals from the territorial state laws that proved their potential to betray even their own citizens. Alternatively, the need to constitute laws that would defend humanity at large regardless of territorial affiliation promoted a universal perception of law and called for adherence to extraterritorial norms of justice, consequently giving rise to the idea of international human rights and international criminal law.[70]

International law itself, distinguishes between two types of situations of extraterritoriality in which a state is obliged to respect its obligations under human rights treaties: (1) "control over foreign territory as a result of occupation or otherwise," in which the occupier is obliged to protect human rights in the occupied territory; and (2) "control over persons [in which] individuals may be brought within the 'jurisdiction' of a state as a consequence of a … link between the individual and the state whose acts produce effects outside its territory." Situations of the first type include, for example, the Israeli-Palestinian conflict. Situations of the second type

involve such diverse issues as the "war on terror," legal black holes, drone warfare and targeted killings in Pakistan, Afghanistan, and Yemen under the post-9/11 US administration, extraterritorial immigration, and the status of refugees.[71] These manifestations of extraterritoriality give rise to a variety of legal and ethical problems, especially in light of the eagerness of many government to resort to extraterritorial measures in order to increase their power. A full analysis of the legality of such measures is beyond the scope of the current review. However, I will present the ways in which scholars from various disciplines have tried to conceptualise and discuss critically the ethical implications of such measures.

In the latter half of the twentieth century, as the Westphalian system of territorial sovereignty became universal, the entire globe became "a fully occupied world," a world almost entirely divided into the sovereign territories of nation-states.[72] Various forms of extraterritoriality nevertheless survived, some readjusted from older forms, and others were newly constituted. Together, forms of territoriality and extraterritoriality shape the current global spatial-legal landscape, sometimes complementing each other, at other times conflicting and contradicting each other. According to contemporary writers, extraterritoriality not only continues to co-exist alongside territorial sovereignty as yet another spatial-juridical order; it is also deeply involved in preserving and shaping national borders. At the same time, extraterritoriality poses a challenge to the system of territorial sovereignty as a sole principle of the political ordering of spaces and subjects. In some cases it is applied as a device for enhancing territoriality, in others, it is a way of keeping certain forms of personal jurisdiction alive. Furthermore, extraterritoriality can also be used to rethink current political concepts. In what follows I will attempt to articulate some of the diverse meanings and roles of extraterritoriality in contemporary times.

Contemporary thought about extraterritoriality owes much to the writings of Gorgio Agamben, especially his critique of sovereign power and its manifestations in the "state of exception," the camp, and the figure of the refugee. All these, Agamben claims, are core features of the modern political order. Several contemporary scholars have also understood them in relation to the concept of extraterritoriality. [73]

Agamben's notion of the "state of exception" relies on jurist and philosopher Carl Schmitt's concept of the "state of emergency."[74] According to Schmitt, sovereign power is to be understood as the right to claim special powers in times of "emergency" and suspend the law; in Schmitt's words, the sovereign is "he who decides on exceptions."[75] This power, he adds, is the ultimate foundation of modern political power. For Agamben, this same power defines the limits of politics. To this Agamben adds Walter Benjamin's claim that the state of emergency is no longer an exception but the rule. In doing so, Agamben seems to heed Benjamin's call for an effective critique of "legal violence"—the kind of violence that simultaneously "makes" (or "posits") and "preserves" the law. At the same time, Agamben challenges Benjamin's notion of "pure violence"—violence for its own sake, violence as a means without an end—and it is on this criticism that he bases his own notion of the "state of exception."[76] Agamben thus writes: "The violence exercised in the state of exception clearly neither preserves nor simply posits law, but rather conserves it in suspending it and posits it in excepting itself from it."[77]

According to Agamben, the state of exception which becomes a fundamental political structure appears as the legal form of that which can have no form—a form of emptiness of laws, a juridical void. At the same time, it is the very place where the law becomes valid—the threshold between what is outside and what is inside the law, and the source of the law's validity. It is thus a form of inclusive exclusion. For

Agamben, the state of exception, the suspension of juridical order itself, "defines the law's thresholds or limit concepts"; it is the place where "facts and law fade into each other […] On the one hand the norm is in force but is not applied; and on the other hand, acts that do not have the value of law acquire its force"; it is "an anomic space in which what is at stake is a force of law without law … where logic and praxis blur with each other and pure violence without logos claims to realise an enunciation without real reference."[78]

According to Agamben, the state of exception materialises in the camp, a territory placed outside the normal juridical order of state law, allowing the suspension or elimination of the subjects' political value.[79] The camp is justified by its creators on grounds of security as a way to avert danger or ensure state security. In the camp, the state of exception becomes the rule. It is a hybrid of law and fact in which the two terms become indistinguishable, as do the notions of inside and outside.[80] Agamben thus describes the camp as "a dislocating localisation … or a localisation without order."[81]

The state of exception is also embodied in the figure of the refugee, a political category that according to Agamben became a mass phenomenon after the First World War. For Agamben, the refugee is a modern incarnation of the ancient Roman *homo sacer*.[82] By declaring a person a *homo sacer*, Roman law stripped the person of all political rights, reducing his existence to that of "bare life." The person was thus positioned outside the law but under its effective control. This, Agamben claims, is precisely the condition of the modern refugee vis-à-vis state power.[83]. It is for the refugee, he writes, that the identity between man and citizen breaks down, exposing the fiction of sovereignty based on nationality.[84]

My focus on Agamben is due to the fact that many significant recent scholars have linked the notion of extraterritoriality with Agamben's notion of the "state of exception," sometimes using the terms almost interchangeably. Like the phenomenon of extraterritoriality, Agamben's "state of exception" has its origins in conflicts of laws,[85] generating complex arrays of representation and non-representation which involve an effect of suspension, a dialectic of inclusion and exclusion, and manifestations of the "irreducible difference between state and law."[86]

Thus, as the following examples will demonstrate, extraterritorial phenomena such as the refugee camp are characterised by a state of exception, an ordering of space and legal status which makes possible the creation of, and infliction of pure violence upon, "bare life."[87]

Sociologist Sari Hanafi has outlined the emergence of the Palestinian refugee camps in Lebanon as extraterritorial sites, beginning with the burgeoning Palestinian nationalism in the mid-1960s and the rise of the Palestinian Liberation Organisation (PLO),[88] and leading to the Cairo Agreement of 1969, which, while recognising Lebanese sovereignty, gave the PLO direct control over the camps. As a result, the camps "virtually became a state within a state."[89] Hanafi notes that even after the expulsion of the PLO from Lebanon in 1982 and the subsequent handing over of the camps to UNWRA and to various NGOs, "to this day the camps make up enclaves out of reach of some Lebanese laws."[90]

Following Agamben, Hanafi describes these camps operating under extraterritorial jurisdiction as "spaces of exception." They exist, he writes, in a "state of void" in which laws are suspended. The result is chaos, discrimination, and deprivation. The camps have become a place of refuge for outlaws, while the refugees themselves are "often stripped of their political existence and identities and

reduced to their status as individuals … as bare life."[91] Writing, for example, about the camp Nahr el-Bared in Northern Lebanon, Hanafi claims that the Lebanese authorities "turned [the camp] into a place where other extraterritorial elements like al-Qaeda can come to establish their microcosm."[92]

The camp thus brings together different manifestations of extraterritoriality into one territory. According to Hanafi, it is the camp's very extraterritorial status that allows the authorities to further marginalise the camp by denying it physical infrastructures and thus enhancing its separation from nearby urban centres. Hanafi further argues that this strategy extends beyond the camps themselves and is now utilised "against the whole Palestinian refugee community in Lebanon."[93] That is, extraterritorial jurisdiction is imposed not only within the physical borders of the camp, but becomes a legal status applied to its denizens on a personal basis.

In another discussion of policy and governance in the Palestinian refugee camps, Hanafi addresses the camp's exterritorial status not only in Lebanon but also in the Palestinian territories occupied by Israel,[94] pointing to the link between extraterritoriality and the exclusion of camp inhabitants from local elections. The camps, he writes, do "not truly belong to the place"; they "subsist 'in', but [are] not … part 'of' the space that they physically occupy." [95]

The application of extraterritorial measures to refugees is also discussed by anthropologist and ethnologist Michel Agier, in his studies of the efforts made by European governments to control migrant flow and decrease the number of asylum seekers in their countries. In late-twentieth century Europe, Agier writes, extraterritoriality has emerged not only as a "jurisdiction of exception," as in the camp, rather, but also as a way to define the contemporary figure of the "stranger":

"if he is physically present, he is administratively held over and beyond the national territory."[96]

Agier points in particular to two French laws, from 2003 and 2010, which imposed extraterritorial status on foreigners entering France's borders. Here, in contrast to the former example, it is not the camp's extraterritorial jurisdiction, which follows the individual refugee; extraterritoriality is no longer constrained to the geographical location of the camp. Instead, the relationship between extraterritoriality and space appear much more flexible, applied to the individuals on a personal basis. In effect, these laws utilise extraterritoriality to enable the state to circumvent the foreigner's right of asylum. International law demands that states respect all requests by asylum seekers from the moment the person sets foot on the state's national territory. Under the new laws, Agier writes, "everything that surrounds [the asylum seeker] becomes like an aura, extraterritorial, and therefore outside the Law." Extraterritoriality is no longer a geographical status of exclusion applied, e.g., to camps located within the state or under its administration; rather, extraterritorial jurisdiction is now used as a device for blocking access to the state's territory. [97] Instead of constraining state power, these new extraterritorial measures enable states to abscond their obligation to respect human rights within their national borders.

Increasingly and ever more regularly in recent years, extraterritorial devices have also enabled states to use their military forces to assert prescriptive jurisdiction beyond their territorial limits. [98] A well-known example is the so-called X-Ray Camp at Guantanamo Bay in Cuba, which served the United States in its "war on terror" — the international military campaign launched by George W. Bush after the 9/11 terror attack on the World Trade Center. Located on Cuban soil, the former detention

camp[99] is under the control of the United States despite the fact that it is located outside its formal jurisdiction. The camp is known for its use in the imprisonment, without trial, of hundreds of suspected foreign nationals allegedly involved in terrorist organisations. Wishing to evade the legal requirements and human rights standards normally applied on U.S. soiled, the United States argued that the area was "extraterritorial."

In their essay "The Geography of Extraterritoriality," Eyal Weizman, Ines Geisler and Anselm Franke describe the Guantanamo X-Ray Camp as a legal loophole in which varied forms of inclusions and exclusions intersect:

> The political void in which the prisoners are held is mirrored by a sensual one—photographs of the camp show prisoners, their eyes, mouths and ears folded, incommunicado, prevented from sensing and comprehending their surroundings. Thus, without access to neither lawyers nor visitors, in the base on Guantanamo Bay as well as in American bases such as those in Bagram, Afghanistan and on the island of Diego Gracia, British Indian Ocean Territory, that operate according to similar juridical principles, prisoners may go on floating in indefinite detention. The absence of law has created a new type of space, one in which a person may be reduced to the level of biological life, a body without political or legal rights, a living dead.[100]

Though the writers do not themselves say this, the notion of "extraterritoriality" seems to be applicable here not only the U.S. government's attempt to evade its legal obligations, but also the physical and corporeal conditions imposed on the prisoners themselves, for example the state of perceptual isolation imposed on detainees. Pointing to the foundations of the Guantanamo camp in nineteenth-century colonialism as well as its current existence as a site of exception,[101] Derek Gregory too seems to draw (although, again, he does not explicitly mention it) similar conclusions. Comparing the aggression and torture enacted in the camp with the violence habitually inflicted by colonial regimes, he describes Guantanamo as a zone in which "the legalised and the extralegal cross over into one another."[102] Writing

about the interrogative torture technics employed against the detainees, Gregory quotes historian Alfred W. McCoy:

> These 'no-touch' techniques leave no marks, but they create 'a synergy of physical and psychological trauma whose sum is a hammer-blow to the fundamentals of personal identity': they deliberately ravage the body in order to 'un-house' the mind.[103]

In Gregory's account, as in Weizman, Geisler and Franke's, the camp's extraterritorial status finds expression in the prisoners' very bodies as well.

The use of extraterritorial measures in cases such as Guantanamo is also discussed by sociologist Boaventura de Sousa Santos, as part of his critique of Western epistemology. Santos tries to understand modern Western thought as embedded in what he calls "abyssal thinking." In his view, modern law and knowledge, dominated by Western science, form an "abyssal" legal and epistemological cartography, which imposes a hegemonic regime of visibility and invisibility in order to support the colonial order.[104] Santos' intellectual enterprise can be seen as an attempt to cross, in order to dismantle, what Schmitt terms the zone "beyond the line," the zone on which the state of exception is based. At the same time, as if echoing Benjamin's invocation (which Agamben also invokes), Santos believes that in order to confront the state of exception, one must reconceptualise the oppressed.[105]

A central characteristic of the abyssal paradigm is its non-dialectical rejection of the co-presence of existences, the view that existence is conditioned by absence.[106] Similarly, abyssal thinking involves classifications of legal and non-legal forms, which are presented as the only relevant forms of existence before the law. Consequently, this dichotomy negates an entire social terrain of

> the lawless, the a-legal, the non-legal and even the legal or illegal according to non-officially recognised laws. … [This] other side of the line comprises a vast

> set of discarded experiences made invisible…and with no fixed territorial location."[107]

According to Santos, what exists beyond the legal territory of modern law is the colonial zone: "in its modern constitution the colonial represents not the legal or illegal, but rather the lawless".[108] In his view, abyssal thinking is most clearly manifested in Guantanamo: "the creation of the other side of the line as a non-area in legal and political terms, an unthinkable ground for the rule of law, human rights, and democracy."[109] It is not only the extraterritoriality of the camp that Santos has in mind, however, but an entire series of performances of the lawless in everyday life. According to Santos, modern humanity is not conceivable without the production of a modern sub-humanity characterised by radical exclusion and legal non-existence: "there are millions of Guantanamos," he writes, "in the sexual and racial discriminations … in the savage zones of mega-cities … in the black market of human organs."[110]

In order to overcome the determinism inscribed in the abyssal model, Santos suggests replacing it with a model characterised by an ecology of multiplicity of co-existences: "it is an ecology, because it is based on the recognition of the plurality of heterogeneous knowledges … and on sustained and dynamic interactions between them without comprising their autonomy."[111] Santos's "abyssal" view of extraterritoriality as a representation of the "lawless" seems to echo Agamben's "state of exception." His emphasis on the co-existence of multiple knowledges sheds light, however, on the disadvantages of viewing extraterritoriality solely through the Agambenian lens, i.e., as the action of a dominant sovereign exploiting its powers of inclusion and exclusion. Such an approach risks overlooking or denying extraterritoriality as the outcome of co-existing, overlapping, competing, and

mutually negotiating legal systems. Even if these sometimes replicate the prevalent power structures and enhance discrimination and oppression, a full understanding of current applications of extraterritoriality demands that we view extraterritoriality from a perspective other than the dialectical models just discussed, which focus on the practices of inclusion and exclusion of a single dominant sovereign. Similarly, viewing extraterritoriality in terms of the dialectic of law and its absence, producing either a sovereign or naked life, might blur, on the one hand, the complex legal apparatus involved in the creation of extraterritoriality, and, on the other, the fact that extraterritoriality often allows the simultaneous operation of overlapping and mutually interacting legal systems. In this sense, our understanding of extraterritoriality should not be limited to the concept's ties to the 'state of exception' or to the preservation and validation of the laws of a single sovereign. Moreover, while Agamben's 'state of exception' is conceptualised within the tradition of Western politics, an analysis of extraterritoriality requires a broader perspective that encompasses other, non-Western forms of politics. Finally, viewing extraterritoriality through the prism of the "state of exception," whose origins Agamben traces to forms of dictatorship, might also fail to encompass the positive aspects of exception, which Agamben himself discusses in relation to messianism.[112]

The positive potential of extraterritoriality has been articulated by philosopher Emmanuel Levinas, who in his essay "The Rights of Man and the Rights of the Other" conceives of extraterritorialities as vital spaces from which forms of dictatorship and totalitarianism can be fought.[113] According to Levinas, any effort to defend human rights must rely on the understanding that these rights are located outside the state. "The defense of the rights of man, "he writes, "corresponds to a vocation outside the state [in] a kind of extraterritoriality, like that of the prophecy in

the face of the political power of the old testament." Extraterritoriality thus makes possible a "way to fight totalitarianism which is defined in part by its denial of any 'outside the state.'"[114]

Revisiting Levinas's ethics, sociologist Zygmunt Bauman claims that the Levinasian "Other" is no more than a mirror image of one's responsibility. He argues that in contemporary times, when economy gained independence from the state, rather than an extraterritorial ethics it is "the real powers which decide the shape of things [that] have acquired a genuine ex-territoriality," making it more difficult to maintain a distinction "between the 'inside' and the 'outside' of the state … in any but the most narrow, 'territory-and-population policing' sense."[115] He therefore offers a different approach to extraterritoriality. In his view, extraterritoriality does not necessarily take the form of spatial delimitation or legal status. Rather, power itself can become "extraterritorial" as a result of what Bauman describes as the "instigator process of modernity": the separation of time from space, the treatment of the two as independent categories.[116] Building on Foucault's concept of the "Panopticon" as a metaphor of modern power, Bauman offers a model in which control is gained by "immobilising [one's] subordinates in space through denying them the right to move and through the routinisation of the time-rhythm they [have] to obey." In modernity, he writes, this has become a "principal strategy in [the] exercise of power." In previous eras, power was bounded by space. In contemporary times, as a result of technological advances that diminish the limiting effects of distance, power has "become truly extraterritorial, no longer bound, or even slowed down, by the resistance of space." [117]

A second effect of post-panoptical modernity is that we may no longer simply assume that supervised and supervisors are simply present, that they are "there" in

fixed locations maintaining stable power relations. Rather, with the emergence of a type of "disembodiment," human labour no longer ties down capital, allowing it to be extraterritorial, volatile and fickle.[118] According to Bauman, these new relationships encourage those in power to use techniques of escape and slippage. The ideal condition for them is now one of invisibility. Their optimal strategy is to reject territorial confinement and the regimes it involves.

Reviewing the history of nation-state citizenship, Bauman distinguishes between the "solidity" of the modern" and the "liquidity" of pre-modern forms. In the modern, "solid" era, he claims, nomadism was rejected in favour of territorial and sedentary configurations that are easier to dominate. In contemporary times, this has resulted in the reconfiguration of nomadism in the form of extraterritorial elites, which rule the sedentary majority:

> The contemporary global elites are shaped after the pattern of the old-style 'absentee landlords.' It can rule without burdening itself with the chores of administration, management, welfare concerns, or, for that matter, with the mission of 'bringing light,' 'reforming the ways,' morally uplifting, 'civilising' and cultural crusades.[119]

Bauman's view echoes to a certain extent the work of architectural theorist Keller Easterling, specifically in terms of the ways the economic power of elites relies on extraterritorial exemptions in relation to the expanding implementation of worldwide free trade liberalism policy. Unlike Bauman, however, Easterling locates theses exemptions in so-called "free zones"—"spatial instrument[s] for externalising obstacles for profit". These are used by the market and the state, but also by non-state and non-market actors. According to Easterling, although such zones have ancient roots traceable to other early forms of extraterritoriality, only recently have they "emerged as a powerful global form", proliferating as an "extra-state legal habitat" that provides "the setting for secrets, hyper-control and segregation."

Easterling understands the current abuse of these extraterritorial zones as a recent mutation, however, noting their potential to become "alternative forms of urbanism." [120] An even more positive understanding of the potential of extraterritoriality is found in Agamben. Despite the close connection between the conditions of extraterritoriality described above and Agamben's notion of the state of exception, Agamben himself never draws an explicit link between the two in his early writings dedicated to the latter concept.[121] When he does use the term, it is in the context of the Israeli-Palestinian conflict, where he offers the concept of extraterritoriality as a solution to the Palestinian refugee problem and to the Israeli-Palestinian conflict over Jerusalem. The problem, he claims, is a product of the current nation-state system, which is based on the triad state-nation-territory. To solve the problem, we must first re-examine and re-articulate the very concepts by which political subjects are represented. In his view, extraterritoriality (or "better yet aterritoriality") could serve as a generalised "model of new international relations."[122] Accordingly, Jerusalem could be governed by a mutual condition of extraterritoriality, creating a multi-faceted collective political space:

> Instead of two national states separated by uncertain and threatening boundaries, it might be possible to imagine two political communities insisting on the same region and in a condition of exodus from each other—communities that would articulate each other via a series of reciprocal extraterritorialities in which the guiding concept would no longer be the *ius* (right) of the citizen but rather the *refugium* (refuge) of the singular.[123]

Sari Hanafi seems to endorse Agamben's idea. Accordingly, his proposed solution to the Israeli–Palestinian conflict involves both Palestinian statehood and acknowledgment of the Palestinian refugees' right of return. [124] He then turns to the notions of extraterritoriality as a refuge, a way to avoid territorial division. Rejecting a territorial approach, he claims that a feasible two-state solution requires a

reconceptualisation of "a new model of nation-state … based on flexible borders, flexible citizenship, and some kind of separation between nation and state." As a solution, Hanafi proposes a new model of "two extraterritorial nation-states … with Jerusalem as their capital, contemporaneously forming, without territorial divisions, two different states."[125]

2. Extraterritorial Images

As noted in the previous section, the concept of extraterritoriality has traditionally been applied to *people* and to *spaces*. In the first case, extraterritorial arrangements could either exclude or exempt an individual or a group of people from the territorial jurisdiction in which they were physically located; in the second, they could exempt or exclude a space from the territorial jurisdiction by which it was surrounded. The special status accorded to people or spaces had political, economic, and juridical implications, ranging from immunity and various privileges to extreme disadvantages. In both cases, a person or a space physically included within a certain territory was removed from the usual system of laws and subjected to another. In other words, the extraterritorial person or space was held at what could be described as a legal distance.

Viewed from this perspective, however, the notion of extraterritoriality—the quality of being held at a legal distance—may be applied not only to *people* and *spaces*, but to any entity or thing that follows the same *logic of representation* (where "entities," or "things," may be physical objects, but may also be more intangible entities such as visual images or other forms of documentation). Looking at the flotilla incident, I wish to suggest, then, that the concept of extraterritoriality can also be applied to *images* when the latter are excluded or exempted from one system of

laws and subjected to another. Put differently: extraterritoriality regulates the function and circulation of people and things in space and across borders, sometimes by exclusion, sometimes by exemption. Under conditions of extraterritoriality, people and things are placed in a space that is beyond the reach of some legal or political system which would otherwise apply to them. The extraterritorial images may continue to exist in the public sphere and play an active political role in it even when they are inaccessible: that is, they may be described orally or in writing. In such cases, they can be said to be "present at a distance." However, when the images are mediated linguistically, "at a distance," as it were, they inevitably become subject to loose interpretation, reimagining and manipulation.

In the case explored in this dissertation, important visual documentation is kept at a legal distance precisely in order to keep it away from investigations in which it may potentially serve as vital evidence.[126] My suggestion, then, is that the concept of extraterritoriality may help us understand the ways in which these images have been legally excluded from public scrutiny, especially in cases involving a conflict between competing legal systems (including that of international law). The excluded images in this case follows what I shall call an extraterritorial "logic of representation," because they are known to exist but are placed in a space beyond our visibility, this might also be generating what seems to be a unique mode of seeing what is publicly available. In this case, a particular legal-political system has expropriated the images and "imprisoned" them in a classified archive, removing them from public visibility as well as from the reach of other competing legal systems. These extraterritorial images become political prisoners, as it were. Stripped of their publicly visible form, their existence is reduced to that of inaccessible data. If the legal "territory" of the images, metaphorically speaking, is their ability to be

visible in court and to serve as legal testimony, then the images are in this respect "extraterritorialised." Under such a spatial-juridical order, which suspends all inquiry into the alleged crimes, the images are deprived of their freedom of movement in terms of distribution and circulation; they can no longer testify or speak for themselves. Not only may the creators of the images lose ownership over them (also in the form of territorial copyright); even more fundamentally, the images' most basic capacity, their power to represent or signify, is revoked. By being prevented from appearing in court, the images are denied their testimonial value as evidence. Disbarred from appearing in public, their meaning can be misrepresented or even mis-presented to such an extent that it can be turned against the images themselves and be used to claim their further captivity. Metaphorically, the extraterritorial images are deprived of their right to a fair trial. In real terms, their indefinite detention prevents them from being used as evidence in national and international investigations into severe crimes. The documentary images are known to exist, continue to play a legal-juridical role, and are even subject to public discourse, yet they remain inaccessible to direct public and legal investigation, their public presence limited to indirect and unverifiable representations. The images have continued to influence public opinion are have been publicly invoked in the service of certain political purposes yet they have been relegated to an "extraterritoriality" in which the normal workings of the legal and political order are suspended.

A general systematic research into the effect of extraterritorial images is beyond the scope of this dissertation. By focusing on the particular case of the Gaza flotilla, however, I aim to examine the ways in which extraterritorial images affect what is publicly seen and abet the production of blind spots in the judicial inquiries

to which they relate. In cases of this sort, the missing extraterritorial images seem to become a filter through which what is publicly viewable is perceived.

Part 2

Extraterritorial Images in Action:

The Gaza Freedom Flotilla

3. The Gaza Freedom Flotilla: Background

Captured by Israel in 1967 after decades of Egyptian rule, the Gaza Strip remained under full Israeli occupation over the next four decades, until 2005. During this time, its Palestinian residents remained stateless and without citizenship, deprived of basic civil and human rights and excluded from democratic participation. (They shared this fate with their fellow Palestinians in the West Bank ruled by Jordan, similarly captured during the Six Day War between Israel and its neighbouring Arab states.) In 2005, Israeli forces withdrew from the Gaza Strip and civilian Israeli settlements in the region were evacuated. Gaza became nominally autonomous, under the jurisdiction of the Palestinian Authority. In the democratic legislative elections held in Gaza the following year, the Islamic party Hamas came to power, first forming a coalition with, then replacing the secular and politically more moderate Fatah.

In real terms, however, Gaza has remained very much under Israeli control throughout the post-2005 period. Most importantly, Israel (with Egyptian collaboration) continues to control all land, naval, and aerial pathways to and from Gaza. In 2007, Israel imposed a blockade on the Gaza Strip, severely limiting the movement of goods into the region. Israel has invoked security reasons in an attempt to justify the blockade; many believe, however, that the blockade has been largely

motivated by political goals, collectively (and illegally) punishing the people of Gaza for having elected Hamas.[127]

It was against this background that the Gaza Freedom Flotilla set sail in 2010. The notion of extraterritoriality was central to the aims and motivations of the flotilla organisers. According to their claims, Israel's effective control over Gaza and its regulation of the passage of goods and persons through Gaza's borders constituted an illegal expansion of Israel's state powers beyond their proper jurisdiction.[128] The convoy was organised by the Foundation for Human Rights, Freedom and Humanitarian Relief (IHH) based in Turkey, in collaboration with the Free Gaza Movement and other NGOs and activist networks.[129] Three of the vessels, including the *Mavi Marmara*, left Turkey as part of the flotilla in late May 2010.[130] The organisers' professed aims included humanitarian aid to a Gazan population suffering from a severe rationing of food, medical products, and other basic necessities. No less important, however, was the evident goal of raising international awareness of the plight of the Gazans, protesting the violation of their basic human and civil rights, and agitating for the larger Palestinian cause.[131] It should be noted that these two sets of goals were in a certain respect at odds with each other: whereas the professed goal of offering aid would have pushed in the direction of compromise, diplomacy, and quiet understandings, the evident goal of protest and agitation pushed in the direction of open confrontation and a heightened media profile.

The Freedom Flotilla organisers, primarily the IHH, invoked several different interpretations of the territorial closure imposed on the Gaza Strip, referring to it variably as an "embargo," a "siege," and a "blockade."[132] The same variability recurs in dozens of passengers' testimonies, where the three terms are used interchangeably

to describe the mechanisms of territorial domination that prompted the flotilla initiative.[133] It also recurs, this time in legal terms, in the report submitted by the Turkish National Commission of Inquiry. According to the report, the different blockades are legally indistinguishable; furthermore, the report claims that an effective blockade on Gaza preceded Israel's formal declaration of a blockade by at least two years.[134]

The flotilla organisers deployed a uniform rhetoric, articulating the closure mechanisms in undifferentiated legal-linguistic terms. From their perspective, the naval blockade was "an integral part of the land blockade [and] must be examined in tandem."[135] Accordingly, the Turkish National Commission of Inquiry accused Israel of making artificial legal-spatial distinctions between its various restrictive measures (e.g., by distinguishing between forbidden "combat zones," "hostile zones"). The organisers' rhetoric seems to imply that the different terms applied to Israel's policy are identical in meaning. Yet, in fact, each tactic may entail its own laws, ideology, conception of space, and border regime. This may imply that in order to address the territorial separation imposed on the Gaza Strip, two distinct conceptions of the spatiality of the closure must be taken into account. The difference between these two conceptions is captured by the distinction between a *blockade* and a *siege*.

The distinction between these two terms is crucial, in fact, to the question of the *legal* status of the naval closure imposed by Israel on the Gaza Strip—a question addressed by various national and international committees of inquiry.[136] The Israeli Turkel Commission begins its report with precisely this question—that is, with the question whether the blockade complied with international law, whether the IDF takeover operation was therefore legitimate[137] and whether Israel was justified in launching the interception of the flotilla in extraterritorial waters, carrying the

territorial conflict deep into the extraterritorial high seas.[138] The committee begins its account of this issue with stressing the conceptual distinction between a naval blockade and a siege, a distinction based on their allegedly different *spatial* features:

> Whereas a siege means the encircling of the enemy's military forces, a strategic fortress, or any other location defended by the enemy, and cutting it off from support and supply lines, a naval blockade describes a wider variety of operations.[139]

According to the committee, a naval blockade aims at "preventing the enemy from having access to the maritime area on which the blockade has been imposed [...] from being able to receive supplies and assistance via that area…"[140] According to these definitions, a siege could be perceived as a spatial tactic whose objective is the establishment of fully surrounding borders that would lock the enemy in a clearly defined, unified political space. A naval blockade, though site-specific, is determined not by a particular spatial structure or topography but, rather, by different practices of political control, by management of people and their circulation, and by other methods of maritime warfare.[141] Thus, while a siege exerts pressure on the interior of a territory, a naval blockade extends its regime beyond the territory in question.

The implication of this view is that both spatial configurations inflict territorial separation, yet only the naval blockade, applied against the backdrop of the Israeli-Palestinian conflict to tighten the borders of the Gaza Strip, allows Israel to claim that its operation in extraterritorial waters was legitimate.

The naval blockade, executed in the maritime space of the Gaza Strip, culminated in a process of fluctuating restrictions on border crossing, which imposed a land siege on Gaza.[142] As part of the disengagement plan, which was endorsed by Egypt, the Palestinian Authority, and Jordan at a summit meeting at Sharem a-Sheikh in September 2005,[143] Israel unilaterally dismantled its settlements and

military installations and withdrew from the Gaza Strip, but maintained control of the territory's borders, including Gaza's air space and coast.[144] The Rafah crossing point, which is the only non-Israeli army-controlled access point for Palestinians to and from Gaza, was to be maintained by the European Union Border Assistance Mission (EUBAM). Israel deployed closed-circuit cameras at the checkpoint, which allowed it to monitor people's movement in and out via live video footage[145] and to retain the power to open and close the crossing according to its assessment of the security situation.[146]

The production and distribution of images has also been an important part of the border regime imposed by Israel over Gaza. As noted earlier, the Israeli authorities employ dozens of closed-circuit video surveillance cameras to monitor Gaza's borders and territory, helping Israel control the areas where it is not officially sovereign and where its citizens and troops are no longer directly present. In this sense, Israel's extraterritorial control over the Gaza Strip is made possible by the circulation of images. [147]

Since the Palestinian elections of 2006, which brought Hamas to power in Gaza,[148] there has been a dramatic increase in the number of Palestinian rockets and mortar attacks on southern Israel. Moreover, a guerrilla cell that penetrated Israel through a tunnel dug under the border with the Gaza Strip captured an Israeli soldier.[149] These events prompted Israel to impose further land crossing restrictions on the Gaza Strip. As the IDF was no longer stationed on the Gaza-Egyptian border, and the demand for weapons expanded as a result of internal Palestinian fighting and the ongoing Israeli-Palestinian struggle, the smuggling of weapons soared, generating underground tunnels along the Egyptian-Gaza border at depths of 50-60 feet in order to avoid detection.[150] The tunnels reshaped the spatiality of the conflict,

which literally became much deeper and more complicated, by spreading underground. This development was a direct response, of course, to Israel's aforementioned effort to control the Gaza Strip from a distance via the use of surveillance cameras. The Palestinian tunnels literally created an underground zone exempt from the reach of the Israeli gaze and its image-making apparatuses.

On September 19, 2007, Israel declared Gaza, including a 20-nm maritime zone,[151] a "hostile territory" and announced additional restrictions on the passage of goods, the supply of electricity fuel and the movement of persons. In some cases the land crossing was entirely closed,[152] leading to a policy of closure. Egypt worked with Israel to close the Rafah crossing, which was opened in exceptional cases only.[153] The fishing range in the Gaza maritime zone, which extended practically over 12 nm, was reduced during those years and has since been subjected to fluctuant restrictions by 3-6 nm along the maritime boundary.[154]

Already prior to the arrival of two flotillas flying Greek flags a legal advisor of the Israeli Navy suggested imposing a naval blockade. This option was cited in a position paper of August 3, 2008 and similar recommendations were submitted by the Chief Military Advocate General, but it seems that at the time the attorney general wished to postpone the decision on this matter until further discussion.[155]

On August 13, 2008, Israel declared the maritime zone near the coast of the Gaza Strip a "combat zone" or an "exclusion zone."[156] Invoking international humanitarian law as its mandate, the Israeli Turkel Commission asserted that this designation permits a party in conflict to constrain the activity of a neutral vessel and even seize control of its communication systems.[157] Accordingly, "all foreign vessels in the area [were requested] not to enter the maritime zone adjacent to Gaza."[158] Still, between August and December 2008 flotillas continued to arrive, and six vessels

were reportedly permitted entrance to Gaza.[159] According to the same report, the IDF had relatively limited options to inspect this series of humanitarian flotillas,[160] partly because these ships were neutral, partly because the IDF could not legally use the "visit-and-search" power it employed when there was reasonable ground to suspect a boat.[161] On January 3, 2009, during Operation Cast Lead, a series of devastating attacks on Gaza reportedly killed 1,400 Palestinians: "The entire population of 1.5 million people has been trapped in Gaza… [T]he 22 days of intense bombardment trapped tens of thousands of families in their homes." [162] During that operation the Minister of Defense Ehud Barak ordered an additional naval blockade of the Gaza Strip coastline up to a distance of 20 nm from the coast.[163] Gaza's territoriality has thus come to be defined by the various exclusions and blockades to which it has been subjected, which have remained in force since operation Cast Lead ended.[164]

4. The Flotilla Interception and the Capture of the Images in Extraterritorial Waters

Though the Israeli army's physical takeover of the flotilla began in the early hours of May 31, the attack, as noted earlier, began several hours earlier, at around 10 p.m. the previous evening, when IDF forces interrupted satellite communications to and from the flotilla vessels. The interruptions intensified later that night until a complete or near-complete blackout on communications was imposed.[165]

The Israeli army's takeover of the flotilla commenced with an attempt to prohibit the transmission of images from the vessels. This effort was especially significant since the production and distribution of images were among the flotilla's central aims. The flotilla was conceived as a high-profile media event designed to

"alert the world to the crimes being committed against the Palestinians."[166] According to Gülden Sönmez, the IHH lawyer and a member of the organisation's executive committee who was aboard the *Mavi Marmara*,

> We aimed to sail from international waters to Egyptian waters, then on to Gaza [where we wanted to] deliver the aid, if possible. If Israel prevented the delivery, we would draw attention to the illegal blockade, broadcast live for a while through the media, and then return.[167]

To make broadcasting and media coverage possible, a large number of journalists and television teams were invited on-board.[168] A strong infrastructure for mid-sea live broadcasting was installed, and the engineers who operated the on-board broadcast "took account of every possible situation about the system" and worked to ensure that "the course of the flotilla could be watched uninterrupted on the IHH website."[169] To prepare for the battle over images, the IHH rented two Turksat frequencies for the live broadcast, one of which, known only to the IHH, the Foreign Press Association (FPA), and Turksat itself, was meant to serve as backup in case of attempts to block the broadcast.[170] In addition, the activists brought with them an abundance of personal communications equipment. According to some estimates, the *Mavi Marmara* held 546 passengers and 29 crew members at the time of the struggle, but no less than 600 laptops, 800 video cameras, and 1200 mobile phones.[171]

For some of the activists, it was precisely the presence of communications devices that was to signal their peaceful intentions. According to activist Alexandra Lort-Phillips, "the vessels were covered with cameras to witness the voyage. I don't know what else the Freedom Flotilla could do to make sure it was clear it was a peaceful mission…"[172] For the IDF, however, the deactivation of this very equipment was a central goal of the raid. One of the military's primary aims was to control and limit the distribution of images—to keep the images quarantined, as it were, within

carefully set borders.[173] In addition, the IDF strove to take control of the production of images by gaining physical control of all communications devices and materials on board the vessels. A special military force was devoted to this end, with the aim of capturing all digital images and gaining exclusive control over their production and circulation. [174]

The first virtual encounter between the adversaries in extraterritorial waters—the first act of the Israeli army's inception of the flotilla—probably consisted, then, in the electromagnetic waves which blocked the images transmitted from the vessels and prevented their further circulation. "For about half an hour [now] the Israelis have been harassing us," a reporter announced in one of the last transmissions documented abroad the *Mavi Marmara*, referring not to any physical force but to the Israeli effort to interrupt transmissions.[175] Another Turkish reporter, Ayşe Sarıoğlu, described the battle for control over images: "…our satellite connection was frequently failing and the internet kept disconnecting. The more they jammed, the more we elevated our receivers."[176]

The events leading up to and throughout the flotilla incident are recounted in the video, as presented by the team of experts led by Maj. Gen. (res.) Giora Eiland in the IDF's internal inquiry. The image above illustrates the IDF's electronic screening. Still from "Video Timeline of the Flotilla Incident as Presented by the Eiland Team of Experts (English Version)" (2010): http://www.idfblog.com/2010/07/15/videos-timeline-of-flotilla-incident-as-presented-by-eiland-team-of-experts-english-version-13-july-2010.

The image above is a still taken from IHH Documentary recounting the incident presented by a witness, illustrating the IDF's electronic screening. *Freedom: Last Destination Mavi Marmara*, IHH documentary film (2012): http://vimeo.com/50824956.

The confrontation between Israeli forces and the activists was thus, in the first place, a confrontation between two logics of information flow—one devoted of producing a strictly monitored territory of limited communications in extraterritorial waters, the other dedicated to free information flow as part of the protest agenda. As the confrontation unfolded, these conflicting logics generated complex perceptions of the role played by images. Indeed, the invisible stream of images soon became an organising principle of the lethal fighting that took place on-board. One of the activists, and an IHH attorney, Cihat Gökdemir, reported:

> The first two combat boats came very close… [a]fter a few minutes a helicopter approached from the stern side to the wheelhouse deck. It created a huge wind and a lot of noise… I thought the helicopter was coming to break down the radio transmitter of the ship, which was on top of the wheelhouse, so I ran toward the wheelhouse deck… I saw a few other people climbing the stairs with me. […] The helicopter was about 9-10 meters high and it didn't have a flag, coat of arms or any such sign. It stayed up there for about a minute and then opened fire. We thought this firing too was "aiming at the satellite systems." This is why people had gathered not right on top of the wheelhouse where there was an opening, but further back, near the satellite antennas. Personally I thought "if they're sending them on board, they will probably land right on top of the wheelhouse. After this first shooting some of our friends fell down, but we still thought that they were using plastic bullets; and since we had never seen plastic bullets we believed injuries from plastic bullets weren't significant, that the main target of the attack was the satellite systems.[177]

As this testimony indicates, the scenery of the battlefield was shaped in large part by the activists' goal of protecting and sustaining the flow of images. The battle over the images was entangled with the physical conflict on board to such an extent that the two became barely distinguishable, making it no longer clear to what degree military power was mediating the image stream and to what degree the images facilitated and shaped the physical struggle. Indeed, reports about the deadly encounter portray a tangled relation between the shooting of live ammunition and

the shooting of images. Prior to the event, some of the activists struggled with the question whether in the event of an attack on the flotilla they would attempt to document the conflict or to defend the boat. Activist Ken O'Keefe who was aboard, the *Mavi Marmara* described the dilemma:

> When I was asked, in the event of an Israeli attack on the *Mavi Marmara*, would I use the camera, or would I defend the ship? I enthusiastically committed to defense of the ship. I am a huge supporter of non-violence. In fact I believe nonviolence should always be the first option. Nonetheless I joined the defense of the *Mavi Marmara* understanding that we may very well be compelled to use violence in self-defense.[178]

The distinction that the question implies between filming and active fighting would soon be contested, however. Reports claimed that men were killed holding cameras, some even "using them to film the Israeli invaders when they were shot."[179] According to several eyewitness reports, the director of the ship's press room, Cevdet Klıçlar, was last seen stepping outside to take pictures.[180] One of the testimonies quotes his last words:

> I helped others carry one of the injured down. As I was climbing up, right in front of the pressroom door I saw our martyr Cevdet Klıçlar. Cevdet told me "brother I sent the images." I think he had managed to send some of the images/videos of the first attack via satellite or Internet—this is what he must have meant.[181]

On the other hand, an Israeli soldier reported being badly beaten with large cameras tripods.[182] Another reported being photographed and videotaped extensively while he was being beaten with batons, making him feel like he was "in the middle of a press conference."[183] The pattern repeated itself in other soldiers' testimonies.[184] The activists, for their part, describe continuous and indiscriminate attempts to disrupt the live broadcast:

> We climbed upstairs to the 3rd floor. The staircase was all bloody. I went out from the stern side door to the deck where we had the live broadcast. Live broadcast was going on, but I didn't know if the

> world did actually receive it. I stayed there for a minute; from the stern deck, port side, I looked up the wheelhouse deck and saw one of the terrorists/pirates pointing with his gun at the live broadcast equipment, and saw the red light on the cameraman. I thought he was trying to shoot the cameraman, so I ran there on the narrow port side deck. […] A cameraman dragged me and said, "stand still in front of me, I'll record this" and I did what he told me; I shielded him and he recorded. I stood straight to shield the cameraman and also to see the helicopter sending troops down to our deck. … But in a minute or so the cameraman behind me fell down. I squatted down near him and saw that he was shot from his right arm.[185]

According to one activist, the injured on-board the *Mavi Marmara* were evacuated only when the Israelis discovered that "satellite images of what happened on the ship [were spreading] around the world"; only then, the activist continues, did the soldiers "begin to play the role of 'the good guy' [and tried] to save the lives of the wounded.[186] The Israelis, by contrast, claim that such attempts were taking place all along and only continued in a "more managed way" once the takeover was complete.[187]

Around the same time, starting at 5:10 a.m., an additional Israeli force (provided by Masada, the special operations unit of the Israel Prison Service) boarded the ship. A two-step apprehension procedure was initiated, with some of the passengers first handcuffed and all of them searched for data storage devices. All such devices—an estimated number of 2600—were confiscated.[188] Thus, while the wounded were being treated and evacuated, Israeli forces were also busy confiscating the memory cards, cameras, mobile phones, hard discs, videos, and diskettes held by the hundreds of flotilla passengers and removing all recordings from the ships' security cameras. According to the Turkel Commission Report, the same helicopters that evacuated the wounded were also used to transport some of the confiscated media for use by the IDF Spokesperson and Advocacy Department. All other materials were transferred to the IDF Document and Technological Capture Collection Unit

upon the flotilla's arrival at Ashdod Port.[189] In fact, various sources suggest that the IDF's censorship policy only escalated during and immediately following the confrontation itself. Prior to the raid, the IDF invited a group of journalists to accompany its forces. However, in the course of the raid the military prevented reporters and crews from broadcasting and publishing their reports. Moreover, a year later, Colonel Shai Stern, then IDF Deputy Spokesperson, revealed in the course of a military conference: "In the flotilla incident we were involved in the very initial planning of the takeover operation… For the first time in the IDF history, the military allocated helicopters to the [Spokesperson's] unit to enable it to produce operational coverage and then transfer materials to the media as quickly as possible."[190]

The paradoxical result of this media blockade was that during the first twelve hours after the raid was launched, images streamed by the activists were distributed extensively in the international media but not in Israel itself.[191]

Israel's censorship efforts did not prevent the events from being documented, but it did prevent access to the plethora of existing documentation. What happened on the upper deck, where the fighting took place, was filmed from numerous angles by dozens of cameras (video, still, CCTV, aerial)[192] as well as by special cameras mounted on soldiers' helmets.[193] The large presence of cameras turned hyper-representation into a core feature and objective of the event. And yet, despite the surfeit of visual evidence produced, accessible video evidence of the confrontation remains limited to less than five minutes of material. The remaining several hundred hours of recordings are now categorised as classified information for reasons of national security[194] and remain under exclusive Israeli control.[195] The cameras on the ship, some of them smashed by the soldiers,[196] became unusable. What records remain are now under IDF control, stored in the army archives. Whereas the

passengers were detained only temporarily, the images were seized permanently.[197] As a result, the international judicial inquiry into the events had only Israeli and Turkish investigative and forensic reports to rely on. First-hand visual evidence was replaced with second-hand verbal testimony describing it.[198]

By blocking electronic communications and confiscating the activists' collective digital memory, the IDF turned all visual evidence from the event into national Israeli property. Its goal was to ensure that all such evidence remain "extraterritorial," that is, to keep it both outside of the public domain and beyond the reach of international legal proceedings. The evidence exists yet remains inaccessible to investigation by international bodies and by countries other than Israel.[199]

What little accessible footage remains shows only fragments of the actual struggle on board the *Mavi Marmara*. The publicly available evidence, most of which was released by the IDF, has been the visual basis for the various attempts to "expose the truth"—by governments, NGOs, the media, and individuals. Moreover, this material has served as actual evidence in various official inquiries and investigations. As noted, however, the publicly available footage amounts to no more than a few minutes of videotaped material. Rather than revealing what actually happened, it is an almost ephemeral trace of the event, testifying from a distance, as it were, to the existence of the censored footage.[200]

Since they are so minimal and therefore susceptible to multiple interpretations, the publicly available images have been used by the various adversarial parties to support different, often contrary political narratives. Paradoxically, it is precisely the *absence* of visual material that has allowed what little footage remains to generate a politics of persistent investigation and an aesthetic of interpretation in which the same visual facts form the basis of rival arguments.[201] The

uses to which both sides have put the publicly available images reveals a complex relationship between the images and their function within the narratives adjoined to them. In some cases, these uses simply underscore the relationship's fundamental dependence on perspective; in others, however, the distance between image and narrative becomes so great as to make the relationship either weak or downright contradictory.

The video footage publicly available at present consists of three types of material:

(a) The final images broadcast live from the ship by the activists at the time of the confrontation. These images were transmitted using the complementary Turkast satellite frequency installed by the flotilla organisers, which reportedly continued broadcasting until 7 a.m. on May 31.[202]

(b) Clips edited by the IDF Spokesperson and Advocacy Department and released about 12 hours after the event. These clips are based on footage filmed by the IDF as well as on materials confiscated from the activists, and were evidently edited to serve Israel's propaganda purposes.[203] One of these clips, released by the IDF at a later time, is "based on findings by the Eiland Team of Experts" and "breaks down the events of the flotilla using a timeline that alternates between 3D models and footage captured throughout the incident."[204]

(c) A very small number of images smuggled by the activists and released after the event.

(a) The Live Broadcast

The first images from the confrontation to circulate in the media were the very last ones broadcast from the ship while satellite communications were being

interrupted. These are short sequences in colour, visually disrupted and distorted.[205] They feature live accounts of the attack by such individuals as news reporter Jamal al-Shayal of al-Jazira[206] and IHH director Bülent Yıldırım.[207] The live broadcast by the activists includes several images of the physical altercation, among them two clips, each a few seconds long, one showing a soldier aiming his M-16 rifle horizontally and firing an off-camera target from what seems to be very close range, the other showing soldiers kicking an off-camera individual who is apparently on the floor; and two segments which show a soldier being stabbed by another individual, presumably one of the activists on board.[208] Although initially presented by the activists as evidence for the Israeli attack,[209] the stabbing scene was later extracted and broadcast by Israel's Channel 2 (the country's largest commercial TV channel) to support the IDF's version of the events.[210] The latter scene was also edited by the IDF in the "timeline" clip in order to highlight the activists' alleged violence.[211]

As these particulars indicate, the images were used in conflicting ways by the opposing sides. They were sometimes put to contradictory uses, however, even when utilised in the service of the same agenda. In some cases, the activists used the images in ways that contradicted the verbal testimonies of other activists. For example, the clip which shows soldiers kicking and shooting was used to expose IDF brutality: by superimposing heavy graphics on the moving images, the activists tried to establish that the clip depicted the close-range execution of one of the slain flotilla passengers, Furkan Doğan.[212] The indictment submitted to the criminal court in Istanbul claimed, however that "Furkan Doğan and İbrahim Bilgen were killed before any of the soldiers boarded the ship *Mavi Marmara*."[213] This latter claim was meant to prove that the IDF attacked the activists before encountering any violence on the part of the passengers; clearly, however, this claim contradicts the attempt to

show that Furkan Doğan was gunned down on the ship, that is, after the soldiers descended from the helicopters.[214] The interruptions to the live broadcast are clearly visible in these clips, forcing viewers to observe the documented battle through the filter of the further battle between the activists' broadcasting technologies and the IDF's disruptive technological effort. Our view of the original event thus becomes layered or doubled, as our visual access to the violent struggle becomes conditioned by the lens or filter of the violent struggles between competing technologies. The violence that the image seeks to represent becomes inseparable from the violence meted out to the image itself.

As the above case illustrates, the very same images were often used by both sides in support of their respective versions of the event. That the images could be utilised in such a way, however—that they could be used to support divergent takes on the events—only indicates that they were often so rudimentary as to preclude any conclusive interpretation. The images that stood at the centre of such bitter fighting, the images that inspired such careful efforts by those who wished to capture or to defend them, often turned out to provide the flimsiest of evidence. Their importance as factual documents, their ability to support claims of fact, has turned out to be highly dubitable.

(b) Clips Released by the Israeli Military

The materials provided by the IDF are intriguing in a number of ways. In one piece of footage— a minute and 5 second-long clip, in colour but without sound, taken in long shot from aboard the ship—a Morena-type IDF vessel is seen approaching the *Mavi Marmara*. Passengers aboard the *Marmara* are seen wielding

clubs and waving a chain, throwing objects, and using a water hose to spray IDF soldiers located below them on a Zodiac boat. At the same time, a flicker of light can be seen flashing. On the IDF website, this clip is described as evidence that the activists assaulted the soldiers. Using instructive graphics overlaid on top of the footage, the IDF claims that the flashing (presumably exploding) object thrown at the soldiers was a stun grenade.[215] However, this claim contradicts the testimony of "the most senior [IDF] officer in charge of taking the *Mavi Marmara*" that he himself had ordered the use of flash grenades as soon as the IDF Morena boats met with resistance.[216] Parts of the same clip appear in a documentary produced by the IHH which aims to reconstruct the events based on eyewitness testimony.[217] The same segments of the clip are presented in the documentary as evidence that the activists tried to prevent the soldiers from boarding the ship. The documentary claims, however, that it was the soldiers who threw grenades from the Zodiac boats onto the *Mavi Marmara*.[218]

Another piece of footage released by the IDF—a clip taken in medium shot, 2:10 minutes in length, again in colour and without sound—was edited out of footage purportedly taken from a security camera installed on board the *Mavi Marmara*.[219] The clip is heavily edited, with constant temporal jumps and without a single sequence lasting longer than 15 seconds. In one 10-second segment, activists are seen using slingshots and throwing an object overboard. The other segments mostly show activists holding clubs, gathering on the deck, and reacting to various off-camera occurrences.[220] Parts of this clip, too, are included in the IHH documentary to illustrate the activists' testimonies, in particular their accounts of how they tried to prevent the soldiers from boarding it. [221]

Two other clips released by the IDF are in grainy black and white. One was taken in long shot, the other in extreme long shot. The first, 1:01 minutes long and with sound, was reportedly taken from a naval boat; the other, 00:54 minutes long and silent, shows aerial footage.[222] Both clips present, from different point of views, soldiers rappelling down from helicopters and being attacked by activists. Some of the activists appear to be using clubs, or what instructive graphics added by the IDF describe as metal poles. A soldier is seen thrown from the upper deck to a lower one by the activists. The two sequences may overlap at some points, and short segments from each appear in the IHH documentary to illustrate the activists' testimonies about the takeover, the evacuation of the wounded, and their own responses to these developments.

The "timeline" clip put together by the IDF incorporates much of the footage described above. The clip is heavily edited, combining the above black-and-white footage with narration presenting the IDF's version of the events. The clip also includes very short segments from the other footage described earlier—the clip shot from the *Mavi Marmara* in which IDF Morena boat is seen approaching; the footage taken from the ship's security cameras; and the two segments in colour, seemingly taken from the live streaming, which show a soldier beaten and stabbed. In addition, the clip seems to incorporate materials that are otherwise available to the public. These include black-and-white segments, apparently taken from an Israeli navy boat, in which the IDF Morena boat is seen approaching the *Mavi Marmara* and being sprayed by a water hose. Also incorporated are very short pieces of aerial footage, including a black-and-white segment, again taken from a navy boat, in which what appear to be rifle crosshairs are visible mid-screen; in this segment, a soldier is seen sliding down a rope and attacked by group of people holding clubs, while another

soldier is thrown from an upper to a lower deck. Interestingly, the same segment also appears in the IHH documentary, where it is used to illustrate the activists' claim that the soldiers had begun shooting from the helicopters before any of them started sliding down the ropes. At a later point, the documentary presents sections from these clips as an activist describes how he, together with others, managed to "throw some of the soldiers overboard to prevent them from shooting" and how "some of [the soldiers] may have jumped by themselves to avoid falling into our hands." [223]

(c) Smuggled Images

The main piece of video footage smuggled from the *Mavi Marmara* was filmed by activist Iara Lee who managed to hide her camera's memory card despite IDF confiscation efforts.[224] Her footage provides visual testimony to the complexity of the very act of visual documentation on board the ship. The footage reveals very little of the actual physical confrontation.[225] IDF Zodiac boast are shown approaching the *Mavi Marmara*; gunshots are heard,[226] and a soldier is seen pointing his gun upward and shooting; several objects are thrown at the soldiers, including a large case, and a flickering light flashes quickly while another loud noise is heard. Many of the passengers are seen holding metal clubs and poles, and shots that depict red stains are intelligible.[227] Later, soldiers are seen descending onto the ship from a helicopter while three activists aim slingshots and shoot at the helicopter for about 40 seconds. Towards the end of the recording, just before the takeover is complete, a group of activists holding metal poles is seen crowding the stairwell leading to the ship's entrance and protecting the door from inside. Gunshots are occasionally heard, probably coming from outside (off-camera). One activist is shown standing near the round window of the already-smashed entrance door, and as what sounds

like a gunshot is heard, the man is seen either ducking or falling down.[228] As noted, however, the actual confrontation is hardly seen. Most of the footage presents the evacuation of the injured to the ship's inner galleries and various attempts to provide medical care.[229]

Iara Lee's footage reveals the prominent presence of photographers, both amateur and professional, aboard the ship. From the beginning of the interception, barely a sequence goes by without a photographer caught in the frame. As a result, we, the viewers, cannot but reflect on the ways in which the event we observe was documented; our experience of the event is thus always mediated by our contemplation of the photographers' work. Whereas in the beginning of Lee's footage the photographers seem to apply routine documentary conventions, taking photos of the wounded from the side-lines or from above looking down, once the takeover is in full effect they can no longer be separated from their subjects. In many cases, those taking pictures of the wounded from close range are forced to stop in order to make way for evacuators and medical help. Photographers are seen documenting their own colleagues while they themselves are looking for shelter. The unity of photographer and subject culminates in a piece of footage in which a photographer is seen turning his camera towards himself in extreme close-up in order to document himself lying-down wounded.

The army's eventual confiscation of the footage changed the photographers' role, however, from the producers of actual (that is, viewable) documentation to the manufacturers of merely symbolic meaning. With most of the documentary footage confiscated and archived away from public view, the photographers' own presence in the available footage becomes mere testimony to the plethora of missing images.[230]

Still from Iara Lee (dir.), "Israeli Attack on the Mavi Marmara / Raw Footage" (2010): http://www.youtube.com/watch?v=vwsMJmvS0AY (CulturesOfResistance.org).

5. Extraterritoriality and Battle over the Images

The intercepted images of the flotilla interception contain visual evidence that may determine whether violations of human rights occurred. Yet for alleged reasons of national security, this evidence has been stored away at the Israel State Archives, and remains beyond the reach of international law and of states other than Israel. This state of affairs, in which the evidence is, paradoxically, is held in a legal distance, generates instability and contributes to the indefinite suspension of the event's legal and political resolution.

More generally, my project suggests that the Gaza flotilla raid could serve as a case study for a specific economy of vision. The state sees and interprets specific images (whose invisibility is considered vital to security), imposing a taboo over their public representation. Thus, the state produces digital archives of violence co-authored by its own military and by activists, archives which remain out of reach even—indeed, precisely—in cases where human rights may have been violated.[231]

A remarkable feature of these archives is, as just noted, that they are in fact *co-authored* by the military, acting in the name of the law, and by the activists, who stage a spectacle to challenge the law, yet are obliged to do so in terms defined by that same law. As soon as the images authored by the activists are expropriated, the co-authored archive comes to occupy a space between documented history (which may be used to incriminate its civilian co-authors) and an inaccessible visual inventory.[232]

Another related feature of the co-authored archive has to do with the question of post-production and intellectual property. Though the archive is co-authored, one of its authors, the state, becomes its exclusive archivist and lone legal proprietor. Its other authors are excluded from the archive and may even be

incriminated by the fruits of their own work. Moreover, once the images became spoils of war, their status seemed to change. From important historical documentation—important enough to govern the character of the confrontation and the precise way in which it unfolded—their status changed to that of mere illustrations of various political claims. Their ability to convey information, to impart genuine knowledge, became dubitable. The question regarding these materials was no longer "What do I see?" but rather "How can this image help me establish the story I wish to tell?"

Examples of similar images used by both the activists and the IDF to convey contradictory meanings:

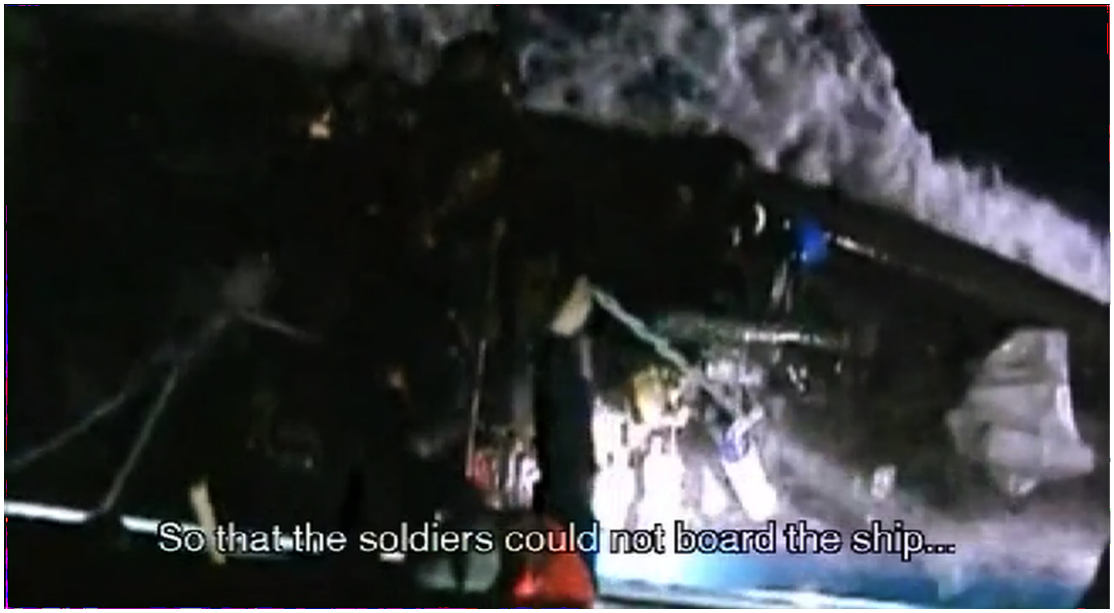
Still from IDF clip: "Flotilla Rioters Prepare Rods, Slingshots, Broken Bottles and Metal Objects to Attack IDF Soldiers," "Rioters Initiate Confrontation with IDF Soldiers."[233]

Still from the IHH documentary *Freedom Last Destination* (2012): http://vimeo.com/50824956. Activist testifies: "When the soldiers tried to board the ship by dropping rope ladders… the men were trying to push them back with [a] water pressure [hose]."

Still from IDF clip "Mavi Marmara Passengers Attack IDF before Soldiers Boarded Ship" (2010): http://www.youtube.com/watch?v=B6sAEYpHF24: "Activist waving metal bars later used for hitting soldiers".[234]

Still from IHH documentary *Freedom Last Destination* (2012): http://vimeo.com/50824956. Activist testifies: "…the men were trying to push them back with [a] water pressure [hose]."

Still from IDF clip: "Mavi Marmara Passengers Attack IDF before Soldiers Boarded Ship" (2010): http://www.youtube.com/watch?v=B6sAEYpHF24: "Metal chain…"



Still from IHH documentary *Freedom Last Destination* (2012): http://vimeo.com/50824956. Activist testifies: "So that the soldiers could not board the ship..."

Still from IDF clip "Timeline of the Mavi Marmara Incident" (2011): http://www.youtube.com/watch?v=z31GesVrBjc: "While falling, one of the soldiers is stabbed in the stomach and hand" (IDF Narrator's voiceover).[235]

Still from the IHH documentary *Freedom Last Destination* (2012): http://vimeo.com/50824956. Activist testifies: "Of course at first we were able to throw two to three soldiers to the lower deck by such prevention" (voiceover).

Still from IDF clip: "Timeline of the Mavi Marmara Incident" (2011): http://www.youtube.com/watch?v=z31GesVrBjc: "As soon as the IDF light boats approached the boat, IHH activists crowded together at the side of the ship" (IDF Narrator's voiceover).

Still from the IHH documentary *Freedom Last Destination* (2012): http://vimeo.com/50824956. Activist testifies: "For a moment I thought that they all came only for me." (voiceover)

6. The Mavi Marmara Trial: From Absent Images to Absent Defendants

In 2012, two years after the incident, criminal charges against four Israeli senior commanders, allegedly the leaders of the military interception of the Gaza flotilla, were presented before the 7th Court of Serious Crimes at the Çağlayan Courthouse in Istanbul, Turkey.[236] An indictment signed by an Istanbul prosecutor was brought against the former Israeli Military Chief of Staff Gabi Ashkenazi, former head of military intelligence Amos Yadlin, former commander of the Israeli Navy Eliezer Marom, and Air Force Commander Avishai Levy, for the alleged crime of planning and leading the attack. The indictment chose to base its legitimacy on an "extraterritorial" claim, namely, that Turkish territorial jurisdiction applies to Turkish maritime vessels such as the *Mavi Marmara*.[237] Held in the absence of the defendants, who were declared fugitives, the hearings commenced on November 6 and have been ongoing ever since without a termination date.[238]

The IHH played a significant role in getting the case to trial, hiring barristers to represent the victims, funding the invitation of dozens of international witnesses to arrive in Turkey in order to testify, and conducting extensive efforts to present the case to the media. Their inclusion in the trial was made possible by an invocation of an extraterritorial law, namely the "principle of universality" which allows the prosecution in Turkey of crimes committed abroad against foreign citizens.[239] The prosecution, for its part, demanded nine consecutive life sentences for each of the defendants.[240]

The indictment charged the defendants with numerous violations, including premeditated murder, attempted premeditated murder, aggravated assault, assault, aggravated looting, and torture.[241] In six hearing held on May 26, 2014, the court also

issued arrest warrants for the four defendants, reflecting the claim that the Marmara incident was taking place on Turkish soil. [242] Since both Turkey and Israel had signed the European Convention on Extradition agreeing to mutually respect extraterritorial law enforcement, it was claimed that Israel would be obliged to extradite the defendants in case of conviction. In tandem, the Turkish branch of Interpol reportedly requested that the General Secretariat of Interpol issue arrest warrants and a "red notice" for the suspects, yet these were never respected by the state of Israel.[243]

Some have criticised the Istanbul court for trying the four commanders *in absentia*, in potential violation of international human rights law.[244] Israeli officials denounced the trial, arguing it was merely performative in nature—a "show trial," "political theater," a "unilateral political act with no judicial credibility." [245] The IHH retorted by stressing that it was deliberate absence—the forced deprivation of visual evidence—that not only occasioned the trial itself but also shaped the nature of the testimonies. In its condensed report on the trials, lawyer Cüneyt Toraman is quoted as stating: "The victims' cameras were seized, but those who shot the footage are in front of us as witnesses or victims now." The act of giving testimony was thus presented as an alternative to the absent visual evidence.[246] A later IHH report on the legal actions taken against Israel explicitly cites the absent images as validating the recourse to trials *in absentia*:

> There is no impediment to continuing the trial and the hearings. Because the Turkish and foreign complainants and victims testifying in the hearings saw and experienced the events that took place during the attack, they are the witnesses of the human rights violations and of the crimes dealt with in this case. Though the victims' cameras and the recording devices on the ship were seized by Israeli soldiers, it is extremely important for the realisation of a fair trial that the statements of those who have made these records are received immediately while they are still alive, and that all the evidence of the event is

> collected with all the details thereof and brought before the legal authorities.[247]

Against this backdrop, the international media reported that contrary to normal juridical procedures in Turkey, the trial would be documented and recorded, but not broadcast. [248]

From the very beginning, then, the trial was conceived as the production of an inaccessible archive. Since documentation of the flotilla event had been removed from visibility by the Israeli government, the trial had to replace visual evidence with verbal description: witnesses were now orally testifying as to what they had filmed on the night of the incident.[249] The court's documentation of the juridical proceedings helped their testimony regain a visual dimension—although, as I shall later explain, this new visual dimension would, become out of reach as well. The missing archive of the flotilla event, co-authored by the IDF and by the activists, is being used to generate yet another inaccessible visual archive, this time co-authored by the activists and by the Turkish legal system.

My main claim in the following section of the dissertation is that to better understand the Istanbul trial, we must comprehend the extraterritorial logic of representation underlying certain of its aspects, including the following: (a) The court proceedings relied on, and were in turn documented by, visual images produced by sometimes overlapping, sometimes competing legal systems. (b) The images' evidentiary content may have both indicated and affected the competition between the legal system involved: for example, if the court documentation had been made public, this would have shown that the European standards allegedly adopted by the court had not been assimilated in practice. (c) The images were made inaccessible to public scrutiny. (d) Representatives of the legal systems hold

exclusive rights to the images. (e) The inaccessibility of the images may affect the ways in which the event they document is perceived and imagined.

Since I, like others, lack access to the court's visual documentation, my main tasks in what follows are, first, to trace the ways in which the creation of the trial's documentation has itself been an outcome of the encounter between negotiating law systems; second, to examine the evidentiary value of the court-produced images and their potential effect on the legal validity of the proceedings. As I hope to show, the visual images produced and used by the Istanbul court ended up exposing certain shortcomings of the court itself and its legal proceedings. Although the images were produced by representatives of the law, they exposed violations that were carried out in the name of the law and contested the legitimacy of its procedures. Here, again, my main thesis is that the notion of the "extraterritorial image" can help to explain the phenomenon in question.

The following sections pursue these tasks by combining legal storytelling with an examination of how justice was documented by the court cameras. I will juxtapose the actual proceedings with written Turkish criminal law and fair trial procedures, while describing verbally what presumably exists on the audio-visual records in the court archive.[250] In a sense, my own work here becomes an example of the ways in which the existence of "extraterritorial images"—in this case the court documentation—could incriminate their creators if the images became open to public scrutiny.

7. Extraterritorial Images and "Access to Justice"

(a) The Concept of Access to Justice

In the course of the Mavi Marmara trial, the Turkish court in Istanbul itself became the creator of "extraterritorial images." It has done so by producing audio-visual records of the court proceedings, only to then restrict access to them. To understand both the motivations for this documentation and the implications of its suppression, it is necessary to look briefly at the relationship between the Turkish legal system and the European Union.

For decades since the 1950s, Turkey has been making a concentrated effort to join the European Economic Community upon which the EU was built. Reforms in the country's legal and judiciary system have been a major part of this effort ever since.[251] A fundamental condition for EU membership is that candidates must be monitored by the EU commission. To examine Turkey's progress, the country's justice system has become subject to ongoing investigations and annual reports.[252] A crucial aspect of EU monitoring over states seeking for membership has to do with the concept of "**access to justice**." On the most basic level, "access to justice" requires that citizens be provided equal access to courts of law. In a broader sense, however, "access to justice" may also refer to the ability to monitor the legal system and ensure that it properly administers justice. For example, principles of "access of justice" may cover vital measures required for tracing the ways in which the justice system operates, for example access to court records and proceedings, as well as to legal information connected with the investigation (both pre- and post-trial).[253] According to Berk Kalem, the concept itself made its first appearance in the Turkish legal literature in tandem with the acceptance of Turkey's candidacy for full EU

membership.[254] At present, however, the Turkish Constitution does not provide a right to access to juridical or other government information.[255]

In a strategic plan developed by the Turkish Ministry of Justice in order to comply with EU requirements, the Turkish government expressed its will to "provide and introduce all opportunities that are necessary for the people to easily have the access to justice they need [in order to] seek their rights effectively."[256] The 2013 Istanbul Declaration further states: "It is now universally accepted that the principle of transparency is a fundamental component of the juridical process in states that uphold human rights and the rule of law." The Declaration further notes that "subject to judicial supervision, the public, the media and court users should have reliable access to all information pertaining to judicial proceedings, both pending and concluded," and that "poor or biased media coverage can undermine public confidence in the judiciary and raise concerns with regard to judicial independence."[257]

Similarly, according to the recent Right of Information Law (2003), Turkish citizens enjoy a right to access any governmental and juridical information available on the Internet. When the original documents cannot be provided, the law allows citizens to access visual copies and sound recordings. The law does not apply to criminal cases, however, ostensibly in order not to "obstruct judicial duty," "endanger crime prevention or investigation," to name just a few pretexts. These considerations can easily be cited in order to deny access to records concerning criminal proceedings.[258]

In its evaluation reports, the European Court of Human Rights has repeatedly pointed out Turkey's systematic violations in this area, most frequently involving infringements of the right for a fair trial.[259] Despite the adoption of a set of reforms in

mid-2012, including the directive that judiciaries provide more documentation of their rulings, court proceedings in Turkey have been found as still lacking transparency. Defendants' limited access to prosecution files has been described as contrary to "international fair trial standards,"[260] and some have noted the tendency of prosecutors and judges to avoid criticising government policies, "sympathise with radical ideology," and adhere to "state-centred attitudes."[261] Journalists reporting on or criticising sensitive investigations or court proceedings risk prosecution, and the situation has only deteriorated over the last few years.[262]

In July 2012—the same month the above legal reform was adopted—the ruling AKP party proposed a "sweeping constitutional amendment that would restrict coverage of the judicial system, national security, and other public issues, along with vaguely defined topics such as 'public morals' and 'others' rights.'"[263] The EU's judicial concerns with Turkey became yet stronger when on February 26, 2014, then-Prime Minister Erdoğan approved a bill limiting the independence of the judiciary and empowering the Ministry of Justice at the expense of the Supreme Board of Judges and Prosecutors (HSIK).[264]

One aspect criticised by the European commission was the fact that Turkish courts did not have any mechanisms for recording verbatim the testimony of witnesses or presented evidence.[265] Until that point, hearings were recorded mainly in the form of "minutes": court records composed of the judge's notes. Since 2002, the latter have been documented electronically and thus automatically preserved via the UYAP, Turkey's National Judiciary Informatics Program—a system initiated as part of the effort to adhere to the EU demand to modernise Turkish justice.[266] The program promotes the use of information and computer technology in the judiciary, enabling all courts to share judicial proceedings via electronic networks.[267]

The Turkish Ministry of Justice's active efforts to adopt EU norms of access to justice are reflected in a report concluding the Program for Better Access to Justice in Turkey, a two-year (2003-4) project initiated by the EU. Among other objectives, the program addressed the need to record court proceedings both audibly and visually. According to the report, the construction of sound and visual recording systems in Turkey's felony courts (to be funded by the EU) was awaiting EU approval. Listing the program's expected advantages, the report notes:

> [Since] evidence will be recorded thoroughly, the possibility of reaching the truth in criminal justice will increase. Not only the submissions and arguments but also the gestures of the parties will be recorded, which will lead to an increase in the quality of justice. Judges and prosecutors will spend more time investigating the facts of the case and will not be facing the difficulty of entering all the evidence and submissions by the parties into the court record through a court stenographer. The administration of criminal justice will be swift, all the visuals and sounds recorded via this recording systems will be archived and could be checked whenever a dispute arises as to their accuracy. In addition to these benefits, [the program will] reinforce one of the fundamental principles of criminal law, namely the directness of evidence.[268]

The reform is also manifest in Articles 52, 58, 81, 87, 140, 180 and 196 of the new Turkish Criminal Procedure Code, no. 5271, in effect from June 1, 2005. The new code requires penal courts and prosecutors to use both sound and visual recording systems for certain procedures. Recording witnesses' statements is now allowed and in some cases even compulsory,[269] and court minutes must record even evidence unobtainable by the courts.[270]

The first audio-visual recording system installed as part of the program was set up in the Ankara courthouse in 2007. Other cities with significant crime rates followed suit in January 2009.[271] Regulations governing the use of the new system were published in the official gazette of Turkey's court system on September 20, 2011.[272] According to the publication, traditional written transcripts, while perhaps

useful, cannot match the accuracy of video documentation or its utility for "comparative analysis."[273]

As I will try to establish, the newly instated system of video documentation represents a new episode in the interaction between Europe and Turkey, with its complex relationship between the adoption of European technology and the adoption of European values and institutions.[274] It was Europe that introduced video cameras into the Turkish justice system in order to make judicial proceedings subject to future EU inspection; the production of images would have enabled EU supervision to enter the territory of the court. As it turns out, however, the introduction of technological means of documentation is not enough for the creation of genuine "access to justice," for there is still the question of the legal accessibility of such documentation. The Turkish government may prevent such access based on alleged considerations national security. Moreover, in a justice system that lacks independence, video cameras inside the courthouse could easily be used as a device to *increase* rather than check state control over the judiciary. The exploration I offer here unravels a conflict between competing legal systems; it also provide a more complex understanding of the Turkish justice system as actively considering European demands rather than passively adopting them.

The criminal proceeding of the Mavi Marmara trial have been taking place since 2012 in the 7th Court of Serious Crimes at the Çağlayan Courthouse in Istanbul.[275] Initially, the IHH announced that 490 witnesses would voice their experiences before the court in a trial open to the public.[276] Accordingly, the hearings were set to comprise the testimonies of eyewitnesses who experienced the incident firsthand on the *Mavi Marmara* and the accompanying fleet. Since the court reserved to itself the exclusive right to film and record the courtroom proceedings and limited

access to the audio-visual documentation, my analyses attempts to reconstruct selected aspects of the trial based on my own attendance of most of the hearings so far and on reports from the trial. In tandem, I will reflect on the relationship between how justice appears and how it is administered in court.

According to some, it is due to a failure of international law that the trial has been held in a Turkish court. The Turkish government, some claim, has made "a significant effort to guard the values of international law… [demonstrating] that national courts can play a role in making international law effective" and in changing "the double standard of international law."[277]

By providing some examples, I would like to propose a somewhat more complex view, namely that the trial has exposed a series of faults and dysfunctions, most of which resonate certain judicial aspects of the Turkish justice system which have been criticised as failing to comply with the most basic prerequisites of a fair trial according to both European standards and international law. Goaded by the criticism of the EU Commission, the Turkish Ministry of Justice claims to have formally rectified some of these shortcomings; in practice, however, many of these flaws have been apparent throughout the trial. It is this gap, I argue, between the written letter of the law and the way justice has been administered in practice that the audio-visual recordings of the proceedings can be expected to reveal.

(b) The Courthouse and the Courtroom: Spatial Aspects of the Production of Justice

The Çağlayan Courthouse was inaugurated in 2011 as part of a comprehensive juridical reform undertaken in order to meet EU membership standards. According to the Turkish Ministry of Justice, the court building was erected as part of an extensive construction plan, which since 2003 launched dozens

of modern courthouses throughout the republic. The building plan was implemented in order to improve the "physical capacity of courthouses in the framework of determined principles," taking into account "contemporary architectural aspects," with the aim of furnishing juridical services with "advanced technological facilities."[278]

From the start, the Istanbul "Justice Palace" has been described as "one of the most costly construction projects in Turkey" and as "the largest of its kind in Europe."[279] Inseparable from the aim of improving the technological capacities of courthouses, these attributes manifest the superiority/inferiority complex at the heart of the relationship between Turkey and Europe.[280] The emphasis on size and expense, both symbolic and the concrete, indicate that the juridical reforms had not only legal significance but also visual aspects which, materialised in the form of built environments, produce the very architecture of the contemporary state justice system. Despite the courthouse's enormous size, the hearings take place in courtrooms that are often too small for the crowds they attract. As a result, much of the audience is left outside the courtroom, in violation of the court's pretence to secure the trial's open and public nature.[281] Against this background it is worth recalling the Istanbul Declaration, published the same year the second hearing took place, which announced a commitment to juridical transparency:

> The principle of public proceedings implies that … "the court should ensure that the public and the media can attend court proceedings"; that "adequate facilities should also be provided for the attendance of the public…taking into account the interest in the case and the nature of the hearing"; and that "public access to court hearings is a fundamental requirement in a democratic society."[282]

The court's spatial arrangement involved a further flaw with serious implications for those attending the hearings. Stationary microphones were located

at various points in the courtroom, including the witness stand, the judge's bench, and several mobile microphones were used, for example by the translators for non-Turkish-speaking witnesses and by the plaintiffs' lawyers.[283] The latter used the usual counsel seats on the left side of the courtroom, but due to their great number—usually more than a dozen at any given time—many were also sitting in the front gallery. Consequently, the public had only the back of the courtroom left. Surprisingly, however, all of the microphones in the courtroom, without a single exception, could only be used to record sound for the audio-visual system and thus for the court's exclusively internal use; they could not be used to amplify the speakers, making the hearings barely audible for the audience. Despite the pretence of an open trial, the court thus gave primacy to its own documentation of the legal procedure, neglecting its duties toward the public. The importance given to the task of documentation was also indicated by the fact that the trial is being filmed by four security cameras aimed at the judge's bench, the witness podium, the defense lawyers, and the empty seats of the absent defendants, all of which are shown in real time on a multi-frame monitor mounted above the judge, enabling the audience to see his face as well as the witnesses'. Intriguingly, for the audience, the presence of the images on the screen in conjunction with the inaudibility of the proceedings only emphasised the performative and imagistic aspects of the trial, similar to the experience of watching a silent film.

(c) Territory on Trial

While all of the above may only indicate inadequacy on part of the court's administration, the Mavi Marmara trial has been characterised by an even more fundamental issue—the question of *who* is on trial. According to the Turkish criminal

code, only individuals (and not collective entities such as states) are considered criminally responsible and can be taken to court as such. Turkish law also determines that no one shall be held responsible for the acts of another individual.[284] The hearings of the Mavi Marmara reveal a different reality, rhetorically at least, for the testimonies captured by the court cameras focus not on the four accused individuals, but on the state of Israel as construed by the victims. Through a process of personification, the state itself is understood as a lawbreaker, a murderer to be incarcerated. By criminalising the Israeli occupation and blockade, the sentence of the trial promises, as it were, to release the Palestinian territories from the hold of this villain. Consequently, despite the fact that charges were brought against four Israeli individuals, their absence in court is not only physical but also of juridical significance. As the witnesses have repeatedly made evident in their testimonies, this has been a trial against Israel, and it is the Israeli state that is eventually to be punished.[285] To give only a few examples: On the second hearing, witness Marry Ann Wright testified: "the Mavi Marmara trial is of historic importance because this is the first time Israel is standing on trial as a murderer."[286] Another witness, Joe Meadors, testified:

> This is the first time that Israel is being called to account for its actions. The United States has refused to do this for decades. But the Turkish state has acted honestly by being willing to file this case against Israel.[287]

Refika Yıldırm, the widow of Marmara victim Necdet Yıldırım, stated on the witness stand: "Israel has taken such a valuable thing from us that I want them to be executed."[288] İsmail Songür, who lost his father Cengiz Songür, added:

> Now, the entire world and Europe in particular have seen [what Israel had done]. … This trial is the first in history because people used to think that it is never possible to try Israel. They used to think that Israel is even more powerful than the United States. But we know that Allah is more powerful than Israel and the United States… Israel should be aware of this now… We

> don't have any demands, such as an apology or compensation from Israel. We want the termination of the blockade on Gaza."[289]

In tandem with the testimonies, statements twitted from the court by the IHH's public relations office, meant to mediate the trial to non-Turkish speakers, described the witness testimonies as follows: "All different nationalities came to Istanbul to seek justice for the crimes committed against them by Israel."[290] IHH lawyer who became also a witness in the trial, Cihat Gökdemir said: "The real goal of the Mavi Marmara victims is not to receive compensation but to ensure that Israel is convicted in court."[291] Accordingly, the significance of the trial's outcome was construed in political and national terms:

> The importance of the Mavi Marmara case [is that] Israel's illusive immunity will disappear [and its] impunity from [accountability for] grave international crimes will not be tolerated… Israel will be held responsible for its crimes for the first time and this will set an example…[292]

Witness David Schermerhorn summed up: "The real purpose of these hearings is to hold Israel accountable."[293]

The trial's political and national significance was again underscored in an exchange during the third hearing, in which witness Ciğdem Topcuoglu claimed: "All means are justified in the fight against the Zionist occupiers. They have to abandon the Palestinian lands." In response, one of the plaintiffs' lawyers stated emphatically: "This trial is not just a criminal case; it is first and foremost an effort to liberate the Palestinian lands. Let the U.S. be cursed, let Israel be cursed!" The crowds at court responded with a wild round of applause. Sara Colborne, head of the Palestinian Solidarity Campaign, wrote in her report from the hearing: "Victims of the Mavi Marmara attack have also repeatedly made clear that another essential demand that must be fulfilled is the lifting of Israel's siege on Gaza."[294] Similar statements were made online in an IHH tweet dedicated to reporting from the court:

"[The] lawyers are defending the rights not only of the Mavi Marmara victims but also the Palestinians."[295]

(d) The Absence of Cross-Examination

In a report by the Turkish Ministry of Justice on the unique features of the Turkish justice system, judges are defined, in keeping with the EU Commission's definitions, as those entrusted with the task of reaching juridical decisions based on the claims of the litigating parties.[296] In a report dedicated to the "Administration of Justice and Protection of Human Rights in Turkey," judges and prosecutors are claimed to be "giving precedence to the protection of the state over protection of human rights," with especially adverse implications for cross-examination by the defense which often amount to violations of the right of defense. Complaints over lack of judicial independence and the absence of so-called "direct questioning" as a form of cross-examination occur frequently, sometimes coming from the judges themselves. Turkish criminal court procedures give judges a leading role in the trial and primary interrogation powers. While attorneys are permitted to ask the witnesses direct questions, it is the judge who has the primary obligation to find the truth. Judges are therefore allowed to summon their own witnesses and present evidence.[297]

The judge's poor fact-finding process in the Mavi Marmara case was disturbingly noticeable throughout the hearings. No examination or efforts were made to impartially evaluate the claims made in previous judicial investigations—by the UN, by Israel, or in the media. Most crucially, no investigation was made into whether any of the violence had been pre-planned by the organisers.

Instead, the hearings took the following format: the judge asked the witnesses to describe their experiences from the incident, asking very few questions about particular aspects of the case. Interrogative questions were hardly ever asked, and so far the judge has refrained from summoning witnesses on his behalf (his prerogative according to Turkish law). Moreover, the judge abstained from interrogation when witnesses made confusing claims that called for further clarification. To note just a few examples, one of the witnesses testified that passengers were throwing weapons into the water, not clarifying whose weapons these were. Another witness complained that he was interrogated more severely by the Israeli soldiers as he was discovered to be carrying with him his weapon license, but was never asked why he was carrying such a license on a journey in which carrying weapons was strictly prohibited. Another witness, Muhamed Latifkaya, said he was urging the other activists not to resist, but was not asked whether such resistance was the result of unprovoked aggression or not. Such questions remained unasked, neither by the judge nor by the defense lawyers. Furthermore, it has not been clear to what extent the testimonies directly addressed the actual felonies with which the suspects were being charged: aggravated assault, assault, torture, etc.[298] Throughout the hearings, hardly any efforts at all were made by the prosecution, the judge or the witnesses to connect the defendants to the felonies invoked.

It is worth noting that early during the hearings, the judge stopped dictating the witnesses' statements to the court clerk (as required by Turkish court procedures), presumably because the testimonies' content no longer had evidentiary value relevant to the case.[299] As a result, the only full record of the hearings has been made by the court's audio-visual system, despite the fact that Turkish law views

written minutes as the sole record on the basis of which to determine the fairness of the trial.[300]

Furthermore, although three defense lawyers had been assigned by the Istanbul Bar Association at the behest of the court, the three (Alev Peken, Murat Bozkurt, and Uğur Kasapoğlu) are hardly ever present all together. During the hearings, none of the lawyers take notes or make comments. Most strikingly, none have undertaken cross-examinations, turning the case into a series of almost uninterrupted performances orchestrated by the prosecution. The failure to cross-examine is at odds with Article 201 of the reformed Turkish Criminal Code (TCCP 2005), which

> introduced for the first time into the Turkish legal order the possibility for the defense counsel to address direct questions to witnesses or experts during the trial, … changed the practice of examining witnesses to conform to the principle of a fair hearing (as stated in Article 6 of the European Convention on Human Rights), and regulated the right of confrontational questioning. [301]

However, years after Article 201 came into force, the EU Commissioner discovered that the practice of cross-examination has rarely been implemented in practice, reportedly due to inexperience on the part of judges, prosecutors, and defense lawyers.[302]

A necessary condition for the existence of a fair trial is the principle of "equality of arms"—the idea that in a criminal trial the prosecution and the defense must enjoy equal rights.[303] In reality, however, only attorneys representing the plaintiffs addressed the witnesses, and their questions tended to strengthen rather than question their testimonies. The defendants' physical absence was thus exacerbated by the complete absence of cross-examination- a core aspect that determines their miss representation at court.

The audio-visual documentation of the court hearings thus reveals a disturbing picture: The defense's silence through the long hours of court hearings and the paucity of its argumentation seem to have turned its lawyers into mere extras. At the same time, the testimonies on behalf of the plaintiffs emerged as prolonged monologues, involving little if any genuine dialogue or exchange.

(e) Mistranslation and Misinterpretation

Another aspect in which the court revealed its incompetence has to do with the issue of translation and interpretation. Concerns about the accessibility and quality of interpretation services in court have been addressed by the Turkish Minister of Justice as part of Turkey's juridical reform strategy. Among other issues, these concerns have to do with the cultural-political rights of minorities in Turkey—for example the Kurdish minority, which for many years was deprived of the right to use the Kurdish language in court.[304] The reform thus aimed to protect the right of communication via regulated interpretation services. In particular, the Ministry of Justice acknowledged that the absence of standards regarding interpreters' qualifications represented a failure to allow for the fact that "court interpretation is a highly demanding profession requiring special training and skills." To rectify this flaw, the Ministry pledged to reform its policy on the provision of interpretation services.

Qualified legal interpreters must not only to be fluent in all the languages involved; but must be able to translate from one language into another while preserving the integrity of the message, with proper attention to dialect, accent, cultural meaning, body language and gestures, as well as the specific legal terminology. According to an EU Directive from 2010, providing legal interpretation

and translation services is a "basic obligation for member states." As part of the judicial reform, the Turkish authorities thus pledged to find and train "objective and reliable" interpreters with "a very good commend of the languages in question," with the goal of meeting EU standards by the end of 2010.[305]

From its earliest stages, the Mavi Marmara trial was supposed to include dozens of witnesses from 37 countries, with foreign witnesses scheduled to testify before Turkish ones as early as the first hearing, indicating their importance to the court. Translation and interpretation services were thus central to the proceedings. In practice, however, such services fell far short of meeting the required standards of quality and accessibility. [306]At least in some cases, the initial choice in translators and interpreters seemed far from meeting standards of "professional training" and "objectivity." IHH lawyer Ms. Rabia Yurt, to note but one example, was the one translating from English the testimonies of witnesses from the UK. At a certain point, one of the court security guards was brought in to translate a testimony by an Arabic-speaking witness. In some cases no translator could be found at all, for example in the case of Indonesian witness Surya Fachrizal who was forced to communicate his testimony in English. The result was often poor, incompetent translation. Five witnesses from Greece who testified on May 20-21, 2013 had long strings of sentences in Greek translated into a word or two in Turkish. Moreover, mistranslations often occurred. A witness's reference to "Semitic" people was mistranslated by the interpreter into the Turkish word "simit" (a kind of bagel), turning entire parts of the testimony into utter nonsense.

While some of these examples may seem trivial, another episode of mistranslation was far more consequential. When one of the plaintiffs' lawyers asked a Greek witness whether the passengers had weapons onboard, the interpreter

simply reversed the reply, replacing his "no" with a "yes." Surprised by the answer, the judge repeated the question two more times, only to have the interpreter repeat his mistake. Since the traditional court minutes summarised and dictated by the judge were the only record of the court procedure, they now contain the mistranslated answer.

In all of the ways surveyed above, the trial at the Istanbul court has failed to meet standards of fairness. Only the audio-visual records of the sessions would be able to expose these failures. By making these records "extraterritorial"—by excluding them from public access and scrutiny—the Turkish court has ensured, however, that no direct record of these failures is available to us.

The blindfolded goddess of justice, unable to see the images laid at its feet.
7th Court of Serious Crimes, Çağlayan Courthouse, Istanbul, October 10, 2013.
Photo: Maayan Amir

Conclusion

My main argument in this dissertation is that the concept of extraterritoriality is vital for explaining the ways in which *images* are legally excluded from public scrutiny, especially in cases involving a conflict between competing legal systems (including that of international law).

With regard to the particular case examined here, my suggestion is that certain aspects of the Gaza Freedom Flotilla incident and its aftermath are best understood using the concept of extraterritoriality, which has governed not only the concrete spatial geography and of the event and its legal aspects, but also its *visual topography*. Put differently, my claim is that the concept of extraterritoriality is part of a distinct *model or logic of visual representation*, and that this logic has been influential in shaping the events in question.

Within its accepted legal and political contexts, the concept of extraterritoriality refers to the exemption or exclusion of *individuals* and of *spaces* from one legal system (to which they would otherwise be subject) while subjecting them to another such system. (In doing so, the concept of extraterritoriality presupposes, of course, the existence of several competing or overlapping legal systems.) My proposition in the dissertation is that practices of exemption or exclusion of this sort can be applied to other objects as well, and specifically in this case to *visual images*. Metaphorically speaking, if the "territoriality" of an image is its visibility, then attempts to "extraterritorialise" an image by *excluding* it aim to limit the "territorial reach" of the image, that is, to restrict its visibility. Attempts to "extraterritorialise" the image by *exempting* it from a legal system aim, by contrast, to

make it no longer subject to the limitations of that system or to the particular visual regime that the system imposes. We might say, that like the Agambenian concept of the ban, used for example in his discussion on the figure of the *homo sacer* (the one who committed homicide and is expelled from the law and becomes a "threshold of indistinction"), the images that may have documented homicide are now excluded from visual representation in legal investigations. According to Agamben, this banishment is what makes possible sovereign territorialistion. However, while the *homo sacer* becomes legally exposed to public violence (to ban someone is to say "anyone may harm him"), in the case of excluded images, only the authorities or their representative may directly "harm the images", in the sense of destroying, manipulating or misrepresenting them.[307]

Moreover, understanding extraterritoriality as a certain kind of representation helps explain its applicability in multiple and diverse types of discourse, ranging from legal theory—where the concept applies both to a legal status and to a geographical jurisdiction—to sociology and political philosophy. Viewing extraterritoriality in this manner also helps explain why the concept has been used to apply to widely different, even conflicting phenomena. In this regard, rather than try to redefine what extraterritoriality is, I have sought to explore how extraterritoriality is performed within a contemporary conflict, in which images became objects of intense political dispute and were subject to violent seizure.

The dissertation's analysis of extraterritoriality has been anchored in the particular case of the Gaza Freedom Flotilla and has focused on efforts to expand our visual knowledge of this event as well as on counter-efforts determined to restrict it: in the former via the production and dissemination of images, and in the latter via their exclusion and suppression. To understand these efforts, I suggest, it is

worthwhile to look for the logic of "extraterritorial representation" that organises them and in the process willfully excludes them from public discourse.

The concept of extraterritoriality is central to the flotilla event and its aftermath in several ways, some more obvious than others. Those that are more obvious correspond to our conventional legal-geographical understanding of the notion of extraterritoriality: the flotilla was launched in protest of Israel's expanding extraterritorial control over the Gaza Strip; the struggle between the flotilla activists and the Israeli military took place in extraterritorial waters; and the trial brought against the Israelis in Turkey has had certain legal features that cannot be fully understood without recourse to the language of extraterritoriality, which both serves the prosecution as an instrument for pressing charges, and is the basis on which the verdict depends.

The flotilla event and the ensuing trial have also exhibited, however, certain features where the notion of extraterritoriality can be helpfully applied to the regime of visual representation involved. Both during and after the flotilla event, representatives of the law—in this case the Israeli authorities—excluded a substantial number of images from the public sphere and thus from both public and legal scrutiny. Hundreds of hours of recorded material created by the flotilla activists were also captured by the Israeli military and government, while further documentation by the military itself was never released publicly, or released only insofar as it could be used the Israeli authorities to establish their own claims and arguments regarding the event. Together all of the images could serve as vital evidence in the legal and political controversy between the conflicting parties that created them. However, they are not stored in the Israel state archives, inaccessible to any but the representatives of the Israeli authorities.

By suppressing this potential evidence, the Israeli authorities are trying to conceal certain aspects of the event, control its public visibility, and shape public perceptions of it. Ironically, however, the suppression of the images has only made their public impact, use, and mode of appearance more complex and their potentially incriminatory depictions more persuasive. The images' current invisibility has only made their content more susceptible to imaginative speculations. The few images that are publicly accessible have been appropriated by the various rival parties to illustrate their competing claims about the event and to support opposing narratives. The 'absent' images have thus been recovered, in part, by attempts at reconstruction in other media, including the discussed trial in absentia.

Furthermore, despite the images' inaccessibility, the very knowledge that they exist and are archived, combined with their potential for incriminating their co-creators, contribute to the unstable existence of the images, creating a sphere of visual vagueness that seems to suspend the possibility of legal decision. Examining the images' extraterritorial status thus offers us an important perspective that can help us decipher their complexity despite their deliberate withdrawal from public scrutiny.

In addition, as I hope to have shown, images can become extraterritorial even when the conflict between competing legal systems takes place within one system. As the trial in Istanbul has shown, court documentation can serve as evidence for the failure to adhere to officially accepted legal standards. Though the Turkish court has prevented access to its own documentation of the trial, such documentation could potentially serve as evidence for the court's various failures in the Mavi Marmara trial—in particular its failures in the light of the EU standards ostensibly adopted by Turkish legal system—raising doubt about the fairness of the court's procedures.

Here, once more, the presence of an extraterritorial logic of representation can help us shed light on the key role of images in the nexus between different, parallel or competing legal systems.

To conclude, what my research illuminates is the connection between various forms of what we might call "extraterritoriality." As my discussion has illustrated, rather than being one static form, extraterritoriality is always a practice with a specific logic of representation which may nevertheless produce varied manifestations, as we could learn by exploring the visual presence and absence of representation in the Gaza Freedom Flotilla.

Epilogue

In 2014 the story of an unprecedented civic lawsuit against the Israeli army was exposed on the weekend news edition of Israel's main commercial TV channel, Channel 2.[308] The lawsuit was filed by Sergeant Major M, the first Israeli commando who rappelled down from the helicopter on board the Mavi Marmara. Beaten badly with clubs and poles, then flung from the upper deck to a lower level of the vessel, Sergeant Major M was severely wounded. His identity could not be discerned in the official Israeli documentation of this scene, filmed from an Israeli navy boat in extreme long shot and released by the IDF spokesmen unit after the incident. Yet his face was clearly visible in still images taken by the Marmara activists, which were among the very few to be leaked from the boat and which have been circulating worldwide ever since.

In his news interview, Sergeant Major M reported that he was still haunted by the incident: "I have been living with it ever since… We are at risk of being injured, of being killed, that is something we take into account. But I, as a fighter, am doing my job and I expect that the system will support me." Sergeant Major M's charge against the Israeli Defense Forces—the first of its kind—was the negligence that enabled his image to leak and circulate widely, causing him "irreversible harm" and preventing him from leaving the country out of fear of prosecution or assassination. His report of being haunted by the event—of "living with it ever since"—seems to refer, then, not to memories of the event itself, but to the publicly exposed images which revealed his identity and perpetually placed him at the scene.

Sergeant Major M took pains to stress that the failure to protect his image was his sole complaint: "I very much love the army, and I don't regret for an instant my participation in this incident. If it were to happen once more, I would definitely go down that rope again."[309] Like many other elite soldiers, he was willing to die in action, yet he was not willing to sacrifice his life while still living—to lose ownership of his own image, created while he was serving his country.

In the exhibition "Image Blockade," extracted frames from the television interview and news item are exhibited, re-arranging them as a storyboard alongside other elements from my research and video works.[310] The selected frames show Sergeant Major M, his face darkened, stating his charges and conveying the agony inflicted upon him by the loss of control over his exposed image. By freeze-framing the news item footage, the display emphasizes the illustrative character of the convention of darkening the interviewee's face as an attempt by the state to censor certain images in order to limit their identifying and evidentiary power.

The model of extraterritorial representation and extraterritorial images offered in this dissertation may be employed to analyse the meaning of this particular episode. What emerges here very strongly is the willingness to sacrifice life, including one's own, both in order to document and in order not to be documented.

Moreover, for Sergeant Major M, the military's inability to prevent an image depicting the incident and its executers from becoming visible, its failure to control the image's territorial reach and keep it legally excluded—in other words, its failure to make the image "extraterritorial"—represented not only a breach of contract but a most severe crime. The special conditions of the extraterritorial maritime space in which the takeover operation was set to take place were supposed to enable the

military to gain full control over the event's documentation. By making the images extraterritorial, protected from visibility under the laws of the state, the military was to enhance its ability to evade responsibility for the documented actions, which other legal systems would in all likelihood consider crimes. These goals and conditions were presumably discussed with the soldiers prior to the flotilla takeover; Sergeant Major M was thus under the impression that the system had failed him. The image, now openly accessible beyond Israel's borders, has confined him to the borders of the Israeli state. The state's territorial law has become both his shield and his prison. Such circumstances reveal how those equipped with weaponry and thus with the power to physically control the situation also expect to be in control of the visual evidence, to use national state law in order to keep it out of reach. The model proposed in this work for interpreting the flotilla event may thus also be used to understand other cases in which states deploying their power expect to maintain exclusive control over the visual evidence of such use of power.[311] In such cases, extraterritorial images are tools used to prevent the state's representatives (soldiers, officials, etc.) from becoming criminals in other territories or in the eyes of international law. The model of the extraterritorial image should not be limited, however, to competition between officially recognized legal systems or forms of laws. For example, when animal rights activists try to document and publicize the goings-on in facilities of animal-based production, they are not always simply criticizing violation of existing laws, but rather operate within an agreed set of shard ethical beliefs in order to instigate a change in morals. Instances in which the industry revoked documentation of the factory work on the pretext of avoiding harsh damaging image and in favor of protecting its employees could severe as an example.[312]

By appearing with his face darkened during his TV interview, it was as if Sergeant Major M was regaining his anonymity, if only within his country's borders. By doing so, the TV station added yet another censored image that alluded to the confiscated documentation of the original incident. Just as the violence on board the Marmara was mediated via censored images, this testimony was communicated via yet another form of suppressed representation.

After the interview was initially broadcast, further information about the lawsuit was impossible to obtain and its progress, if any, was never covered again in the media. Its representation in "Image Blockade" exhibition as a series of still images thus offers another opportunity to critically reflect on the phenomenon of the extraterritorial image.

Ruti Sela & Maayan Amir, Documentation from the solo exhibition: “Image Blockde”, The Center for Contemporary Art, Tel-Aviv, 2015.

Postscript: Images as Court Evidence

Our understanding of the phenomenon of "extraterritorial images" may be enriched by an awareness of the legal history of images, both as legal evidence and as a way of documenting legal proceedings. In what follows, I will consider the attempts of legal systems to control images by looking on how images have been perceived, conceptualised, articulated and applied by such systems.

Regarding the history of images as evidence, I will focus on the diverse legal uses of images in common law systems—from attempts to downplay their evidentiary value at the expense of a merely illustrative role, to their full acceptance as self-authenticating evidence (that is, as evidence whose truth is not subject to further proof beyond themselves). Regarding the history of images as documentation, I will concentrate on cases of historic international significance.[313]

The presentation of photographic images in courts can be traced back to the nineteenth century and has developed ever since with the evolution of technologies of image production and reproduction. The invention of photography had a tremendous influence on systems of justice. As soon as the technology appeared, some recognised it as "a new form of representation that challenged received notions of original and hearsay evidence." Despite doubts concerning the reliability of photography expressed by jurists, many claimed that the new "pictorial realism" would make possible a "new judicial photographic realism," a new "means for presenting facts" by way of "machine-made testimony." [314] Already in the 1840s, British police initiated the use of photography for criminal identification, while a year later the French police included daguerreotypes of criminals in its files.[315] The use of photography was soon extended to additional aspects of criminal

investigations: reconstruction of crimes, documentation of evidence at the crime scene, identification of fingerprints and handwriting by means of photo analysis, and more. In the second half of the nineteenth century, these applications turned photography into a forensic practice and a powerful judicial tool.[316] Within two decades of its invention, photography was routinely employed in courtrooms across the United States, England and France within ever-expanding legal contexts. [317]

Until the final decades of the nineteenth century, photography was technologically constrained by the need to develop the photograph immediately upon exposure (if the collodion dried prior to development, the image would be damaged). This made outdoor photographing more challenging, resulting in an overwhelming preference for studio photographs. The invention in 1880 of the "stable dry plate," which made it possible to postpone the development process to a later time, gave rise to "incriminating photographs," as the new technique made it possible to "take photographs without the subject's knowledge." The new technique also led to a "new way of establishing [legal] truth: the emergence of a 'culture of construction' within the courtroom. Evidence was now something not only to be found, but to be made."[318]

The emergence of photography as a source of visual evidence spawned a legal discourse whose goal was to determine the status of such images in courts. Jurists' responses to the invention ranged from early enthusiasm ("photographs as objective machine-made truth") to scepticism that emphasised the human agency and manipulation involved in the process. From an early stage, it was understood that photographs could not be viewed as mere replications of reality, and that the accuracy of photographic representation was therefore often debatable.[319]

Since judicial facts have been said to comprise "both facts and the means to

bring such facts to the attention of the tribunal," the emergence of photography was soon followed by an examination of its epistemic status as legal evidence.[320] Prior to the nineteenth century, English courts mainly relied on "material" objects (handwritten documents, instruments of criminal offense, etc.) as "primary evidence" in "trials by inspection."[321] In *The Rationale of Judicial Evidence*, philosopher and jurist Jeremy Bentham proposed to classify such evidence as "real evidence," providing the following definition:

> All evidence of which any object belonging to the class of things is the source; persons also included, in respect of such properties as belong to them in common with things.[322]

Bentham further proposed to apply this category to any physical evidence "made present to the senses of the judge himself" but unclassifiable under the existing categories of "personal," "testimonial" or "documentary" evidence.[323]

In the early eighteenth century, however, with the emergence of a distinct "law of evidence" to regulate the use of evidence in court, oral and written testimony took precedence as primary forms of evidence. [324] In particular, oral testimony emerged as the privileged form of evidence.[325] By the mid-nineteenth century, legal evidence mainly consisted of oral testimonies and written documents (depositions, contracts, etc.), whereas "images were hardly used to establish judicial claims.[326] When photographic images did appear in courts, they were usually thought of as "evidentiary aid" and played a merely illustrative role. Photographs were on a par with forms of symbolic visual representation such as maps, charts and diagrams; its evidentiary role was thus circumvented.[327] Under common law systems, images, including photographic ones, were classified as "demonstrative evidence." Early case law contained absolutely no discussion of what evidential standards governed the admissibility of demonstrative evidence as a separate category of proof. Later

definitions vary, and courts have been inconsistent in their assessments.

The common law of demonstrative evidence began to develop more fully in the United States. According to some scholars, U.S. courts in the late nineteenth century were almost indifferent to the need of any evidential theory to justify the use of other visual images such as diagrams or models, which were viewed as purely demonstrative displays. Such demonstrative evidence was understood as an "illustration of tautological, mathematically confirmable proof, something in the nature of what we might call scientific proof."[328] Even late in the century, the category of demonstrative evidence did not have a stable meaning, though some judges considered it conclusive: "evidence that offered the highest possible degree of proof".[329] According to other scholars, demonstrative evidence was understood as theatrical props, a form of evidence only "derivatively related to material fact,"[330] used only for illustrative purposes and not as independent proof.[331]

The aforementioned paradox of photography—the fact that it is both a mediated artifice and an innovative means of representation—was met in the legal context with the claim that photographs "could not provide definitive evidence about their mode of manufacture" and that it was therefore necessary "to look not at the product but at the process."[332] Consequently, the courts demanded that "before a witness could use such a visual aid, he was required to authenticate the image and verify that it in fact offered a correct representation of whatever was at issue." While such demands are often made regarding admissibility of every form of evidence, it led some judges to hold photographs to especially stringent standards of authentication.[333]

The early view of the relationship between photographs and other types of visual evidence ("models, maps and diagrams") is illustrated in *A Treatise on the*

Anglo-American System of Evidence in Trials at Common Law (1889) by legal scholar John Henry Wigmore, which classifies photographs as "non-verbal expression" and therefore as "demonstrative evidence," as distinct from verbal "testimonial evidence."[334] The category of "demonstrative evidence" also appears in the legal writings of American lawyer Melvin Belli, who with some qualification defines such evidence as "the type of evidence imparted directly to the senses without the intervention of a testimony."[335] In 1940, Dean McCormick similarly described demonstrative evidence as "all phenomena which can convey a first-hand sensuous impression to the trier of fact…[a]s opposed to those that serve merely to report secondhand sense impressions."[336]

Pointing to the enormous influence of the category of "demonstrative evidence" yet also to its limitations, law professor Robert D. Brain claims that the category was too broad, lacking "any coherent legal theory justifying the inclusion of real, documentary, illustrative, and demeanour evidence under [that] one heading."[337]

Nineteenth- and early-twentieth-century approaches to the evidentiary value of photographs were problematic in several ways, then: early jurists viewed photographs as mere illustrations of verbal testimonies and underestimated the persuasive power of images and "their power to solidify impressions." Above all, they failed to recognise the objectifying power of the camera—the impossibility "to express in words everything that a photo depicts"; for this reason, they failed to recognise that "the photograph [was] still further evidence…" that could go beyond verbal testimony.[338] As a result, approaches to the legal status of photographs oscillated between those who viewed them as objects with autonomous evidentiary value, capable of "speaking" directly to the senses and thus of serving as "sheer

proof," and those who viewed them as human artefacts requiring human mediation in the form of persuasive verbal interpretation.

In practice, however, the two conflicting approaches sometimes coexisted, for despite

> an effort to make photographs the operative equivalent of other kinds of visual evidence, the doctrine was only partially successful. That is, even though it ignored the widespread belief in photographic truth, the awareness of the photograph's special probative power could not be suppressed entirely.[339]

Once photographs were allowed into the courtroom,

> it was no longer clear…where illustration ended and proof started or who was illustrating what: the photograph illustrating the testimony or the testimony illustrating the photograph.[340]

In fact, it has even been claimed that whereas theorists often accorded photographs secondary status, in practice this innovative form or representation was perceived as substantial evidence almost from the moment it was invented.[341]

The conflicting approaches to "demonstrative evidence" and the inconsistent definitions of the category itself presented difficulties for scholars who sought to explain its role in the evidentiary process. Eventually, in the advent of modern attempts to replace the common law of evidence with statutory evidence codes, the category was abandoned altogether.[342]

In the twentieth century, growing acceptance of photographs as substantial legal evidence was in large part a result of certain technological developments. Early in the century, changing attitudes were largely a response to the discovery of X-ray technology, which exceeded the capacity of natural human vision and therefore stood in a new relation to human testimony and verbal description. The introduction of other new technologies such as 16-mm film (early 1920s),[343] colour photography (early 1940s), and videotape (late 1950s) did not confront the courts with similar

challenges regarding the evidentiary status of photographs.[344] It was not until the introduction of surveillance cameras in the late 1960s that another major doctrinal shift occurred:

> Surveillance cameras, just like X-ray machines, provided valuable images for which no verifying eyewitness could be provided. However, unlike X-ray machines, surveillance cameras needed no one to speak for them in court. They produced traditional photographic evidence that conveyed intuitive information readily accessible to the jury. Thus, for the first time, the courts faced machine-made visual evidence that no longer was required to be coupled with human agency to express what it contained.[345]

To allow the admissibility of surveillance footage in courts, the American appellate court recognised "machine-made pictures as reliable representations of what they depict." The principles invoked in support of this decision have come to be known as "Silent Witness" theory.[346] According to the older "pictorial testimony" doctrine, for a photograph to be admissible in court, a "sponsoring witness"—a person with personal knowledge of that which was depicted in the photograph—had to testify to the photograph's accuracy. According to "silent witness theory," by contrast, the photograph could "speak for itself" and, as such, was substantive evidence for what it portrayed, independently of the input of any sponsoring witness. Photographic material thus became admissible as independent, self-authenticating evidence, "based on the presumed reliability of the photographic process."[347] Silent Witness theory acknowledged that the admissibility of photographic images could be subject to various criteria ("relevance," "authenticity," "fair representation"); these, however, were to be determined by the particular facts of any given case.[348]

From the twentieth century, hardly a trial takes place without the use of images, while the latter have gained recognition as among the most effective forms of evidence. The accuracy of photographs can even be established circumstantially (without the addition of either expert or witness testimony), as in cases of automatic

cameras. In time, similar rules have come to apply to filmed and videotaped images as well: "the tape recording is not admissible as an illustration … but as evidence itself … the tape becomes mechanical hearsay, admissible as long as the correct foundation be laid as to the truth and accuracy of the recording process."[349] Though perhaps classifiable as "secondary" evidence, "with proper foundation [it] could be viewed as 'substantive or real evidence.'"[350]

The same principles applying to traditional photographic images have also come to govern the admissibility of digital photographs as evidence:

> Digital photographs still need to be authenticated by a witness, and it is up to the opposing counsel to question the authenticity of the evidence. Should there be any indication that the photograph is not what the witness states it represents, the evidence can be accorded less probative value or weight by the jury.[351]

Even in the age of digital photography, then, evidentiary uses of technology are still structured around verbal rhetoric, prioritising language over pure vision as a way of "opening our eyes."[352]

Whether press cameras should be allowed to document court proceedings has been debated from the early twentieth century. Courts have often expressed the fear that cameras would alter the trial process and put witnesses at risk, that the media might misuse its footage, and that visual documentation might commercialise the legal procedures and compromise the defendants' right to a fair trial.[353] Based on such concerns and others, justice systems, have imposed various restrictions on photography, filming and videotaping in courtrooms.[354]

Another important debate (though one less often discussed outside the professional legal discourse) has concerned the visual documentation of court cases by the legal system itself. The question of courtroom documentation predates the age of photography.[355] For some, however, the advent of the camera represented a new

potential for ensuring the existence of fair legal procedures.[356] According to legal scholars Collins and Skover, legal events, both legislative and judicial, are transformed by the medium through which they are communicated and documented, since different media—from oral language, handwriting and print, to photography, filming and videotaping—are capable of recording different types of information. Legal proceedings were harder to preserve in preliterate societies. The invention of writing made it possible to preserve legal processes; such preservation was still limited, however, given the slow and cumbersome nature of early writing technologies and the sheer rarity of literacy. The age of print marked a revolution in this field, as in others, and in time written evidence joined and even surpassed oral testimony as a leading form of evidence. By the eighteenth century, print "ushered in a new legal culture," replacing living memory with the dead letter. The advent of print increased "reliance on the fixed rules of published law," replacing "the fluid memory of the oral way and the comparatively flexible rules of custom." Some have even claimed that archetypal notions of Anglo-American jurisprudence are intimately linked to print.[357]

The invention of the camera marked yet another watershed moment in legal history. Despite the widespread prohibition on photography in the courtroom, especially in criminal trials, the introduction of cameras has been closely linked to several developments in both domestic criminal and international law.[358] Since presenting a comprehensive survey of the subject is beyond the scope of this dissertation, let me illustrate this claim by reference to a few cases, both historic and more recent, each representing a certain politics of representation.

Historically, the Nuremburg Trials (November 1945–October 1946) represented one of the earliest efforts by a court to audio-visually record its own

criminal procedures. The court presented several reasons for its pioneering decision to document the proceedings. In particular, the documentation was described as an attempt to raise international consciousness of the atrocities committed by the Nazis and to shape the collective memory of the international community.[359] I wish to suggest, however, that the most novel purpose of the trial's audio-visual documentation was to prove to the German public that the Nazi leadership was being given a fair trial. As I hope to show, this way of using the camera became one of the Nuremburg tribunal's most important legacies.[360] The audio-visual documentation of the Nuremburg Trials marked the genesis of a certain kind of "legal-judicial image production"—the creation of images in order to later use them as evidence for the court's proper conduct, on the basis of which further judicial assertions could be made.[361]

It has been argued that the documentation of the Nuremberg Trials affected the trials themselves, prompting their organisers to redesign the architecture of the Nuremberg Palace of Justice in which the hearings were held. Whereas traditional juridical practices protected the accused from the public eye in order to avoid an excess of emotions, here the accused stood in full frontal view of a mass international audience. It has even been argued that it was "the new configuration of the courtroom [that] allowed the emergence and contestation of the novel charges of crimes against humanity and later genocide."[362]

The 1961 Adolf Eichmann trial set another precedent for the use of cameras by a legal system to document its own proceedings. Kidnapped in Argentina by the Israeli Mossad, former S.S. officer Eichmann was brought to Israel in 1960, where he was put to trial the following year for his part in the Nazi genocide of European Jewry. Prior to the trial, the Israeli government hired a production company to film

the entire trial.[363] Though the courtroom itself was not reshaped to accommodate the documentation, the trial was set up as a public performance. The venue chosen for the trial was the 800-seat People's Hall (Beit Ha'am) Theater in Jerusalem.[364] The tension between the trial's two objectives—legally valid procedures on the hand, performative dramatisation on the other—was evident in the special filming arrangements:

> Filming was authorised under strict conditions: cameras were to be located in three concealed corners of the hall, special noise-reduction measures were to be taken, and the presence of cameramen in the courthouse was to be kept minimal. … [A]ll copies were to be released simultaneously to all interested parties on an equal basis, the price of copies was to be fixed and controlled, and the entire record was to be handed to the government at the end of the procedure. Defined a 'public service', profits were to be donated to charity. These terms stipulate, in effect, that coverage of the Eichmann trial was not to be traded or benefited from, at least not in the commercial sense.

As in Nuremburg, the precedential decision to film the legal procedures was given two main justifications: the desire to generate wide publicity, and the need to make the legal process accessible to public evaluation in order to ensure that justice was being served without bias or prejudice. According to some, the main concern was the latter rather than the former: "[the] concern was thus the propriety of the legal process rather than the place it would take in history."[365] The trial was broadcast extensively abroad, but it was clear that the filmed coverage would have little immediate impact on the local audience, as Israel had no television broadcast services at that time. Moreover, when the idea of filming the proceedings was first introduced, it was claimed that the purpose was to provide archival footage for future use rather than immediate regular reportage.[366] According to Supreme Court Justice Moshe Landau, the documentation had to be "accurate and fair"—it my terms, it had to produce images of a fair trial—in order to serve as future proof for the validity of the legal procedures.[367]

Due to a blunder made by Israeli government officials, it eventually turned out that the production company hired to document the trial was not contractually obligated to film the proceedings in their entirety. Fearing that partial documentation would represent the proceedings as incoherent, the Voice of Israel, Israel's official radio broadcasting service (then a subdivision in the Prime Minister's Office) stepped in to record the entire proceedings.[368] The recordings were to be kept for "safekeeping in the State Archives or in some other national institute." Officials claimed that "it would be an irretrievable loss if for whatever reason such audio recordings were not preserved by the State of Israel and the Jewish people," emphasising the importance of such records as an educational device for future generations.[369] The presiding judge at the trial, Supreme Court Justice Moshe Landau, signed a decree stating that the proceedings would be "machine-recorded," and that the resulting record would have the same validity as written court protocols.[370] The audio-visual documentation thus officially received equal weight as the actual court protocols.

Both the Nuremberg and the Eichmann trials made pioneering use of filmed footage as substantial evidence—so much so, that in Nuremberg the prosecutor preferred film over summoning witnesses to the stand as a way to support his claims. His stated reason for this preference was that witnesses might fail to control their emotions; we may assume, however, that the preference was at least equally motivated by the expectation that filmed evidence would make the defendants feel guilty and express their sense of guilt, which would then be used as further evidence against them. The same strategy was later used in Jerusalem, where Eichmann was made to view filmed footage of Holocaust atrocities. [371]

The turn to documentary filming practices in both Nuremberg and Jerusalem made possible yet another mode of image production—the production of images that blended the criminal and the political. On the one hand, the way in which the proceedings were documented molded the defendants in the image of common criminals. On the other hand, the documentation was carried out by state authorities and not by the media, marking the genesis of new practice in which filmed documentation could replace written court protocols, serving not only as legal evidence but also as a political instrument used to validate the court and its actions.

Both the Nuremberg and Eichmann trials had the declared goals of protecting human rights. Both trials also show, however, how the court can preserve to itself the exclusive right to use cameras and thus create a power imbalance contrary to basic human rights and to legal transparency. Moreover, once the production of the documentation are produced by the court itself via automatic security cameras, without the mediation of professional filming personnel, the court can more easily assert control over the resulting documentation. Moreover, as soon as the footage is taken by security cameras, it becomes easier to treat it as objective, as a self-authenticating artifact of "pure vision."

In recent decades, many courts followed the precedent set in Nuremberg and Jerusalem, using audio-visual technologies to document their proceedings. The practice has taken special prominence in cases of international law violations and crimes against humanity. A notable instance has been the proceedings of the International Criminal Tribunal for the Former Yugoslavia (ICTY). In 1994, the ICTY judges decided to record and publicise the proceedings in order to "make sure that justice would be seen to be done, to dispel any misunderstanding that might arise as to the role and nature of the proceedings, and to educate the public."[372] In recording

the proceedings, the court following an explicit set of conventions characteristic of the "genre." Though each of the three purpose-built courtrooms contained six cameras with zooming and tilting capabilities, the four video directors in charge of the filming were subjected to specific guidelines. For example, there had to be no panning or zooming visible on screen, and the directors had to cut away from any visibly distressed court participant. Witnesses had the right to avoid identity exposure by having their voice and facial features distorted. In addition, the production process itself had to be open and visible (perhaps to ensure the impression of a fair trial): all court participants were to see what the courtroom director was filming. The footage was recorded live but broadcast with a thirty-minute delay to protect court participants.[373] Other international criminal courts have adopted similar practices of audio-visual recording, each contributing to the "genre" by adding its own restrictions. In 2009, the Joint Tribunal of the Khmer Rouge (also known as the Extraordinary Chambers in the Courts of Cambodia [ECCC]), a special Cambodian court set up to prosecute leaders of the Khmer Rouge regime for the killing of 1.7 million and backed by the UN, resolved to document its own judicial proceedings. Inspired by the ICTY, the ECCC adopted the following standards:

> the presence of cameras did not force upon the proceedings an ordinary media standard of transparency. It facilitated the widening of the spatial and temporal framework of the judicial narrative, which was up to the judges and prosecutors to render audible for the greatest number of people. They did this by determining which counts of the trial seemed representative of the history under indictment, what punishments were called for, and what reparations were required.[374]

In other instances, court-created images helped make the proceedings more accessible to those to whom the trial was of most concern. For example, the audio-visual archive set up by the International Tribunal of Rwanda (ICTR, created in

1995), has been of tremendous value given Rwanda's low literacy and almost non-existent internet accessibility rates.[375]

Audio-visual recording of court proceedings has also been used by the Special Court for Sierra Leone and in East Timor.[376] It is precisely the accusation that such international tribunals constitute the victors as just that encouraged in these cases a "rigid adherence to the requirement of proof beyond reasonable doubt" and "the development of transparent and consistent rules in the treatment of evidence."[377] The advanced audio-visual policy pursued by these courts is likely to have represented their efforts to produce images that would become evidence for the fairness of the trials.

While it has been argued that "the goal of the modern trial is the rectitude of an ultimate decision achieved through rational process of presentation," the paradox that in order to achieve such a goal, "modern law has to ultimately fall back on notions of exclusivity, exclusion and closure."[378] In the context of internationalised criminal justice, this paradox helps us understand the role played by the current economy of images in the effort to presents such trials as fair. In many cases, it seems that national interests overpower the goal of accessibility and transparency, with the production of certain images entailing the exclusion of others. A clear instance of the latter phenomenon is provided by the International Criminal Court (ICC), the first permanent court of its type, established in 1988 on the basis of the Rome Treaty. While the ICC's legal proceedings are recorded and made public, a careful look at the ICC's own regulations reveals the explicit statement that "the ICC's audio-visual records may be released to broadcasting unless ordered otherwise." Here again, all broadcasts are to be "delayed by 30 minutes in order to protect sensitive information." The ICC Chamber may prohibit audio-visual documentation and

broadcast based on various considerations, among them concerns of national security raised by the member states.[379] While using the audio-visual images as evidence for the validity and fairness of the legal procedures, the courts also reserve to themselves exclusive editing and distribution rights which risk undermining those same goals.

In conclusion, it may be worth recalling one of the earliest instances in which audio-visual courtroom recordings became evidence against the very same justice system that produced them. In 1944, the Nazi authorities filmed the trial of the July 20 plotters who attempted to assassinate Hitler, though the over-staged nature of the footage eventually led them to exclude it from public view. It was only later, during the postwar Nuremberg Trials, that the documentation was shown in public—though now, of course, it served as evidence for Nazi injustice.[380]

Bibliography

Abby, P. R. (2005) "Treaty Ports and Extraterritoriality in 1920 China": http://www.chinapage.com/transportation/port/treatport1.html (accessed August 27, 2013).

Adami, T. (2007) "Who will be left to tell the tale? Recordkeeping and International Criminal Jurisprudence," Archival Science, 7:3, pp. 213-22.

Agamben, G. (1995) *Homo Sacer: Sovereign Power and Bare Life*. Stanford: Stanford University Press.

Agamben, G. (2000) *Means Without End*, Minneapolis: University of Minnesota Press.

Agamben, G. [2002] *Remnants of Auschwitz: The Witness and the Archive*, New York: Zone Books, pp.144-145.

Agamben, G. (2003) *State of Exception*, Chicago: University of Chicago Press.

Agamben, G. (2005) *The Time that Remains: A Commentary on the Letter to the Romans*, Stanford: Stanford University Press.

Agier, M. and Bouchet-Saulnier, F. (2004) "Humanitarian Spaces: Spaces of Exception," in Weissman, F. (ed.), *The Shadow of Just Wars: Violence, Politics and Humanitarian Action*, Ithaca, NY: Cornell University Press, pp. 297-313.

Agier, M. (2010) "Humanity as an Identity and Its Political Effect: A Note on Camps and Humanitarian Government," *Humanity: An International Journal of Human Rights, Humanitarianism and Development*, 1:1, pp. 29-45.

Agier, M. (2011) "The Undesirables of the World and How Universality Changed Camp," *Open Democracy*, May 16, 2011: http://www.opendemocracy.net/author/michel-agier (accessed June 7, 2012).

Aksel, I. (2013) Turkish Judicial System- Bodies, Duties and Officials, The Ministry of Justice of Turkey: The Department for Strategy Development: http://www.justice.gov.tr/judicialsystem.pdf (accessed February 16, 2014).

Al-Jazeera English (2010) "Israeli Troops Storm Gaza Flotilla," May 31, 2010: http://www.youtube.com/watch?v=xFEBbDkyrqQ (accessed October 10, 2012).

Amnesty International (2009) "Israel/Gaza: Operation Cast Lead: 22 Days of Destruction": http://www.amnesty.org/en/library/asset/MDE15/015/2009/en/8f299083-9a74-4853-860f-0563725e633a/mde150152009en.pdf (accessed July 2, 2013).

Anonymous for Animal Rights, Petition to the Supreme Court of Israel, December 11, 2012: http://tnuvacruelty.co.il/high-court (accessed August 4, 2015).

Anonymous for Animal Rights, Under Cover Investigation at the Soglowek Slaughterhouse, July 6, 2015: http://chicken.org.il (accessed August 4, 2015).

Ansay, T. and Wallace D., eds. (2005) *Introduction to Turkish Law*, The Hague: Kluwer.

Augusti, E. (2011) "From Capitulizations to Unequal Treaties: The Matter of an Extraterritorial Jurisdiction in the Ottoman Empire." *J. Civ. L. Stud.* 4, p. 285.

Aydin, S., Suavi, M. E., Mithat, S. Atilgan, E. Ü. (2011). "Just Expectations: A Compilation of TESEV Research Studies on the Judiciary in Turkey," TESEV Publication, Istanbul, 2011, pp. 38, 42, 45: http://www.tesev.org.tr/just-expectations--compilation-of-tesev-research-studies-on-the-judiciary-in-turkey/Content/249.html (accessed March 5, 2013).

Barnes, E. (2010) "Reuters Admits Cropping Photos of Ship Clash, Denies Political Motive," Fox News, June 8, 2010: http://www.foxnews.com/world/2010/06/08/reuters-fake-photos-ihh-gaza-blockade-commandos (accessed March 9, 2012).

Bassam T. (2006) "Europeanising Islam or the Islamization of Europe: Political Democracy vs. Cultural," in Byrnes, T. A. and Katzenstein, P. I. (eds.), *Religion in an Expanding Europe*, Cambridge: Cambridge University Press, p. 220: http://www.euroculture.upol.cz/dokumenty/sylaby/Byrnes-Katzenstein_Religion%20in%20an%20expanding%20Europe_ch-8_Tibi_Islam_(3).pdf.

Bauman, Z. (2000) *Liquid Modernity*. Malden: Polity Press.

Bauman, Z. (1999) "The World Inhospitable to Levinas," *Philosophy Today* 43:2, pp. 151-167.

Bayoumi, M., ed. (2010) *Midnight on the Mavi Marmara*, Chicago: Haymarket.

BBC 1 (2010) Panorama: "Death in the Med," TV Documentary, first broadcast August 22, 2010.

BBC News Europe (2012) "Turkey Tries Israeli Commanders over Mavi Marmara Raid," November 6, 2012: http://www.bbc.co.uk/news/world-europe-20215991 (accessed February 8, 2013).

Benjamin W. (1940) "On the Concept of History": http://walterbenjamin.ominiverdi.org/wp-content/walterbenjamin_concepthistory.pdf.

Benjamin, W. (1986) "Critique of Violence," *Reflections: Essays, Aphorisms, Autobiographical Writ*ings, New York: Schocken, pp. 277-300.

Benjamin, W. (1996) *Selected Writings, Vol. 1: 1913-1926*. Cambridge, MA: Belknap Press, pp. 236-252.

Bentham, J. (1843) "The Rational of Judicial Evidence," *The Works of Jeremy Bentham*, Vol. 7: http://lf-oll.s3.amazonaws.com/titles/1998/Bentham_0872-07_EBk_v6.0.pdf (accessed February 5, 2014).

Bergel, S. I. (1985) "Evidence – Silent Witness Theory Adopted to Admit Photographs without Percipient Witness Testimony (Case Note)," *Suffolk University Law Review* 2, pp. 353-359.

Berk Kalem, S. (2011) "Access to Justice" in *Turkey: Indicators and Recommendations*, Turkish Economic and Social Studies Foundation-Tesev Publications, pp. 32-35: http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=135218 (accessed March 3, 2014).

Bernasconi R. (2008) "Extra-Territoriality: Outside the State, Outside the Subject," *Levinas Studies*, 3, pp. 61-77.

Biemann, U. (2012) *Articulating the Exception*: http://www.geobodies.org/books-and-texts/texts.

Bilefsky, D. and Arsu, S. (2012) "Charges Against Journalists Dim the Democratic Glow in Turkey," *New York Times*, January 5, 2012: http://www.nytimes.com/2012/01/05/world/europe/turkeys-glow-dims-as-government-limits-free-speech.html?pagewanted=all (accessed February 26, 2013).

Björnberg, K. and Cranston, R. (2005) "The Functioning of the Judicial System in the Republic of Turkey: Report of an Advisory Visit," *European Commission Brussels*, June 13-22, pp. 52-53: http://www.deontologie-judiciaire.umontreal.ca/en/textes%20int/documents/TURQUIE_ENQUeTE.pdf (accessed April 5, 2014).

Blumenthal, M. (2010) "Israeli Army Admits It Doctored Gaza Freedom Flotilla Audio Clip," Global Research, June 10, 2010: http://www.globalresearch.ca/israel-military-admits-it-doctored-gaza-freedom-flotilla-a udio-clip/19646?print=1 (accessed June 1, 2012).

Booth, L. (2010) "Gilad Atzmon: Shocking Testimonies from the Mavi Marmara Survivors and One Israeli Fembot": http://mycatbirdseat.com/2010/06/gilad-atzmon-shocking-testimonials-from-the-mavi-marmara-survivors-and-one-israeli-fembot-by-lauren-booth (accessed July 7, 2011).

Boulter, J. [2011] *Melancholy and the Archive: Trauma, History and Memory in the Contemporary Novel*. London: Bloomsbury Publishing, p. 13.

Brain, R. D. (1992) "The Derivative Relevance of Demonstrative Evidence: Charting Its Proper Evidentiary Status," *UC Davis Law Review* 4, pp. 957-1027.

Bray, M. S. and Murphy, W. T. (1972) "Audiovisual Records in the National Archives Relating to World War I." Preliminary Draft, National Archives and Records Service (GSA), Washington, D.C.: http://files.eric.ed.gov/fulltext/ED081239.pdf (accessed August 11, 2014).

Bruch, J. (2012) "Israeli Military over Gaza Ship Killing," The Daily Star, Lebanon, November 5, 2012: http://www.dailystar.com.lb/News/Middle-East/2012/Nov-05/193962-turkey-to-try-israeli-top-brass-in-deadly-flotilla-raid.ashx#axzz2IRZw5noP (accessed January 15, 2013).

B'Tselem: The Israeli Information Center for Human Rights in the Occupied Territories (2008) "More Sanctions on Gaza," pp. 10, 13, 14, 17, 39, 53: http://www.btselem.org/gaza_strip/20081127_more_sanctions_eon_gaza (accessed September 20, 2013).

B'Tselem: The Israeli Information Center for Human Rights in the Occupied Territories (2011) "The Siege on Gaza": http://www.btselem.org/gaza_strip/siege (accessed June 5, 2012).

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories (2013) "Lift the Restrictions on the Gaza Fishing Range," March 24, 2013: http://www.btselem.org/gaza_strip/20130324_restrictions_on_fishing_should_be_lifted (accessed April 1, 2013).

Cam, A. R. (2008) "EU Principals in Modernisation of Justice and the Turkish IT Project UYPA," *European Journal of ePractice*: http://www.epractice.eu/files/3.5_1.pdf (accessed April 4, 2014).

Carter, R. G. S. (2010) "Ocular Proof: Photographs as Legal Evidence," *Archivaria*, 69, p. 23.

Cassar, I. [2010] "The Image of, or in, Sublation," *Philosophy of Photography* 1:2, pp. 201-215.

Cassel, K. (2012) *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan*. Oxford: Oxford University Press.

Chan, K. C. (1977) "The Abrogation of British Extraterritoriality in China 1942-43: A Study of Anglo-American-Chinese Relations," *Modern Asian Studies*, 11:2, pp. 257-291.

Channel 2 Israel and DHA (2010), "'Peace Activists Stabbing Israeli Solider," May 31, 2010: http://www.youtube.com/watch?v=buzOWKxN2co (accessed March 24, 2012).

CNN TURK (2010), "Dakika, dakika, Mavi Marmara_ya saldiri," June 1, 2010: http://www.youtube.com/watch?v=INVT98698R8 (accessed February 11, 2013).

Code on Criminal Procedure, Law No. 5271, April 4, 2004: http://legislationline.org/documents/action/popup/id/8976 (accessed April 6, 2014).

Colborne, S. (2013) "Three Years on, The Mavi Marmara is Still Making Waves," *Palestine Solidarity Campaign*, May 31, 2013: http://www.palestinecampaign.org/three-years-on-the-mavi-marmara-is-still-making-waves (accessed April 16, 2014).

Collins, R. K. L. and Skover, D. M. (1992) *Stanford Law Review*, 44:3, pp. 509-552.

Council of Europe (1953) Convention for the Protection of Human Rights and Fundamental Freedoms: http://conventions.coe.int/Treaty/en/Summaries/html/005.htm (accessed August 1, 2013).

"Cultures of Resistance 2010, Israeli Attack on the Mavi Marmara/Raw Footage" (June 11, 2010): http://www.youtube.com/watch?v=vwsMJmvS0AY (accessed March 19, 2012).

Delage, C. (2010) "The Place of the Filmed Witness: From Nuremberg to the Khmer Rouge Trial," *Cardozo Law Review*, 4, pp. 1087-1112.

Delage, C. (2006) *Caught On Camera: Film in the Courtroom from the Nuremberg Trials to the Trials of the Khmer Rouge*, Philadelphia: University of Pennsylvania Press.

Derrida, J. [1996] *Archive Fever*, trans. Eric Prenowitz, Chicago: University of Chicago Press.

Doğru, O. (2012) "Mills that Grind Defendants: The Criminal Justice System in Turkey from a Human Rights Perspective," Tesev Publications, March 2012: http://www.tesev.org.tr/assets/publications/file/11703ENGyargi3_06_03_12onay.pdf (accessed July 19, 2014).

Dollinger, A. (2000) "Herodotus on Proteus," *An Introduction to the History and Culture of Pharaonic Egypt*: http://www.reshafim.org.il/ad/egypt/herodotus/proteus.htm (accessed August 7, 2013).

Dönmez, B. D. (2011) "Cross-Examination in Turkish Criminal Procedure Law," *Ankara Law Review*, 8:1, pp. 53-69.

Elden, S. (2012) "Outside Territory," lecture given at the Exterritory Project Symposium, Paris, May 2, 2012.

The Electronic Intifada (2013) *Spain Prosecutor Requests ICC Referral of Case Against Israel's Netanyahu for 2010 Flotilla Attack*: http://electronicintifada.net/blogs/ali-

abunimah/spain-prosecutor-requests-icc-referral-case-against-israels-netanyahu-2010 (accessed June 18, 2014).

Erdem Law Office (2011) "Key Notes on Legal Development of September 2011": http://www.erdem-erdem.com/en/articles/key-notes-on-legal-developments-of-september-2011 (accessed March 3, 2014).

Erişen E. and Erişen E. (2013) "Attitudinal Ambivalence towards Turkey's EU Membership," *Journal of Common Market Studies*, 52:2, pp. 217-233.

EurActive (2005) EU News & Policy Debates, EU-Turkey Relations, November 14, 2005: http://www.euractiv.com/enlargement/eu-turkey-relations/article-129678 (accessed February 27, 2013).

EurActive (2012) "EU Will Lose Turkey If It Hasn't Joined by 2023, Erodgan Says," October 31, 2012: http://www.euractiv.com/enlargement/eu-lose-turkey-hasnt-joined-2023-news-515780 (accessed February 26, 2013).

European Agency for Fundamental Human Rights (2012) "Access to Justice in Cases of Discrimination in the EU: Steps to Further Equality": http://fra.europa.eu/en/publication/2012/access-justice-cases-discrimination-eu-steps-further-equality (accessed April 2, 2014).

European Commission (2012) "Enlargement Strategy and Main Challenges 2012–2013," Commission Staff Working Document SWP, October 10, 2012: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf (accessed February 26, 2013).

European Commission (2013) *Conditions for Membership*, Enlargement Policy, November 28, 2013: http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm (accessed March 18, 2014).

European Commission (2013) Staff Working Document, Turkey 2013 Progress Report: Enlargement Strategy and Main Challenges 2013-2014, Brussels 16.10.2013: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf (accessed February 27, 2013).

European Convention of Human Rights (2005) PF 2005 01.01 Better Access to Justice in Turkey: Standard Summery Project Fiche: http://ec.europa.eu/enlargement/fiche_projet/document/PF%202005%2001.01%20Better%20Access%20to%20Justice%20in%20Turkey.pdf (accessed April 5, 2014).

Extraordinary Chambers in the Courts of Cambodia (ECCC) (2003-2006) Introduction to the ECCC: http://www.eccc.gov.kh/en/about-eccc/introduction (accessed March 24, 2014).

Extraordinary Chambers in The Courts of Cambodia (2011) *Extraordinary Chambers in The Courts of Cambodia*, August 3, 2011: http://www.eccc.gov.kh/sites/default/files/legal-

documents/ECCC%20Internal%20Rules%20(Rev.8)%20English.pdf (accessed September 2, 2014).

Feldman, T. (2011) "A Tale of Two Closures: Comments on the Palmer Report Concerning the May 2010 Flotilla Incident" Blog of the *European Journal of International Law*, September 20, 2011: http://www.ejiltalk.org/a-tale-of-two-closures-comments-on-the-palmer-report-concerning-the-may-2010-flotilla-incident (accessed July 5, 2013).

Filosu O. (2011) *Mavi Marmara Gazze*, IHH.

Israel Defence Force (201), "Flotilla Rioters Prepare Metal Rods, Slingshots, Broken Battles and Metal objects," June 2, 2010: https://www.youtube.com/watch?v=HZlSSaPT_OU (accessed December 4, 2012).

Folk, R. (2013) "Israel on the Felons Dock: Double Standards in International Law," lecture at the Foundation for Human Rights, Freedom and Humanitarian Relief, University of Istanbul: http://eski.ihh.org.tr/falk-uluslararasi-hukuk-cifte-standartli/en (accessed April 15, 2014).

Foucault, M. [2012] *The Archaeology of Knowledge*, New York: Vintage Books, pp. 129, 147.

Foucault, M. (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, New York: Pantheon.

The Foundation for Humanitarian Rights and Freedoms, 2012, Israel on the Felon's Dock: Mavi Marmara Trial Begins In Çağlayan On November 6: http://www.ihh.org.tr (accessed April 12, 2014).

The Foundation for Humanitarian Rights and Freedoms (2013), Second Hearing of the Mavi Marmara Trial Held February 21, 2013: http://mavi-marmara.ihh.org.tr/en/main/news/0/second-hearing-of-mavi-marmara-trial-held/1593 (accessed April 18, 2014).

The Foundation For Humanitarian Rights and Freedoms (2013) Mavi Marmara Trial Continues with the 4th Hearing, October 3, 2013: http://mavi-marmara.ihh.org.tr/en/main/news/0/mavi-marmara-trial-continues-with-4th-hearing/1891 (accessed April 17, 2014).

FRA, European Union Agency For Fundamental Rights (2011) "Accesses to Justice in Europe: An Overview of Challenges and Opportunities": http://fra.europa.eu/sites/default/files/fra_uploads/1520-report-access-to-justice_EN.pdf (accessed April 9, 2014).

Gisha – Legal Center for Freedom of Movement (2006) "Disengaged Occupiers: The Legal Status of Gaza":

http://www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf (accessed January 4, 2013).

Gisha – Legal Center for Freedom of Movement (2009) "Rafah Crossing: Who holds the Keys?": http://www.gisha.org/userfiles/File/publications/Rafah_Report_Eng.pdf (accessed April 1, 2015).

Gisha – Legal Center for Freedom of Movement: (2012) "Scale of Control: Israel's Continued Responsibility in the Gaza Strip": http://www.gisha.org/UserFiles/File/scaleofcontrol/scaleofcontrol_en.pdf (accessed June 2, 2012).

Gökan, S. (2010) "A Study on the Turkish Criminal Trial System," The Ankara Bar Association, Istanbul.

Golan, T. (2004) "The Emergence of the Silent Witness: The Legal and Medical Reception of X-rays in the USA," *Social Studies of Science*, 34:4, pp. 469-499.

Goodrich, P. and Delage, C. (eds.) (2013) *The Scene of the Mass Crime: History, Film and International Tribunals*, New York: Routledge.

Gorgos, K. A. (2009) "Lost in Transcription: Why the Video Record Is Actually Verbatim," *Buffalo Law Review* 57, p. 1057.

Gregory, D. (2006) "The Black Flag: Guantánamo Bay and the Space of Exception," *Geografiska Annaler*, 88:4, pp. 405–427.

Gruen, M. (2003) "The World of Court Room Technology," Center for Legal and Court Technology: http://www.legaltechcenter.net/download/whitepapers/The%20World%20Of%20Courtroom%20Technology.pdf (accessed June 24, 2014).

Guilshan, C. (1992) "A Picture Is Worth a Thousand Lies: Electronic Imaging and the Future of the Admissibility of Photographs into Evidence," *Rutgers Computer & Technology Law Journal* 1, pp. 365-380.

Haldar, P. (1991) "The Evidencer's Eye: Representations of Truth in the Laws of Evidence." *Law and Critique*, 2, pp. 171-189.

Haldar. P. (1999) "The Return of the Evidencer's Eye: Rhetoric and the Visual Technologies of Proof," *Griffith Law Review*, 1, pp. 86-101.

Hammarberg, T. (2012) Report to the Administration of Justice and Protection of Human Rights in Turkey, Commissioner for Human Rights of the Council of Europe, Following his visit to Turkey from 10 to 14 October 2011 (Strasbourg: Council of Europe, January 10, 2012: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-tr/dv/0131_04/0131_04en.pdf (accessed February 26, 2013).

Hanafi, S. (2011) "New Models for the Nation-State," in Simon, J. (ed.) *United States of Palestine,* New York: Sternberg Press, pp.17-22.

Hanafi, S. (2010) "Palestinian Refugee Camps in Lebanon: Laboratory of Indocile Identity Formation": http://staff.aub.edu.lb/~sh41/dr_sarry_website/publications/32_Camps_Lebanon_Khalidi_eng.pdf (accessed August 8, 2012).

Hanafi, S. (2003) "The Broken Boundaries of Statehood and Citizenship," *Borderlands*: http://www.borderlands.net.au/vol2no3_2003/hanafi_boundaries.htm (accessed August 6, 2012).

Herodotus (1920) *The Histories*, trans. A. D. Godley, Cambridge, MA: Harvard University Press.

Hildebrandt, M. (2013) "Extraterritorial Jurisdiction to Enforce in Cyberspace? Bodin, Schmitt, Grotius in Cyberspace." *University of Toronto Law Journal* 63: 2, pp. 196-224.

Hill, G. N. and Hill, K. T. (2005) "In Absentia," *The People's Law Dictionary*: http://legal-dictionary.thefreedictionary.com/in+absentia (accessed February 6, 2013).

Hürriyet Daily News (2010) "Turkish Rights Group's Cargo Ship to Set Sail with Gaza Aid," *Hürriyet Daily News*, April 13, 2010: http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=cargo-ship-will-set-out-to-gaza-to-deliver-aid-2010-04-13 (accessed July 1, 2013).

ICC (2014) "Rome Statute legal requirements have not been met", November 6: http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-statement-06-11-2014.aspx (accessed November 8, 2014).

IDF announcement (2010) "Maj. Gen. (Res.) Eiland Submits Conclusions of Military Examination Team Regarding *Mavi Marmara*": http://www.idfblog.com/2010/07/12/maj-gen-res-eiland-submits-conclusions-of-military-examination-team-regarding-mavi-marmara-12-july-2010 (accessed March 6, 2011).

IDF Habat – Unit of Technological Education and Training (2011) "Timeline of the Mavi Marmara Incident": http://www.youtube.com/watch?v=z31GesVrBjc (accessed July 1, 2013).

IDF Blog (2011), "Colonel Shai Shtern: Victory Consciousness is More Valuable than the Outcome on the Field," September 8, 2011: http://www.idf.il/1133-13098-he/Dover.aspx (accessed March 30, 2015).

IHH (2010) Mavi Marmara Art Exhibition, opened August 4, 2010: http://www.ihh.org.tr/en/main/news/0/mavi-marmara-art-exhibition-opens/220 (accessed May 1, 2013).

IHH (2011) Report of the UN Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident: http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf (accessed September 13, 2012).

IHH Humanitarian Relief Foundation (2011) "Aljazeera Begins 15th-year Celebrations with *Mavi Marmara* Play," November 16, 2011: http://mavi-marmara.ihh.org.tr/fr/main/news/0/aljazeera-begins-15th-year-celebrations-with-/1179 (accessed May 1, 2013).

IHH Humanitarian Relief Foundation (2012) "About the Trial: Israel on the Felon's Dock!" Blogpost: http://www.ihh.org.tr/dava-hakkinda/en (accessed February 5, 2013).

IHH Humanitarian Relief Foundation, *Ship Purchased for Gaza Campaign:* http://mavi-marmara.ihh.org.tr/en/main/news/0/ship-purchased-for-gaza-campaign/231 (accessed July 1, 2013).

IHH Humanitarian Relief Foundation (2012) "Witness Account on the Israeli Attack and Rights Violations": http://www.ihh.org.tr/taniklar-israil-saldirisi-ve-sonrasindaki-ihlalleri-anlatti/en (accessed January 26, 2013).

IHH Department of Research and Publication (2012) *Mavi Marmara: Gaza Freedom Flotilla*, Istanbul.

IHH (2012) *Freedom: Last Destination Mavi Marmara*, IHH documentary film: http://vimeo.com/50824956.

IHH Humanitarian Relief Foundation (2012) *The Mavi Maramara Case- Legal Actions Taken Aginst The Israeli Attack On The Gaza Freedom Flotilla On 31.05.2010*: http://www.ihh.org.tr/fotograf/yayinlar/dokumanlar/134-Mavi%20Marmara%20Hukuk%20Raporu%20-%2010%20Aral%C4%B1k%202012%20-mavi-marmara-legal-report.pdf (accessed April 29, 2014).

IHH, Indictment Files (2012): https://www.dropbox.com/sh/l0zl7g242zi1bu9/qFM6mGnfIj (accessed January 14, 2013).

IHH (2012) Twitter, Mavi Marmara Case: @MaviMarmaraCase, posted by IHH The Foundation for Human Rights and Freedoms, November 6, 2012: https://twitter.com/MaviMarmaraCase (accessed March 31, 2014).

IHH (2012) The Foundation for Human Rights and Freedoms, Mavi Marmara Trial Postponed to February 21, 2013, November 10, 2012:

http://www.ihh.org.tr/uploads/2012/ihh-press-release-on-mavi-marmara-trial-10-11.pdf (accessed April 5, 2014).

IHH (2012) Twitter: Mavi Marmara Case: @MaviMarmaraCase, posted by: Izzet Şahin, IHH The Foundation For Human Rights and Freedoms and Humanitarian, 3 November: https://twitter.com/MaviMarmaraCase (accessed March 31, 2014).

IHH Report on the Gaza Flotilla Raid (2012) "Fact Sheet: Palestine Our Route, Humanitarian Aid Our Load": https://www.dropbox.com/sh/l0zl7g242zi1bu9/fHZgXPt16S/IHH%20Deliller%20Dosyası.pdf (accessed January 18, 2013).

IHH (2012) "Witness Account of the Israeli Attack and Rights Violations": http://www.ihh.org.tr/taniklar-israil-saldirisi-ve-sonrasindaki-ihlalleri-anlatti/en (accessed January 26, 2013).

IHH Humanitarian Relief Foundation Report (2013): http://www.ihh.org.tr/mavi-marmaraya-saldirinin-delilleri-mahkemede/en (accessed January 6, 2013).

IHH Humanitarian Relief Foundation Report (2013) The Free Gaza Movement: http://www.freegaza.org (accessed February 4, 2013).

IHH (2013) Twitter, Mavi Marmara Case: @MaviMarmaraCase, posted by: IHH The Foundation For Human Rights and Freedoms and Humanitarian, 21 February: https://twitter.com/MaviMarmaraCase (accessed March 31, 2014).

IHH (2013) The Foundation For Human Rights and Freedoms and Humanitarian Relief, Second Hearing of The Mavi Marmara Trial Held, February 21, 2013: http://mavi-marmara.ihh.org.tr/en/main/news/0/second-hearing-of-mavi-marmara-trial-held/1593 (accessed March 31, 2014).

IHH Humanitarian Relief Foundation in the Mavi Marmara Trials: http://www.ihh.org.tr/en (accessed March 29, 2014).

Imber, C. (2002) *The Ottoman Empire, 1300-1650: The Structure of Power*. New York: Palgrave Macmillan.

Inalcik, H. and Quataert D., eds. (1995) *An Economic and Social History of the Ottoman Empire,Vol. 2: 1600-1914*. Cambridge: Cambridge University Press.

International Criminal Court (2004) Regulation of the Court: http://www.icc-cpi.int/NR/rdonlyres/B920AD62-DF49-4010-8907-E0D8CC61EBA4/277527/Regulations_of_the_Court_170604EN.pdf (accessed August 27, 2014).

International Criminal Court (2013) "ICC Prosecutor receives referral by the authorities of the Union of the Comoros in relation to the events of May 2010 on the vessel 'MAVI MARMARA'": http://www.icc-cpi.int/iccdocs/otp/Referral-from-Comoros.pdf (accessed May 15, 2013).

International Transport Workers Federation, *What Are Flags of Convenience:* http://www.itfglobal.org/en/error-404?404%3bhttp%3a%2f%2fwww.itfglobal.org%3a80%2fflags-convenience%2fsub-page.cfm (accessed June 1, 2013).

Interpol Red Notice Removal Lawyers (2011) *Report: Turkish Prosecutor Seeks Interpol Notice for Flotilla Attackers*: http://interpolnoticeremoval.com/tag/istanbul-public-prosecutor-mehmet-akif-ekinci (accessed January 15, 2013).

Isfnadesk, (2010) Close Up Footage of Mavi Marmara Passengers Attacking IDF Soldiers (with sound), video, YouTube, May 31, 2010: https://www.youtube.com/watch?v=gYjkLUcbJWo (accessed June 1, 2010).

Isfnadesk (2010) "Demonstrators Use Violence Against Israeli Navy Soldiers Attempting to Board the Ship," video, YouTube, May 31, 2010: http://www.youtube.com/watch?v=bU12KW-XyZE (accessed June 1, 2010).

Israel Ministry of Foreign Affairs (2005) Israel's Disengagement Plan: Renewing the Peace Process: http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israels+Disengagement+ Plan-+Renewing+the+Peace+Process+Apr+2005.htm (accessed March 25, 2013).

Israel Ministry of Justice, Adolf Eichmann Trial, Records of The Attorney General Against Adolf Eichmann, Volume A: http://index.justice.gov.il/Subjects/EichmannWritten/volume/vol1_shaar.pdf (accessed August 15, 2014).

Israel State Comptroller's Report (2012) *A Critical Review of the Application of the National Security Committee Law and the Handling of the Turkish Flotilla*: http://www.mevaker.gov.il/serve/contentTree.asp?bookid=615&id=0&contentid=12640&parentcid=undefined&bctype=12640&sw=1024&hw=698 (accessed September 12, 2012).

Jelani Jefferson Exum (2005-2008) Turkish Criminal Code Procedure: The Essence of The Rules: A Comparison of Turkish and U.S. Criminal Procedure: http://gulentrial.org/gulen/turk_criminal_art.pdf (accessed April 7, 2014).

Jerusalem Post (2012) "Turkey Tries IDF Commanders over Marmara Killings," May 11, 2012: http://www.jpost.com/International/Article.aspx?id=290587 (accessed February 8, 2013).

Johansson, R. (2005) "Non-Territorial Governance, Mankind's Forgotten Legacy: A Review of Shin Shin Liu's *Extraterritoriality: Its Rise and Its Decline*," Panarchy: http://www.panarchy.org/johnsson/review.2005.html (accessed July 8, 2012).

Kassan, S. (1935) "Extraterritorial Jurisdiction in the Ancient World," *The American Journal of International Law*, 29:2, pp. 237-247.

Kayaoğlu, T. (2010) *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China*, Cambridge: Cambridge University Press.

Keinon, H. (2014) "Complaint alleging aggravated assault, illegal threats, theft in international waters filed on behalf of Swedish nationals prompted investigation," *Jerusalem Post*: http://www.jpost.com/Diplomacy-and-Politics/Sweden-looks-into-Israeli-actions-toward-its-nationals-involved-in-flotillas-to-Gaza-360737 (accessed September 16, 2014).

Keller, E. (2012) "Zone: The Spatial Software of Extrastatecraft," *Places*, 82: 5, pp. 58-63.

Knesset State Control Committee (2012) Protocol no. 263, June 14, 2012: http://www.knesset.gov.il/protocols/data/rtf/bikoret/2012-06-14.rtf.

Kong, P. [2009] *The Raiders and Writers of Cervantes' Archive: Borges, Puig, and García Márquez*, Farnham, UK: Ashgate Publishing, p. 19.

Kor, Z. T., ed. (2011) *Witnesses of the Freedom Flotilla: Interviews with Passengers*, Istanbul: IHH Kitap.

Kunstman A. and Stein, R. L. (2010) "Another War Zone: Social Media in the Israeli-Palestinian Conflict," *Middle East Report Online* (MERIP): http://www.merip.org/mero/interventions/another-war-zone#.UBF0yo1TSiE.email.

Kurban D. and Sözeri C. (2012) "Caught in the Wheels of Power: The Political, Legal and Economic Constraints on Independent Media and Freedom of the Press in Turkey," Medıa Studies Series no. 3, Istanbul: Turkish Economic and Social Studies Foundation [TESEV], pp. 34-35: http://www.tesev.org.tr/Upload/Publication/0a3511ab-e048-4666-abca-a6618d5d15a8/12301ENGmedya3WEB09_07_12.pdf (accessed February 27, 2013).

Lambert P. (2011) *Courting Publicity: Twitter and Television Cameras in Court,* West Sussex, UK: Bloomsbury Professional.

Langbroek, P. (2011) "Digital Technology Leading the Way in Court Recording," *International Journal for Court Administration* 3:2.

Lee, I. (2010) *Culture of Resistance* (2010) feature documentary, directed by Iara Lee, produced by George Gund, USA. 73 min.

Legislationonline (2004) Criminal Code, Law Nr. 5327: Second Chapter-Essence of Criminal Responsibility, Article 20, September 26, 2004: http://legislationline.org/documents/action/popup/id/6872/preview (accessed April 1, 2014).

Levi, C. (2010) "Refugees, Europe, Camps/State of Exception: 'Into The Zone,' the European Union and Extraterritorial Processing of Migrants, Refugees, and Asylum-seekers (Theories and Practice)": http://eprints.gold.ac.uk/4593/1/LevyRSQ.pdf (accessed August 1, 2013).

Levinas, E. (1993) *Outside the Subject*, trans. Michael B. Smith, Stanford: Stanford University Press.

Lieblich, E. (2013) "Exterritory," lecture given at the Exterritory Project Symposium, Haifa, December 20, 2013.

Lieblich, E. "Show Us the Films: Transparency, National Security and Disclosure of Information Collected by Advanced Weapon Systems under International Law." *Israel Law Review* 45:3 (2012), pp. 459-491.

Lin, S. G. (2009) "Gaza's Shrinking Borders: 16 Years of the Oslo Process," *Dissident Voice*, December 26, 2009: http://dissidentvoice.org/2009/12/gaza's-shrinking-borders-16-years-of-the-oslo-process (accessed March 26, 2013).

Lubell, N. (2010) *Extraterritorial Use of Force Against Non-State Actors*, Oxford: Oxford University Press.

Lucas, J. R. (1990) "Props: An Overview of Demonstrative Evidence," *American Journal of Trial Advocacy*, 3, pp. 1097-1139.

Mackey, R., "Photographs of Battered Israeli Commandos Show New Side of Raid," The Lede Blog, *The New York Times*, June 7, 2010: http://thelede.blogs.nytimes.com/2010/06/07/photographs-of-battered-israeli-commandos-show-new-side-of-raid (accessed April 5, 2012).

Madison III, B. V. (1984) "Seeing Can Be Deceiving: Photographic Evidence in a Visual Age – How Much Weight Does It Deserve?" *William and Mary Law Review* 25, pp. 705-957.

Malinovic, M. (2011) *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy*. Oxford: Oxford University Press.

Marmara Derneği Resm (2013) Second Hearing Held in Historic Trial, The Freedom and Solidarity Association Mavi Marmara: http://www.mavimarmara.org/en/?p=105 (accessed April 15, 2014).

"Mavi Marmara Truth: Israeli soldiers killing Furkan (The Freedom Flotilla)" (2010):http://www.youtube.com/watch?v=rdA6jJ8dOZQ (accessed June 30, 2013).

"Mavi Marmara passengers attack IDF before soldiers board ship" (2010): http://www.youtube.com/watch?v=B6sAEYpHF24 (accessed November 6, 2012).

Mavi Marmara Indictment (2012) Testimony of Cihat Gökdemir: https://www.dropbox.com/sh/l0zl7g242zi1bu9/50rnIguSdl/STATEMENT%20OF

%20CIHAT%20GÖKDEMIR%20%28DIRECTOR%20OF%20MAZLUMDER%20NGO%29.pdf: (accessed February 1, 2013).

Mavi Marmara Indictment (2012) Testimony of Gülden Sönmez: https://www.dropbox.com/sh/l0zl7g242zi1bu9/r5EMPzTa6V/STATEMENT%20OF%20GULDEN%20SONMEZ%20%28IHH%20MEMBER%20OF%20BOARD%20LAWYER%29.pdf (accessed February 1, 2013).

Mason, P. (2000) "Lights, Camera, Justice? Cameras in the Courtroom: An Outline of the Issues," *Crime Prevention and Community Safety*, 2:3, pp. 23-34.

May, R. and Wierda, M. (1998) "Trends in International Criminal Evidence: Nuremberg, Tokyo, The Hague, and Arusha." *Colum. J. Transnat'l L.*, 37, p. 725.

Meir Amit Intelligence and Terrorism Information Center, (2012) *'Overview'*, blogpost, November 13, 2012: http://www.terrorism-info.org.il/en/articleprint.aspx?id=20422 (accessed February 5, 2013).

Mbembe, A. [2002] "The Power of the Archive and its Limits," in *Refiguring the Archive*, New York: Springer, pp. 19-27.

MGF – Millî Görüş Forum – IHH.flv, May 30, 2010: http://www.youtube.com/watch?v=bfFfK4CxUHM (accessed July 9, 2013).

Migdalovitz, C. (2010) *Israel's Blockade of Gaza, the Mavi Marmara Incident and its Aftermath*: http://www.fas.org/sgp/crs/mideast/R41275.pdf (accessed March 1, 2012).

Milliyet, (2013) "Çağlayan Adliyesi'nde polis müdahalesi Cascade police," June 2013: https://www.youtube.com/watch?v=x0yyQaNb5cU (accessed September 7, 2014).

Mnookin, J. L. (1998) "The Image of Truth: Photographic Evidence and the Power of Analogy," *Yale Journal of Law & the Humanities* 10:1, pp. 1-74.

Mommsen T. (1895) *History of Rome*: http://ia600404.us.archive.org/23/items/historyofrometra02mommuoft /historyofrometra02mommuoft.pdf.

Nora, P. (1989) "Between Memory and History: Les Lieux de Mémoire," *Representations* 26, pp. 7-24.

Nur, F. (2010) *Mavi Marmara Menembus Gaza*, Jakarta: Kesaksian Seorang Relawan.

Örücü, E. (2008) "What Is a Mixed Legal System: Exclusion or Expansion?" Electronic Journal of Comparative Law, 12:1: http://www.ejcl.org/121/art121-15.pdf (accessed April 27, 2014).

Osborne, T. [1999] "The Ordinariness of the Archive," *History of the Human Sciences* 12:2, pp. 51-64.

Osterhammel, J. (1986) "Semi-Colonialism and Informal Empire in Twentieth-Century China: Towards a Framework of Analysis," in Mommsen, W. J. (ed.) *Imperialism and After: Continuities and Discontinuities*. London: Allen & Unwin, pp. 290-314.

Owen, R. C. and Mather, M. (2000) "Thawing Out the Cold Record: Some Thoughts on How Videotaped Records May Affect Traditional Standards of Deference on Direct and Collateral Review," *J. App. Prac. & Process*, 2, p. 411.

Peleg, Guy, 2014, "Commando Unit Warrior is Prosecuting: "I Thought They Are Going to Execute Me", Channel 2 News, 11 April: http://www.mako.co.il/news-law/legal/Article-6cf8a45b4e15541004.htm (accessed April 16, 2014).

Perry, M., "Kevin Neish's Photos of Mavi Marmara Attack Published plus Full Interview," rabble.ca, June 9, 2010: http://rabble.ca/news/2010/06/do-not-publish-yet-kevin-neishs-photos-mavi-maramara-attack-published (accessed August 5, 2012).

Peterson, T. H. (2008) Temporary Courts, Permanent Records, History and Public Policy Program: http://www.wilsoncenter.org/sites/default/files/TCPR_Peterson_HAPPOP02.pdf (accessed August 12, 2014).

Pierini M. and Mayr, M. (2013) "Freedom of the Press in Turkey," Carnegie Europe, Carnegie Endowment for International Peace, Belgium & Open Society Foundation in Turkey: http://carnegieendowment.org/files/press_freedom_turkey.pdf (accessed February 25, 2013).

Pinchevski, A. and Liebes, T. (2010). "Served Voices: Radio and Mediation of Trauma in the Eichmann Trial," *Public Culture*, 22:2, pp. 265-291.

Pinchevski, A., Liebes, T. and Herman O. (2007) "Eichmann on the Air: Radio and the Making of an Historic Trial," *Historical Journal of Film, Radio and Television*, 27:1, pp. 1-26.

Porter, G. (2011) "A New Theoretical Framework regarding the Application and Reliability of Photographic Evidence," *International Journal of Evidence and Proof*, 1, pp. 26-61.

Porter, G. (2012) "Photographic Truth and Evidence," *Australian Journal of Forensic Sciences*, 2, pp. 183-92.

Quigley, H. S. (1926) "Extraterritoriality in China," *The American Journal of International Law*, 20:1, p. 48.

Ramadan, A. (2009) "Destroying Nahr el-Bared: Sovereignty and Urbicide in the Space of Exception," *Political Geography*, 28:3, pp. 153-163.

Rapaport, H. [2003] "Later Derrida: Reading the Recent Work," *Oxford Literary Review* 25:1, p. 385.

Raustiala, K. (2005) "The Geography of Justice," *Fordham Law Review*, 73:6, p. 2501.

Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident (2011): http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf (accessed September 13, 2012).

Republic of Turkey Ministry of Justice (2009) Juridical Reforms Strategy: http://www.sgb.adalet.gov.tr/yrs/Judicial%20Reform%20Strategy.pdf (accessed April 28, 2014).

Republic of Turkey Ministry of Justice Department of Information Technologies and Use of Information Technologies in the Judiciary: http://www.justice.gov.tr/basiclaws/JUDICIARY_2.pdf (accessed March 3, 2014).

Reuters (2012) "Turkey Tries Israeli Military Over Gaza Strip Killings," November 5, 2012: http://mobile.reuters.com/article/idUSBRE8A415T20121105?irpc=932 (accessed March 18, 2013).

Rolnik, G. (2010) "Taking Stock: Behind the Smoke Screen," *Haaretz*, June 8, 2010: http://www.haaretz.com/print-edition/business/taking-stock-behind-the-smoke-screen-1.294819 (accessed June, 17, 2012).

Ropes & Gray LLP for the Open Society Justice Initiative, Report on Access to Judicial Information, March 2009, New York, pp. 25-27: www.right2info.org/.../Access%20to%20Judicial%20Information%20Re (accessed March 3, 2014).

Santos, B. (2006) *The Rise of the Global Left: The World Social Forum and Beyond*, London: Zed Books.

Santos, B. (2007) "Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges," *Review*, 30:1, pp. 45-89.

Sharp, J. M. (2008) *The Egypt-Gaza Border and its Effect on Israeli-Egyptian Relations*. Foreign Press Center, U.S. Department of State: http://fpc.state.gov/documents/organization/101806.pdf (accessed January 2, 2013).

Saxton, L. (2008) *Haunted Images: Film, Ethics, Testimony and the Holocaust*, London & New York: Wallflower Press.

Sekula, A. (1986) "The Body and the Archive," *October*, 39, pp. 3-64.

Sheizaf, N. (2010) The Promised Land Blog, "IDF spokesman Spins Mavi Marmara Video for Local Political Purposes," August 13, 2010: http://www.promisedlandblog.com/?tag=mavi-marmara (accessed September 21, 2012).

Schmitt, C. (2005) *Political Theology: Four Chapters on the Concept of Sovereignty*, Chicago: Chicago University Press.

Scott, J. C. (2009) *The Art of Not Being Governed*, New Haven: Yale University Press.

Sefik, D. (2010) *Kanili Mavi Marmara*, Istanbul: Kalkedon.

Segarra, D. (2011) *Feu sur le Marmara*, documentary film, dir. David Segarra, Venezuela. *Mavi Marmara: The Inside Story*, TV documentary, Press TV, May 30, 2011.

Siegel, J. A. and Saukko P. J. (eds.) (2013) *Encyclopedia of Forensic Science*, 2nd Edition, San Diego: Academic Press.

Silbey, J. M. (2004) "Judges as Film Critics: New Approaches to Filmic Evidence," *University of Michigan Journal of Law Reform*, 37:2, pp. 493–571.

Simon J. (2012) "For Turkey, World's leading Jailer, a Path Forward," Committee to Protect Journalists, December 11, 2012: https://www.cpj.org/reports/Turkey2012.English.pdf (accessed February 25, 2013).

Shih Shun, L. (1969 [1925]) *Extraterritoriality: Its Rise and Its Decline*, New York: AMS Press.

Sönmez, Z. (2014) "Arrest Warrants Issued for Israeli Commanders over the Fatal Attack on Mavi Marmara," The Foundation For Humanitarian Rights and Freedoms 26 April: http://www.ihh.org.tr/en/main/news/0/arrest-warrants-in-mavi-marmara-case/2341 (accessed June 7, 2014).

Special Court for Sierra Leon (2003) Rules of Procedure and Evidence: https://www1.umn.edu/humanrts/instree/SCSL/Rules-of-proced-SCSL.pdf.

Santee, D. S. (2012) "More than Words: Rethinking the Role of Modern Demonstrative Evidence," *Santa Clara Law Review*, 1, pp. 105-144.

Spelman, E. (2013). "The Legality of the Israeli Naval Blockade of the Gaza Strip," *Web Journal of Current Legal Issues*: http://ojs.qub.ac.uk/index.php/webjcli/article/view/207/277 (accessed March 12, 2013).

Starr, J. (1991) *Law as a Metaphor: From Islamic Courts to the Palace of Justice*, Albany, NY: State University of New York.

State of Israel (2004) The Committee to Examine Opening Courts in Israel to The Electronic Media, Jerusalem: http://elyon1.court.gov.il/heb/doch%20electroni.pdf (accessed August 15, 2015).

State of Israel (2006) Ministry of Transport and Road Safety, Notice to Mariners No. 1/2009 Blockade of the Gaza Strip, January 6, 2006: http://en.mot.gov.il/index.php?option=com_content&view=article&id=124:no12009&catid=17:noticetomariners&Itemid=12 (accessed February 6, 2013).

Stepniak D. (2004) "Technology and Public Access to Audio-Visual Coverage and Recordings of Court Proceedings: Implications for Common Law Jurisdiction," *William and Mary Bill of Rights Journal*, 12, pp. 791-979.

Stoyanova, V. (2008) "The Principle of Non-Refoulement and The Right of Asylum-Seekers of Enter State Territory," *Interdisciplinary Journal of Human Rights Law,* 3:1.

Suavi A., Erdal, M., Mithat, S. and Atilgan, E. Ü. (2011) "Just Expectations: A Compilation of TESEV Research Studies on the Judiciary in Turkey," TESEV Publication, Istanbul, Turkey: http://www.tesev.org.tr/just-expectations--compilation-of-tesev-research-studies-on-the-judiciary-in-turkey/Content/249.html (accessed March 5, 2013).

Tank, P. (2005) "Political Islam in Turkey: A State of Controlled Secularity," *Turkish Studies,* 6:1, pp. 3-19.

Thurston, T. (1996-2009) The Law and Science of Evidence: http://chnm.gmu.edu/aq/photos/frames/essay01.htm (accessed June 29, 2014).

Today In Gaza, 2012, HH's Mehmet Kaya on Mavi Marmara Court Case, November 4, 2012: http://todayingaza.wordpress.com/2012/11/04/ihhs-mehmet-kaya-on-mavi-marmara-court-case (accessed April 18, 2014).

Treaty of Rome: https://web.archive.org/web/20070927211417/http://www.turkishembassy.org/index.php?option=com_content&task=view&id=57&Itemid=235 (accessed February 26, 2013).

Turkish Criminal Code (2009) Beta Publishing House, Istanbul: http://www.justice.gov.tr/eski/basiclaws/cmk.pdf (accessed April 21, 2014).

Turkish Diary (2011) Europe Largest Palace in Istanbul, August 1, 2011: http://www.buyuyenturkiye.com/turkishdiary/haber/europes-largest-palace-of-justice-in-istanbul (accessed March 19, 2013).

Turkish National Commission of Inquiry (2011), *Report on the Israeli Attack on the Humanitarian Aid Convoy to Gaza*: http://dosyalar.hurriyet.com.tr/mavimarmara_rapor.pdf (accessed March 10, 2012).

Turkel Commission Report (The Public Commission to Examine the Maritime Incident of 31 May 2010) (2010) Part 1, pp. 1-36: http://www.turkel-committee.gov.il/files/wordocs/8035report-heb.pdft (accessed July 7, 2011).

UNDP (2013) A Declaration on Juridical Transparency Endorsed by Asian Countries in Istanbul, December 1: http://www.ks.undp.org/content/turkey/en/home/presscenter/news-from-new-horizons/2013/12/declaration-judicial-transparency (accessed March 7, 2013).

UN ICTY (2000) A Report on the Audiovisual Coverage of the ICTY's Proceedings Finds that Cameras Contribute to a Proper Administration of Justice, April 19, 2000, The Hague: http://www.icty.org/sid/7869 (accessed March 24, 2014).

UN ICTY (2014) Courtroom Technology: http://www.icty.org/sid/167 (accessed September 2, 2014).

University Of Minnesota (1994) International Criminal Tribunal for the former Yugoslavia, Rules of Procedure and Evidence, U.N. Doc. IT/32/Rev.7 (1996), pp. 25-26, 37, 47: http://www1.umn.edu/humanrts/icty/ct-rules7.html (accessed September 2, 2014). And International Criminal Tribunal of Ruanda, 1996, Rules of Procedure of Evidence, July 5: http://www.unictr.org/Portals/0/English%5CLegal%5CEvidance%5CEnglish%5C050796e.pdf (accessed September 2, 2014).

United Nation Development Program, Istanbul Declaration On Transparency In The Judicial Process: http://www.ge.undp.org/content/dam/turkey/docs/demgovdoc/%C4%B0stanbul%20Declaration.pdf (accessed March 6, 2013).

United Nation General Assembly GA/11317 (2012) *General Assembly Votes Overwhelmingly to Accord to Palestine*, United Nations, 29 November: http://www.un.org/News/Press/docs/2012/ga11317.doc.htm (accessed June 1, 2013).

United Nations Human Rights Council (2011) "Report of the International Fact Finding Mission to Investigate the Violations of the International Law, including International Humanitarian and Human Rights Law Resulting from the Israeli Attack on the Flotilla of Ships Carrying Humanitarian Assistance": http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.PDF (accessed October 10, 2012).

UNRWA (2012): http://www.unrwa.org/userfiles/20120317152850.pdf (accessed September 1, 2013).

UN Secretary's Report (2011) "General Panel of Inquiry on the May 31 Flotilla Incident."

UPI (2014) "EU Has Juridical Concerns with Turkey," January 15, 2014: http://www.upi.com/Top_News/Special/2014/01/15/EU-has-judicial-concerns-with-Turkey/UPI-34421389798136 (accessed April 4, 2014).

Üzeyir, M. (2012) "Turkish Juridical Reform: It Has Achieved Much But There Is Much To Be Done," *International Justice Monitor*: http://www.judicialmonitor.org/archive_summer2012/judicialreformreport.html (accessed March 28, 2014).

Uzun, A. (2013) "Evidence by Documentation and Its Exception under the Code of Civil Procedure," Erdem & Erdem: http://www.erdem-erdem.com/en/articles/evidence-by-documentation-and-its-exceptions-under-the-code-of-civil-procedure (accessed July 19, 2014).

Van Bynkershoek, C. (2008) *A Treatise on The Law of War*, Clark, NJ: The Law Book Exchange.

Van Dyck (1881) "Capitulations of the Ottoman Empire," United States Department of State: http://library.universalhistory.net/wp-content/uploads/2011/05/kapitulasyon.pdf.

Velody, I. (1998) "The Archive and the Human Sciences: Notes towards a Theory of the Archive," *History of the Human Sciences* 11:4 , pp. 1-16, at p. 1.

Veterans News Now (2014) "Israel Must Be Held Accountable", March 28, 2014: http://www.veteransnewsnow.com/2014/03/28/israel-must-be-held-accountable (accessed April 20, 2014).

Walker, W. L. (1945) "Territorial Waters: The Cannon Shot Rule," *Brit. YB Int'l L.* 22, p. 210.

Weiss, P. (2010) "UN: Two Men Killed on 'Mavi Marmara' were Holding Cameras When They Were Shot," *Mondoweiss*, September 25, 2010: http://mondoweiss.net/2010/09/un-two-men-killed-on-mavi-marmara-were-holding-cameras-when-they-were-shot.html (accessed August 22, 2012).

Weizman, E. (2005) "On Extraterritoriality," *Public Space*, November 10-11, 2005: http://www.publicspace.org/ca/text-biblioteca/eng/b011-on-extraterritoriality (accessed June 5, 2012).

Weizman, E., Geisler, I. and Franke, A. (2003) "The Geography of Extraterritoriality," *Archis Magazine*: http://slought.org/files/downloads/events/SF_1351-Franke.pdf (accessed September 6, 2012).

Wigmore, H. J. (1915) *A Supplement to A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, Boston: Little, Brown & Company: https://archive.org/stream/cu31924020192401#page/n91/mode/2up (accessed August 10, 2014).

Yilmaz, I. (2005) "State, Law, Civil Society and Islam in Contemporary Turkey," *The Muslim World*, 95:3, pp. 385-411.

Yonah, J. (2013) "Turkey Resumes Gaza flotilla Trial for ex-IDF Heads," *Jerusalem Post*, February 21, 2013: http://www.jpost.com/Diplomacy-and-Politics/Turkey-resumes-Gaza-flotilla-trial-for-ex-IDF-heads (accessed April 16, 2013).

YNET (2013) "Turkish Court Rejects Marmara Victim's Family's Compensation Plea": http://www.ynetnews.com/articles/0,7340,L-4469745,00.html (accessed September 16, 2014).

Yücel, G. (2001) "The Struggle for Mastery: Turkey, France, and the Ankara Agreement of 1921,"*The International History Review*, 23: 3, pp. 560-603.

Endnotes

[1] Hildebrandt, M. (2013) "Extraterritorial Jurisdiction to Enforce in Cyberspace? Bodin, Schmitt, Grotius in Cyberspace." *University of Toronto Law Journal* 63: 2, pp. 196-224.

[2] van Bynkershoek, C. (2008) *A Treatise on The Law of War*, Clark, NJ: The Law Book Exchange. The establishment of cannon shot as a rule may be traced to the writings of several French and Dutch jurists from as early as the eighteenth century: see Walker, W. L. (1945) "Territorial Waters: The Cannon Shot Rule." *Brit. YB Int'l L.* 22, p. 210.

[3] See for example Ruti Sela and my solo exhibition presenting works and research created within the framework of the Exterritory Project: "Image Blockade," The Center for Contemporary Art, July 30–September 26, 2015, Tel-Aviv, Israel.

[4] See the report made by the Turkel Commission Report (The Public Commission to Examine the Maritime Incident of 31 May 2010) (2010), Part 1, pp. 1-36: http://www.turkelcommittee.gov.il/files/wordocs/8035report-heb.pdft (accessed July 7, 2011); G. Rolnik, "Taking Stock: Behind the Smoke Screen," *Haaretz*, June 8, 2010: http://www.haaretz.com/print-edition/business/taking-stock-behind-the-smoke-screen-1.294819 (accessed June, 17, 2012). See also Humanitarian Relief Foundation [IHH] Report: http://www.ihh.org.tr/mavi-marmaraya-saldirinin-delilleri-mahkemede/en (accessed January 6, 2013); The Free Gaza Movement (2013): http://www.freegaza.org (accessed February 4, 2013) ; *Haaretz*, "Turk Injured in Gaza Flotilla Dies After Four-Year Coma", 24 May 2014: http://www.haaretz.com/news/diplomacy-defense/1.592489 (accessed September 21, 2014).

[5] The inquiry was headed by retired IDF Major General Giora Eiland. The report was submitted to IDF Chief of Staff Gabby Ashkenazi. See IDF announcement, "Maj. Gen.(Res.) Eiland submits conclusions of military examination team regarding *Mavi Marmara*" (2010): http://www.idfblog.com/2010/07/12/maj-gen-res-eiland-submits-conclusions-of-military-examination-team-regarding-mavi-marmara-12-july-2010 (accessed March 6, 2011).

[6] The Turkel Commission was chaired by retired Supreme Court Justice Jacob Turkel. Turkel Commission Report: http://www.turkel-committee.gov.il/files/wordocs/8035report-heb.pdft (accessed July 7, 2011).

[7] Israel State Comptroller's Report, *A Critical Review of the Application of the National Security Committee Law and the Handling of the Turkish Flotilla* (2012): http://www.mevaker.gov.il/serve/contentTree.asp?bookid=615&id=0&contentid=12640&parentcid=undefined&bctype=12640&sw=1024&hw=698 (accessed September 12, 2012).

[8] United Nations Human Rights Council Report, *Report of the International Fact-Finding Mission to Investigate Violations of International Law, including International Humanitarian and Human Rights Law, Resulting from the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance* (2010): http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.PDF (accessed October 10, 2012).

[9] Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident (2011):

http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf, accessed September 13, 2012. The Palmer report was first leaked to the *New York Time*s on September 1, 2011, forcing the UN Secretary-General to present the report officially the following day. See Feldman, T. (2011) "A Tale of Two Closures: Comments on the Palmer Report Concerning the May 2010 Flotilla Incident," Blog of the *European Journal of International Law*, September 20, 2011: http://www.ejiltalk.org/a-tale-of-two-closures-comments-on-the-palmer-report-concerning-the-may-2010-flotilla-incident (accessed July 5, 2013).

[10] See the congressional report by Migdalovitz, C. (2010) *Israel's Blockade of Gaza, the Mavi Marmara Incident and Its Aftermath*: http://www.fas.org/sgp/crs/mideast/R41275.pdf (accessed March 1, 2012). See also a report sponsored by the International Bureau of Humanitarian NGOs (IBH) and Friends of Charities Association (FOCA), *Timeline and Inconsistencies Report Relating to the Gaza-bound Freedom Flotilla Attack* (2010): http://www.foca.net/media/documents/timeline-inconsistencies-gaza-flotilla-attack-31052010.pdf (accessed January 15, 2013).

[11] IHH Humanitarian Relief Foundation (2012), *The Mavi Maramara Case- Legal Actions Taken Aginst The Israeli Attack On The Gaza Freedom Flotilla On 31.05.2010*: http://www.ihh.org.tr/fotograf/yayinlar/dokumanlar/134-Mavi%20Marmara%20Hukuk%20Raporu%20-%2010%20Aral%C4%B1k%202012%20-mavi-marmara-legal-report.pdf (accessed April 29, 2014).
The Electronic Intifada (2013), *Spain prosecutor requests ICC referral of case against Israel's Netanyahu for 2010 flotilla attack*: http://electronicintifada.net/blogs/ali-abunimah/spain-prosecutor-requests-icc-referral-case-against-israels-netanyahu-2010 , June 18, 2014. Herb, Keinon (2014), *Complaint alleging aggravated assault, illegal threats, theft in international waters filed on behalf of Swedish nationals prompted investigation*, The Jerusalem Post: http://www.jpost.com/Diplomacy-and-Politics/Sweden-looks-into-Israeli-actions-toward-its-nationals-involved-in-flotillas-to-Gaza-360737 (accessed September 16, 2014).

[12] The report of the Turkish inquiry was published in February 2011, a month after the publication of the Israeli Turkel Commission Report, parts of which the Turkish report addresses. See Turkish National Commission of Inquiry, *Report on the Israeli Attack on the Humanitarian Aid Convoy to Gaza* (2011): http://dosyalar.hurriyet.com.tr/mavimarmara_rapor.pdf (accessed March 10, 2012).

[13] See Interpol Red Notice Removal Lawyers (2011), *Report: Turkish Prosecutor Seeks Interpol Notice for Flotilla Attackers*: http://interpolnoticeremoval.com/tag/istanbul-public-prosecutor-mehmet-akif-ekinci/(accessed January 15, 2013). See also IHH Indictment Files (2012): https://www.dropbox.com/sh/l0zl7g242zi1bu9/qFM6mGnfIj (accessed January 14, 2013). On Kayseri trial see YNET (2013), "Turkish Court Rejects Marmara Victim's Family's Compensation Plea": http://www.ynetnews.com/articles/0,7340,L-4469745,00.html (accessed September 16, 2014).

[14] International Criminal Court (2013), *ICC Prosecutor Receives Referral by the Authorities of the Union of the Comoros in relation to the Events of May 2010 on the Vessel 'MAVI MARMARA'*: http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-statement-14-05-2013.aspx (accessed May 15, 2013).

[15] ICC International Criminal Court (2014), "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on concluding the preliminary examination of the situation

referred by the Union of Comoros: ICC (2014) "Rome Statute legal requirements have not been met", November 6: http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-statement-06-11-2014.aspx (accessed November 8, 2014).

[16] Peleg, G. (2014) "Commando Unit Warrior is Prosecuting: "I Thought They Are Going to Execute Me", Channel 2 News, April 11, 2014: http://www.mako.co.il/news-law/legal/Article-6cf8a45b4e15541004.htm (accessed April 16, 2014).

[17] See, e.g., Bayoumi, M. ed. (2010) *Midnight on the Mavi Marmara*, Chicago: Haymarket; Filosu, O. (2011) *Mavi Marmara Gazze*, IHH; Nur, F. (2010) *Mavi Marmara Menembus Gaza*, Jakarta: Kesaksian Seorang Relawan; Sefik, D. (2010) *Kanili Mavi Marmara*, Istanbul: Kalkedon.

[18] See, e.g., *Feu sur le Marmara*, documentary film, dir. David Segarra, Venezuela, 2010. *Mavi Marmara: The Inside Story*, TV documentary, Press TV, May 30, 2011. IHH, *Mavi Marmara Art Exhibition*, opened August 4, 2010: http://www.ihh.org.tr/en/main/news/0/mavi-marmara-art-exhibition-opens/220 (accessed May 1, 2013). About the premiere of the play *Ölüyoruz, Demek ki Yaşanılacak* [Dying to Give Life], written by Sedat Doyan and directed by Bedir Avşin, see IHH, "Aljazeera begins 15th-year celebrations with *Mavi Marmara* play," November 16, 2011: http://mavi-marmara.ihh.org.tr/fr/main/news/0/aljazeera-begins-15th-year-celebrations-with-/1179 (accessed May 1, 2013).

[19] Interestingly both sides identify the other side as terrorists, see for example: from the testimony of one of the Israeli commandos: ""I have no doubt that the terrorists on the vessel planned, organised, foresaw the events, and planned to kill a soldier." Or from the testimony of soldier 16: "we identified a group of terrorists with protective vests", testimony of soldier no. 4: "As I reached the deck, I noticed a terrorist with an iron crowbar waiting to strike me in the head, but when he tried to hit me…", The Turkel Commission Report (2010), Part 1, *The Public Commission to Examine the Maritime Incident of 31 May 2010*, pp. 153, 206, 215: http://www.turkel-committee.gov.il/files/wordocs/8035report-heb.pdf (accessed July 9, 2011).

[20] Foucault, M. (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, New York: Pantheon, p. 133.

[21] The need to view even the concept of territory beyond territorial lens was stressed by Professor Stuart Elden in a talk he gave in the frame of an Exterritory Project symposium. According to Elden, the original meaning of the classical Latin term *territorium* was the agricultural lands surrounding a town, settlement or colony .See Elden, S., "Outside Territory," lecture, Exterritory Project Symposium, Paris, May 2, 2012.

[22] The claim that extraterritoriality should not be understood simply as a derivative of territoriality has been made with regard to antiquity. For example, Richard Johnsson writes: "Extraterritoriality, or non-territorial governance, does not stop at religious tolerance but extends it to all spheres of life. Thus, it seems that the guiding principles behind this historical system of non-territorial governance is so distinct from the present exclusive system of territorial governance that, in fact, the two systems cannot be regarded as anything else but opposites, as anything else but mutually exclusive, as anything but principally totally different in nature." Johansson, R. (2005) "Non-Territorial Governance, Mankind's Forgotten Legacy: A Review of Shin Shin Liu's *Extraterritoriality: Its Rise and Its Decline*," Panarchy: http://www.panarchy.org/johnsson/review.2005.html (accessed July 8, 2012).

[23] Agamben, G. (2003), *State of Exception*, Chicago: University of Chicago Press, p. 59.

[24] On the restriction imposed on Gaza see e.g., Gisha – Legal Center for Freedom of Movement (2006) "Disengaged Occupiers: The Legal Status of Gaza": http://www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf (accessed January 4, 2013). And the "The Siege on Gaza" (2011), B'Tselem: The Israeli Information Center for Human Rights in the Occupied Territories: http://www.btselem.org/gaza_strip/siege (accessed June 5, 2012).

[25] A publication by the IHH Research Department notes at different points that the flotilla set sail in order to "end an ongoing embargo on Gaza." A press release dated April 3, 2010, included in the same publication, states that the flotilla is "a coalition bringing together a number of organisations and movements working to break Israel's illegal blockade." According to the same publication, the Free Gaza Movement stated that the initiative was launched by "an umbrella organisation established by pro-Palestinian groups and human rights advocates to increase public awareness of the blockade on the Gaza Strip ... [in order] to break the siege of Gaza": IHH Department of Research and Publication, *Mavi Marmara: Gaza Freedom Flotilla*, pp. 8, 13, 33.

[26] According to the Turkel Commission Report, the IDF planned to deploy a second-wave force whose task was "(a) to bring the flotilla vessels to Israeli ports; (b) to make a list of the persons on board and to deal with the magnetic media that would be found on board the vessels." The Israeli troops searched for both weapons and magnetic media. Some of the magnetic media gathered at this stage were transferred to Israel by helicopter to be used by the IDF Spokesperson's Unit. The rest of the material was transferred to the Document and Technological Capture Collection Unit upon the ship's arrival at Ashdod Port. See the Turkel Commission Report (2010), Part 1, pp. 129, 176, 178.

[27] The Turkel Commission describes reviewing hundreds of hours of audio and video footage of the forty-minute skirmish, representing multiple sources and perspectives. See the Turkel Commission Report (2010), Part 1, p. 11: http://www.turkel-committee.gov.il/files/wordocs/8035report-heb.pdft (accessed July 7, 2011). Detailed references list to publicly available footage, see in section 5 of this dissertation.

[28] The Foundation For Humanitarian Rights and Freedoms, 2012, Israel on the Felon's Dock: MaviMarmara Trial Begins In Caglayan On November 6: http://www.ihh.org.tr/ (accessed April 12, 2014).

[29] "In absentia," *The People's Law Dictionary* (2005) Hill, G. N. and Hill, K. T.: http://legal-dictionary.thefreedictionary.com/in+absentia (accessed February 6, 2013).

[30] See e.g., Bruch, J. (2012). "Israeli Military over Gaza Ship Killing," The Daily Star, Lebanon, November 5, 2012: http://www.dailystar.com.lb/News/Middle-East/2012/Nov-05/193962-turkey-to-try-israeli-top-brass-in-deadly-flotilla-raid.ashx#axzz2IRZw5noP (accessed January 15, 2013).

[31] Republic of Turkey Ministry of Justice (2009), Juridical Reforms Strategy, p. 9: http://www.sgb.adalet.gov.tr/yrs/Judicial%20Reform%20Strategy.pdf (accessed April 28, 2014).

[32] Legislation Online (2004) Criminal Code, Law Nr. 5327: Second Chapter-Essence of Criminal Responsibility, Article 20, 26 of September: http://legislationline.org/documents/action/popup/id/6872/preview (accessed April 1, 2014).

[33] For a detailed account and references, see section 7 of this dissertation.

[34] IHH Humanitarian Relief Foundation (2012) The Mavi Maramara Case: Legal Actions Taken Against The Israeli Attack on The Gaza Freedom Flotilla On 31.05.2010, December 10, 2012: http://www.ihh.org.tr/fotograf/yayinlar/dokumanlar/134-Mavi%20Marmara%20Hukuk%20Raporu%20-%2010%20Aral%C4%B1k%202012%20-mavi-marmara-legal-report.pdf (accessed April 29, 2014). On the Turkish justice system's need for reform in translation services, see for example Berk Kalem, S. (2011) "Access to Justice," in *Turkey: Indicators and Recommendations*, Turkish Economic and Social Studies Foundation: Tesev Publications, pp. 32-35: http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=135218 (accessed March 3, 2014).

[35] See for example Brain, R. D. (1992) "The Derivative Relevance of Demonstrative Evidence: Charting Its Proper Evidentiary Status," *U.C. Davis Law Review*, 4, pp. 957-1027.

[36] Bergel, S. I. (1985) "Evidence – Silent Witness Theory Adopted to Admit Photographs without Percipient Witness Testimony (Case Note)," *Suffolk University Law Review*, 2, pp. 353-359.

[37] Quotation taken from Guilshan, C. A. (1992) "A Picture Is Worth a Thousand Lies: Electronic Imaging and the Future of the Admissibility of Photographs into Evidence," *Rutgers Computer & Technology Law Journal*, 1, pp. 365-80. See also Madison, B. V. III (1984), "Seeing Can Be Deceiving: Photographic Evidence in a Visual Age -- How Much Weight Does It Deserve?" *William and Mary Law Review*, 25, pp. 705-957.

[38] Ernest, K. (1966) *Etymological Dictionary: A Comprehensive Dictionary of the English Language*, Amsterdam: Elsevier; Andrews, E. L. (1865), *A Copious and Critical Latin-English Lexicon*, New York: Harper Brothers, pp. 586-587.

[39] Shih Shun, L. (1969 [1925]) *Extraterritoriality: Its Rise and Its Decline*, New York: AMS Press; Kassan, S. (1935) "Extraterritorial Jurisdiction in the Ancient World," *The American Journal of International Law*, 29:2, pp. 237-247.

[40] Kassan, p. 240.

[41] See Shih Shun (1969), p. 9; Kassan (1935), p. 245; Walbank, M. B. (1978) *Athenian Proxenies of the Fifth Century B.C.* Toronto: Samuel Stevens.

[42] Mommsen T. (1895) *History of Rome*, 199: http://ia600404.us.archive.org/23/items/historyofrometra02mommuoft /historyofrometra02mommuoft.pdf. Cf. Shih Shun (1969), pp. 9-10; Kassan (1935), p. 246.

[43] Dollinger, A. (2000) "Herodotus on Proteus," *An Introduction to the History and Culture of Pharaonic Egypt*: http://www.reshafim.org.il/ad/egypt/herodotus/proteus.htm (accessed August 7, 2013): "After him, they said, there succeeded to the throne a man of Memphis, whose name in the tongue of the Hellenes was Proteus; for whom there is now a sacred

enclosure at Memphis, very fair and well ordered, lying on that side of the temple of Hephaistos which faces the North Wind. Round about this enclosure dwell Phenicians of Tyre, and this whole region is called the Camp of the Tyrians. Within the enclosure of Proteus there is a temple called the temple of the 'foreign Aphrodite,' which temple I conjecture to be one of Helen the daughter of Tyndareus, not only because I have heard the tale how Helen dwelt with Proteus, but also especially because it is called by the name of the 'foreign Aphrodite,' for the other temples of Aphrodite which there are have none of them the addition of the word 'foreign' to the name." See also Herodotus (1920) *The Histories*, trans. A. D. Godley, Cambridge, MA: Harvard University Press. See also Shih Shun (1969), p. 9. Interestingly, it has been suggested that the Peregrines' ability to live according to their own laws ended when they received Roman citizenship; see also Johnsson: http://www.panarchy.org/johnsson/review.2005.html.

[44] Kassan (1935), p. 241, mentions the immigration of the Jews into Egypt from the land of Canaan and the migration of the nomadic Mentin tribe to Goshen, where they lived under independent rule.

[45] Ibid.

[46] Johnsson: http://www.panarchy.org/johnsson/review.2005.html.

[47] Ibid.

[48] Shih Shun (1969), p. 12. Cf. Cassel, K. (2012) *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan*. Oxford: Oxford University Press, p. 9. Shih Shun claims that "[i]n the absence of any views of territorial sovereignty…racial consanguinity was treated as the sole basis of amenability to law." Johnsson disagrees however: "This cannot be entirely true, as the Alamanns (Alamannis), apparently, seceded from Lombard laws to establish Alamann laws. It rather seems like ethnicity was just one basis for how people decided what laws to live under, perhaps even the dominant, but evidently not the sole basis." See also Shih Shun (1969), p. 10, and Johnsson: http://www.panarchy.org/johnsson/review.2005.html.

[49] Shih Shun (1969), p. 12.

[50] In a late nineteenth-century report, Edward A. Van Dyck, Consular Clerk of the United States at Cairo, writes: "These treaties [between Christians and Muslims] received, however, a name different to that given to treaties that were concluded by the Christian powers among themselves. Instead of being called treaties they were called capitulations, i.e., letters of privilege, or, according to the Oriental expression, imperial diplomas containing sworn promises." The early capitulations, Van Dyck stresses, were not reciprocal but only grants of privileges and immunities: see Van Dyck (1881) "Capitulations of the Ottoman Empire" United States Department of State: http://library.universalhistory.net/wp-content/uploads/2011/05/kapitulasyon.pdf, pp. 12, 24. According to Shih Shun (1969), pp. 25-26, the objective of the capitulations according was to regulate the conditions under which Europeans were to do business in the Levant; the interests of Muslims, whether at sea or abroad in a Christian country, were ignored in the scramble to encourage European commerce at home. According to Eliana Augusti, the capitulations were granted based on an explicit promise to keep peaceful relations with the Ottoman rulers, subject to the understanding that any violation may result in a unilateral revocation of the privileges: Augusti, E. (2011), "From Capitulations to Unequal Treaties: The Matter of an Extraterritorial Jurisdiction in the Ottoman Empire," *Journal of Civil Law Studies*, 4, pp. 294.

[51] Van Dyck (1881), p. 25. This definition is almost entirely opposed to recent articulations of extraterritoriality as related to "law at a standstill": whereas older articulations used this definition to enhance the autonomy of foreigners, contemporary articulations use it to diminish and even to deny such autonomy.

[52] Shih Shun (1969), p. 22.

[53] Such quarters are also mentioned in Van Dyck's report; the Arabic word 'Funduk', he writes, was used to designate the quarters inhabited by Pisans, Genoese, and other foreigners who traded in the cities of the Levant. The names of some quarters still retain reference to the nationality of their erstwhile denizens. For example, the city of Sidon still contains the Khan el-Afrange, i.e., the Home of the French (see Van Dyck [1881], p. 89).

[54] Shih Shun (1969), p. 25. In some cases, such specially designated quarters for foreigners were called "farms" (Augusti [2011], p. 291). On capitulations for citizens of the Italian republics in the period between 1150 and 1200, see also Van Dyck (1881), pp. 12-13. For a first-hand account of the capitulations regime in the Ottoman Empire, see, e.g., Van Dyck: "the agents of Ottoman public force cannot enter the residence of the foreigner without the assistance of the consul or the delegate of the consul of the power on which the foreigner depends" (p. 43).

[55] According to Shih Shun (1969), imperialism could not have been the origin of extraterritoriality, "inasmuch as the notion of territorial sovereignty was as yet unknown when extraterritoriality took its root" (p. 32). In addition, Shih Shun claims, imperialism itself is based on a later idea of territorialism. Nevertheless, when exploring the notion of extraterritoriality in the nineteenth century, Shin Shun identifies it with a kind of imperialism. See Johnsson: http://www.panarchy.org/johnsson/review.2005.html.

[56] Cassel, p. 72.

[57] Augusti, p. 11.

[58] Ibid., p. 288.

[59] Ibid. Augusti refers here to claims made by Antoine Pillet.

[60] Kayaoğlu, T. (2010). *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China*, Cambridge: Cambridge University Press. Shih Shun writes: "In the Far East, extraterritorial rights have been enjoyed by foreign Powers in China, Japan, Korea, Siam, Borneo, Tonga and Samoa. The earliest grant of such rights made by China to Great Britain was contained in the supplemental treaty of July, 1843. The first treaty entered into by Japan was that of March 31, 1854, with the United States, but it included no provision regarding extraterritorial jurisdiction. Of all the European treaties the Russian, dated January 26/February 7, 1855, appears to have contained the earliest germs of extraterritorial jurisdiction in Japan. In Korea, Japan was the first foreign Power to secure extraterritorial rights. The formal establishment of extraterritoriality in Siam dates from the treaty of April 18, 1855, with Great Britain. The United States and Great Britain have enjoyed extraterritorial rights in Borneo since the middle of the last century. Before the Tonga Islands fell under the protection of Great Britain, various Powers obtained title to rights of jurisdiction in that country. The first treaty containing a specific grant of this nature was that with Great Britain, dated November 29, 1879. Finally, in Samoa, the United States, Germany and Great Britain

enjoyed extraterritorial rights before the islands were divided up between Germany and the United States in 1899" (p. 42). According to H. S. Quigley, the origins of extraterritoriality in China can be traced to the ninth century, when Arab traders residing at Canfu (Canton or Haiyen) were permitted to govern themselves under their own laws. See Quigley, H. S. (1926) "Extraterritoriality in China," *The American Journal of International Law* 20:1, p. 48.

[61] Kayaoğlu further claims that Western governments collaborated with each other to sustain extraterritoriality in non-Western countries. By contrast, non-Western powers never exercised extraterritoriality, with the exception of Japan, which, as a result, was considered a member in the exclusive club of "civilised sovereignty states." See Kayaoğlu, p. 8.

[62] Ibid, pp. 9-12.

[63] Cassel (2012), p. 10.

[64] Ibid., p. 12.

[65] "From which it would follow necessarily that within a settlement or concession non-treaty foreigners when defendants would be under the jurisdiction of the mixed court": Quigley (1926), p. 54.

[66] Abby, P. R. (2005) "Treaty Ports and Extraterritoriality in 1920 China": http://www.chinapage.com/transportation/port/treatport1.html (accessed August 27, 2013). See also Osterhammel, J. (1986) *Semi-Colonialism and Informal Empire in Twentieth-Century China: Towards a Framework of Analysis*, in W. J. Mommsen (ed.), *Imperialism and After: Continuities and Discontinuities*, London: Allen & Unwin, pp. 290-314.

[67] "The Anglo-Chinese and American-Chinese treaties signed on January 1, I943 which brought an end to British and American extraterritorial rights have been regarded as the 'finale' which ended the old order and ushered in a new one in China": Chan, K. C. (1977) "The Abrogation of British Extraterritoriality in China 1942-43: A Study of Anglo-American-Chinese Relations," *Modern Asian Studies*, 11:2, pp. 257-291.

[68] Council of Europe (1953) Convention for the Protection of Human Rights and Fundamental Freedoms: http://conventionsf.coe.int/Treaty/en/Summaries/html/005.htm (accessed August 1, 2013). The treaty's relation to the application of exterritorial human rights has been described as highly important for two reasons ". First, the ECHR system is by far the strongest of all human rights regimes (if far from perfect) in its ability to effectively secure compliance and have a direct impact on state policy. The stakes are highest in Strasbourg, because the Court will be listened to. Secondly, it is precisely because the stakes are highest in Strasbourg that the jurisprudence of the European Court of Human Rights on extraterritorial application is the richest and the most developed. At the same time, it is the most problematic, suffering from rampant casuistry and conceptual chaos. It is a jurisprudence of (at times quite unprincipled) compromise, caused mostly by the Court's understandable desire to avoid the merits of legally and politically extremely difficult cases by relying on the preliminary issue of extraterritorial application." Malinovic, M. (2011) *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy*. Oxford: Oxford University Press, p. 4.

[69] Ibid.

[70] See Lieblich, E. (2013) "Exterritory," lecture, Exterritory Project Symposium, Haifa, December 20, 2013. In his talk, Libelich further stressed how despite the fact that these processes were perceived as a positive developments, they were also abused by Western states as pretexts for intervention and as instruments of neo-colonisation.

[71] Ibid, p. 35.

[72] According to political philosopher James C. Scott, Zomia, a border area in Southeast Asia, is the largest area in the world in which people were not fully incorporated into the state system until the 1950s. Scott (who uses the term "fully occupied world") identifies four eras of political-territorial organisation: (1) the stateless era (which was by far the longest); (2) the era of small-scale states encircled by vast and easily accessed stateless peripheries; (3) a period in which stateless peripheries shrank and were beleaguered by the expansion of state power; and, finally, (4) the current era in which virtually the entire globe has become an "administrated space," with stateless peripheries remaining "not much more than a folkloric remnant." Scott, J. C. (2009) *The Art of Not Being Governed*. New Haven: Yale University Press, p. 324.

[73] See, e.g., Weizman, E. (2005) "On Extraterritoriality," *Public Space*, November 10-11, 2005: http://www.publicspace.org/ca/text-biblioteca/eng/b011-on-extraterritoriality (accessed June 5, 2012). See also Agier, M. (2010) "Humanity as an Identity and Its Political Effect: A Note on Camps and Humanitarian Government," *Humanity: An International Journal of Human Rights, Humanitarianism and Development*, 1:1, pp. 29-45; Levi, C. (2010), "Refugees, Europe, Camps/State of Exception: 'Into The Zone,' the European Union and Extraterritorial Processing of Migrants, Refugees, and Asylum-seekers (Theories and Practice): http://eprints.gold.ac.uk/4593/1/LevyRSQ.pdf (accessed August 1, 2013); Hanfi, S. (2010) "Palestinian Refugee Camps in Lebanon: Laboratory of Indocile Identity Formation": http://staff.aub.edu.lb/~sh41/dr_sarry_website/publications/32_Camps_Lebanon_Khalidi_eng.pdf (accessed August 8, 2012); Adam Ramadan, "Destroying Nahr el-Bared: Sovereignty and Urbicide in the Space of Exception" (2009) *Political Geography*, 28:3, pp. 153-163.

[74] According to Agamben, the origins of the "state of exception" can be traced back to the German "state of necessity," and (following Schmitt), even earlier, to the Napoleonic "state of siege" which extended military power and suspended constitutional law. Agamben explores the history of the state of exception in the French constitution (where "the power to suspend the law can belong only to those who produce the laws") and in the anti-democratic, anti-constitutional European dictatorships between the two world wars. Following Schmitt, he writes that the state of exception is "an exclusive legacy of the undemocratic tradition." See Agamben, G. (1995) *Homo Sacer: Sovereign Power and Bare Life*, Stanford: Stanford University Press, p. 19.

[75] Schmitt, C. (2005) *Political Theology: Four Chapters on the Concept of Sovereignty*, Chicago: Chicago University Press.

[76] Benjamin, W., (1996) *Selected Writings, Vol. 1: 1913-1926*, Cambridge, MA: Belknap Press, pp. 236-252.

[77] Agamben (1995), p. 41.

[78] Agamben (2003), pp. 16, 29, 38, 39, 40.

[79] Ibid., p. 19. Cf. Agamben, G. (2000) *Means Without End* (trans. V. Binetti), Minneapolis: University of Minnesota Press, pp. 14-24.

[80] Agamben (1995), pp. 95-97.

[81] Ibid., p. 99.

[82] Sacratio arises out of the conjunction of two traits: the unpunishipility of killing and the exclusion of sacrifice. Agamben claims that the structure of Sacratio is connected to the structure of sovereignty, which is based on a double exclusion: the sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating sacrifice. Agamben (1995) further writes: "the sovereign is the one with respect to whom the all men are potentially homines sacri, and homo sacer is the one with respect to whom all men acts as sovereigns" (pp. 52-53).

[83] Agamben, *Means Without End*, pp. 3-15. Agamben quotes Schmitt to emphasise the relation between territory and the "state of exception" inscribed in soverign law: "The 'ordering of space' that is, according to Schmitt, constitutive of the sovereign *nomos* is therefore not only a 'taking of land' (*Landesnahme*)—the determination of a juridical and a territorial ordering (of an *Ordnung* and an *Ortung*)—but above all a 'taking of the outside,' an exception (*Ausnahme*)" (*Homo sacer*, p. 19).

[84] Agamben, *Means Without End*, pp. 14-24.

[85] As I noted earlier, some claim that extraterritoriality first emerged from jurisdictional conflicts. For this claim in relation to the "state of emergency," see Agamben, *State of Exception*, p. 10.

[86] Ibid., p. 31.

[87] On the concept of pure violence see Benjamin, W. (1986), "Critique of Violence," in *Reflections: Essays, Aphorisms, Autobiographical Writi*ngs, New York: Schocken, pp. 277-300.

[88] Around 455,000 refugees are registered with UNRWA (United Nations Relief and Works Agency for Palestinian Refugees in the Near East) in Lebanon, many (53%) in the country's twelve refugee camps. Palestinian refugees are estimated to make up ten per cent of Lebanon's population. See http://www.unrwa.org/etemplate.php?id=65 (accessed September 1, 2011). Cf. Malinovic, p. 98.

[89] See Hanfi: http://staff.aub.edu.lb/~sh41/dr_sarry_website/publications/32_Camps_Lebanon_Khalidi_eng.pdf.

[90] Ibid, pp. 9-13.

[91] Ibid, p. 14. According to Hanfi, the camp's extraterritorial jurisdiction was an outcome of a burgeoning Palestinian nationalism. Later developments, however—the expulsion of the PLO and the horrific massacres at the camps Sabra and Shatila—bring to mind Agamben's view of the camp as a site for the production of "political bare life," and thus as a site of "de-nationalisation": *Homo sacer*, pp.98- 99.

[92] See interview with Sari Hanafi (himself a Palestinian refugee): Biemann, U. (2012)

Articulating the Exception: http://www.geobodies.org/books-and-texts/texts: "For Sari Hanafi … Nahr el Bared is the epitome of how the Lebanese authorities conceive of such extraterritorial space: 'The camp is located outside the city of Tripoli but they allow no infrastructure to connect the camp to the city; they marginalise it, govern it by emergency law and then abandon it. This is the very condition under which the refugee camps in Lebanon are turned into a place where other extraterritorial elements, like al-Qaeda, can come and establish their microcosm'" (p. 97). A legal discussion of extraterritoriality in relation to non-state actors and organisation is beyond the scope of this review. The issue's enormous complexity begins with the basic question of how non-state actors (e.g. al-Qaeda) ought to be classified. Noam Lubell writes: "…it is certainly plausible to argue that initially Al-Qaeda was a non-state actor, and may have remained as such at the time the US began its military operations in Afghanistan, but that at some point during the hostilities, when it appeared that some of the Al-Qaeda members were fighting within the structure and chain of command of the Taliban—the then *de facto* government—those individuals and any hostilities they were involved in at that time and place would have been part of an international armed conflict... If, following the US invasion and the commencement of battle, Al-Qaeda fighters became integrated within the organisational structure of the Taliban forces, it could be argued that they too were then part of an international armed conflict" (Lubell, *Extraterritorial Use of Force Against Non-State Actors*, Oxford: Oxford University Press, 2010, p. 98). Also see Malinovic, p. 98.

[93] Hanfi, p.13.

[94] According to UNRWA, there are eight camps in the Gaza Strip and nineteen in the West Bank. 1,167,572 refugees are registered in Gaza, 727,471 in the West Bank. See UNRWA (2012): http://www.unrwa.org/userfiles/20120317152850.pdf (accessed September 1, 2013).

[95] Hanafi, p. 22.

[96] Agier (2010) discusses extraterritoriality and the state of exception in the context refugee camps in Asia and Africa, comparing them to retention centers in Europe: "[T]here is still a way to compare all these camps, if we consider the disorder that blurs the order presented above that is at once symbolic and social. This disorder takes two forms. On the one hand, it is the discretionary power that the extraterritoriality of camps gives to 'administrators' of spaces of exception. Moreover, the violence that takes place in a retention center in Europe can happen elsewhere by virtue of its invisibility—for example, in transit zones annexed to the most stable and monitored camps of the UNHCR in Africa… What we can compare, in these cases, are practices in situations of exception": Agier, M. (2005), "Humanity as an Identity and its Political Effect: A Note on Camps and Humanitarian Government," *Humanity* 1:1: http://humanityjournal.org/humanity-volume-1-issue-1/humanity-identity-and-its-political-effects-note-camps-and-humanitarian-go. Agier goes on to claim that the three characteristics that identify the 'space' of humanitarian apparatuses are extraterritoriality, religion, and exception; see Agier, p.38. Additional examples can be found in Agier M. and Bouchet-Saulnier F. (2004) "Humanitarian Spaces: Spaces of Exception," in *The Shadow of Just Wars: Violence, Politics and Humanitarian Action*, ed. Fabrice Weissman, Ithaca, NY: Cornell University Press, pp. 297-313.

[97] Agier, M. (2011) "The Undesirables of the World and How Universality Changed Camp," *Open Democracy*, May 16, 2011: http://www.opendemocracy.net/author/michel-agier (accessed June 7, 2012). Extraterritorial jurisdiction is administratively applied as a legal tool that enables states to withhold accesses to asylum seekers and in other varied ways. Additional examples mentioned by Agier are the use of coastal islands as detentions centers

in Europe and Australia, converted to retention centers for foreigners in order to circumvent the law of asylum. In another example, the US government has claimed not to be responsible for the actions of its own officials, US coast guards who apprehended Haitian asylum seekers outside of American jurisdiction and forced them to return to Haiti. More relevant to our discussion are French laws which seem to challenge the very relation between space and the application of extraterritoriality: See Agier (2011) and Stoyanova, V. (2008) "The Principle of Non- Refoulement and The Right of Asylum-Seekers of Enter State Territory," *Interdisciplinary Journal of Human Rights Law* 3:1.

[98] Raustiala, K. (2005) "The Geography of Justice," *Fordham Law Review* 73:6, p. 2501.

[99] "The Guantanamo Bay Naval Base has been under U.S. control since 1903. Despite the century-long American presence, the official position of the U.S. government is that Guantanamo is not American territory. An unusual agreement declares that Cuba retains "ultimate sovereignty" over Guantanamo. The United States, however, exercises "complete jurisdiction and control." Raustiala describes the legal status of the camp as a form of U.S. occupation, similar to the status of U.S. bases in Iraq.

[100] Weizman, E. Geisler, I. and Franke, A. (2003) "The Geography of Extraterritoriality," *Archis Magazine*: http://slought.org/files/downloads/events/SF_1351-Franke.pdf (accessed September 6, 2012). Cf. Primo Levi's description of the figure of the Muselmann as deprived of "all consciousness and all personality as to make him absolutely apathetic… All his instincts are canceled along with his reason" (quoted by Agamben, *Homo sacer*, pp. 103-104).

[101] Agamben notes the debate among historians about the origins of the camp, with some dating the first camps to Spanish colonialism in Cuba, others to the South African concentration camps in which the English imprisoned the Boers. What is important, Agamben writes, is that in these camps "a state of emergency linked to a colonial war [was] extended to an entire civil population… the camps [were] thus born out of a state of exception and martial law" (*Homo sacer*, p. 95). Agamben adds: "The state of exception echoes the law at standstill, the production of juridical void"; or "the state of exception is not defined as fullness of powers, a pleromatic state of law, as in the dictatorial model, but as a kenomatic state, an emptiness and standstill of the law" (*State of Exception*, pp. 42, 48).

[102] In contemporary times, extraterritorially is claimed in varying degrees of legality, in many cases (according to some) unlawfully. Discussions of these issues contributed to the closing of the camp at Guantanamo; yet, as both Gregory and Weizman, Geisler and Franke note, other camps with similar conditions have operated in Afghanistan and Iraq (receiving, as Gregory writes, some of the detainees from X-Ray Camp when the latter was closed). See Gregory, D. (2006) "The Black Flag: Guantánamo Bay and the Space of Exception," *Geografiska Annaler*, 88:4, pp. 405–427.

[103] Ibid.

[104] Santos, B. (2007) "Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges," *Review*, 30:1, pp. 45-89.

[105] Walter Benjamin writes: "The tradition of the oppressed tells us that the state of emergency in which we live in is not an exception but a rule. We must attain to a conception of history that is keeping with this insight… This amazement is not the beginning of knowledge—unless it is the knowledge that the view of history which gives rise to it is untenable": Benjamin (1940), "On the Concept of History,":

http://walterbenjamin.ominiverdi.org/wp-content/walterbenjamin_ conceptthistory.pdf. Santos himself recommends that struggles for global social justice be based on a very broad conception of power and oppression: see Santos, B. (2006) *The Rise of the Global Left: The World Social Forum and Beyond*, London: Zed Books, pp. 36-37. Cf. Agamben (2000), p. 8.

[106] Santos (2007) suggests replacing the dialectical notion with an "ecological" one: "As an ecology of knowledges, post-abyssal thinking is premised upon idea of the epistemological diversity of the world, the recognition of the existence of a plurality of knowledges beyond scientific knowledge" (p. 28).

[107] Ibid., pp. 4-5.

[108] Ibid., p. 9.

[109] Ibid., pp. 10-11.

[110] Ibid., p. 11.

[111] Ibid., p. 28.

[112] On exception and "justice without law," see for example: Agamben, G (2005), *The Time that Remains: A Commentary on the Letter to the Romans*, Stanford: Stanford University Press, p. 107.

[113] Levinas, E. (1993), *Outside the Subject*, trans. Michael B. Smith, Stanford: Stanford University Press, pp. 116-125.

[114] Ibid., p. 123. Also see Bernasconi R. (2008), "Extra-Territoriality: Outside the State, Outside the Subject," *Levinas Studies*, 3, pp. 61-77.

[115] Bauman, Z. (1999), "The World Inhospitable to Levinas," *Philosophy Today* 43:2, pp. 151-167.

[116] Bauman, Z. (2000) *Liquid Modernity*, Malden: Polity Press.

[117] Ibid., p. 11.

[118] Ibid., p. 121.

[119] Ibid., p. 13.

[120] Keller, E. (2012). "Zone: The Spatial Software of Extrastatecraft," *Places* 82: 5, pp. 58–63.

[121] At least not his major books dedicated to these issues: *Homo Sacer*, *State of Exception*, and *Means Without Ends*.

[122] Agamben, *Means Without Ends*.

[123] Ibid., p. 24.

[124] Hanafi, S. (2011) "New Models for the Nation-State," in Simon, J. (ed.), *United States of Palestine,* New York: Sternberg Press, pp. 17-22.

[125] Ibid., p. 18. Hanafi, S. (2003) "The Broken Boundaries of Statehood and Citizenship," *Borderlands*: http://www.borderlands.net.au/vol2no3_2003/hanafi_boundaries.htm (August 6, 2012).

[126] In this work I use the word images referring mostly to ones of visual documentation by means of camera which aim to represent an event or some aspects of it and which does not produce of course a transparent replication of it, yet pertains to some documentary values, the images can be in the form of photographs, digital images, and video, moving images, court charts or surveillance images taken by CCTV. In a sense, the images I refer to are ones which already at their stage of production are aimed to serve as evidence at court.

[127] IHH Report, pp. 78-81: http://www.ihh.org.tr/mavi-marmaraya-saldirinin-delilleri-mahkemede/en (accessed January 6, 2013). Report of the UN Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident (2011), p. 16: http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf (accessed September 13, 2012). *B'Tselem:* The Israeli Information Center for Human Rights in the Occupied Territories (2008), "More Sanctions on Gaza," pp. 10, 13, 14, 17, 39, 53: http://www.btselem.org/gaza_strip/20081127_more_sanctions_eon_gaza (accessed September 20, 2013).

[128] In 2009, Gaza was yet officially recognized as "non-member observer state" status received from the U.N on 29 November 2012 resolution 67/19. United Nation General Assembly GA/11317, (2012).*General Assembly Votes Overwhelmingly to Accord to Palestine*, United Nations, November 29, 2012: http://www.un.org/News/Press/docs/2012/ga11317.doc.htm (accessed June 1, 2013). For Turkish claim Israel holds effective control over Gaza, see Turkish National Committee of Inquiry (2011), "Report on the Israeli Attack on the Humanitarian Convoy to Gaza" (2011), p. 82.

[129] According to the Turkel Commission Report, the participating organisations were Canadian Boat to Gaza, European Campaign to End the Siege on Gaza, Irish Ship to Gaza, Rumbo a Gaza (Spain), Ship to Gaza (Sweden), The International Committee to Lift the Siege on Gaza, Un Bateau Français Pour Gaza (France), and U.S. Boat to Gaza (p. 136).

[130] See Report of the UN Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident (2011), p. 16.

[131] According to an IHH press release published in April 2010 ("Coalition to Break the Blockade on Gaza Announced"), one of the organisers' goals was to "use this action to wake the world's consciousness about the crimes committed against Palestinians." See IHH Department of Research and Publication (2012), *Mavi Marmara: Gaza Freedom Flotilla*, Istanbul, p. 33.

[132] A publication by the IHH Research Department notes at different points that the flotilla set sail in order to "end an ongoing embargo on Gaza." A press release dated April 3, 2010, included in the same publication, states that the flotilla is "a coalition bringing together a number of organisations and movements working to break Israel's illegal blockade." According to the same publication, the Free Gaza Movement stated that the initiative was launched by "an umbrella organisation established by pro-Palestinian groups and human rights advocates to increase public awareness of the blockade on the Gaza Strip ... [in order] to break the siege of Gaza": IHH Department of Research and Publication (2012), *Mavi Marmara: Gaza Freedom Flotilla*, pp. 8, 13, 33.

[133] This tendency emerges from the responses the passengers of the freedom flotilla offered to the questions "Why did you join the freedom flotilla? What was your motivation?" Forty interviews with flotilla passengers were collected in Kor, Z. T., ed. (2011), *Witnesses of the Freedom Flotilla: Interviews with Passengers*, Istanbul: IHH Kitap.

[134] Turkish National Commission of Inquiry (2011), *Report on the Israeli Attack on the Humanitarian Aid Convoy to Gaza*, pp. 66, 76-77.

[135] The Turkish National Commission report claims that both blockades have economic purposes and that "the humanitarian flotilla was set up in 2008 as a direct consequence of Israel's increasingly severe economic blockade on Gaza" (pp. 75-77).

[136] Both Turkey and Israel stress the importance of this issue in their reports. See The Turkel Commission Report, Part 1, Ch. 1, pp. 25-60: http; Turkish National Commission of Inquiry (2011), Chs. 4-5, pp. 60-98. See also Report of the UN Secretary General's Panel of Inquiry on the 31 May 2010 Flotilla Incident (2011), p. 38; and Migdalovitz, C. (2010) *Israel's Blockade of Gaza*: http://www.fas.org/sgp/crs/mideast/R41275.pdf (accessed March 1, 2012).

[137] According to the Turkel Commission Report (pp. 34-54), the IDF could legally inspect the flotilla boats in the maritime zone of Gaza as stipulated by the naval blockade. The report states that until July 2008, the IDF's legal right to inspect boats in the maritime area surrounding the Gaza Strip specified "visit-and-search" procedures, which can be implemented when there are reasonable grounds to suspect that a ship is subject to capture. The army expressed concern that the measures available to the IDF are insufficient. The naval blockade was therefore imposed to give the IDF all the tools and power required to prevent the passage of ships to the Gaza Strip. The report argues: "The significance of imposing a naval blockade according to the rules of international law is that it allows a party to an armed conflict to prevent entry into the prohibited area of any vessel that attempts to breach the blockade (even without it being established that the vessel is assisting terrorist activity)" (p. 36). See also the report by the Turkish National Commission of Inquiry: "Israel's claim that it was entitled to interdict the vessels in the humanitarian aid convoy rests on its argument that it was acting in self-defence to enforce a legitimately established blockade" (p. 99).

[138] The Israeli armed forces boarded the Mavi Marmara and the other flotilla vessels in international waters, 70-100 nm from Gaza. The Israeli Turkel Commission Report (p. 221) claims that according to the US Commander's Handbook on Naval Operations, customary international law stipulates that a ship that is aware of a naval blockade and is sailing toward the blockaded port is "*subject to capture wherever it is located.*" The UN Secretary General Report (pp. 52, 80) agrees that a blockade can be legally extended to the high seas. For "Israel to maintain the blockade, it had to be effective, so it must be enforced. Such enforcement may take place on the high seas." The report by the Turkish National Commission of Inquiry report (p. 56) argues, however, that international law does not recognise a general right to visit or seize a foreign ship in the high seas, except in limited situations which do not apply to the flotilla.

[139] The Turkel Commission Report (2010), p. 38.

[140] Ibid., pp. 39, 40.

[141] According to Elizabeth Spelman, blockades were originally regarded as strictly naval measures, and were only later extended to encompass land, aerial, and technological blockades. See Spelman, E. (2013) "The Legality of the Israeli Naval Blockade of the Gaza

Strip," *Web Journal of Current Legal Issues*: http://ojs.qub.ac.uk/index.php/webjcli/article/view/207/277 (accessed March 12, 2013).

[142] UN Secretary General Report (2011); "The Siege on Gaza" (2011), *B'Tselem*: The Israeli Information Center for Human Rights in the Occupied Territories: http://www.btselem.org/gaza_strip/siege (accessed June 5, 2012).

[143] Israel's Disengagement Plan: Renewing the Peace Process (2005), Israeli Ministry of Foreign Affairs: http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israels+Disengagement+ Plan-+Renewing+the+Peace+Process+Apr+2005.htm (accessed March 25, 2013).

[144] Ibid. Following the implementation of the disengagement plan, Israel invoked various legal sources to ban maritime movement off the Gaza coast. As it could no longer invoke the law of occupation, it justified this control as "security restrictions on fishing areas off the Gaza Strip." See Gisha – Legal Center for Freedom of Movement (2012) "Scale of Control: Israel's Continued Responsibility in the Gaza Strip": http://www.gisha.org/UserFiles/File/scaleofcontrol/scaleofcontrol_en.pdf (accessed June 2, 2012).

[145] Gisha – Legal Center for Freedom of Movement (2006), "Disengaged Occupiers: The Legal Status of Gaza": http://www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf (accessed January 4, 2013).

[146] Sharp, J. M. (2008) *The Egypt-Gaza Border and its Effect on Israeli-Egyptian Relations*, Foreign Press Center, U.S. Department of State, pp. 9-10: http://fpc.state.gov/documents/organization/101806.pdf (accessed January 2, 2013).

[147] Gisha- Legal Center for Freedom of Movement (2009) "Rafah Crossing: Who holds the keys?": http://www.gisha.org/userfiles/File/publications/Rafah_Report_Eng.pdf (accessed April 1, 2015).

[148] The last border crossing, Erez, was closed on January 25, 2006, the day of the Palestinian elections. See Lin, S. G. (2009), "Gaza's Shrinking Borders: 16 Years of the Oslo Process," *Dissident Voice*, December 26, 2009: http://dissidentvoice.org/2009/12/gaza's-shrinking-borders-16-years-of-the-oslo-process (accessed March 26, 2013). An Israeli government resolution from February 19, 2006 stipulated that due to security concerns "control at border crossings will increase": Turkel Commission Report, p. 29, n46.

[149] Turkel Commission Report (2010), pp. 27-30.

[150] According to Sharp (2008, p. 3), this activity had already been taking place for two decades, since the 1979 Israeli-Egyptian peace treaty and the division of the border city of Rafah. Palestinian families divided by the partition of Rafah in 1982 seem to have been the first to construct underground tunnels linking Gaza and Egypt.

[151] Turkish National Commission of Inquiry (2011), p. 75.

[152] Turkel Commission Report (2010), pp. 29-30.

[153] Sharp (2008), p. 9. See also EUBAM Rafha (European Union Border Assistance Mission to Rafah) (2007), "EUBAM Still Operational."

[154] *B'Tselem* – The Israeli Information Center for Human Rights in the Occupied Territories (2013) "Lift the Restrictions on the Gaza Fishing Range," March 24, 2013: http://www.btselem.org/gaza_strip/20130324_restrictions_on_fishing_should_be_lifted (accessed April 1, 2013).

[155] Turkel Commission Report (2010), pp. 54-55.

[156] Ibid., p. 35.

[157] According to the Turkel Commission Report (p. 59), these assertions are based on the U.S Commander's Handbook on Naval Operations and the San Remo manual.

[158] Ibid,. p. 59.

[159] Ibid.

[160] Ibid., p. 56.

[161] For detailed information see also endnote no. 137 in this work.

[162]Amnesty International (2009), "Israel/Gaza: Operation Cast Lead: 22 Days of Destruction", pp. 51-52: http://www.amnesty.org/en/library/asset/MDE15/015/2009/en/8f299083-9a74-4853-860f-0563725e633a/mde150152009en.pdf (accessed July 2, 2013). According to the Congressional Research Service, the Cast Lead Operation in Gaza, conducted by Israel "in order to stop rocket fire into southern Israel and to weaken or overthrow Hamas," resulted "in more than 1,000 Palestinian deaths and the destruction of much of the Gaza Strip's infrastructure and many buildings." It also led to a tighter blockade whose end was conditional "on the release of IDF Sergeant Gilad Shalit, who had been captured in 2006." See Migdalovitz (2010), p. 1.

[163] Ibid., p. 36. See also State of Israel**,** Ministry of Transport and Road Safety, Notice to Mariners No. 1/2009 Blockade of the Gaza Strip, January 6, 2006: http://en.mot.gov.il/index.php?option=com_content&view=article&id=124:no12009&catid=17:noticetomariners&Itemid=12 (accessed February 6, 2013).

[164] Ibid., p. 37.

[165] Reports vary as to the precise time of the blackout—12:41 a.m. according to the Israeli report, as late as 4:00 a.m. according to the Turkish report—and the precise degree to which communications were blocked. See Turkel Commission Report (2010), Part 1, p. 138; Turkish National Committee of Inquiry, "Report on the Israeli Attack on the Humanitarian Convoy to Gaza" (2011), p. 20; International Bureau of Humanitarian NGOs and Friends of Charities Association (FOCA), "Timeline and Inconsistencies Report" (2010), p. 30. Interestingly, the Israeli military and the activists chose different images to represent the launching of electronic the blackout. Whereas the IDF clip shows an image of a boat surrounded on all sides by moving red waves, the IHH clip shows a screenshot of a cellular phone announcing reception failure. The difference indicates a certain economy of vision: whereas the military views the event from an external vantage point, the activists view it from within and individually, through the solitary signifier of the individual cellular device. See the

testimony of Gülden Sönmez, *Mavi Marmara Indictment* (2012), p. 12: https://www.dropbox.com/sh/l0zl7g242zi1bu9/r5EMPzTa6V/STATEMENT%20OF%20GULDEN%20SONMEZ%20%28IHH%20MEMBER%20OF%20BOARD%20LAWYER%29.pdf (accessed February 1, 2013).

[166] According to an IHH press release published in April 2010 ("Coalition to Break the Blockade on Gaza Announced"), one of the organisers' goal was to "use this action to wake the world's consciousness about the crimes committed against Palestinians." IHH Department of Research and Publication (2012), *Mavi Marmara: Gaza Freedom Flotilla*, Istanbul, p. 33. According to the Turkel Commission, an official announcement published in the IHH website indicated "the organisers' desire that the conflict with the navy would take place in daylight so that the media could document it, in order to make waves in the international media" Turkel Committe Report (2010), Part 1, p. 119.

[167] Testimony of Gülden Sönmez (2012), *Mavi Marmara Indictment*, p. 10.

[168] TV crews broadcasting live from the ship included TRT, TV Net, HABERTÜRK TV, Press TV, al-Hivar, English al-Jazeera, the Kuwait News Agency, Telesur & Venezuëla TV, The Burunei Times, al-Aksa TV, El Cezire Arabich, and Gulf News Agency. See the Testimony of Gülden Sönmez, *Mavi Marmara Indictment* (2012), p. 9. The flotilla organisers' interest in media coverage was reflected in their investment in the social media. According to Adi Kunstman and Rebecca Stein, "[f]rom its inception, the journey of the Freedom Flotilla was a social media event. In the days leading up to the commando raid on the lead ship, the *Mavi Marmara*, the activists' supporters 'tweeted and tweeted' so that the Flotilla might 'trend,' or become one of the highly popular discussion topics crawling across the top of the screen on Twitter's home page. […] The organisers used social media extensively: tweeting updates from the boats; webcasting live with cameras uplinked to the Internet and a satellite, enabling simultaneous rebroadcasting; employing Facebook, Flickr, YouTube and other social networking websites to allow interested parties to see and hear them in real time; and using Google Maps to chart their location at sea […] A quarter of a million people watched its video feed on Livestream alone, while many more consumed these images in abbreviated form on television news." Also see Kunstman, A. and Stein, R. L. (2010) "Another War Zone: Social Media in the Israeli-Palestinian Conflict," *Middle East Report Online* (MERIP), September 2010: http://www.merip.org/mero/interventions/another-war-zone#.UBF0yo1TSiE.email.

[169] IHH Department of Research and Publications (2012), *Mavi Marmara: Gaza Freedom Flotilla*, Istanbul, p. 25.

[170] IHH leased two frequencies from Turkst 3A, a communication satellite launched by Turkey in 2008: ibid., p. 25.

[171] Turkish National Committee of Inquiry (2011), "Report on the Israeli Attack on the Humanitarian Convoy to Gaza," pp. 15-16. Israel's Turkel Commission reported 29 crew members and 561 passengers on board the *Mavi Marmara*, yet acknowledged that "the data submitted to the committee on this matter is not unambiguous." Turkel Commission Report (2010), Part 1, pp. 15-16. See also L. Booth, "Gilad Atzmon: Shocking Testimonies from the Mavi Marmara Survivors and One Israeli Fembot (2010): http://mycatbirdseat.com/2010/06/gilad-atzmon-shocking-testimonials-from-the-mavi-marmara-survivors-and-one-israeli-fembot-by-lauren-booth/ (accessed July 7, 2011).

[172] "Trial of Israeli Generals over Mavi Marmara Raid Begins," *Today's Zaman*, November 6,

2012: http://www.todayszaman.com/news-297274-trial-of-israeli-generals-over-mavi-marmara-raid-begins.html (accessed December 7, 2012).

[173] This policy is reflected for example in the IDF's extended preparations to block and electronically screen the flotilla's communication systems in order to thwart the activists' efforts to broadcast during the takeover. This was emphasised in a letter from the Adalah organisation to the Israeli Attorney General, claiming that the electronic screening was meant to "prevent the broadcast of harsh images from the takeover of the flotilla vessels." See Turkel Commission Report (2010), Part 1, pp. 126-127.

[174] See endnote no. 26.

[175] *Freedom: Last Destination Mavi Marmara*, IHH documentary film (2012): http://vimeo.com/50824956.

[176] Kor (2011), p. 69.

[177] Testimony of Cihat Gökdemir, *Mavi Marmara Indictment* (2012), pp. 4-5: https://www.dropbox.com/sh/l0zl7g242zi1bu9/50rnIguSdl/STATEMENT%20OF%20CIHAT%20GÖKDEMIR%20%28DIRECTOR%20OF%20MAZLUMDER%20NGO%29.pdf, accessed February 1, 2013. Cihat Gökdemir is director of the human rights NGO Mazlumder and attorney at the Elmadağ Hukuk law firm which represents the IHH. He is a signee of the firm's referral to the International Criminal Court accusing the IDF of war crimes and crimes against humanity. See International Criminal Court, "ICC Prosecutor receives referral by the authorities of the Union of the Comoros in relation to the events of May 2010 on the vessel 'MAVI MARMARA'" (2013): http://www.icc-cpi.int/iccdocs/otp/Referral-from-Comoros.pdf (accessed May 15, 2013).

[178] Bayoumi , M., ed. (2010), *Midnight on the Mavi Marmara*, Chicago: Haymarket Books, p. 37. A slightly different version of this testimony appears in a BBC documentary, where O'Keefe states: "I was given the opportunity to either be a part of filming or witnessing or defending the ship and I made a decision to defend it…" Panorama: "Death in the Med," TV Documentary, BBC 1, first broadcast August 22, 2010.

[179] Weiss, P. (2010) "UN: Two Men Killed on 'Mavi Marmara' were Holding Cameras When They Were Shot," *Mondoweiss*, September 25, 2010: http://mondoweiss.net/2010/09/un-two-men-killed-on-mavi-marmara-were-holding-cameras-when-they-were-shot.html (accessed August 22, 2012). See also IHH Indictment Files (2012), pp. 106-108: https://www.dropbox.com/sh/l0zl7g242zi1bu9/qFM6mGnfIj (accessed January 14, 2013).

[180] "He was shot while he was taking a photo, at the moment when his camera … flashed. He was shot in his forehead" (International Criminal Court, "ICC Prosecutor Receives Referral," p. 12); "[he] lost his life … while he was taking photographs" (IHH Report on the Gaza Flotilla Raid, "Fact Sheet: Palestine Our Route, Humanitarian Aid Our Load" (2012, p. 49: https://www.dropbox.com/sh/l0zl7g242zi1bu9/fHZgXPt16S/IHH%20Deliller%20Dosyası.pdf, accessed January 18, 2013); "[his] filming led literally to death" (IHH Indictment Files (2012, p. 103).

[181] Testimony of Cihat Gökdemir (2012), pp. 7-8.

[182] See soldiers' testimonies recorded in the Turkel Report: "I was surrounded by six people and another person who arrived a few seconds later. This person had a large camera tripod in

his hand; he joined the terrorists and beat me with the tripod. My situation at that point was that I was surrounded by terrorists." Turkel Commission Report (2010), Part 1, p. 21; p. 155.

[183] Ibid., p. 158.

[184] Ibid., pp. 160, 162.

[185] Testimony of Cihat Gökdemir (2012), p. 7. That the activists were unsure whether their cameras were working is reflected in an interview with Iara Lee: "Our connection to the world was cut off: we were sitting without knowing how many people were dead or wounded. We didn't know whether or not our reserve cameras were still functioning." See Kor (2011), p. 70.

[186] Kor (2011), p. 162.

[187] According to eyewitness testimony, the injured were treated right outside the press room lobby: see Kor (2011), p. 146. See also Turkel Commission Report (2010), Part 1, pp. 173-174.

[188] This figure is based on the estimates mentioned earlier in this chapter: see Booth (2010).

[189] Turkel Commission Report (2010), Part 1, p. 178, n. 605.

[190] "Colonel Shai Shtern: "Victory Consciousness is More Valuable than the Outcome on the Field", IDF Blog, September 8, 2011: http://www.idf.il/1133-13098-he/Dover.aspx (accessed March 30, 2015).

[191] This fact was highly criticised in the Israeli State Comptroller's Report, State Comptroller Report (2012), pp. 112, 114, and in the Israeli Parliament: see Knesset State Control Committee, Protocol no. 263 (June 14, 2012): http://www.knesset.gov.il/protocols/data/rtf/bikoret/2012-06-14.rtf (my translation from the Hebrew).

[192] Several activists claim to have filmed the entire attack. See e.g. Kor (2011), pp. 77, 81.

[193] Turkel Commission Report (2010), Part 1, p. 23, note 421.

[194] The Israeli Law of Freedom of Information (1988) permits withholding information for reasons of national security, see: http://www.knesset.gov.il/laws/special/heb/freedom_info.htm. On the IDF Spokesperson's use of national security reasoning, see Sheizaf, N. (2010), The Promised Land Blog, "IDF spokesman Spins Mavi Marmara Video for Local Political Purposes," August 13 2010: http://www.promisedlandblog.com/?tag=mavi-marmara (accessed September 21, 2012).

[195] The fact that hundreds of hours of videotaped evidence exist and were reviewed by the Turkel Commission is indicated by the Turkel Commission Report (2010), Part 1, pp. 11, 23.

[196] "An Israeli [standing] next to me smashed the CCTV camera off the side of the ship and casually put it in his bag" (Kor [2011], p. 212).

[197] According to the indictment submitted to the criminal court at Istanbul, "[m]any journalists who were on board the flotilla in their professional capacity have subsequently

submitted various complaints regarding the confiscation of their data and equipment and the non-payment of damages or compensation. An example of this is a letter of behalf of approximately 60 journalists that was sent to request action by the European Committee. […] The mission is aware of formal claims being prepared on behalf of a number of passengers whose personal property was taken or confiscated on board the *Mavi Marmara* and other vessels." See IHH Indictment Files (2012), p. 145.

[198] The UN inquiry was based exclusively on the national investigations conducted separately by Israel and Turkey. The UN "obtained its information through diplomatic channels" and had "no coercive power to compel witnesses to provide evidence." Its task was merely "to unpack the events by … looking at the two sides of the story." UN Secretary's Report (2011), "General Panel of Inquiry on the May 31 Flotilla Incident," p. 8.

[199] The fact that the confiscated materials constitute crucial evidence is emphasised in the Turkish report. See Turkish National Committee of Inquiry, "Report on the Israeli Attack on the Humanitarian Convoy to Gaza" (2011), p. 5. On the trials in the Istanbul criminal court, see IHH, "Witness Account of the Israeli Attack and Rights Violations" (2012): http://www.ihh.org.tr/taniklar-israil-saldirisi-ve-sonrasindaki-ihlalleri-anlatti/en (accessed January 26, 2013). The importance of free access to the documentary footage was stressed in the United Nations Human Rights Council's "Report of the International Fact Finding Mission to Investigate the Violations of the International Law, including International Humanitarian and Human Rights Law Resulting from the Israeli Attack on the Flotilla of Ships Carrying Humanitarian Assistance" (2010), pp. 4, 58: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.PDF (accessed October 10, 2012). See also IHH Indictment Files (2012), pp. 39, 41, 56, 144-145: https://www.dropbox.com/sh/l0zl7g242zi1bu9/qFM6mGnfIj (accessed January 14, 2013).

[200] The Turkel Commission describes reviewing hundreds of hours of audio and video footage of the forty-minute skirmish, representing multiple sources and perspectives. See the Turkel Commission Report (2010), Part 1, p. 11: http://www.turkel-committee.gov.il/files/wordocs/8035report-heb.pdft (accessed July 7, 2011).

[201] Presumably, the unreleased visual material can resolve some of the factually disputed issues, though probably not all the associated moral and political controversies.

[202] I interviewed lawyer and IHH board member Gülden Sönmez on February 22, 2013 at the IHH headquarters in Istanbul. Sönmez, who was on board the *Mavi Marmara*, confirmed that an additional live broadcasting system was installed on the ship in order to circumvent the anticipated Israeli disruption. The additional system was activated as soon as the Israeli army imposed the blackout and enabled continuation of the live streaming which, Sönmez says, "greatly surprised the army."

[203] That the army has used footage taken by the activists is indicated not only by the visual evidence but also by the Turkel Commission Report (Part 1, p. 178, n. 605), in which an IDF official is quoted as saying that some of the magnetic media gathered on the ship was "transferred to Israel by helicopter to be used by the IDF Spokesperson and Advocacy Department." Some have claimed, however, that certain materials released by the IDF are inauthentic: see, e.g., International Bureau of Humanitarian NGOs and FOCA (2010), "Timeline and Inconsistencies Report," pp. 95-97.

[204] IDF Habat (2011), "Timeline of the Mavi Marmara Incident": http://www.youtube.com/watch?v=z31GesVrBjc (accessed July 1, 2013). This clip was also viewed by the Turkel Commission; see "Turkel Commission, IDF's response to the flotilla events (part 1 of 2) (2011): http://www.youtube.com/watch?v=Zy5SXWv8U0I (accessed August 15, 2012).

[205] The IHH pre-installed two Turkast frequencies in case the IDF jammed communications, yet few of the activists knew how to run and manage the additional frequency. See IHH, Department of Research and Publications (2012), *Mavi Marmara Gaza Freedom Flotilla*, Istanbul, p. 25.

[206] "Israeli troops storm Gaza flotilla," Al-Jazeera English, May 31, 2010: http://www.youtube.com/watch?v=xFEBbDkyrqQ (accessed October 10, 2012).

[207] IHH, *Freedom: Last Destination Mavi Marmara*, documentary film (2012): http://vimeo.com/50824956 (accessed March 11, 2012).

[208] "Dakika, dakika, Mavi Marmara_ya saldiri," CNN TURK, June 1, 2010: http://www.youtube.com/watch?v=INVT98698R8 (accessed February 11, 2013).

[209] Ibid. See also "MGF – Millî Görüş Forum – IHH.flv," May 30, 2010: http://www.youtube.com/watch?v=bfFfK4CxUHM (accessed July 9, 2013).

[210] "'Peace activists' stabbing Israeli solider," Channel 2, Israel and DHA, May 31, 2010: http://www.youtube.com/watch?v=buzOWKxN2co (accessed March 24, 2012).

[211] "The flotilla ship Mavi Marmara, peace activist stabbing IDF soldier (2011): http://www.youtube.com/watch?v=o6MLJErSD2s (accessed March 24, 2012); "Timeline of the Mavi Marmara Incident" (2011): http://www.youtube.com/watch?v=z31GesVrBjc (accessed July 1, 2013).

[212] "Mavi Marmara Truth: Israeli soldiers killing Furkan (The Freedom Flotilla)" (2010): http://www.youtube.com/watch?v=rdA6jJ8dOZQ (accessed June 30, 2013).

[213] Chief Public Prosecutor's Office, Indictment File (2012) p. 38: https://www.dropbox.com/sh/l0zl7g242zi1bu9/qFM6mGnfIj (accessed January 14, 2013). See also UN Secretary-General's Report, "General Panel of Inquiry on the May 31 Flotilla Incident" (2011), p. 59.

[214] "Mavi Marmara Truth: Israeli Soldiers Killing Furkan (The Freedom Flotilla)" (2010): http://www.youtube.com/watch?v=rdA6jJ8dOZQ (accessed June 30, 2013).

[215] "Mavi Marmara passengers attack IDF before soldiers board ship" (2010): http://www.youtube.com/watch?v=B6sAEYpHF24 (accessed November 6, 2012).

[216] Turkel Commission Report (2010), Part 1, p. 143.

[217] IHH, *Freedom: Last Destination Mavi Marmara* (2012): http://vimeo.com/50824956.

[218] Ibid.

[219] No shooting is heard in the clips released by the IDF, despite the IDF's own admission that its soldiers shot 659 bullets during the confrontation. See the Turkel Commission Report (2010), Part 1, p. 260.

[220] Israel Defence Force," Flotilla rioters prepare rods, slingshots, broken battles and metal objects" (June 2, 2010): http://www.youtube.com/watch?v=HZlSSaPT_OU (accessed December 4, 2012).

[221] IHH (2012) *Freedom: Last Destination Mavi Marmara,* IHH documentary film: http://vimeo.com/50824956.The segments are shown at 28:25–28:32, 32:47-32:48, and 32:51–33:00 min.

[222] See Isfnadesk (2010), "Close Up Footage of Mavi Marmara Passengers Attacking IDF Soldiers (with sound)," video, YouTube, 31 May (accessed June 1, 2010). And Isfnadesk, (2010), Demonstrators use violence against Israeli navy soldiers attempting to board the ship, video, YouTube, 2010, 31 May: http://www.youtube.com/watch?v=bU12KW-XyZE (accessed June 1, 2010).

[223] IHH (2012), *Freedom: Last Destination Mavi Marmara,* IHH documentary film: http://vimeo.com/50824956: first segment at 33:15–33:16 min. An audio clip released by the IDF purportedly documents a radio exchange in which the army addressed the flotilla ships with the request to change route prior to the takeover. Also heard in the clip is a series of responses which according to the IDF originated from the flotilla boats, including: "Shut up, Israeli navy, shut up!" "Shut up, go back to Auschwitz," and "We're helping Arabs to go and get the US, don't forget 9/11, guys!" The alleged responses drew controversy when bloggers such as Max Blumenthal disputed their authenticity: see Blumenthal, M., "Israeli army admits it doctored Gaza freedom flotilla audio clip," Global Research, June 10, 2010: http://www.globalresearch.ca/israel-military-admits-it-doctored-gaza-freedom-flotilla-audio-clip/19646?print=1 (accessed June 1, 2012). The Turkel Commission was indecisive: "Since the radio was operated on channel 16 which is an international frequency, it is impossible to determine which of the vessels issued these responses": Turkel Commission Report (2010), Part 1, p. 140. Interestingly this issue did not come up in the Palmer Report.

[224] In an interview for the book *Witnesses of the Freedom Flotilla*, when asked how she managed to smuggle video footage of the ship, Lee answered: "Before the Israeli commandos boarded our ship, I had asked my cameraman [Srdjan Stojilkovic] to switch to small SD cards since I could anticipate that the Israeli Navy would confiscate our gear, hard drive, memory cards. He did, and to avoid getting the SD taken, he hid them behind the stitches of his underwear. I instructed him to tell that he was requested by me to hide them and that he was just doing his job. Since Israelis at the jail facility had to body search hundreds of people and were focusing on Muslim men with long beards, my white cameraman was searched in a less meticulous manner" (Kor [2011], p. 63).

[225] See "Cultures of Resistance 2010, Israeli Attack on the Mavi Marmara/Raw Footage" (2010): http://www.youtube.com/watch?v=vwsMJmvS0AY (accessed March 19, 2012). See especially 37:06–44:00 min. See also *Culture of Resistance* (2010), feature documentary, directed by Iara Lee, produced by George Gund, USA. 73 min.

[226] The characteristics of the sound of shooting that are heard remains indistinctive to the ears of the ordinary viewer on the backdrop of the IDF claim to have used paint ball guns at that stage of the interception. See The Turkel Commission Report (2010), Part 1, p. 143: http://www.turkel-committee.gov.il/files/wordocs/8035report-heb.pdft (accessed July 7,

2011).

[227] "Cultures of Resistance 2010, Israeli Attack on the Mavi Marmara//Raw Footage" (2010): http://www.youtube.com/watch?v=vwsMJmvS0AY, 38:26–39:06 min (accessed March 19, 2012). The footage shows an onboard exchange in which a passenger holding a camera claims that the red stains are actually paint. Pertinent to this is the IDF's decision to use red paintballs. Whether the stains were blood or not remains unclear. The Turkel Commission Report takes special note of the army's problematic choice of color. According to the committee, this use of color was exploited by "advocates" as "evidence that IDF soldiers used excessive force, when, in fact, just the opposite was the case": Turkel Commission Report (2010), Part 1, p. 259.

[228] A description matching this account appears in the indictment submitted to the criminal court in Istanbul: "One passenger standing just inside the door was shot through the broken porthole in the door by a soldier standing a few meters away on the bridge deck outside." This description may also imply, however, that the specific segment was included in the video evidence submitted to the court, though the list of materials was not published. See IHH Indictment Files (2012), p. 104. See also "Cultures of Resistance 2010, Israeli Attack on the Mavi Marmara/Raw Footage" (2010): https://www.youtube.com/watch?v=vwsMJmvS0AY ,35:53–36:56 min. (Zodiac boats approaching), 41:30–42:44 min. (soldier rappelling down the rope, passenger shoots with slingshot), 50:29–53:00 min. (group of men defending the door).(accessed March 19, 2012).

[229] Still images from the ship, mostly showing injured soldiers, were also published after the event. Photos reportedly taken by journalist Adem Özköse and recovered from smuggled memory cards were acquired by the Turkish daily Hürriyet. Additional still images, concealed at the time of the takeover and smuggled through army censorship, were published by reporter Sefik Dnic. For both groups of photos, see Mackey, R., "Photographs of Battered Israeli Commandos Show New Side of Raid," The Lede Blog, *The New York Times*, June 7, 2010: http://thelede.blogs.nytimes.com/2010/06/07/photographs-of-battered-israeli-commandos-show-new-side-of-raid/ (accessed April 5, 2012). Photos taken by Canadian activist Kevin Neish were reportedly disseminated on June 6, see Perry, M., "Kevin Neish's photos of Mavi Marmara Attack Published Plus Full Interview," rabble.ca, June 9, 2010: http://rabble.ca/news/2010/06/do-not-publish-yet-kevin-neishs-photos-mavi-maramara-attack-published (accessed August 5, 2012). In the media, the same still images were often used in support of conflicting claims, though in contrast to the use of video footage, this was usually facilitated by deceptive efforts to manipulate the contents of the images, e.g. by cropping. In one instance, an American blogger charged Reuters with deceptive cropping and image editing:

> Reuters' photo service edited out knives and blood traces from pictures taken aboard the activist ship Mavi Marmara. … The pictures of the fight were released by IHH, the Turkish-based group that sponsored the six-ship fleet that tried to break Israel's blockade of Gaza. In one photo, an Israeli commando is shown lying on the deck of the ship, surrounded by activists. The uncut photo released by IHH shows the hand of an unidentified activist holding a knife. But in the Reuters photo, the hand is visible but the knife has been edited out.

Reuters eventually admitted to the charges. See Barnes, E., "Reuters Admits Cropping Photos of Ship Clash, Denies Political Motive," Fox News, June 8, 2010: http://www.foxnews.com/world/2010/06/08/reuters-fake-photos-ihh-gaza-blockade-

commandos (accessed March 9, 2012).

[230] See "Cultures of Resistance 2010, Israeli Attack on the Mavi Marmara/Raw Footage," http://www.youtube.com/watch?v=vwsMJmvS0AY, 59:49–59:52, 1:02:10–1:02:13 min (accessed March 19, 2012).

[231] Access to the archives in which the extraterritorial images are held is deliberately restricted by the Israeli authorities. Although my dissertation focuses on the inaccessible extraterritorial images and not on the archives themselves as they actually exist to those who have access to them, a few comments are in order about historical and philosophical conceptualisations of the archive as an instrument of power closely related to the force of law. Already from its Greek origins, the archive was perceived as the "house of the magistrates", signifying the privileged access of those representing the law (Velody, I. (1998) "The Archive and the Human Sciences: Notes towards a Theory of the Archive," *History of the Human Sciences* 11:4 , pp. 1-16, at p. 1). The modern notion of the archive can be traced back to a decree published in France on July 25, 1794, ordering that the National Archives of France, established four years earlier by the French revolutionaries, be opened to the public. Before this modern notion emerged, however, archives mainly existed in a non-public form restricted to the sovereign and its representatives (see Osborne, T. [1999] "The Ordinariness of the Archive," *History of the Human Sciences* 12:2, pp. 51-64). The benefit of privileged access is echoed in Michel Foucault seminal philosophical conceptualisation of the archive as "the law of what can be said, the system that governs the appearance of statements as unique events." Foucault adds: "The analysis of the archive … involves a privileged region … it is the border of time that surrounds our presence, which overhangs it, and which indicates it in its otherness; it is that which, outside ourselves, delimits us" (Foucault, M. [2012] *The Archaeology of Knowledge*, New York: Vintage Books, pp. 129, 147). Thomas Osborne suggests that for Foucault, the archive is a central site from which credibility can be established (Osborne, T. "The Ordinariness of the Archive," pp. 51-64). The centrality of privileged access to the phenomenon of the archive is also underscored by philosopher Jacques Derrida's description of archival documents as constituting "a privileged topology" which is inherently connected to law: "These documents speak the law: they recall the law and call on or impose the law. To be guarded thus in the jurisdiction of this speaking the law, they needed at once a guardian and localization. Even in their guardianship or their hermeneutic tradition, the archive could do neither without substrate nor without residence. … [I]n this domiciliation, in this house arrest, that archive takes place" (Derrida, J. [1996] *Archive Fever*, trans. Eric Prenowitz, Chicago: University of Chicago Press, pp. 2-3). Reading Derrida, Herman Rapaport suggests that the ability to keep certain things confidential is what gives archives their *evil* character (Cited in Kong, P. [2009] *The Raiders and Writers of Cervantes' Archive: Borges, Puig, and García Márquez*, Farnham, UK: Ashgate Publishing, p. 19; see also Rapaport, H. [2003] "Later Derrida: Reading the Recent Work," *Oxford Literary Review* 25:1, p. 385). In the context of my work, it is also worth noting Achille Mbembe's observation that "the relationship between the archive and the state … rests on paradox. On the one hand there is no state without archives … on the other hand, the very existence of archives constitutes a constant threat to the state" (Mbembe, A. [2002] "The Power of the Archive and its Limits," in *Refiguring the Archive*, New York: Springer, pp. 19-27, at p. 23).

[232] The existence of extraterritorial images in the classified archives position the images in between potential evidence of factual historical value, on the one hand, and an inaccessible inventory, on the other. Given this unique status, it is worth recalling that archives and archival politics have often been defined dialectally as operating within two opposing forces—as possessing mnemonic power, and, on the contrary, as capable of imposing absentmindedness and amnesia. Archives have been described as occupying a place between

"tradition and oblivion" (Foucault, *The Archeology of Knowledge*, p. 130); between "obsessive memory of tradition … and the exaggerated truthfulness of oblivion," "between the unsaid and the said" (Agamben, G. [2002] *Remnants of Auschwitz: The Witness and the Archive*, New York: Zone Books, pp.144-145); between "preservation and cancelation" (Cassar, I. [2010] "The Image of, or in, Sublation," *Philosophy of Photography* 1:2, pp. 201-215, at p. 202); between "memorization… [and] … destruction" (Derrida, *Archive Fever*, pp. 12-13). According to Wordsworth, "the archive is inherent with processes of preservation and a force of apocalyptic destruction" (Kong, *The Raiders and Writers*, p. 11). For Pierre Nora, "[m]emory has been wholly absorbed by its meticulous reconstitution … delegating the archive the responsibility of remembering" (Nora, P. (1989) "Between Memory and History: Les Lieux de Mémoire," *Representations* 26, pp. 7-24, at p. 13); whereas Jonathan Boutler describes archives as "a threat to memory" (Boulter, J. [2011] *Melancholy and the Archive: Trauma, History and Memory in the Contemporary Novel*. London: Bloomsbury Publishing, p. 13). Against this background, the presence of extraterritorial images outside of archives, as discussed in this dissertation, may offer a new point of entry that may enable us to rethink the archive beyond its dialectical potential.

[233] This clip first appears on idfnadesk (2010), Flotilla Rioters Prepare Rods, Slingshots, Broken Bottles and Metal Objects to Attack IDF Soldiers, video, YouTube, June 2, 2010: http://www.youtube.com/watch?v=HZlSSaPT_OU(accessed December 4, 2012). Parts of this clip appear in the IHH documentary, which was edited and combined with testimonies of the activists to illustrate their narratives, the way they prevented the soldiers from boarding the ship and their endeavors to protect it Freedom: IHH (2012) *Freedom: Last Destination Mavi Marmara,* IHH documentary film: http://vimeo.com/50824956.The segments are shown at 28:25–28:32, 32:47-32:48, and 32:51–33:00 min.

[234] See "Mavi Marmara Passengers Attack IDF before Soldiers Board Ship" (2010): http://www.youtube.com/watch?v=B6sAEYpHF24 (accessed November 6, 2012).

[235] See Idfnadesk (2011), "Timeline of the Mavi Marmara Incident" (English, High Quality Version), video, YouTube, May 22, 2011: http://www.youtube.com/watch?v=z31GesVrBjc (accessed July 1, 2013).

[236] IHH Humanitarian Relief Foundation (2012), "About the Trial: Israel on the Felon's Dock," blogpost: http://www.ihh.org.tr/dava-hakkinda/en (accessed February 5, 2013).

[237] "*Mavi Marmara* was registered in the Turkish International Ship Registry (TUGS) and was sold on April 27, 2010. It was then registered under TUGS on the same date. Based on this fact, the ship Mavi Marmara is considered a Turkish marine vessel according to the Maritime Trade Laws, and the crimes committed in and by this ship will be deemed as committed in Turkey based on the principle of territoriality. Turkish Penal Code applies in this incident." IHH Indictment Files (2012), p. 153: https://www.dropbox.com/sh/l0zl7g242zi1bu9/qFM6mGnfIj (accessed January 14, 2013). It's interesting to note that the *Marmara*'s free-floating identity has been articulated in different ways in the various legal charges brought against Israel. The IHH bought the *Mavi Marmara* from the City of Istanbul. Two days before setting sail, presumably for reasons of regulatory convenience, the boat gave up its official Turkish affiliation, registering instead under the flag of the Comoro Islands, a tiny archipelago in the Indian Ocean. Ironically, it was the organisers' choice of a "flag of convenience"—a step often taken to circumvent legal requirements and avoid minimal human right standards that allowed them to press charges against Israel for the most serious crimes recognised by international law. It was the boat's

Comorran affiliation, however, that enabled the organisers to appeal to the International Criminal Court (ICC) at The Hague. Had the *Marmara* remained a Turkish boat at the time of the takeover, the IHH could not have gone to the ICC, since Turkey (like Israel) is not a signee of the Rome Convention and therefore not an ICC member. It was precisely the boat's arbitrary registration under the Comorran flag that enabled the IHH to bring its charges of "crimes against humanity" before the international court. See "Turkish Rights Group's Cargo Ship to Set Sail with Gaza Aid," *Hürriyet Daily News*, April 13, 2010: http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=cargo-ship-will-set-out-to-gaza-to-deliver-aid-2010-04-13 (accessed September 21, 2014), International Transport Workers Federation, *What Are Flags of Convenience:* (accessed June 1, 2013). See also IHH Humanitarian Relief Foundation, *Ship Purchased for Gaza Campaign*: http://mavi-marmara.ihh.org.tr/en/main/news/0/ship-purchased-for-gaza-campaign/231(accessed July 1, 2013). On flags of convenience see International Transport Workers Federation, *What Are Flags of Convenience*: http://www.itfglobal.org/en/transport-sectors/seafarers/in-focus/flags-of-convenience-campaign/(accessed June 1, 2013).

[238] The Meir Amit Intelligence and Terrorism Information Center, (2012), '*Overview*', bolgpost, 13 November: http://www.terrorism-info.org.il/en/articleprint.aspx?id=20422 (accessed February 5, 2013). On the status of the defenders as fugitives see The Foundation for Humanitarian Rights and Freedoms, The Mavi Marmara Case: Legal Actions Taken Against Israeli Attack on the Gaza Freedom Flotilla on 31.05.2010, 2012, p. 13: http://www.ihh.org.tr/fotograf/yayinlar/dokumanlar/134-Mavi%20Marmara%20Hukuk%20Raporu%20-%2010%20Aral%C4%B1k%202012%20-mavi-marmara-legal-report.pdf.

[239] Ansay, T. and Wallace D., eds. (2005), *Introduction to Turkish Law*, The Hague: Kluwer Law International, p. 182. The IHH report dedicated to the legal actions taken against the attack claims that it was the application of universal jurisdiction that made possible the inclusion of non-Turkish victims in the prosecution: "foreign citizens [who were] within the vessel may be included in the case filed in Turkey, even if they are not able to file a complaint regarding the event in their own country". The Foundation For Humanitarian Rights and Freedoms (2012), The Mavi Marmara Case: Legal Actions Taken Against Israeli Attack On The Gaza Freedom Flotilla on 31.05.2010, p. 6: http://www.ihh.org.tr/fotograf/yayinlar/dokumanlar/134-Mavi%20Marmara%20Hukuk%20Raporu%20-%2010%20Aral%C4%B1k%202012%20-mavi-marmara-legal-report.pdf (accessed March 8, 2014).

[240] The Foundation For Humanitarian Rights and Freedoms (2012), "Israel on the Felon's Dock: Mavi Marmara Trial Begins in Çağlayan on November 6": http://eski.ihh.org.tr/6-kasimda-israil-yargilaniyor/en/ (accessed April 12, 2014). An investigation in the case of General Tal Russo was also initiated; he is accused of planning and carrying out the attack on the Mavi Marmara. See IHH Humanitarian Relief Foundation (2012), "About the Trial: Israel on the Felon's Dock," blogpost: http://www.ihh.org.tr/dava-hakkinda/en/(accessed February 5, 2013). See also Today in Gaza (2012), "HH's Mehmet Kaya on Mavi Marmara Court Case," November 4, 2012: http://todayingaza.wordpress.com/2012/11/04/ihhs-mehmet-kaya-on-mavi-marmara-court-case/(accessed April 18, 2014).

[241] See: IHH Indictment Files (2012), p. 37: https://www.dropbox.com/sh/l0zl7g242zi1bu9/qFM6mGnfIj (accessed January 14, 2013).

[242] IHH Indictment Files (2012), p. 158: https://www.dropbox.com/sh/l0zl7g242zi1bu9/qFM6mGnfIj (accessed January 14, 2013).

Turkish law allows trials *in absentia* in several circumstances, for example "when the accused is a fugitive and a decision to that effect is rendered by the trial court." See Articles 194 (2) and 247 (h) TCCT. Gökan, S. (2010), *A Study On Turkish Criminal Trial System,* Istanbul: The Ankara Bar Association, pp. 63-64.

[243] The Foundation For Human Rights and Freedoms (2013), "Mavi Marmara Trial Continues with the 4th Hearing," October 3, 3013: http://mavi-marmara.ihh.org.tr/en/main/news/0/mavi-marmara-trial-continues-with-4th-hearing/1891 (accessed April 17, 2014). On the issuing of arrest warrants, see also an IHH press release: Sönmez, Z. (2014), "Arrest Warrants Issued for Israeli Commanders over the Fatal Attack on Mavi Marmara," The Foundation For Humanitarian Rights and Freedoms, April 26, 2014: http://www.ihh.org.tr/en/main/news/0/arrest-warrants-in-mavi-marmara-case/2341 (accessed June 7, 2014).

[244] According to Turkish law, procedure trials are usually held in the presence of the parties. See, e.g., Gökan (2010), p. 61.

[245] "Turkey Tries IDF Commanders over Marmara Killings," Jerusalem Post, May 11, 2012: http://www.jpost.com/International/Article.aspx?id=290587 (accessed February 8, 2013). "Turkey Tries Israeli Commanders over Mavi Marmara Raid," BBC News Europe, November 6, 2012: http://www.bbc.co.uk/news/world-europe-20215991 (accessed February 8, 2013). These responses immediately provoked reports and bloggers to invoke Israel's past support for and use of trials *in absentia*, including the Nuremberg trials.

[246] See IHH (2012), "Witness Account of the Israeli Attack and Rights Violations": http://www.ihh.org.tr/taniklar-israil-saldirisi-ve-sonrasindaki-ihlalleri-anlatti/en/ (accessed January 26, 2013).

[247] IHH Humanitarian Relief Foundation (2012), "The Mavi Marmara Case: Legal Actions Taken Against The Israeli Attack on the Gaza Freedom Flotilla on 31.05.2010," December 10, 2013: http://www.ihh.org.tr/fotograf/yayinlar/dokumanlar/134-Mavi%20Marmara%20Hukuk%20Raporu%20-%2010%20Aral%C4%B1k%202012%20-mavi-marmara-legal-report.pdf (accessed April 29, 2014). The connection between the missing documentation of the event and the way it as repapers in the testimonies, as if to recapture the lost footage, is made also for example in a Twit massage sent from the court describing the procedure by the IHH public relations: "The trial at this stage is collecting evidence by hearing witnesses, to prevent [losing again what has been] lost"…"Media Members are giving their testimonies to the court. All their footage and reports have been confiscated." The missing images are often invoked in witness testimonies: see for e.g. Twitter (2013), Mavi Marmara Case: @MaviMarmaraCase, posted by: IHH The Foundation For Human Rights and Freedoms and Humanitarian, 21 February: https://twitter.com/MaviMarmaraCase (accessed March 31, 2014).

[248] See, e.g., Bruch, J. (2012), "Israeli Military over Gaza Ship Killing," *The Daily Star*, Lebanon, November 5, 2012: http://www.dailystar.com.lb/News/Middle-East/2012/Nov-05/193962-turkey-to-try-israeli-top-brass-in-deadly-flotilla-raid.ashx#axzz2IRZw5noP (accessed January 15, 2013); and Reuters (2012), "Turkey Tries Israeli Military Over Gaza Strip Killings," November 5, 2012: http://mobile.reuters.com/article/idUSBRE8A415T20121105?irpc=932 (accessed March 18, 2013).

[249] An exception are photos smuggled from onboard the ship by human rights activist Kevin Neish, who is said to have handed them over to the court in Istanbul. See Twitter (2012),

Mavi Marmara Case: @MaviMarmaraCase, posted by IHH The Foundation For Human Rights and Freedoms and Humanitarian, 6 November: https://twitter.com/MaviMarmaraCase (accessed March 31, 2014).

[250] On May 19, 2014 I met the president of Cağlayan Adliyesi court in his office. I presented to him an official request to view the court documentation; he refused and referred me to the defendants' appointed advocates, stating that it is in their power to decide differently. I approached advocate Murat Bozkurt who adamantly refused my requests to receive a copy or to view the documentation, declining to justify his refusal. When I approached advocate Alev Peken she did not only refuse but specified that she is furious at the Israeli commanders and what they did at sea. Advocate Uğur Kasapoğlu could not be reached.

[251] The extent to which the Turkish justice system should follow European ways has been a major issue in Turkey ever since the collapse of Ottoman Empire and the establishment of the modern Turkish state by Atatürk in the aftermath of the First World War. In the 1920s, a series of steps were taken to consolidate Turkey as a modern secular state, among them a major reorganisation of the Turkish juridical system. Radical reforms abolished Islamic law in 1924, replacing them two years later with a civic code inspired by Swiss law and with a system of criminal law adopted from Italy. In 1926 new secular courts were introduced in place of the old Islamic Shari'a (or Şeriat) courts. Among their chief goals was to implement the new values on nationalism, secularism, and gender equality (see Imber, Colin. *The Ottoman Empire, 1300-1650: the structure of power*. New York eHoundmills Houndmills: Palgrave Macmillan, 2002, pp. 211- 232; Yücel, G (2001), "The Struggle for Mastery: Turkey, France, and the Ankara Agreement of 1921,"*The International History Review* , 23: 3, pp. 560-603. In 1929, Turkey adopted a German code of criminal procedures, further separating religion and state law. The Turkish justice system was thus modelled on European civil law and its rules, codes and procedures. See Üzeyir, M. (2012), "Turkish Juridical Reform: It Has Achieved Much But There Is Much To Be Done," *International Justice Monitor*: http://www.judicialmonitor.org/archive_summer2012/judicialreformreport.html (accessed March 28, 2014). Despite later counter-reforms that reinstated Islamic legal codes and practices, the European influence remained strong in Turkey's legal system. The European influence persisted and intensified as a result of Turkey's ongoing effort to join the European Union date since 1959. Turkey first applied for full EU membership on April 14, 1987, and was granted official candidate status at the Helsinki Summit in December 1999 (a status formally ratified in 2005). See Turkey's application for full membership was filed under the Treaty of Rome: https://web.archive.org/web/20070927211417/http://www.turkishembassy.org/index.php?option=com_content&task=view&id=57&Itemid=235(accessed February 26, 2013). Political Islamic groups have been divided on the issue of EU membership, with positions ranging from strict resistance to outright support: see Yilmaz, I. (2005) "State, Law, Civil Society and Islam in Contemporary Turkey," *The Muslim World*, 95:3, pp. 385-411; Tank, P. (2005), "Political Islam in Turkey: A State of Controlled Secularity." *Turkish Studies*, 6:1, pp. 3-19; Erişen E. and Erişen E. (2013) "Attitudinal Ambivalence towards Turkey's EU Membership," *Journal of Common Market Studies*, 52:2, pp. 217-233. Since then, Turkey has been taking steps in order to meet the Copenhagen criteria required for accession to the European Union. To comply with the European Council's standards, Turkey has been expected to undertake major reforms in its judicial system in general and with respect to human rights specifically. A program of 'harmonisation' initiated a process of reforms that started with constitutional amendments of 2001 and continued with the complete revision of the Turkish Criminal Code (TCA) and Turkish Criminal Procedures (TCPA) and the introduction of new institutions, practices and codes: Dönmez, B. D. (2011), "Cross-Examination in Turkish Criminal Procedure Law," *Ankara Law Review*, 8:1, pp. 53-69. These

new codes added European- and U.S.-inspired laws to the already existing Turkish system (which, as noted above, had been an amalgam of Swiss, German, Italian, French and Roman codes): see Örücü, E. (2008), "What Is a Mixed Legal System: Exclusion or Expansion?" Electronic Journal of Comparative Law, 12:1: http://www.ejcl.org/121/art121-15.pdf (accessed April 27, 2014). Despite the ample legal revisions—some of which have even been seen as models for emulation by other countries—in effect most of the amendments and reforms have not been successfully implemented. See, e.g., UNDP (2013), A Declaration on Juridical Transparency Endorsed by Asian Countries in Istanbul, December 1, 2013: http://www.ks.undp.org/content/turkey/en/home/presscenter/news-from-new-horizons/2013/12/declaration-judicial-transparency (accessed March 7, 2013); Üzeyir (2012): http://www.judicialmonitor.org/archive_summer2012/judicialreformreport.html (accessed March 28, 2014). Cf. EurActive (2005), EU News & Policy Debates, EU-Turkey Relations, November 14, 2005: http://www.euractiv.com/enlargement/eu-turkey-relations/article-129678 (accessed February 27, 2013); EurActive (2012), "EU Will Lose Turkey If It Hasn't Joined by 2023, Erodgan Says," 31 October 2012: http://www.euractiv.com/enlargement/eu-lose-turkey-hasnt-joined-2023-news-515780 (accessed February 26, 2013). It has been noted that efforts to achieve the implementation of the reforms were mostly successful in holding workshops and trainings to judges and prosecutors. Nevertheless, substantive amount of criticism of the fact that in practice legislations have been exercised inefficiently or have not been implemented at all (as in the case of the Constitutional Court, the judicial police, freedom of speech, etc.) appears again and again in the annual EU reports. See for example European Commission, Commission Staff Working Document SWP (2012), "Enlargement Strategy and Main Challenges 2012–2013," October 10, 2012: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf (accessed February 26, 2013). See also European Commission Staff Working Document, Turkey 2013 Progress Report: Enlargement Strategy and Main Challenges 2013-2014, Brussels 16.10.2013 SWD (2013): http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf (accessed February 27, 2013), pp. 2, 44-47.

[252] See European Commission (2013), *Conditions for Membership*, Enlargement Policy, November 28, 2013: http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm (accessed March 18, 2014). The first product of legal reforms was the constitutional amendment introduced in October 2001. To date, numerous "harmonisation packages" that adjusted many laws were introduced, most importantly an amendment made in Article 90 of the Constitution privileging international agreements in the area of fundamental rights and freedoms. Nevertheless most jurists stated that human rights norms are not taken into account in trials. See Aydin, S., Suavi, M. E., Mithat, S. Atilgan, E. Ü. (2011), "Just Expectations: A Compilation of TESEV Research Studies on the Judiciary in Turkey," TESEV Publication, Istanbul, pp. 38, 42, 45: http://www.tesev.org.tr/just-expectations--compilation-of-tesev-research-studies-on-the-judiciary-in-turkey/Content/249.html (accessed March 5, 2013).

[253] The concept of "access to justice" was first introduced with the Treaty of Lisbon which forms the constitutional basis of the EU. In the 1998 Aarhus convention, "access to justice" was discussed together with access to information. In 2006, "access to justice" was enshrined in a UN convention. See FRA, European Union Agency For Fundamental Rights, Accesses to Justice in Europe: An Overview of Challenges and Opportunities, FRA-European Union Agency For Fundamental Rights, 2011, pp. 14-20: http://fra.europa.eu/sites/default/files/fra_uploads/1520-report-access-to-justice_EN.pdf (accessed April 9, 2014). On the important role the EU allocates to access to justice, see for example European Agency For Fundamental Human Rights, Access to Justice in Cases of

Discrimination in the EU: Steps to Further Equality,"2012: http://fra.europa.eu/en/publication/2012/access-justice-cases-discrimination-eu-steps-further-equality (accessed April 2, 2014). See also "Accesses to Justice and to a fair trial are guaranteed under article 6 of The European Convention of Human Rights, PF 2005 01.01 Better Access to Justice in Turkey: Standard Summery Project Fiche, 2005: http://ec.europa.eu/enlargement/fiche_projet/document/PF%202005%2001.01%20Better%20Access%20to%20Justice%20in%20Turkey.pdf (accessed April 5, 2014).

[254] Kalem, S. B. (2011) "Access to Justice in Turkey: Indicators and Recommendations," Turkish Economic and Social Studies Foundation-Tesev Publications: http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=135218 (accessed March 3, 2014).

[255] Ropes & Gray LLP for the Open Society Justice Initiative, Report on Access to Judicial Information, March 2009, New York, pp. 25-27: www.right2info.org/.../Access%20to%20Judicial%20Information%20Re (accessed March 3, 2014).

[256] Aksel, I. (2013), Turkish Judicial System- Bodies, Duties and Officials, The Ministry of Justice of Turkey: The Department for Strategy Development: http://www.justice.gov.tr/judicialsystem.pdf (accessed February 16, 2014).

[257] United Nation Development Program, Istanbul Declaration on Transparency in the Judicial Process, pp. 1-10: http://www.ge.undp.org/content/dam/turkey/docs/demgovdoc/%C4%B0stanbul%20Declaration.pdf (accessed March 6, 2013). See also UNDP (2013), A Declaration on Juridical Transparency endorsed by Asian Countries in Istanbul, December 1, 2013: http://www.ks.undp.org/content/turkey/en/home/presscenter/news-from-new-horizons/2013/12/declaration-judicial-transparency/ (accessed March 6, 2013). Turkey has been cited as the nation with the largest number of imprisoned journalists, nearly all on terrorism or other anti-state charges. The state of freedom of the press and freedom of information has been described as a "stain on Ankara's democratic reputation, economic standing and diplomatic position." The reaction of the government to the accusations was to insist that such allegations amounted to "insulting language or terrorism." The wide interpretation of terrorism by the courts has been criticised for creating confusion between terrorism and acts expressing freedom of thought and expression. See European Commission, Commission Staff Working Document SWP (2012) "Enlargement Strategy and Main Challenges 2012–2013," 336, October 2012, p. 44: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf (accessed February 26, 2013). See also Simon, J. (2012), "For Turkey, World's Leading Jailer, a Path Forward," Committee to Protect Journalists, December 11, 2012: https://www.cpj.org/reports/Turkey2012.English.pdf (accessed February 25, 2013).

[258] See, e.g., Information Law (Law No: 4982). Information and documents pertaining to state secrets, the economic interests of the state, state intelligence, the administrative investigation, and the judicial investigation and prosecution are outside the scope of this law. Open Society Justice Initiative (2009), Access to Judicial Information Report, March, pp. 25-27. Any refusal to provide information based on the different exemption may be submitted to the "Turkish Right to Information Assessment Council", then to the courts. Law on Right to Information, No. 4982, Article 1: http://www.bilgiedinmehakki.org/en/index.php?option=com_content&task=view&id=7&Itemid=8 (accessed March 4, 2014). Another example is provided by the laws governing

media content in Turkey "which contain restriction based on principles of "national unity," "national security" and "territorial integrity". Open Studies Series no. 3 (Istanbul: Turkish Economic and Social Studies Foundation [TESEV], pp. 34-35: http://www.tesev.org.tr/Upload/Publication/0a3511ab-e048-4666-abca-a6618d5d15a8/12301ENGmedya3WEB09_07_12.pdf (accessed February 27, 2013). The radical nature of the restrictions on freedom of the press in Turkey was recently emphasised in a report which also set the explain the fact the media failed to cover the major protest over Gezi Park in Istanbul which was overflowed with protest in substantial number of cities in Turkey mainly throughout May-June 2013. As a result of the confrontations six people lost their lives and more than 8 000 were injured. The inspections carried out by the Ministry of Interior also concluded that police used disproportionate force against protesters. A large number of human rights defenders also faced prosecution and legal proceeding on charges of making propaganda for terrorism during demonstrations and meetings and following their attendance to press conference. These have also led to a number of convictions. See European Commission Staff Working Document, Turkey 2013 Progress Report: Enlargement Strategy and Main Challenges 2013-2014, Brussels 16.10.2013 SWD(2013), pp. 2, 53: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf (accessed February 27, 2013).

[259] Ibid., pp. 12, 15.

[260] Ibid., p. 8.

[261] See the report by Pierini, M. and Mayr, M. (2013), "Freedom of the Press in Turkey," Carnegie Europe, Carnegie Endowment for International Peace, Belgium & Open Society Foundation in Turkey: http://carnegieendowment.org/files/press_freedom_turkey.pdf (accessed February 25, 2013). See also Administration of Justice and Protection of Human Rights in Turkey, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his Visit to Turkey from 10 to 14 October 2011 (Strasbourg: Council of Europe, Jan. 10, 2012), p. 4: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-tr/dv/0131_04/0131_04en.pdf (accessed February 26, 2013).

[262] A judicial reform adopted in mid-2012 transferred jurisdiction over serious criminal offenses (including terrorism) to specialised regional courts. See Pierini, M. and Mayr, M. (2013), p. 8: http://carnegieendowment.org/files/press_freedom_turkey.pdf (accessed February 25, 2013). According to the Turkish Journalists Union, more than 15,000 Websites have been blocked by the state. For more than two years, YouTube was banned on the grounds that some videos on the site insulted modern nation founder Mustafa Kemal Atatürk. Many of the media members accused are being tried in Çağlayan courthouse. See Dan Bilefsky and Sebnem Arsu, "Charges Against Journalists Dim the Democratic Glow in Turkey," *New York Times*, January 5, 2012: http://www.nytimes.com/2012/01/05/world/europe/turkeys-glow-dims-as-government-limits-free-speech.html?pagewanted=all (accessed February 26, 2013).

[263] See Simon (2012), p. 7: https://www.cpj.org/reports/Turkey2012.English.pdf (accessed February 25, 2013).

[264] UPI (2014), "EU Has Juridical Concerns with Turkey," January 15, 2014: http://www.upi.com/Top_News/Special/2014/01/15/EU-has-judicial-concerns-with-Turkey/UPI-34421389798136 (accessed April 4, 2014).

[265] Björnberg, K. and Cranston, R. (2005), "The Functioning of the Judicial System in the Republic of Turkey: Report of an Advisory Visit," *European Commission Brussels*, June 13-22, pp. 52-53: http://www.deontologie-judiciaire.umontreal.ca/en/textes%20int/documents/TURQUIE_ENQUeTE.pdf (accessed April 5, 2014). According to the amended Article 129 of the criminal court, "a record of the hearing should be drawn up and should be signed by the presiding judge and the court clerk: "If the actions taken during the hearing have been recorded by means of technical equipment, written minutes of the recording shall be prepared without delay". See Law No. 5271, Code on Criminal Procedure, April 4, 2004: http://legislationline.org/documents/action/popup/id/8976 (accessed April 6, 2014).

[266] The project was started in 2000 and completed by the end of 2007. See Cam, Ali, Raza (2008), EU Principals in Modernisation of Justice and The Turkish IT Project UYPA, *European Journal of ePractice* (2008): http://www.epractice.eu/files/3.5_1.pdf (accessed April 4, 2014).

[267] See Aksel, I. (2013), Turkish Judicial System- Bodies, Duties and Officials, The Ministry of Justice of Turkey: The Department for Strategy Development: http://www.justice.gov.tr/judicialsystem.pdf(accessed February 16, 2015).

[268] The European Convention of Human Rights (2005), PF 2005 01.01 Better Access to Justice in Turkey: Standard Summery Project Fiche: http://ec.europa.eu/enlargement/fiche_projet/document/PF%202005%2001.01%20Better%20Access%20to%20Justice%20in%20Turkey.pdf (accessed April 5, 2014), pp. 7, 8, 14.

[269] The European Convention of Human Rights (2005), PF 2005 01.01 Better Access to Justice in Turkey: Standard Summery Project Fiche: http://ec.europa.eu/enlargement/fiche_projet/document/PF%202005%2001.01%20Better%20Access%20to%20Justice%20in%20Turkey.pdf (accessed April 5, 2014).

[270] Turkish Criminal Code (2009), Beta Publishing House, Istanbul: http://www.justice.gov.tr/eski/basiclaws/cmk.pdf (accessed April 21, 2014), p. 87.

[271] Republic of Turkey, Ministry of Justice, Department of Information Technologies and Use of Information Technologies in the Judiciary, pp. 45-48: http://www.justice.gov.tr/basiclaws/JUDICIARY_2.pdf (accessed March 3, 2014), Among other tasks, the system aims to document hearings in "133 heavy criminal centers and 225 court rooms via audio and visual recording systems." It has been noted that over 150 staff members from these criminal centers were trained toward that aim in audio-visual recordings. "The system was developed by Broland Delphi studio and integrated into the Java based UYPA where all files generated by the judicial units are stored and where all electronic procedures and transactions of the judiciary are performed. During the court hearing, the software processes images captured from the camera and audio signals incoming from the mixer." The recording of the hearings is regulated by Articles 52, 58, 147/1-h, 180, 196 and 219 of the Code of Criminal Procedure. See ibid.

[272] Ibid. See also Erdem Law Office (2011), Key Notes on Legal Development of September 2011: http://www.erdem-erdem.com/en/articles/key-notes-on-legal-developments-of-september-2011 (accessed March 3, 2014). First estimation of the cost of UYAP was 160 million dollars. The European Convention of Human Rights (2005), PF 2005 01.01 Better Access to Justice in Turkey: Standard Summery Project Fiche: http://ec.europa.eu/enlargement/fiche_projet/document/PF%202005%2001.01%20Better%20Access%20to%20Justice%20in%20Turkey.pdf (accessed April 5, 2014), p. 78.

[273] See for example Owen, R. C. and Mather, M. (2000) "Thawing Out the Cold Record: Some Thoughts on How Videotaped Records May Affect Traditional Standards of Deference on Direct and Collateral Review," *J. App. Prac. & Process,* 2, p. 411; Gorgos, K. A. (2009) "Lost in Transcription: Why the Video Record Is Actually Verbatim," *Buffalo Law Review*, 3, pp. 1057-1128; Lederer, F. I. (2000) "An Environment of Change: The Effect of Courtroom Technologies on and in Appellate Proceedings and Courtrooms," *Journal of Appellate Practice and Process*, pp. 251-463.

[274] Tibi, B. (2006), "Europeanising Islam or the Islamisation of Europe: Political Democracy vs. Cultural," in Religion in an Expanding Europe (ed. T. A. Byrnes and P. I. Katzenstein), Cambridge: Cambridge University Press, p. 220: http://www.euroculture.upol.cz/dokumenty/sylaby/Byrnes-Katzenstein_Religion%20in%20an%20expanding%20Europe_ch-8_Tibi_Islam_(3).pdf.

[275] The case was filed at the 7th High Criminal Court on May 28, 2012. The first set of hearings was conducted on November 6-9, 2012, the second on February 21, 2013, the third on May 20-21, 2013, the fourth on October 10, 2013, and the fifth on the March 27, 2014. The sixth on May 26, 2014. The seventh was conducted on March 11-12, 2015. For general information about the hearings dates, see IHH Humanitarian Relief Foundation in the Mavi Marmara Trials: http://www.ihh.org.tr/en (accessed April 29, 2015).

[276] Twitter, 2012, Mavi Marmara Case: @MaviMarmaraCase, posted by: Izzet Şahin , IHH The Foundation For Human Rights and Freedoms and Humanitarian, 3 November: https://twitter.com/MaviMarmaraCase (accessed March 31, 2014).

[277] Folk, R. (2013) "Israel on the Felons Dock: Double Standers In International Law," lecture at the Foundation For Human Rights, Freedom and Humanitarian Relief, University of Istanbul: http://eski.ihh.org.tr/falk-uluslararasi-hukuk-cifte-standartli/en/ (accessed April 15, 2014). On the lawyers' arrest, see for example Milliyet (2013),"Çağlayan Adliyesi'nde polis müdahalesi Cascade police intervention,": https://www.youtube.com/watch?v=x0yyQaNb5cU (accessed September 7, 2014).

[278] Republic of Turkey, Ministry of Justice (2009), Juridical Reforms Strategy, p. 29: http://www.sgb.adalet.gov.tr/yrs/Judicial%20Reform%20Strategy.pdf (accessed April 28, 2014).

[279] Turkish Diary (2011) Europe Largest Palace in Istanbul, 1 August: http://www.buyuyenturkiye.com/turkishdiary/haber/europes-largest-palace-of-justice-in-istanbul (accessed March 19, 2013). According to the Center for Legal and Court Technology, the court infrastructure demands raised floors, cabling infrastructure, special location for the racks with adequate ventilation, etc. Martin Gruen, "The World of Court Room Technology," Center for Legal and Court Technology, 2003: http://www.legaltechcenter.net/download/whitepapers/The%20World%20Of%20Courtroom%20Technology.pdf (accessed June 24, 2014).

[280] The extent to which the Turkish justice system should follow European ways has been a major issue in recent years. The issue has roots, however, in the Ottoman Empire which preceded the current Turkish state and in its relationship with Europe—a relationship largely marked by perceptions of superiority and inferiority. For claims regarding Ottoman superiority, see, e.g., Starr, J. (1991), *Law As a Metaphor: From Islamic Courts to The Palace Of Justice*, Albany, NY: State University of New York. Parallel assertions regarding Western

superiority relate to more advanced technology: see Inalcik, H. with Quataert D., eds. (1995), *An Economic and Social History of The Ottoman Empire* ,Volume Two 1600-1914. Cambridge: Cambridge University Press.

[281] In her statement to the court, Gülden Sönmez complained about the size of the courtroom: "You know there are more than 700 victims. Some of them are abroad. Unfortunately, they cannot come here and testify at the court because the courtroom is too small and the hearing is only one day long": The Foundation For Humanitarian Rights and Freedoms (2013), Second Hearing of the Mavi Marmara Trial Held, 21 February: http://mavi-marmara.ihh.org.tr/en/main/news/0/second-hearing-of-mavi-marmara-trial-held/1593 (accessed April 18, 2014).

[282] United Nation Development Program, Istanbul Declaration on Transparency in the Judicial Process, pp. 1-10: http://www.ge.undp.org/content/dam/turkey/docs/demgovdoc/%C4%B0stanbul%20Declaration.pdf (accessed March 6, 2013). See also UNDP (2013), A Declaration on Juridical Transparency endorsed by Asian Countries in Istanbul, 1 December 2013: http://www.ks.undp.org/content/turkey/en/home/presscenter/news-from-new-horizons/2013/12/declaration-judicial-transparency/ (accessed March 6, 2013).

[283] According to a survey on the application of digital technologies in courtrooms, more than 30,000 courts have adopted digital audio and video recording technology to capture court proceedings since the end of the 1990s: "most digital recording systems today are comprised of at least four components: recording, note-taking, playback and storage. For the best quality, and to facilitate the creation of verbatim transcripts, typical courtroom venues require four independent audio channels (from a minimum of 4 microphones, one each for the judge, prosecution, defense and witness) are recorded." Langbroek, P. (2011), "Digital Technology Leading the Way in Court Recording," *International Journal for Court Administration* 3:2.

[284] Legislation Online, Criminal Code, Law Nr. 5327: Second Chapter-Essence of Criminal Responsibility, Article 20, 2004: http://legislationline.org/documents/action/popup/id/6872/preview (accessed April 1, 2014). During the hearings I attended, only once witness testified to have seen former Chief of Staff Gabi Ashkenazi on board the Mavi Marmara. This remark did not provoke any questions, neither by the judge nor by the defendants' lawyer.

[285] See also, e.g., IHH The Foundation For Human Rights and Freedoms and Humanitarian Relief (2013), Second Hearing of The Mavi Marmara Trial Held, 21 February: http://mavi-marmara.ihh.org.tr/en/main/news/0/second-hearing-of-mavi-marmara-trial-held/1593, (accessed March 31, 2014).

[286] Marmara Derneği Resm, 2013, Second Hearing Held In Historic Trial, The Freedom and Solidarity Association Mavi Marmara: http://www.mavimarmara.org/en/?p=105 (accessed April 15, 2014).

[287] Ibid.

[288] The Foundation For Humanitarian Rights and Freedoms (2012), The Mavi Marmara Case: Legal Actions Taken Against Israeli Attack on The Gaza Freedom Flotilla on 31.05.2010, December 10, 2012, p.9: http://www.ihh.org.tr/fotograf/yayinlar/dokumanlar/134-

Mavi%20Marmara%20Hukuk%20Raporu%20-%2010%20Aral%C4%B1k%202012%20-mavi-marmara-legal-report.pdf (accessed April 18, 2014).

[289] The Foundation For Humanitarian Rights and Freedoms (2013), Second Hearing of The Mavi Marmara Trial Held: http://mavi-marmara.ihh.org.tr/en/main/news/0/second-hearing-of-mavi-marmara-trial-held/1593 (accessed April 18, 2014).

[290] Twitter, Mavi Marmara Case: @MaviMarmaraCase, posted by: IHH The Foundation For Human Rights and Freedoms and Humanitarian, October 10, 2013: https://twitter.com/MaviMarmaraCase (accessed March 31, 2014).

[291] Colborne, S. (2013), "Three Years on, The Mavi Marmara is Still Making Waves," *Palestine Solidarity Campaign*, May 31, 2013: http://www.palestinecampaign.org/three-years-on-the-mavi-marmara-is-still-making-waves (accessed April 16, 2014).

[292] Twitter, 2013, Mavi Marmara Case: @MaviMarmaraCase, posted by: IHH The Foundation For Human Rights and Freedoms and Humanitarian, 7 October: https://twitter.com/MaviMarmaraCase (accessed March 31, 2014).

[293] Veterans News Now (2014), "Israel Must be Held Accountable," March 28, 2014: http://www.veteransnewsnow.com/2014/03/28/israel-must-be-held-accountable (accessed April 20, 2014).

[294] Colborne (2013): http://www.palestinecampaign.org/three-years-on-the-mavi-marmara-is-still-making-waves (accessed April 16, 2014).

[295] Twitter, 2013, Mavi Marmara Case: @MaviMarmaraCase, posted by: IHH The Foundation For Human Rights and Freedoms and Humanitarian, 7 October: https://twitter.com/MaviMarmaraCase (accessed March 31, 2014).

[296] Aksel, I. (2013), Turkish Judicial System- Bodies, Duties and Officials, The Ministry of Justice of Turkey: The Department for Strategy Development: http://www.justice.gov.tr/judicialsystem.pdf (accessed February 16, 2015).

[297] Exum, J. J. (2004-8), Turkish Criminal Code Procedure: The Essence of The Rules: A Comparison of Turkish and U.S. Criminal Procedure, p. 5: http://gulentrial.org/gulen/turk_criminal_art.pdf (accessed April 7, 2014).

[298] See also Bob, J. Y. (2013), "Turkey Resumes Gaza flotilla Trial for ex-IDF Heads," *Jerusalem Post*, February 21, 2013: http://www.jpost.com/Diplomacy-and-Politics/Turkey-resumes-Gaza-flotilla-trial-for-ex-IDF-heads (accessed April 16, 2013).

[299] It is worth noting, however, that in the Turkish law system, the judge's task of reiterating the testimonies and dictating them to the court clerk is highly redactive in nature, often substantially editing the witnesses' statements, choice of words, tone, etc.

[300] Gökan, S. (2010), p. 70.

[301] Administration of Justice and Protection of Human Rights in Turkey, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following His Visit to Turkey From 10 to 14 October 2011 (Strasbourg: Council of Europe, January 10, 2012), p. 19: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-

tr/dv/0131_04/0131_04en.pdf (accessed February 26, 2013). See also Burcu Demren Dönmez, "Cross-Examination in Turkish Criminal Procedure Law," 8:1 (Summer 2011), pp. 53-69.

[302] Ibid.

[303] Ibid.

[304] Aydin, S., Suavi, M. E., Mithat, S. Atilgan, E. Ü. (2011), "Just Expectations: A Compilation of TESEV Research Studies on the Judiciary in Turkey," TESEV Publication, Istanbul, pp. 38, 42, 45: http://www.tesev.org.tr/just-expectations--compilation-of-tesev-research-studies-on-the-judiciary-in-turkey/Content/249.html (accessed March 5, 2013).

[305] Berk Kalem (2011), pp. 32-35: http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=135218 (accessed March 3, 2014).

[306] The invitation to foreign citizens to participate and testify at court was legally justified based upon a claim that in accordance with the Turkish law in cases in which "inhuman treatment and torture was applied to defenseless people, it is subject to the provisions of the Turkish law as a result of the application of universal jurisdiction principle." IHH Humanitarian Relief Foundation (2012), The Mavi Marmara Case- Legal Actions Taken Against The Israeli Attack on The Gaza Freedom Flotilla On 31.05.2010, December 10: http://www.ihh.org.tr/fotograf/yayinlar/dokumanlar/134-Mavi%20Marmara%20Hukuk%20Raporu%20-%2010%20Aral%C4%B1k%202012%20-mavi-marmara-legal-report.pdf (accessed April 29, 2014). See also IHH The Foundation For Human Rights and Freedoms and Humanitarian (2012), Mavi Marmara Trial Postponed To 21th Feb 2013, 10 November: http://www.ihh.org.tr/uploads/2012/ihh-press-release-on-mavi-marmara-trial-10-11.pdf (accessed April 5, 2014).

[307] Agamben, G. (1995), p. 104, and more generally pp. 104-111.

[308] Peleg, G. (2014) "Commando Unit Warrior is Prosecuting: 'I Thought They Were Going to Execute Me,'" Channel 2 News, April 11, 2014: http://www.mako.co.il/news-law/legal/Article-6cf8a45b4e15541004.htm (accessed April 16, 2014).

[309] Ibid.

[310] "Image Blockade,"(Works and Research Created within the Frame of Exterritory Project) The Center for Contemporary Art, July 30–September 26, 2015, Tel-Aviv, Israel. Information about the various works in the exhibition is included in the Appendix.

[311] For a legal discussion as well as further examples (e.g., cases of targeted killings, the US assassination of al-Qaeda founder and leader Osama Bin Laden, etc.), see Lieblich, E. "Show Us the Films: Transparency, National Security and Disclosure of Information Collected by Advanced Weapon Systems under International Law." *Israel Law Review* 45:3 (2012), pp. 459-491.

[312] Two recent cases in Israel involved meat production company Soglowek and Adom Adom. In both cases, the factories in questions attempted to confiscate images taken by the animal rights activists themselves. See, e.g., Anonymous for Animal Rights, Petition to the

Supreme Court of Israel, December 11, 2012: http://tnuvacruelty.co.il/high-court (accessed August 4, 2015); Anonymous for Animal Rights, Under Cover Investigation at the Soglowek Slaughterhouse, July 6, 2015: http://chicken.org.il (accessed August 4, 2015).

[313] While choosing to explore the legal history of the image as evidence especially under common law, it is important to note that every state may enforce its own national codes of evidence and specific legal conceptualisation of images as evidence. Common law systems have exerted enormous effect, including in Israel. Unlike Israel, Turkey adopted the mixed system of criminal proceedings prevalent in Continental Europe. In fact, the Panel Code and Code of Criminal Procedure, which were in place until 2005, were taken from Italy and Germany respectively. One of the main principals of criminal justice system is that of free evaluation of evidence, i.e. "that everything can be used as evidence that is going to help the judge resolve the dispute and will assist the judge form an opinion, unless evidence is unlawfully obtained (Article 217 CCP). The law regulates certain tools of proof that are admissible as evidence and in parallel grants the Judge discretionary power on evaluating evidence. In 2005 both panel codes were replaced, while the German influence is still strong. Criticism claims that the new code adopts concepts from different countries and systems and gives rise to incoherence and confusion and misunderstandings among practitioners. In addition in regards to cases that happened before 2005 the former codes are still applied. One of the fundamental principles of the Turkish legal system is "providing evidence by documentation" (Set forth by the former Code of Civil Procedure No. 1086) which is considered as a fundamental means of evidence in the Turkish legal system. In the new code (No. 5271) some changes has been made rearticulating what was formally titled "written preliminary evidence" into mere "preliminary evidence". The condition that preliminary evidence must be in written form was cancelled and other types of records are regarded as preliminary evidence under the new provisions. The new code provides the definition of what constitute a Record: "written or printed texts or documents, certificates, drawing, plans, sketches, photographs, films, visual or audio data and electronic data and other means of collection of information, which are convenient for proving facts related to the dispute, are records under this act." See Doğru, O. (2012), "Mills that Grind Defendants: The Criminal Justice System in Turkey From a Human Rights Perspective," Tesev Publications: http://www.tesev.org.tr/assets/publications/file/11703ENGyargi3_06_03_12onay.pdf (accessed July 19, 2014); Uzun, A. (2013), "Evidence By Documentation And Its Exception Under The Code Of Civil Procedure," Erdem & Erdem: http://www.erdem-erdem.com/en/articles/evidence-by-documentation-and-its-exceptions-under-the-code-of-civil-procedure (accessed July 19, 2014).

[314] Thurston, T. (1996-2009), The Law and Science of Evidence: http://chnm.gmu.edu/aq/photos/frames/essay01.htm (accessed June 29, 2014). The category of hearsay has to do with the law of evidence complying to be delivered with an oath, and should be available for cross-examination. Haldar, P. (1991), "The Evidencer's Eye: Representations of Truth in the Laws of Evidence," *Law and Critique*, 2, pp. 171-89.

[315] See Thurston (1996-2009): http://chnm.gmu.edu/aq/photos/frames/essay01.htm (accessed June 29, 2014); Sekula, A. (1986), "The Body And The Archive," *October*, 39, pp. 3-64. See also Cohen J. and Meskin, A. (2010), "Photographs as Evidence," in *Photography and Philosophy: Essays on the Pencil of Nature* (ed. S. Wadlen), West Sussex, UK: Blackwell Publishing; Carter, R. G. S. (2010), "Ocular Proof: Photographs as Legal Evidence," *Archivaria*,, 69, p. 23; Porter, G. (2012), "Photographic Truth and Evidence," *Australian Journal of Forensic Sciences*, 2, pp. 183-92.

[316] *Encyclopedia of Forensic Science*, eds. Siegel & Saukko, 2nd Edition, San Diego: Academic Press, 2013. Similar uses of photography by the police were also employed in the U.S.: see Thurston (1996-2009): http://chnm.gmu.edu/aq/photos/frames/essay01.htm (accessed June 29, 2014).

[317] Mnookin provides an example for an early use of photography that appeared in an American photographic journal. According to the journal, French lawyers in 1852 were using daguerreotypes "as a means of convincing the judge and jury that is more eloquent than their words." According to Mnookin, photographs were exhibited before the US Supreme Court as early as in 1864. According to Guilshan, photographs were admitted by the US court even earlier, in 1860. See Mnookin (1998), pp. 1-74; Carter (2010), p. 23; Guilshan (1992), pp. 365-80.

[318] Mnookin, 1998, p. 65.

[319] Ibid., p. 20.

[320] Brain (1992), p. 972.

[321] Ibid.

[322] Bentham, J. (1843), *The Works of Jeremy Bentham, Vol. 7* ("The Rationale of Judicial Evidence"), p. 20: http://lf-oll.s3.amazonaws.com/titles/1998/Bentham_0872-07_EBk_v6.0.pdf (accessed February 5, 2014), and also in: Brain (1992), pp. 957-1027.

[323] Bentham, J. (1843), *The Works of Jeremy Bentham, Vol. 7*, p. 23.

[324] Brain (1992), pp. 957-1027.

[325] This preference may be due to various reasons, including the ability to vocally claim an assertion as well as support it with an oath. This reason is also consistent with a mediaeval hierarchy of the living over the dead, in terms that the witness can be seen and heard. Another reason is the fact that adversarial trial centers on cross-examination of the witness. Haldar, P. (1999), "The Return of the Evidencer's Eye: Rhetoric and the Visual Technologies of Proof," *Griffith Law Review*, 1, pp. 86-101.

[326] Mnookin (1998), pp. 1-74; Porter, G. (2011), "A New Theoretical Framework regarding the Application and Reliability of Photographic Evidence." *International Journal of Evidence and Proof*, 1, pp. 26-61.

[327] Mnookin (1998), p. 64; Carter (2010), p. 23.

[328] Brain (1992), p. 995.

[329] Mnookin (1998), p. 67.

[330] See, respectively, Lucas, J. F. (1990), "Props: An Overview of Demonstrative Evidence," *American Journal of Trial Advocacy*, 3, pp. 1097-1139; Santee, D. S. (2012), "More than Words: Rethinking the Role of Modern Demonstrative Evidence," *Santa Clara Law Review*, 1, pp. 105-144; Mnookin (1998), pp. 69-70.

[331] It has been argued that within the Roman law the concept of 'proof' is indistinguishable from the word "rhetoric." Furthermore, some believe that this had affected the modern law of evidence. Haldar (1999), pp. 86-101.

[332] Mnookin (1998), p. 40. See also Thurston (1996-2009): http://chnm.gmu.edu/aq/photos/frames/essay01.htm (accessed June 29, 2014).

[333] By the 1870s, photographs were frequently used in criminal cases in the U.S. as a way to prove identity, either of the victim or of the defendant: Mnookin (1998), pp. 11-13.

[334] Wigmore, H. J. (1915) *A Supplement to A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, Boston: Little, Brown & Company, pp. 72-72: https://archive.org/stream/cu31924020192401#page/n91/mode/2up (accessed August 10, 2014). See also Brain (1992), pp. 957-1027.

[335] Brain (1992), p. 1002.

[336] Ibid., pp. 998-999.

[337] Ibid., p.1009.

[338] Mnookin (1998), pp. 123-124.

[339] Ibid, p. 47. See also Silbey, J. M. (2004), "Judges as Film Critics: New Approaches to Filmic Evidence." *University of Michigan Journal of Law Reform*, 37:2, p. 499.

[340] Golan, T. (2004), "The Emergence of the Silent Witness: The Legal and Medical Reception of X-rays in the USA," *Social Studies of Science* 34:4, p. 476.

[341] Mnookin (1998), p. 64; Carter (2010), p. 23.

[342] Brain (1992), pp. 1002, 1013.

[343] Due to the incoherence of common law, U.S. courts have applied three different judicial approaches of filmic evidence. See Silbey (2004), pp. 493-1275.

[344] This change has motivated a shift of focus among experts on witness testimony, from interpretation to verification: radiologists were asked to concentrate on affirming the validity of the production process rather than share their opinion and interpretation about the meaning of the images. See Golan (2004), pp. 469-499.

[345] Ibid, p. 490.

[346] Bergel S. (1985), "Evidence – Silent Witness Theory Adopted to Admit Photographs without Percipient Witness Testimony," *Suffolk University Law Review,* 2, pp. 353-359. In tandem with the introduction of surveillance cameras, police deployed the new technology as a monitoring tool to reduce crime, and already in 1956 installed CCTV in certain American cites for the purpose of public surveillance. Lambert, P. (2011), *Courting Publicity: Twitter and Television Cameras in Court*, West Sussex, UK: Bloomsbury Professional.

[347] Guilshan (1992), pp. 365-80. See also Madison, B. V. III (1984), "Seeing Can Be Deceiving: Photographic Evidence in a Visual Age – How Much Weight Does It Deserve?" *William and Mary Law Review*, 25, pp. 705-957.

[348] Bergel (1985), pp. 353-359.

[349] It was further argued that while demonstrative evidence helped initiate photography into the realm of evidence, its legal status is less explanatory of the status of films in courts. See Silbey (2004), pp. 493-1275.

[350] Lucas, J. R. (1990), "Props: An Overview of Demonstrative Evidence," *American Journal of Trial Advocacy*, 3, pp. 1011, 1124. 1131. Of course there are also differences between the technologies, which may create different criteria for admissibility and authentication processes. Some of the aspects with respect to which technologies may differ are the scale of resolution, the process of production of the image, etc. Different states may have different standards; in the U.S., criteria may even be determined by individual judges.

[351] Carter (2010), pp. 23, 41. It is also worth noting that according to U.S law, whether evidence is recorded manually or automatically is not a relevant factor to the question of admissibility. Haldar (1991), pp. 171-89.

[352] Haldar (1999), p. 97.

[353] Mason, P. (2000), "Lights, Camera, Justice? Cameras in the Courtroom: An Outline of the Issues," *Crime Prevention and Community Safety,* 2:3, pp. 23-34.

[354] For example, enactment prohibiting courtroom photography in England and in Wales dates back to 1925. In 1989 a debate on the subject was conducted in the frame of the General Council Bar and resulted with a proposed experiment enabling judges on all courts for the period of two years to allow photography and recording according to their judgment under the restrictions of fair trial, nevertheless and despite the full support of the bar the law offered in order to permit such experiment did not pass. In the U.S, a 1946 Federal Rule banning photography and radio broadcasting of criminal procedure in Federal courts was enforced until 1981. Stepniak, D. (2004), "Technology and Public Access to Audio-Visual Coverage and Recordings of Court Proceedings: Implications for Common Law Jurisdiction," *William and Mary Bill of Rights Journal*, 12, pp. 791-979.

[355] Collins, R. K. L. and Skover, D. M. (1992), *Stanford Law Review*, 44: 3, pp. 509-552.

[356] On the audio-visual recording court proceedings see for example Lambert (2011) and Stepniak (2004).

[357] Ibid. See also Collins and Skover (1992).

[358] On the diverse approaches of temporary international criminal court, see for example: Peterson, T. H. (2008), Temporary Courts, Permanent Records, History and Public Policy Program: http://www.wilsoncenter.org/sites/default/files/TCPR_Peterson_HAPPOP02.pdf, (accessed August 12, 2014).

[359] Some have expressed critic regarding role of international tribunals "as authors of history," claiming that "it is not a burden that should be placed on the shoulders of the

judiciary." See for example Goodrich, P. and Delage, C., eds. (2013), *The Scene of the Mass Crime: History, Film and International Tribunals*, New York: Routledge, p. 28.

[360] The prosecutor, U.S Supreme Court justice Robert H. Jackson, made the decision. He determined both to document the trial and to use film as evidence viewing it as a tool of conviction. All though the fact that all the trials were sound recorded, the military filming crew (Army Signal Corps) filmed eventually only 25 hours over the course of ten and half months. Interestingly the prosecutor preference toward documentary evidence in favor of summoning witnesses, and the choice to have only a small number of victims testifying was explained as follows: "he feared that they would not be able to control their emotions. Delage, C. (2010), "The Place of the Filmed Witness: From Nuremberg to the Khmer Rouge Trial," *Cardozo Law Review*, 4, pp. 1087-1112.

[361] The testimonial power of images has been the subject of a debate since at least the mid-twentieth century. The debate is mapped out in a book by Libby Saxton, which examines some prominent views concerning the ability of documentary images to bear witness to the Holocaust, as well as the ability of cinema to represent traumas and atrocities. On the one hand, film director Claude Lanzmann has claimed that the Holocaust is an event without an image to capture the trauma (Saxton, L. [2008] *Haunted Images: Film, Ethics, Testimony and the Holocaust*, New York: Wallflower Press, p. 60); some, including Slavoj Žižek and Gérard Wajcman, even hold that the image of atrocity can either shield or veil us from the event itself (ibid., p. 53). Others, however, including film director Jean-Luc Godard, oppose such views pointing to the images' power of resurrection through cinema (ibid., p. 49). Didi Huberman further claims: "images have just as important a role to play as words in bearing witness to the Holocaust" (ibid., p. 60). While this debate has certainly been prominent in recent decades, Saxton writes that "the focus of critical discussion and artistic intervention has shifted from the question of whether the event could be or should be represented to the question of how it might be adequately or responsibly represented" (ibid., p. 2). My own point of departure in this dissertation is that any discussion regarding the limits of visual representation is first conditional upon access to the images themselves: to judge the images' testimonial value, we must first see them.

[362] Goodrich and Delage (2013), pp. 2-3. These arguments do not claim that the application of CCTV is a simple mirror of reality. Nevertheless, CCTV is often considered more objective because it is not controlled at the time of filming by human intervention; it produces static shots; and it presents records of the image through a stable set framing and a scheduled time. "Furthermore, some CCTV cameras are controlled by remote security staff by panning, tilting and zooming the camera." Nevertheless it may be interesting to add that: "In the U.S.A early constitutional discussions over the use of CCTV were interestingly connected to the issue of right of confrontation in cases when the defender was excluded from the court and was allowed accesses only via CCTV" (Porter [2012], pp. 183-192).

[363] According to the Israeli Courts Act (section 70 (b)) no filming is allowed in the courtroom. Also forbidden is the publication of photographs taken inside the courtroom, except when court permission is granted. Throughout history, in only very few cases have Israeli courts permitted broadcasting of their proceedings. These exceptional cases include the above-discussed Adolf Eichmann trial, and later the trial of John (Ivan) Demjanjuk, Ukrainian POW who was convicted in war crimes for being accessory to the murder of thousands of Jews during Second World War. In both cases court preceding were broadcast on radio and television. In 1996, television and radio broadcast live the reading of the verdict in the trial of Yigal Amir, the assassin of late Israeli Prime Minister Yitzhak Rabin. In 1999, the District Court in Jerusalem permitted live radio broadcast of the summary of the verdict in the trial of

Aryeh Deri, leader of ultra-orthodox political party Shas. Following a Knesset private bill from 2000 asking to amend the old prohibition, a commission headed by Supreme Court President Dorit Beinisch was set to examine the issue. In 2004, the Commission recommended exercising restraint with respect to the expansion of electronic coverage of court proceedings. It recommended that a controlled small-scale experiment would take place only within the framework of the High Court of Justice. Other than that, the use of cameras to film or videotape court protocol is an issue of debate, and the above rule is exercised. Nevertheless, the possibility to ask for court permission to film the trial for protocol is dealt with greater openness, and each of the sides is entitled to submit a request, while the one applying would bear the costs involved in the documentation in case of approval. At times, the judge himself may order the recording of the proceedings for the sake of the protocol, for example in cases where a typed protocol might not be sufficient. See the Committee to Examine Opening Courts In Israel to the Electronic Media (2004), The State of Israel, Jerusalem: http://elyon1.court.gov.il/heb/doch%20electroni.pdf (accessed August 15, 2015).

[364] Pinchevski, A. and Liebes, T. (2010), "Served Voices: Radio and Mediation of Trauma in the Eichmann Trial," *Public Culture* 22:2, pp. 265- 291.

[365] Hava Yablonka, quoted in Pinchevski,A., Liebes, T. and Herman, O. (2007), "Eichmann on the Air: Radio and the Making of an Historic Trial, *Historical Journal of Film, Radio and Television*, 27:1, pp. 1-25.

[366] The trial was partially broadcast: including some of sessions and other additional coverage in the frame of the radio program Yoman Ha'mishpat. See Pinchevski, A. and Liebes, T. (2010), "Served Voices: Radio and Mediation of Trauma in the Eichmann Trial," *Public Culture* 22:2, pp. 265- 291.

[367] Judge quoted in Delage, C. (2006), *Caught on Camera: Film In the Courtroom From the Nuremberg Trials to the Trials of the Khmer Rouge*," Philadelphia: University of Pennsylvania Press, p. 170.

[368] Pinchevski, Liebes and Herman (2007).

[369] Zinder to Landor, 15 June 1960, ISA, Prime Minister's Office, G/6384 I/3657. Cited in: Pinchevski, Liebes and Herman (2007).

[370] Israel Ministry of Justice, Adolf Eichmann Trial, Records of The Attorney General Against Adolf Eichmann, Volume A, p. 14: http://index.justice.gov.il/Subjects/EichmannWritten/volume/vol1_shaar.pdf (accessed August 15, 2014). The decision to allow filming and broadcasting the trial met with resistance by both sides, but mainly by the legal system. Minister of Justice Pinchas Rosen invoked the novelty of such an act in the state legal life, expressing the fear that the defence may try to discredit the trial. Defence lawyer Servatius also objected but was overruled by the court. Pinchevski, Liebes and Herman (2007), pp. 1-25.

[371] The Nuremberg trials were also the first to extensively introduce film as evidence. According to article 19, the tribunal declared that it should not be bound technical rules of evidence. One of the films to serve as visual proof was the film 'The Nazi Plan', a documentary commissioned under orders of the U.S. Council. Later the same film will be shown in Eichmann trial. Additional films were shown as well. See Morrison, W. (2014), "Book review: Valerie Hartouni, *Visualising Atrocity: Arendt, Evil, and the Optics of*

Thoughtlessness, and Christian Delage and Peter Goodrich (eds.), *The Scene of the Mass Crime: History, Film and International Tribunal, Theoretical Criminology*, Vol.18:2, pp. 252-256. See also Delage, (2006). Another example for a tribunal which proceedings were partly documented in the name of court and in which film was also introduced as evidence is the Tokyo War Crimes Trial presenting "Japan in Time of Emergency". See Bray, M. S. and Murphy, W. T. (1972), Audiovisual Records in the National Archives Relating to World War I. Preliminary Draft, National Archives and Records Service (GSA),Washington, D.C.: http://files.eric.ed.gov/fulltext/ED081239.pdf (accessed August 11, 2014).

[372] UN ICTY, A Report on the Audiovisual Coverage of the ICTY's Proceedings Finds that Cameras Contribute to a Proper Administration of Justice, April 19, 2000, The Hague: http://www.icty.org/sid/7869 (accessed March 24, 2014).
See also Peterson (2008), Temporary Courts, Permanent Records, History and Public Policy Program:
http://www.wilsoncenter.org/sites/default/files/TCPR_Peterson_HAPPOP02.pdf (accesses August 12, 2014).

[373] See UN ICTY, Courtroom Technology: http://www.icty.org/sid/167 (accessed September 2, 2014). And also: Mason, Paul, Court on Camera: Broadcast Coverage of The Legal Proceedings: http://usf.usfca.edu/pj/camera-mason.htm (accessed August 10, 2014).

[374] Extraordinary Chambers in the Courts of Cambodia (ECCC), 2006-2003, Introduction to the ECCC: http://www.eccc.gov.kh/en/about-eccc/introduction (accessed March 24, 2014). See Delage, C. (2010), "The Place of the Filmed Witness: From Nuremberg to the Khmer Rouge Trial," *Cardozo Law Review*, 4, pp. 1087-1112.

[375] Adami, T. "Who Will Be Left to Tell the Tale?" Recordkeeping and International Criminal Jurisprudence," (2007) *Archival Science*, 7:3, pp.213-22.

[376] In 1996 audio recordings of the floor proceedings and of the translations were introduced; in 1999 video recording was added. The sound tracks on the video recordings are duplicates of the audio. In an anecdote note it might be interesting to add that the ICTY and the ICTR are not using the electronic systems of recording and thus in the future it such discussion should also engage in looking into different recording cultures. See Peterson (2008), Temporary Courts, Permanent Records, History and Public Policy Program:
http://www.wilsoncenter.org/sites/default/files/TCPR_Peterson_HAPPOP02.pdf (accesses August 12, 2015) pp. 27, 31.

[377] May, R. and Wierda M. (1998), "Trends in International Criminal Evidence: Nuremberg, Tokyo, The Hague, and Arusha." *Colum. J. Transnat'l L.*, 37, p. 725.

[378] Haldar (1999), p. 88.

[379] International Criminal Court (2004), Regulation of the Court, 26 May, pp. 11-12:
http://www.icc-cpi.int/NR/rdonlyres/B920AD62-DF49-4010-8907-E0D8CC61EBA4/277527/Regulations_of_the_Court_170604EN.pdf (accessed August 27, 2014). See for example: University Of Minnesota (1994), International Criminal Tribunal for the former Yugoslavia, Rules of Procedure and Evidence, U.N. Doc. IT/32/Rev.7 (1996), pp. 25-26, 37, 47: http://www1.umn.edu/humanrts/icty/ct-rules7.html (accessed September 2, 2014), and International Criminal Tribunal of Ruanda (1996) Rules of Procedure of Evidence, 5 July, p. 29:
http://www.unictr.org/Portals/0/English%5CLegal%5CEvidance%5CEnglish%5C050796e.

pdf (accessed September 2, 2014). At the ECEE, judges may invoke disclosure, yet this ability does not appear to be explicitly grounded in considerations national security. This may or may not be related to the fact that it is a governmental court and thus the protection of such interest are pre-given. On the right of judges to disclose, see Extraordinary Chambers in The Courts of Cambodia (2011), *Extraordinary Chambers in The Courts of Cambodia*, p.33: http://www.eccc.gov.kh/sites/default/files/legal-documents/ECCC%20Internal%20Rules%20(Rev.8)%20English.pdf (accessed September 2, 2014); Special Court for Sierra Leon (2003), Rules of Procedure and Evidence: https://www1.umn.edu/humanrts/instree/SCSL/Rules-of-proced-SCSL.pdf (accessed September 2, 2014).

[380] About the fact that the trial documentation was shown as evidence in Nuremburg, see Goodrich and Delange (2013), p. 4.

The enclosed USB contains:

1. Artworks created during 2011-2015, the same period I was writing my dissertation. The only exception is the documentation of two earlier interventions which formed the earliest stages of the Exterritory Project. Launched in 2009 and ongoing ever since, the Exterritory Project is a collaboration between myself and artist Ruti Sela. All the included artworks were created by the two of us as part of the project.

2. Images from exhibitions I curated while I was writing my dissertation.

3. Excerpts from selected filmed interviews I conducted as part of the dissertation.

4. All of the above materials are publicly available only on this USB. Additional information—e.g., three public symposia on extraterritoriality organized in the framework of the Exterritory Project—are available online in the project blog: http://exterritory-project.org.

USB INDEX- EXTRATERRITORIAL IMAGES- ART WORKS

1.		Title: ...."Exterritory Project" ..... Year: .....2009..... Medium/Duration: .....Video Documentation, 7 min..... ..... In 2009, together with artist Ruti Sela, I initiated the "Exterritory Project". This art project was conceived when we decided to screen a video compilation of works by Middle-Eastern artists onto the sails of boats sailing in the extraterritorial waters of the Mediterranean, as a response to the ongoing Israeli–Palestinian conflict. In 2010 we initiated a meeting in the extraterritorial waters of the Mediterranean, to which we openly invited people from diverse disciplines to offer their interpretation to the concept of extraterritoriality and to project art works onto the sails of the participating boats. After long months of intense research and production, a week before our planned departure date, the Israeli military intercepted the freedom flotilla in extraterritorial waters. Created a year before commencing the Ph.D., the conjunction in time and space between the Gaza flotillas and the flotilla we initiated as part of the project, pushed me to pursue the theoretical research presented in the dissertation.
2.		Title: ... "Thinking About (Unstable) Images in (Unstable) Spaces"..... Year: .....2010..... Medium/Duration: ..... Video Documentation, 3:32 min..... Event inintated in the frame of the Exterritory Project. We projected sequences of still images on boats sails sailing on the Yarkon river. The movement of the boats created a stop motion. We were occupied with questions such as: what kinds of images "benefit" from being unstable? what types of images can survive a space in which borders are constantly changing? What types of images become "better defined", when the spaces in which they are presented are unstable and in flux?
3.		Title..."Scenarios Preparations"..... Year: .....2015 "..... Medium/Duration: ..... Video, 35 min..... In 2011 we joined the preparations for the Gaza flotilla protesting the Israeli ongoing siege that was being organized by a Dutch NGO. *Scenarios Preparations* is comprised of footage filmed during preparations for the action which were held in different locations including a secret location from were the boat was meant to depart. The participants in the initiative are preparing toward the prospects of the military confiscation of their footage. Edited in 2015, the work addresses the ties between law of war, performativity and transparency and activism. Due to the sabotage of some of the boats as well as restrictions imposed by the countries from which the boats were to set sail, the flotilla was cancelled.

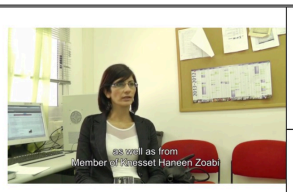
USB INDEX- EXTRATERRITORIAL IMAGES- ART WORKS

4.		Title: ...."Extras" .....
		Year: .....2012.....
		Medium/Duration: .....Video, 00:20 min.....
		The following work depicts a choreography we created by using the latest developments in TMS technology for a group of extras. TMS technology: "Transcranial Magnetic Stimulation", involves an external, noninvasive method which can cause brain activity through electromagnetic stimulation of magnetic fields in specific parts of human brain which produces and controls body movement. By using this technology to create a collective of people whose shared movements are coordinated without their control or immediate intentionality, we wished to raise questions such as: what kind of space does one embody when acknowledging that one is being partially controlled by external factor, in addition to issues related to perceptual freedom, the privacy of sensations, and the power of the choreography to re-contextualize the technology current utilization, signifying in turn, new ways in which physiological mechanisms can be automated.
5.		Title: ... "Image Blockade".....
		Year: .....2015.....
		Medium/Duration: ..... Video, 42:30 min.....
		In September 2014, veterans of Israel's elite army intelligence unit called "8200," many of whom were still on active reserve duty, signed a letter publicly addressing the state's political and military leaders and declaring their refusal to continue taking exploitative action against Palestinians in order to maintain military control of the occupied territories. Though they were refusing to continue their military service in order to instigate a policy change, the signatories were still committed to upholding national security and therefore adhered to censorship laws and did not reveal their identity. As a consequence, all media interviews with them were performed with their faces obscured. "Image Blockade" documents an experiment the artists initiated in collaboration with neuroscientists at the Weizmann Institute of Science. The subjects of the experiment consisted of two groups: other veterans of the 8200 intelligence unit and a random control group. The participants had their brain activity scanned using MRI technology while watching clips from media interviews with the dissidents. These reports had been approved for broadcast by military censors, but since the dissidents' faces had been darkened, the footage was easily manipulated by the artists, who inserted additional information into it. The added material was taken from various unconfirmed rumors or reports about state use of intelligence that most likely would not have passed the military censor. The subjects of the experiment were asked to identify which clips had been altered and what would or would not have been censored. Each participant's brain activity was measured while viewing the interviews to reveal how such information is read differently by people who have undergone the military's training in self-censorship. The distinction is visible when comparing the two groups' brain activities, especially around sensory regions of the brain such as the visual and auditory cortices.

USB INDEX- EXTRATERRITORIAL IMAGES- CURATED EXHIBITONS

6		Title: ...."Israeli Artists for Defense"……
		Year: .....2012.....
		Recreation of an exhibition. On July 25, 1967, barely a month and a half after the end of the Six Day War, the exhibition *Israeli Artists for Defense* opened at the Helena Rubinstein Pavilion of the Tel Aviv Museum of Art. Hundreds of artists participated, including Joseph Zaritsky, Yehezkel Streichman, Dani Karavan, Lea Nickel, Aviva Uri, Ziona Tajar, Anna Ticho, Ruth Schloss, and Raffi Lavie. "Israel's artists have donated 350 works of art to contribute to the national security effort," the official press release announced. It was "the greatest of exhibitions for the most important of causes," a newspaper ad stated, urging the public to purchase the works with the slogan: "Buy a painting—donate to our nation." Largely forgotten over the years, the exhibition is barely mentioned in histories of Israeli art . To the contrary that period was described in the local history as providing too little time to artists to "readjust and respond," as a time in which Israel's "mainstream artists devoted more attention to individual and aesthetic concerns than to political or social issues. The exhibition recreation urges us to look back at an exhibition in which a concrete functional relationship was on display between art on the one hand, occupation and militarism on the other—an episode which seemed to sever the ties between the war and its implications, between social and aesthetic values.
7.		Title: ... "Un Classified".....
		Year: .....2015.....
		Since the 2005 disengagement plan and the imposition of the blockade, Gaza Strip is represented on the Israeli public sphere, almost solely through images produced by the Israeli military. These images are captured by the army weapon systems and mostly depict targeted killings and that destruction of the strip built environment. Their production is made under multiply causes: military needs, propaganda but also as an alibi for the state adherence to the laws of war, a tool for legitimizing its devastating violence. Bringing together clips created by the army over these years, the exhibition and accompanied public discussions sought to raise questions concerning the implications resulting out of the monopoly of a militarized gaze over Gaza and the complexity inscribed in images that are designated to serve as "weapons" of fighting and simultaneously as evidence of impunity.

USB INDEX- EXTRATERRITORIAL IMAGES-EXCERPTS OUT OF SELECTED RESEARCH INTERVIEWS

8.		Interview with: ...Member of Israel Parliament: Haneen Zoabi…….
		Year: .....2012.....
9.		Interview with: ... IHH Executive Board Member, Lawyer and a Witness in the Mavi Marmara Trial: Gülden Sönmez……
		Year: .....2012.....
10. .		Interview with: ... Human Rights Adv. Dr. Abeer Baker, (At the time of the incident Baker worked at "The Legal Center for Arab Minority Rights in Israel") ..... .
		Year: .....2012 .....
11.		Interview with: ...Activists which took part in the initiative and are also witnesses at the Mavi Marmara trial in Istanbul: Surya Fachrizal and Babu Zanghar..... .
		Year: .....2012 .....