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### **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\***

#### *Summary*

This report was prepared by the fact-finding mission established by the Human Rights Council in resolution A/HRC/RES/14/1 of 2 June 2010 to investigate violations of international law, including international humanitarian law and human rights law, resulting from the interception by Israeli forces of the humanitarian aid flotilla bound for Gaza on 31 May 2010 during which nine people were killed and many others injured.

The report sets out background information relating to the interception of the flotilla as well as the applicable international law.

The fact-finding mission conducted interviews with more than 100 witnesses in Geneva, London, Istanbul and Amman. On the basis of this testimony and other information received, the Mission was able to reconstruct a picture of the circumstances surrounding the interception on 31 May 2010 and its aftermath. The report presents a factual description of the events leading up to the interception, the interception of each of the six ships in the flotilla as well as a seventh ship subsequently intercepted on 6 June 2010, the deaths of nine passengers and wounding of many others and the detention of passengers in Israel and their deportation.

The report contains a legal analysis of facts as determined by the Mission with a view to determining whether violations of international law, including international humanitarian and human rights law, took place.

The fact-finding mission concluded that a series of violations of international law, including international humanitarian and human rights law, were committed by the Israeli

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\* Late submission.

forces during the interception of the flotilla and during the detention of passengers in Israel prior to deportation.

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## I. Introduction

### A. Mandate

1. On 2 June 2010 the Human Rights Council, by resolution 14/1, decided “to dispatch an independent international fact-finding mission to investigate violations of international law, including international humanitarian law and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance” to Gaza. The same resolution authorized the President of the Council to appoint the members of this Mission and called for the independent international fact-finding mission, hereinafter called “the Mission”, to report its findings to the fifteenth session of the Council.<sup>1</sup>

2. Seven weeks later, on 23 July 2010, the President of the Human Rights Council appointed Judge Karl T. Hudson-Phillips, Q.C., retired Judge of the International Criminal Court and former Attorney General of Trinidad and Tobago, to be Chairman and to head the Mission. The other appointed members were Sir Desmond de Silva, Q.C. of the United Kingdom, former Chief Prosecutor of the United Nations-backed Special Court for Sierra Leone and Ms. Mary Shanthi Dairiam of Malaysia, founding member of the Board of Directors of the International Women’s Rights Action Watch Asia Pacific and former member of the Committee on the Elimination of Discrimination against Women.

3. In accordance with common practice, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the Mission. The experts were also assisted by external specialists in forensic pathology, military issues, firearms, the law of the sea and international humanitarian law.

4. The Mission considered that its task was directed to investigating the facts and circumstances surrounding the boarding by Israeli military personnel of a flotilla of ships bound for Gaza and to determine whether in the process violations occurred of international law, including international humanitarian and human rights law.

5. The Resolution in terms directed an investigation of ‘*violations*’ of international law, international humanitarian and human rights law, resulting from the Israeli ‘*attacks*’ on the flotilla carrying humanitarian assistance. This appeared to determine that “violations” of international law, including international humanitarian and human rights law had in fact occurred prior to any investigation. The Resolution also appeared to find as a fact that there were Israeli “attacks” on the flotilla of ships and that the ships were carrying humanitarian assistance.

6. The Mission did not interpret its task as proceeding on any such assumptions. It could not be determined what the position was until the Mission came to its conclusion on the facts. The same can be said of the alleged actions by the Israeli forces.

7. It was not generally contested that there was an interception by Israeli forces of a flotilla of ships and that the ships were carrying cargos of a humanitarian nature. That apart, the Mission considered that its mandate required it to ascertain the sequence of the facts and events as they occurred and to examine the reasons and justification in law, if any, for the same.

8. The Mission convened in Geneva to officially commence its work on 9 August 2010. Shortly prior thereto, on 2 August 2010, the Secretary-General of the United Nations announced “the setting-up of a Panel of Inquiry on the flotilla incident of 31 May”. The

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<sup>1</sup> The resolution was adopted by a recorded vote of 32 to 3, with 9 abstentions. See A/HRC/ RES/14/1.

Secretary-General, without indicating what specific area of inquiry the Panel was to undertake, expressed the hope that the panel “will fulfil its mandate based on the Presidential Statement of the Security Council”.

9. The Panel of Inquiry was given the mandate to receive and review the reports of the national investigations with the view to recommending ways of avoiding similar incidents in the future”.<sup>2</sup>

10. Both Israel and Turkey announced the setting-up of national inquiries, on 15 July 2010 10 August 2010 respectively.

11. In the opinion of the Mission, the remit of the Panel appointed by the Secretary General is quite different and distinct from that of the Mission as its ultimate goal is to “positively affect the relationship between Turkey and Israel, as well as the overall situation in the Middle East.”<sup>3</sup>

12. At the time of writing this report, the Mission was made aware of sittings of the Israeli inquiry under Judge Turkel.<sup>4</sup> Both from the internet and other sources, the Mission was able to secure transcripts of some of the evidence given by witnesses to that enquiry. It appears that evidence was given partly in closed sessions, the transcripts of which have not been made available to the Mission. As far as the Mission is aware, the inquiry announced by the Government of Turkey submitted a preliminary report to the Secretary-General’s Panel on 1 September 2010.

13. The Mission decided that its task required it to seek the cooperation of as wide a cross section of relevant interests as possible and in particular that of the Governments of Turkey and Israel. The Mission was greatly assisted by having discussions in Geneva with the Permanent Representatives of Israel, Jordan, Turkey, the United Kingdom and the United States of America, as well as with the Permanent Observer Mission of Palestine to the United Nations.

14. The Mission wishes to place on record its appreciation for the assistance provided by the Governments of Turkey and Jordan in facilitating its visit to Istanbul, Ankara and Amman and providing pertinent and relevant information in the case of Turkey at an official level.

15. The Mission also wishes to thank the Office of the United Nations Resident Coordinators and the United Nations Development Programme (UNDP) in Ankara and Amman for the cooperation provided. Particular mention is also to be made of the collaboration provided by the Office for the Coordination of Humanitarian Affairs (OCHA) in the Occupied Palestinian Territory, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the Office of the Special Coordinator for the Middle East Peace Process (UNSCO) for briefing the Mission on the situation in the Gaza Strip.

16. The Mission expresses its profound regret that, notwithstanding a most cordial meeting on the 18 August 2010, the Permanent Representative of Israel advised in writing at the end of the meeting that the position of his government was one of non-recognition of and non-cooperation with the Mission. In the hope that this position would change before

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<sup>2</sup> Daily press briefing by the Office of the Spokesperson for the Secretary-General. 02 August 2010. <http://www.un.org/News/briefings/docs/2010/db100802.doc.htm>.

<sup>3</sup> Ibid.

<sup>4</sup> See correspondence between the Mission and the Israeli Permanent Mission on annexes.

the conclusion of its work, the Mission left with the Permanent Representative a list of requests for information.<sup>5</sup>

17. Not having heard from the Permanent Representative of Israel, by letter dated 7 September 2010, the Mission wrote to the Permanent Representative renewing its request for information. The Permanent Representative replied by letter dated the 13 September 2010 requesting the Mission to delay delivering its report to the Council on the ground that it should await the report of the Commission under Judge Turkel in Israel and the Panel appointed by the Secretary-General of the United Nations. The Mission replied advising the Permanent Representative that the request should be made to the Council. Regrettably to date, no information has been given to the Mission by or on behalf of the Government of Israel.

## **B. Methodology**

18. Following its official establishment, the Mission redrafted its Terms of Reference so as to reflect its approach to the mandate given. The Mission then established its working methodology, including the criteria to select witnesses that participated in the flotilla.

19. Different sources of information were made available to the Mission, including the evidence of eye witnesses, forensic reports and interviews with medical and forensic personnel in Turkey, as well as written statements, video film footage and other photographic material relating to the incident.

20. In ascertaining the facts surrounding the Israeli interception of the Gaza-bound flotilla, the Mission gave particular weight to the direct evidence received from interviews with eye witnesses and crew, as well as the forensic evidence and interviews with government officials. In light of seizure of cameras, CCTV footage and digital media storage devices and of the suppression of that material with the disclosure only of a selected and minute quantity of it, the Mission was obliged to treat with extreme caution the versions released by the Israeli authorities where those versions did not coincide with the evidence of eyewitnesses who appeared before us.

21. Taking into consideration the resources and limited time available, the Mission travelled to Istanbul, Ankara and Iskenderun in Turkey, Amman in Jordan and London in the United Kingdom in order to interview witnesses, hold meetings with government officials and to conduct an inspection of the ship Mavi Marmara, in which nine passengers died on 31 May 2010. The Mission was able to contact several persons with information bearing on the matters under enquiry. A total of one hundred and twelve witnesses<sup>6</sup> were interviewed by the Mission either by all of its members at the same time or by individual members. In addition written statements were received from several persons through their attorneys.

22. The Mission wishes to record its appreciation for the assistance given by various firms of attorneys for facilitating the appearance before it of persons involved in the incident<sup>7</sup> and represented by them. Meetings were also held with different non-governmental organizations in Geneva, Istanbul and Amman.

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<sup>5</sup> See annexes.

<sup>6</sup> Witnesses were interviewed at the following locations: London; Geneva; Istanbul; Amman. The Mission is grateful to the International Maritime Organization for its assistance in providing a venue for the interviews in London.

<sup>7</sup> Law firms in London, Istanbul, and Athens assisted the Mission.

23. The Mission is of the opinion that evidence of a sufficient number and range of witnesses was taken to afford it a comprehensive picture of the events as they occurred on the 31 May 2010. In addition to the information received live from persons attending on it, the Mission took into consideration information from a variety of sources subject to verification of authenticity.

24. In assessing the evidence and information available to it, the Mission paid particular attention to the content of the evidence and demeanour of the persons appearing before it in deciding whether and if so what part of the information provided should be accepted. More weight of necessity was accorded to such evidence if believed than to information from other sources. In addition, with respect to information in the nature of hearsay evidence, due regard was paid, giving to it such weight as the circumstances merited. Matters were decided on the basis of the preponderance and quality of the evidence so as to satisfy all the members of the Mission in order that they felt sure of their conclusions.

25. In the preparation of the report, the Mission first of all reviewed the factual contextual background of the incident and came to its conclusions on the facts which are set out in this report. The Mission expressed its opinion on the relevant principles of international law, including international humanitarian and human rights law on the basis of the facts it found. A segmented approach is taken to the analysis.

## II. Background

### A. Context

#### 1. The blockade of the Gaza Strip

##### *Pre-existing restrictions of maritime access to the Gaza Strip*

26. Israel implemented a complete military occupation of the Gaza Strip from June 1967 until its first disengagement from parts of the Gaza Strip from May 1994 as part of the peace process. A series of peace agreements between 1993 and 1995 concluded between the State of Israel and the Palestinian Liberation Organization with international backing were intended, within a transitional period of five years, to regulate Israel's disengagement from the West Bank and Gaza Strip leading up to the conclusion of a permanent status agreement which would establish an independent Palestinian state alongside Israel. These agreements, often collectively referred to as the Oslo Accords, provided the basis for, amongst other matters, the establishment of the Palestinian Authority and Council and put in place interim arrangements for security cooperation between the Israeli and Palestinian police, including the policing of borders and maritime and air space.

27. Under the Oslo Accords, it was agreed that the territorial waters off Gaza would be included in the territorial jurisdiction of the Palestinian Authority (PA).<sup>8</sup> However, the external security of the Gaza Strip was specifically excluded from the PA's functional jurisdiction;<sup>9</sup> responsibility of external security was retained by Israel until the final status agreement.<sup>10</sup> Article VIII of the Gaza-Jericho Agreement specifically stated that "Israel will continue to carry the responsibility ... for defence against external threats from the sea and the air [...] and will have all the powers to take the steps necessary to meet this responsibility." The agreed security arrangements and coordination mechanisms establishes

<sup>8</sup> Article 5, para. 1(a), Gaza-Jericho Agreement.

<sup>9</sup> Article 5, para. 1(b), Gaza-Jericho Agreement.

<sup>10</sup> Article 5, para. 3, Gaza-Jericho Agreement.

three maritime activity zones: a central zone extending twenty nautical miles out to sea, bounded by two one-nautical mile wide strips of water at the Egyptian end and Israeli end of the Gaza Strip, both of which are closed military areas under Israeli control. The central zone, under joint Palestinian-Israeli control, was designated as open for fishing up to the twenty nautical miles limit and recreational boats up to three nautical miles. Foreign vessels entering the central zone were not allowed to approach closer than twenty nautical miles from the coast pending agreement on construction of a sea port for Gaza. Even though there was a breakdown in security cooperation between Israelis and Palestinians in the West Bank and Gaza Strip following the breakdown of bilateral peace negotiations in 2002, significant aspects of the Oslo Accords remain in force, including provisions related to the territorial waters off Gaza.

28. During the 1990s, following the contours of the peace negotiations, Israeli forces imposed periodic “closures” of the Palestinian areas, usually in response to suicide bombings inside Israel. These closures would last for a matter of weeks or months. Prior to the first peace accords, it was estimated that as many as 20,000 Gazans left the strip each day to work inside Israel, returning each evening. Closures impacted on the many families dependent on the wages earned by these workers.

*Restrictions imposed on Gaza following Hamas’ election victory*

29. Since the beginning of the Second Intifada in 2000, a progressive restriction of the access for Gaza fishermen to the sea has taken place. According to OCHA the latest expansion of the restricted sea areas can be dated to late 2008, on the eve of the “Cast Lead” offensive.<sup>11</sup> Along most of Gaza’s coast, the restricted areas begin at three nautical miles from shore. Overall, OCHA states that Palestinians are barred access to 85 percent of the sea areas on which they are entitled to carry out maritime activities and that Palestinian fishermen entering the restricted sea areas are regularly exposed to warning fire by Israeli naval forces and in some cases, directly targeted and that fishing boats are often intercepted by the Israeli military and confiscated.

30. Economic and political measures started to be imposed against the Gaza Strip in February 2006 following the Hamas election victory in the legislative elections, accompanied by the withholding of financial resources on the part of donor countries. The closure on the Gaza Strip was imposed by Israel after Hamas took control of the Gaza Strip in June 2007. In September 2007, Israel declared the Gaza Strip “hostile territory” and that the movement of goods into and out of Gaza would be restricted for security concerns as well as in order to apply pressure on the Hamas government “as part of the State of Israel’s operations against continuous terrorism.”<sup>12</sup> Harsher fuel restrictions came into effect since October 2007.

<sup>11</sup> ‘*Between the Fence and a Hard Place*’, UNOCHA oPt Report, August 2010

<sup>12</sup> “ Hamas is a terrorist organization that has taken control of the Gaza Strip and turned it into hostile territory. This organization engages in hostile activity against the State of Israel and its citizens and bears responsibility for this activity. In light of the foregoing, it has been decided to adopt the recommendations that have been presented by the security establishment, including the continuation of military and counter-terrorist operations against the terrorist organizations. Additional sanctions will be placed on the Hamas regime in order to restrict the passage of various goods to the Gaza Strip and reduce the supply of fuel and electricity. Restrictions will also be placed on the movement of people to and from the Gaza Strip. The sanctions will be enacted following a legal examination, while taking into account both the humanitarian aspects relevant to the Gaza Strip and the intention to avoid a humanitarian crisis.”

<http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm>



31. In a petition to the Israeli Supreme Court,<sup>13</sup> the legality of the decision by the Government of Israel to reduce the supply of electricity and fuel was challenged based on the argument that such cuts were inconsistent with the obligations of Israel under the Fourth Geneva Convention relating to the protection of civilians. In its response, the State Attorney's Office inter alia submitted that harming the economy itself is a legitimate means of warfare and a relevant consideration even when deciding on allowing in relief consignments.<sup>14</sup>

32. From mid-2008, in response to the Free Gaza Movement's attempts to enter Gaza by sea, the Israeli Government took a series of steps aimed initially at deterring shipping from travelling to the area. A Notice to Mariners was issued stating that all ships entering the central zone of the Gaza Maritime Area would be "subject to supervision and inspection." Then, in August 2008, a second Notice to Mariners was issued stating that "a maritime zone extends 20 miles to seaward from the Gaza Strip. In accordance with the agreements between Israel and the PA, entry by foreign vessels to this zone is prohibited."<sup>15</sup>

#### *Imposition of the naval blockade*

33. In his testimony to the Turkel Committee, Chief of General Staff Gabi Ashkenazi accepted that the "phenomenon of the flotillas" in mid-2008 represented the trigger for the imposition of the maritime closure, although he outlines that it was done for security purposes.<sup>16</sup> Israeli Chief Military Advocate General, Avichai Mandelblit also stated that the justification for a naval blockade was on security grounds only. However, plans for a full naval blockade were initially not approved at the political level "on grounds of legitimacy" and the possibility of what Mandelblit describes as "severe criticism" at the international level.<sup>17</sup>

34. Shortly prior to the initiation of Operation 'Cast Lead' at the end of 2008 a recommendation for the initiation of a closure was made by the Military Advocate General to the Defence Minister who directed the imposition of a maritime closure on the Gaza Strip until further notice.<sup>18</sup> The naval blockade of the Gaza Strip was established by Israel on 3 January 2009 and announced by the Israeli Navy on 6 January. The advisory states that "the Gaza maritime area is closed to all maritime traffic and is under blockade imposed by the Israeli Navy until further notice."<sup>19</sup> This advisory was publicised inter alia in a further Notice to Mariners (NTM)<sup>20</sup> and through other channels. It was also publicised twice daily

<sup>13</sup> Israeli Supreme Court, case HCJ 9132/07 – *Al Bassiouni vs. Prime Minister*.

<sup>14</sup> Section 4 of State Submission to the Israeli Supreme Court in case HCJ 9132/07 – *Al Bassiouni vs. Prime Minister*. See <http://www.gisha.org/UserFiles/File/turkel%2026-8-2010-3.pdf>

<sup>15</sup> Israeli Notice to Mariners 6/2008

<sup>16</sup> IDF Chief of General Staff, Gabi Ashkenazi's testimony to the Turkel Committee: Public Commission to Examine the Maritime Incident of May 31, 2010, Session Number 4, 11 August 2010, p. 13.

<sup>17</sup> IDF Chief Military Advocate General Staff, Avichai Mandelblit's testimony to the Turkel Committee: Public Commission to Examine the Maritime Incident of May 31, 2010, Session Number 4, 26 August 2010, p. 41.

<sup>18</sup> IDF Chief of General Staff, Gabi Ashkenazi's testimony to the Turkel Committee: Public Commission to Examine the Maritime Incident of May 31, 2010, Session Number 4, 11 August 2010, pp. 18f.

<sup>19</sup> NO. 1/2009 Blockade of the Gaza Strip. See website of the State of Israel Ministry of Transport and Road Safety: [http://info.mot.gov.il/EN/index.php?option=com\\_content&view=article&id=124:no12009&catid=17:noticetomariners&Itemid=12](http://info.mot.gov.il/EN/index.php?option=com_content&view=article&id=124:no12009&catid=17:noticetomariners&Itemid=12)

<sup>20</sup> A Notice to Mariners advises mariners of important matters affecting navigational safety, including new hydrographic information, changes in channels and aids to navigation and other important data.

on the NAVTEX broadcast system, regularly updating shipping according to location via a direct-printing service.<sup>21</sup> Chief Military Advocate General Staff Mandelblit stated that this blockade was approved at ministry level by the State Attorney without involving military legal advice.<sup>22</sup>

35. Senior Israeli officials have stated that the legal basis for the blockade was (1) the San Remo Manual, (2) the London Declaration and (3) customary law<sup>23</sup> and the existence of an armed conflict between Hamas and Israel that had continued after Operation Cast Lead.<sup>24</sup>

36. A military closure order was signed by the Commander of the Israeli Navy on 28 May 2010,<sup>25</sup> prohibiting persons from entering a specified “closed area” referred to as “Area A” and advising all ships and persons to stay away from a “dangerous area” referred to as “Area B”<sup>26</sup> but, according to testimony received by the Mission, not gazetted. The order announcing the blockade was presented by the representative of the State in a hearing on the extension of detention of four Palestinian Arab citizens of Israel as the provision on the basis of which the Israeli forces entered international waters. The application to extend the arrest of the 4 individuals concerned was based on the argument that there had been a violation of the above mentioned order.

## 2. The humanitarian situation in the Gaza Strip

37. The humanitarian situation in Gaza resulting from the imposition of the blockade on the Gaza Strip since June 2007 has been a matter of increasing concern for the international community, including the Security Council. Following the Flotilla incident, the Security Council qualified the situation in Gaza as “not sustainable”, stressing the full implementation of Resolutions 1850 and 1860, in which it, *inter alia*, expressed “grave concern [...] at the deepening humanitarian crisis in Gaza”, emphasized “the need to ensure sustained and regular flow of goods and people through the Gaza crossings” and called for the “unimpeded provision and distribution throughout Gaza of humanitarian assistance, including food, fuel and medical treatment.” In the Presidential Statement, the Security Council reiterated its “grave concern at the humanitarian situation in Gaza” and stressed “the need for sustained and regular flow of goods and people to Gaza as well as unimpeded provision and distribution of humanitarian assistance throughout Gaza.”<sup>27</sup> In addition, the

<sup>21</sup> IDF Chief of General Staff, Gabi Ashkenazi’s testimony to the Turkel Committee: Public Commission to Examine the Maritime Incident of May 31, 2010, Session Number 4, on the date of 8.11.2010, pp. 18f.

<sup>22</sup> IDF Chief Military Advocate General Staff, Avichai Mandelblit’s testimony to the Turkel Committee: Public Commission to Examine the Maritime Incident of May 31, 2010, Session Number 4, 26 August 2010, pp. 41-43.

<sup>23</sup> Ibid, p. 43.

<sup>24</sup> Ibid, pp. 44-45.

<sup>25</sup> Closure Order and Announcement of Dangerous Area in Sea 06(10, 2010 [Defense (Emergency) Regulations of 1945].

<sup>26</sup> Extract of the hearing on 1 June 2010 on the detention of the four Palestinian Arab citizens of Israeli, before the Ashkelon Magistrates Court (unofficial translation).

<sup>27</sup> S/PRST/2010/9. In Security Council resolution 1860 of 8 January 2009, the Security Council expressed “grave concern ...at the deepening humanitarian crisis in Gaza” and emphasized “the need to ensure sustained and regular flow of goods and people through the Gaza crossings. It called for the “unimpeded provision and distribution throughout Gaza of humanitarian assistance, including food, fuel and medical treatment.”

United States Ambassador to the United Nations in Geneva said “we continue to believe the situation in Gaza is unsustainable and is not in the interest of any of those concerned”.<sup>28</sup>

38. In a United Nations joint statement issued on 31 May, Robert Serry, the United Nations Special Coordinator for the Middle East Peace Process and Filippo Grandi, Commissioner-General of the United Nations Relief and Works Agency (UNRWA) emphasized that “such tragedies are entirely avoidable if Israel heeds the repeated calls of the international community to end its counterproductive and unacceptable blockade of Gaza.” In a public statement issued on 14 June 2010, the ICRC described the impact of the closure on the situation in Gaza as “devastating” for the 1.5 million people living there, emphasizing that “the closure constitutes a collective punishment imposed in clear violation of Israel’s obligations under international humanitarian law”, saying the only sustainable solution is a lifting of the closure.

39. Similarly, the Human Rights Committee, in its concluding observations of July 2010, expressed its concern at the “effects of the blockade on the civilian population in the Gaza Strip, including restrictions to their freedom of movement, some of which led to deaths of patients in need of urgent medical care, as well as restrictions on the access to sufficient drinking water and adequate sanitation.” It recommended that Israel lift the military blockade of Gaza, insofar as it adversely affects the civilian population.<sup>29</sup>

40. According to information provided to the Mission by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) in the occupied Palestinian territory, the blockade exacerbated the already existing difficulties of the population in Gaza in terms of livelihoods and brought to new peaks the severe human dignity crisis resulting from the deteriorated public services, widespread poverty, food insecurity, over 40 percent unemployment and 80 percent aid dependence (i.e. some 80 percent of the population receives humanitarian assistance, mainly food). People’s lives were reduced to a daily struggle in an attempt to secure the most basic needs.

41. “Abject poverty” among refugees tripled since the imposition of the blockade from 100,000 to 300,000 and 61 percent of households are food insecure. There has been a shift in diet (from protein rich to low cost and high carbohydrate foods), triggering concerns over mineral and vitamin deficiencies. Moreover, Gaza has been affected by a protracted energy crisis, with the power plant operating at 30 percent of its capacity, scheduled cuts of 8-12 hours per day, leaving households with partial food refrigeration. Services and utilities are forced to rely on generators and UPS units vulnerable due to inconsistent supply of spare parts.

42. Water and sanitation services have deteriorated and resulted in over 40 percent of water loss due to leakages. On a daily basis, eighty million litres of untreated and partially treated sewage is discharged into the environment. Polluted sea water has led to increased health risks and as a result of sewage infiltrating into the aquifer only between five and ten percent of the extracted water is safe. Challenges to the health system include the impossibility to ensure that medical equipment is available and properly maintained, while referral abroad is subject to long and arduous permit processing and medical staff is prevented from upgrading knowledge and skills.

43. On 20 June 2010, the Security Cabinet of the Government of Israel decided on several steps to implement a new Governmental policy towards Gaza, seeking to keep weapons and war material out of Gaza while liberalizing the system by which civilian

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<sup>28</sup> Statement by the Ambassador of the United States of American to the Human Rights Council, Geneva, 1 June 2010.

<sup>29</sup> CCPR/C/ISR/CO/3, para. 8

goods enter Gaza.<sup>30</sup> In July, the United Nations and international relief agencies cautiously welcomed the easing of import restrictions on the blockade, but emphasized that only a complete lifting of the blockade can address the humanitarian crisis, highlighting that this would also mean bringing exports out of Gaza in order to rebuild the economy destroyed by the blockade.<sup>31</sup>

44. At the end of August, OCHA reported that despite the easing of the restrictions and an increase of imports into the Gaza Strip for some weeks, ongoing restrictions on the entry of construction materials as well as on exports, continued to impede major reconstruction and development, noting that the truckloads of goods entering Gaza during the week of 18 August to 24 August constituted only 37 percent of the weekly average of truckloads that entered during the first five months of 2007, prior to the imposition of the blockade. In the same report, OCHA also highlights the continuing fuel shortage and electricity crisis in the Gaza Strip.<sup>32</sup> The impact of the power cuts in terms of putting people's lives at risk, for instance those in need of medical treatment (i.e. dialysis patients) was also highlighted by the ICRC in a press release on 7 September 2010.

### 3. Information on recent armed hostilities

45. According to OCHA, in 2010, forty-one Palestinians (including fourteen civilians), three Israeli soldiers and one foreign national have been killed in the context of the Palestinian–Israeli conflict in the Gaza Strip and southern Israel, with another 178 Palestinians (including 154 civilians) and eight Israeli soldiers having been injured.<sup>33</sup> According to the Israeli Defence Forces, a total of 120 rockets were fired from the Gaza Strip into Israel from 1 January 2010 to 31 July 2010.<sup>34</sup> This figure does not include failed attempts or firing directly at Israeli forces.

## B. Applicable law

46. At the outset it should be noted that a State is responsible for the conduct of its officials, including its armed forces, when acting either in their official capacity or when acting under the colour of authority and using means put at their disposal by the State, even if exceeding their authority or contravening instructions.<sup>35</sup> In the course of enforcement actions carried out by a State, certain fundamental, minimum obligations are applicable at all times, whether an operation is governed by the laws of armed conflict (LOAC) or the laws of international human rights law. The content of those obligations is not affected by the legality or otherwise of a State's claim to exercise authority over individuals or property.

47. However, acting in an official capacity does not relieve a State agent of individual criminal responsibility. It is possible that individual criminal liability and State responsibility may arise from the same act. The fact that the State bears international responsibility does not mean that individuals cannot also bear individual criminal liability.

<sup>30</sup> [http://www.mfa.gov.il/MFA/HumanitarianAid/Palestinians/Briefing-Israel\\_new\\_policy\\_towards\\_Gaza\\_5-Jul-2010.htm](http://www.mfa.gov.il/MFA/HumanitarianAid/Palestinians/Briefing-Israel_new_policy_towards_Gaza_5-Jul-2010.htm) outlining specific elements of the new policy.

<sup>31</sup> <http://www.irinnews.org/Report.aspx?ReportId=89762>

<sup>32</sup> Protection of Civilians: 18-24 August 2010, United Nations OCHA oPt, p.4.

<sup>33</sup> Protection of Civilians: 18-24 August 2010, United Nations OCHA oPt, p.3.

<sup>34</sup> <http://dover.idf.il/IDF/English/News/today/10/08/1203.htm>

<sup>35</sup> Article 7, International Law Commission Articles on Responsibility of States for Internationally Wrongful Acts, [2001] Vol. II(2) Yearbook of the International Law Commission, p. 45. See also: Caire (1929) 5 Reports of International Arbitral Awards 516; Mallén (1925) 4 Reports of International Arbitral Awards 173.

## 1. The law of naval warfare and the question of the blockade

48. Considering the issues raised by the mandate given to the Mission which involved issues of law relating to naval warfare and the matter of a naval blockade imposed by Israel, the Mission views those matters as follows.

49. According to applicable international law, unless an exception applies, a vessel on the high seas is subject to the exclusive jurisdiction of its flag State. Under the international law of the sea such exceptions are usually limited to suspicion of certain activities (piracy, the slave trade, unauthorized high seas broadcasting), ships suspected of lacking nationality (i.e. stateless vessels) and cases where permission to board and inspect have been given either *ad hoc* or by treaty (e.g. those dealing with narcotics smuggling).<sup>36</sup> Other exceptions would include acts of self-defence under Article 51 of the United Nations Charter against vessels which posed an immediate and overwhelming threat to the boarding State and lawful acts under LOAC.

50. It has been suggested that the United Nations Law of the Sea Convention (UNCLOS), by reserving the use of the high seas for peaceful purposes,<sup>37</sup> has effectively outlawed acts of naval warfare on the high seas. First, it should be noted that Israel is not a party to UNCLOS. Second, there was no consensus on this position during the negotiation of UNCLOS and it was certainly not accepted by the major naval powers at the time. Indeed, the military manuals of many States (both UNCLOS parties and non-parties) continue to include provisions on the law of naval warfare and blockade.<sup>38</sup> Further, a report of the United Nations Secretary General found that these UNCLOS provisions did not affect action that was lawful either under the law of self-defence under Article 51 of the United Nations Charter (the *jus ad bellum*) or acts justified by the law of armed conflict (LOAC) once an armed conflict has commenced (the *jus in bello*).<sup>39</sup> The majority of scholarly opinion would also support the view that the law of naval warfare continues to be potentially applicable on the high seas. One attempt at codifying this law was the independent expert study, the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (SRM).<sup>40</sup> While not authoritative, its codification effort has had a significant impact on the formulation of military manuals and it has been expressly relied upon by Israel.

<sup>36</sup> See, in particular, United Nations Law of the Sea Convention 1982, United Nations, *Treaty Series*, vol. 1833, No. 31363, article 110(1); Convention on the High Seas 1958, United Nations, *Treaty Series*, vol. 450, No. 6465, article 22.

<sup>37</sup> United Nations, *Treaty Series*, vol. 1833, No. 31363, articles 88, 141 and 301.

<sup>38</sup> UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (Oxford University Press, 2004) (hereafter, UK Manual); Dieter Fleck (ed), *Handbook of International Humanitarian Law* 2<sup>nd</sup> edition (Oxford University Press, 2008), being an annotated translation of the German military manual (hereafter, German Manual); *The Law of Armed Conflict at the Operational and Tactical Levels* (2004), available at the website of the Canadian Office of the Judge Advocate General, [http://www.forces.gc.ca/jag/publications/Training-formation/LOAC-DDCA\\_2004-eng.pdf](http://www.forces.gc.ca/jag/publications/Training-formation/LOAC-DDCA_2004-eng.pdf) (hereafter, Canadian Manual); *Commander's Handbook of the Law of Naval Operations* (US, 2007), available at [http://usnwc.edu/getattachment/a9b8e92d-2c8d-4779-9925-0defea93325c/1-14M\\_\(Jul\\_2007\)\\_\(NWP\)](http://usnwc.edu/getattachment/a9b8e92d-2c8d-4779-9925-0defea93325c/1-14M_(Jul_2007)_(NWP)) (hereafter, US Manual).

<sup>39</sup> Report of the Secretary General, "Study on the Naval Arms Race", United Nations Doc. A/40/535 (1985), para. 188.

<sup>40</sup> As reproduced in Louise Doswald-Beck et al (eds), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (Cambridge University Press, 1995). Available at: <http://www.icrc.org/ihl.nsf/FULL/560?OpenDocument>.

*Blockade*

51. Under the laws of armed conflict, a blockade is the prohibition of all commerce with a defined enemy coastline. A belligerent who has established a lawful blockade is entitled to enforce that blockade on the high seas.<sup>41</sup> A blockade must satisfy a number of legal requirements, including: notification, effective and impartial enforcement and proportionality.<sup>42</sup> In particular a blockade is illegal if:

(a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or

(b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.<sup>43</sup>

52. A blockade may not continue to be enforced where it inflicts disproportionate damage on the civilian population. The usual meaning of “damage to the civilian population” in LOAC refers to deaths, injuries and property damage. Here the damage may be thought of as the destruction of the civilian economy and prevention of reconstruction of past damage. One might also note, insofar as many in Gaza face a shortage of food or the means to buy it, that the ordinary meaning of “starvation” under LOAC is simply to cause hunger.<sup>44</sup>

53. In evaluating the evidence submitted to the Mission, including by the Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territory, confirming the severe humanitarian situation in Gaza, the destruction of the economy and the prevention of reconstruction (as detailed above), the Mission is satisfied that the blockade was inflicting disproportionate damage upon the civilian population in the Gaza strip and as such the interception could not be justified and therefore has to be considered illegal.

54. Moreover, the Mission emphasizes that according to article 33 of the Fourth Geneva Convention, collective punishment of civilians under occupation is prohibited. “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism, are prohibited.” The Mission considers that one of the principal motives behind the imposition of the blockade was a desire to punish the people of the Gaza Strip for having elected Hamas. The combination of this motive and the effect of the restrictions on the Gaza Strip leave no doubt that Israel’s actions and policies amount to collective punishment as defined by international law. In this connection, the Mission supports the findings of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk,<sup>45</sup> the report of the United Nations Fact-Finding Mission on the Gaza Conflict<sup>46</sup> and most recently the ICRC<sup>47</sup> that the blockade amounts to collective punishment in violation of Israel’s obligations under international humanitarian law.

<sup>41</sup> San Remo Manual, paragraph 10(b).

<sup>42</sup> San Remo Manual, paragraph 93-95, 100.

<sup>43</sup> San Remo Manual, para 102.

<sup>44</sup> C. Pilloud and J. Pictet, *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross, 1987), p.53 para 2089. See also Oxford English Dictionary definitions: “to deprive of or keep scantily supplied with food” or to “subdue by famine or low diet”.

<sup>45</sup> A/HRC/13/53, para.34

<sup>46</sup> The Mission considered the policy of blockade “amounts to collective punishment intentionally inflicted by the Government of Israel on the people of Gaza”; A/HRC/12/48, para. 1878.

<sup>47</sup> In its statement of 14 June 2010, the ICRC maintained that “the whole of Gaza’s civilian population is being punished for acts for which they bear no responsibility. The closure therefore constitutes a

55. It might be suggested that a belligerent in an armed conflict has a right to visit, inspect and control the destinations of neutral vessels on the high seas, irrespective of any declared blockade. Whilst there is some controversy on this issue, the San Remo Manual and a number of military manuals take the view that the right may only be exercised upon reasonable suspicion that a vessel is engaged in activities which support the enemy.<sup>48</sup> The Mission takes the view that a right of interference with third States' freedom of navigation should not lightly be presumed.

56. Thus, if there is no lawful blockade, the only lawful basis for intercepting the vessel would be a reasonable suspicion that it:

- was making an effective contribution to the opposing forces' war effort, such as by carrying weaponry or was otherwise closely integrated into the enemy war effort (belligerent right of capture);<sup>49</sup> or
- posed an imminent and overwhelming threat to Israel and there was no alternative but to use force to prevent it (self-defence under Article 51 of the United Nations Charter).

In view of the information available, the Mission is satisfied that the interception of the flotilla and related preparatory planning by Israel was not purely motivated by concerns as to the vessels' contribution to the war effort. Evidence attributed to the Chief of General Staff, Gabi Ashkenazi who testified that he did not believe that the IHH, one of the coalition members organizing the Flotilla, was a "terrorist organization".<sup>50</sup> The evidence of Prime Minister Netanyahu to the Turkel Committee indicates that the decision to stop the flotilla was not taken because the vessels in themselves posed any immediate security threat. In any event, no such right of belligerent interdiction or wider claim of self-defence against the Flotilla has been asserted by Israel.

57. Therefore the Mission is satisfied not only that the flotilla presented no imminent threat but that the interception was motivated by concerns about the possible propaganda victory that might be claimed by the organizers of the flotilla.

58. Given the evidence at the Turkel Committee, it is clear that there was no reasonable suspicion that the Flotilla posed any military risk of itself. As a result, no case could be made to intercept the vessels in the exercise of belligerent rights or Article 51 self-defence. Thus, no case can be made for the legality of the interception and the Mission therefore finds that the interception was illegal.

59. The Mission finds that the policy of blockade or closure regime, including the naval blockade imposed by Israel on Gaza was inflicting disproportionate civilian damage. The Mission considers that the naval blockade was implemented in support of the overall closure regime. As such it was part of a single disproportionate measure of armed conflict and as such cannot itself be found proportionate.

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collective punishment imposed in clear violation of Israel's obligations under international humanitarian law".

<sup>48</sup> San Remo Manual, paras 118 and 67; United Kingdom Manual, para 13.91.

<sup>49</sup> San Remo Manual, paragraph 67 and 146.

<sup>50</sup> Turkel Committee: Public Commission to Examine the Maritime Incident of May 31, 2010, Session Number 4, 11 August 2010, responding to a question by Professor Deutch; <http://www.turkel-committee.gov.il/files/wordocs/07790ga.doc>. The Mission notes that a Germany-based organization called "Internationale Humanitaere Hilfsorganisation" that shares the same abbreviation but has no link with the Turkish organization, is under investigation in Germany for alleged 'terrorist' links.

60. Furthermore, the closure regime is considered by the Mission to constitute collective punishment of the people living in the Gaza Strip and thus illegal and contrary to article 33 of the Fourth Geneva Convention.

61. The Mission considers that the enforcement of an illegal blockade does not only constitute a violation of the laws of war, but also a violation of the laws of neutrality giving rise to State responsibility.

## 2. International Humanitarian Law

62. The relevant international humanitarian law standards binding on Israel as the occupying power in the occupied Palestinian territory are set out in the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War. In addition, Israel is bound by customary rules of international humanitarian law.

63. As the occupying power, Israel has certain obligations imposed on it by international law. The International Court of Justice has concluded that the Fourth Geneva Convention is applicable in the occupied Palestinian territories which before the 1967 conflict lay to the east of the Green Line and which during the conflict were occupied by Israel.<sup>51</sup> This is also the case for the Gaza strip, despite the unilateral withdrawal by Israel of the forces from the Gaza Strip in 2005, as the occupation has been confirmed repeatedly since then by the General Assembly and the Security Council.<sup>52</sup> In this context, the Mission notes that occupation continues to the extent to which the occupying power retains effective control.

64. The Mission agrees with the assessment presented in the Goldstone Report as follows:

Given the specific geopolitical configuration of the Gaza Strip, the powers that Israel exercises from the borders enable it to determine the conditions of life within the Gaza Strip. Israel controls the border crossings (including to a significant degree the Rafah crossing to Egypt, under the terms of the Agreement on Movement and Access) and decides what and who gets in or out of the Gaza Strip. It also controls the territorial sea adjacent to the Gaza Strip and has declared a virtual blockade and limits to the fishing zone, thereby regulating economic activity in that zone. It also keeps complete control of the airspace of the Gaza Strip, *inter alia*, through continuous surveillance by aircraft and unmanned aviation vehicles (UAVs) or drones. It makes military incursions and from time to time hit targets within the Gaza Strip. No-go areas are declared within the Gaza Strip near the border where Israeli settlements used to be and enforced by the Israeli armed forces. Furthermore, Israel regulates the local monetary market based on the Israeli currency (the new sheqel) and controls taxes and custom duties.<sup>53</sup>

The Mission is satisfied that these circumstances continued to prevail at the time of the incident under investigation.

65. Under the Fourth Geneva Convention, individuals may not be killed, tortured, ill-treated or suffer humiliating and degrading treatment and there may not be destruction of

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<sup>51</sup> Legal Consequences of the construction of the Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, ICJ Reports 2004, para. 101.

<sup>52</sup> Security Council resolution 1860 (2009); General Assembly resolutions A/Res/64/92 and A/Res/64/94.

<sup>53</sup> Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict, United Nations Doc A/HRC/12/48 (25 September 2009), para 278.



property unless absolutely necessary for the military operation. Article 147 Fourth Geneva Convention spells out a list of “grave breaches” of international humanitarian law.

66. Flotilla passengers were civilians and in the context of the interception of the vessels must be considered as protected persons. Under article 4 Fourth Geneva Convention, protected persons are those who, at a given moment and in any manner whatsoever, find themselves in the hands of a part to the conflict of occupying Power of which they are not nationals. In a situation of armed conflict, military force can only be used against a combatant or against civilians participating actively and directly in combat activities, which cannot be said of the civilians on the Mavi Marmara.

### 3. International Human Rights Law

67. Israel is party to the core human rights treaties relevant to the situation under consideration.<sup>54</sup> The vessels in the flotilla whilst in international waters were also subject to the jurisdiction of the flag states, namely Cambodia (Rachel Corrie), Comoros (Mavi Marmara), Greece (Eleftheri Mesogios), Kiribati (Defne Y), Togo (Sfendoni), Turkey (Gazze 1) and the United States of America (Challenger 1), The international human rights treaties accepted by each of these states at the time of the incident under investigation were applicable on the relevant vessels.

68. Human rights law in its entirety continues to apply in situations of armed conflict, except for derogations in accordance with treaty provisions relating to times of emergencies. In this respect the Mission notes the recent reiteration by the Human Rights Committee of its view that “the applicability of the regime of international humanitarian law during an armed conflict, as well as in a situation of occupation, does not preclude the application of the Covenant, except by operation of article 4, whereby certain provisions may be derogated from in a time of national emergency.”<sup>55</sup> In its General Comment 29, the Human Rights Committee specified that the Covenant continues to apply in situations of armed conflict to which the rules of international humanitarian law are applicable. “While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be especially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”<sup>56</sup>

69. Moreover, in the *Nuclear Weapons Advisory Opinion* (1996) the ICJ affirmed the applicability of the Covenant during armed conflict, stating that “In principle, the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.”<sup>57</sup>

70. In its *Advisory Opinion on the Legal consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court considered that “the protection offered by the human rights conventions does not cease in case of armed conflict, save through the effect

<sup>54</sup> ICCPR, ICESCR, CEDAW, ICERD, CAT, CRC and the OP on the involvement of children in Armed Conflict.

<sup>55</sup> CCPR/ISR/CO/3, para.5

<sup>56</sup> Human Rights Committee, General Comment No. 29, para. 3, also incorporated into General Comment 31, para. 11.

<sup>57</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996*, 1996 ICJ Reports, p. 226, Para. 25.

of provisions for derogation of any kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law.<sup>58</sup>

71. The Mission is of the view that the conduct of the IDF on board the Mavi Marmara as well as the conduct of the authorities in the aftermath of the operation is not limited strictly to the law of armed conflict, but is subject also to human rights law. Indeed human rights law and international humanitarian law are not mutually exclusive but rather should be regard to be complementary and mutually reinforcing to ensure the fullest protection to the persons concerned.

72. The ICCPR contains several articles which cannot be derogated from even “in times of public emergency which threatens the life of the nation (art. 4).” Non-derogable rights include the right to life and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Israel has made a notification under article 4(3) of the ICCPR – states of emergency, dated 3 October 1991, specifically relevant to article 9 regarding liberty and security of person.<sup>59</sup> In this connection, the Human Rights Committee extends in its General Comment No. 29 the list of non-derogable provisions as provided for by article 4 (2), emphasizing that States parties to the Covenant “may in no circumstances invoke article 4 of the Covenant as a justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivation of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.”<sup>60</sup>

73. Article 2 of the ICCPR obliges each State party to respect and to ensure to all individuals “within its territory and subject to its jurisdiction” the rights recognized within it. The extra-territorial applicability was elaborated by the Human Rights Committee in its General Comment 31: “A State party must respect and ensure the rights laid down in the Covenant to anyone with the power or effective control of that State party, even if not situated within the territory of the State party.”<sup>61</sup> The applicability of the ICCPR “in respect of acts done by a State in the exercise of its jurisdiction outside its own territory” was

<sup>58</sup> *Legal Consequences...*, Para 106.

<sup>59</sup> "Since its establishment, the State of Israel has been the victim of continuous threats and attacks on its very existence as well as on the life and property of its citizens.

"These have taken the form of threats of war, of actual armed attacks and campaigns of terrorism resulting in the murder of and injury to human beings.

"In view of the above, the State of Emergency which was proclaimed in May 1948 has remained in force ever since. This situation constitutes a public emergency within the meaning of article 4 (1) of the Covenant.

"The Government of Israel has therefore found it necessary, in accordance with the said article 4, to take measures to the extent strictly required by the exigencies of the situation, for the defence of the State and for the protection of life and property, including the exercise of powers of arrest and detention.

"In so far as any of these measures are inconsistent with article 9 of the Covenant, Israel thereby derogates from its obligations under that provision."

<sup>60</sup> Human Rights Committee, General Comment 29, para.11 (HRI/GEN/Rev.9 (Vol.I))

<sup>61</sup> Human Rights Committee, General Comment 31, para.10.

confirmed by the ICJ in its 2004 Advisory Opinion on the Wall.<sup>62</sup> The Human Rights Committee itself has reaffirmed this view in its recent consideration of Israel in July 2010.<sup>63</sup>

74. Other relevant United Nations human rights standards applicable to member States of the United Nations include the Code of Conduct for Law Enforcement Officials; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

### **III. Interception of the flotilla by the Israeli navy and its aftermath**

#### **A. Organisation of the Gaza flotilla and the response of the Israeli government**

##### **Factual Description and Findings**

75. The Mission found the following facts to have been established to its satisfaction.

##### *(a) The aims of the Free Gaza Movement and the Gaza flotilla of May 2010*

76. The Free Gaza Movement, a human rights organization registered as a charity in Cyprus, organized five successful boat voyages to Gaza between August 2008 and December 2008 using on each occasion one or two small boats. The self-declared purpose of the voyages was to break the blockade on Gaza. The boats were not intercepted by the Israeli authorities at the time, although some threatening messages were received by the organizers from the Israeli authorities. A sixth mission in December 2008 was obliged to

<sup>62</sup> *Legal Consequences...*, paragraph 111.

<sup>63</sup> CCPR/ISR/CO/3, para.5: “The Committee reiterates its view, previously noted in paragraph 11 of its concluding observations on the State party’s second periodic report (CCPR/CO/78/ISR) and paragraph 10 of its concluding observations on the State party’s initial report (CCPR/C/79/Add.93), that the applicability of the regime of international humanitarian law during an armed conflict, as well as in a situation of occupation, does not preclude the application of the Covenant, except by operation of article 4, whereby certain provisions may be derogated from in a time of national emergency. The Committee’s position has been endorsed, unanimously, by the International Court of Justice in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion, I.C.J. Reports 2004, p. 136), according to which the Covenant is applicable in respect of acts done by a State in exercise of its jurisdiction outside its own territory. Furthermore, the applicability of the regime of international humanitarian law does not preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities or agents outside their own territories, including in occupied territories. The Committee therefore reiterates and underscores that, contrary to the State party’s position, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the occupied territories, including in the Gaza Strip, for all conduct by the State party’s authorities or agents in those territories affecting the enjoyment of rights enshrined in the Covenant (arts. 2 and 40). The State party should ensure the full application of the Covenant in Israel as well as in the occupied territories, including the West Bank, East Jerusalem, the Gaza Strip and the occupied Syrian Golan Heights. In accordance with the Committee’s general comment No. 31, the State party should ensure that all persons under its jurisdiction and effective control are afforded the full enjoyment of the rights enshrined in the Covenant.”

divert to Lebanon after the boat was rammed and severely damaged by the Israeli Navy and a seventh mission in January 2009 was aborted after fears it too would be rammed.

77. On 29 June 2009, approximately 20 nautical miles from the coast of Gaza, the Israeli Navy intercepted a boat called the “Spirit of Humanity” owned by the Free Gaza Movement, carrying 21 passengers and a cargo of humanitarian aid to Gaza. After Israeli requests to turn around were refused, the boat was boarded and taken to Ashdod where the passengers were arrested and detained.

78. After these unsuccessful attempts, the Free Gaza Movement sought wider collaboration with other organizations with a view to increasing the number of boats on future missions. The Movement established contact with a number of organizations including a Turkish humanitarian organization called the Foundation for Human Rights and Freedoms and Humanitarian Relief (IHH) which enjoys consultative status with the Economic and Social Council. IHH, which has been active in over 120 countries and territories including the Gaza Strip, had been planning its own mission to Gaza and committed to joining the flotilla with two cargo vessels and a newly-purchased passenger boat with a total carrying capacity of over six hundred passengers. A number of other organizations, including the Ship to Gaza (Sweden), the Ship to Gaza (Greece) and the European Campaign to Break the Siege on Gaza, also agreed to join what became known as the “Gaza Freedom Flotilla”.

79. The stated aims of the Flotilla, as testified by the leaders of the Free Gaza Movement and IHH, were threefold: (1) to draw international public attention to the situation in the Gaza Strip and the effect the blockade; (2) to break the blockade; and (3) to deliver humanitarian assistance and supplies to Gaza. All participants interviewed by the Mission shared their aims, although most placed emphasis on the delivery of humanitarian aid.

80. The Mission notes a certain tension between the political objectives of the flotilla and its humanitarian objectives. This comes to light the moment that the Israeli Government made offers to allow the humanitarian aid to be delivered via Israeli ports but under the supervision of a neutral organization. The Mission also notes that the Gaza Strip does not possess a deep sea port designed to receive the kind of cargo vessels included in the flotilla, raising practical logistical questions about the plan to deliver large quantities of aid by the route chosen. Whilst the Mission is satisfied that the flotilla constituted a serious attempt to bring essential humanitarian supplies into Gaza, it seems clear that the primary objective was political, as indeed demonstrated by the decision of those on board the Rachel Corrie to reject an Irish Government sponsored proposal that the cargo in that ship to be allowed through Ashdod intact.

(b) *Composition of the Flotilla*

81. The flotilla was composed initially of eight vessels carrying a total of 748 persons (see table in annexes):

- **M.V. *Mavi Marmara*** – a passenger ship registered in the Comoros<sup>64</sup> and owned by IHH;
- **M.V. *Defne Y*** – a cargo boat registered in Kiribati and owned by IHH;
- **M.V. *Gazze 1*** – a cargo boat registered in Turkey and owned by IHH;

<sup>64</sup> The ship was bought by IHH early in 2010 with funds raised by members and was registered with the Comoros just a few days before it set sail for Gaza.

- *M.V. Sfendoni or Sfendonh* – a passenger boat registered in Togo and owned by Sfendonh S.A. based in the Marshall Islands. The boat was given an alternative name, “Boat 8000”, just before it joined the flotilla which was used in official Israeli accounts;
- *M.V. Eleftheri Mesogios or Sofia* – a cargo boat registered in Greece and owned by the Eleftheri Mesogios Marine Company based in Athens. The Greek name of the ship translates as “Free Mediterranean” and an alternative name “Sofia” is also used in some accounts;
- *Challenger 1* – a pleasure boat registered in the United States of America and owned by the Free Gaza Movement;
- *Challenger 2* – a pleasure boat registered in the United States of America and owned by Free Gaza Movement; and
- *M.V. Rachel Corrie* – a cargo ship registered in Cambodia and owned by the Free Gaza Movement.

The participating organizations were obliged to purchase their own vessels since commercial shipping companies were reluctant to allow their vessels to be chartered for the planned flotilla. The services of the crew of the IHH-owned cargo ships were procured through an agency in Istanbul.

82. The Challenger 2 withdrew from the flotilla when it developed engine problems. Its passengers were transferred to the Challenger 1 and the Mavi Marmara in international waters. The departure of the Rachel Corrie from Ireland was delayed and it therefore was unable to join the flotilla on 31 May. Since it was intercepted by the Israeli Navy on 6 June in international waters and its passengers went through the same detention and deportation process, the Mission has included this vessel in its investigation.

83. In line with practice during previous trips, some passengers planned to board certain ships in international waters after being ferried from Cyprus. However, at the last moment, the Cypriot authorities refused to allow these passengers to embark. After a series of failed attempts to embark from ports in the south of the island, some passengers were able to embark from the port of Famagusta.

(c) *Preparation of the Flotilla*

84. The participating organizations in the flotilla were loosely bound together by a nine-point agreement, entitled “Points of Unity”, delineating the points of common purpose shared by all participants including their commitment to resist interception only through the use of non-violent means. According to the Free Gaza Movement, a steering committee, made of representatives of the participant organizations, was set up in each vessel.

85. Individuals with some forty different nationalities joined the flotilla. Each organization applied its own criteria in selecting who should join the various vessels. There was no unified protocol across all participating organizations to register prospective passengers using a single signed form, although individual organizations did require applications to be filled out and a screening and selection process took place. Many of the participants interviewed did not have specific skills or qualifications for humanitarian work. Some organizations said that they selected participants on the basis of their qualifications (for example, medical doctors), status as people of influence (parliamentarians, authors) as well as their ability to resist provocation. Some organizers expressed a preference for people who were known to them.

86. The mission’s attention was drawn to allegations that one of the passengers on the ship, who had logistical responsibilities with regard to the cargo on the Mavi Marmara, was

convicted and served a term of imprisonment for his involvement in the 1996 hijacking of a Russian ferry boat. The hijackers were demanding the release of Chechen prisoners at the time.<sup>65</sup>

87. Participants raised money within their communities for the trip and also solicited cash donations which would be given directly to the population of Gaza.

88. There was stringent security surrounding the Mavi Mamara in the port of Antalya and all items taken on board were checked. Passengers and their luggage were subjected to security checks similar to those found in airports before boarding, including body searches. The passengers who were transferred from the Challenger 1 onto the Mavi Marmara on the ocean were subjected to the same security checks.

89. Similar meticulous security checks were carried out on passengers onboard the Eleftheri Mesogios at the port in Greece. The Svendoni was primarily carrying passengers but also had on board a few medical items, including an ultra-sound machine, which had been donated. The boat's captain personally checked the machine and the boat to confirm that there were no weapons or similar items on board. Witnesses also said that the cargo onboard the Rachel Corrie was checked by three independent authorities and sealed before it left Ireland. The seals remained intact when the ship was boarded by the Israelis.

90. Testimony did not show a clear logistical plan on how the large amounts of humanitarian aid being carried by the cargo ships in the flotilla would be unloaded in Gaza given the limited port facilities in Gaza. One witness said that he understood that IHH workers already in Gaza were preparing cranes to off-load the cargo into smaller boats. Another witness confirmed this plan and said that the Eleftheri Mesogios itself had a crane.

(d) *Planned course and destination of the Flotilla*

91. The vessels participating in the flotilla to Gaza departed from different ports at different dates, as shown below and made for an agreed rendezvous point in international waters, approximately 40 nautical miles south of Cyprus. The following vessels proceeded to the rendezvous as follows:

14 May 2010 *Gazze I* departs from Istanbul to Iskenderun

18 May 2010 *Rachel Corrie* departs Greenore Port, Ireland bound for Malta. It had initially left Dundalk on 14 May but stopped for repairs.

22 May 2010 *Mavi Marmara*, departs from Istanbul to Antalya, Turkey

22 May 2010 *Gazze I* departs Iskenderun towards Gaza

24 May 2010 *Defne Y* departs from Istanbul

24 May 2010 *Elftheri Mesogios* departs Piraeus, Greece

25 May 2010 *Mavi Marmara* arrives in Antalya, Turkey

25 May 2010 *Sfendoni* departs Piraeus, Greece (then makes an intermediary stop in Rhodes).

28 May 2010 *Mavi Marmara* departs Antalya, Turkey.

29 May 2010 *Challenger I* and *Challenger II*, depart from Crete; *Rachel Corrie* arrives in Malta.

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<sup>65</sup> Report from the Meir Amit Intelligence and Terrorism Information Center, Israel, 26 August 2010. [http://www.terrorism-info.org.il/malam\\_multimedia/English/eng\\_n/pdf/ipc\\_e119.pdf](http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/ipc_e119.pdf)

30 May 2010 The six vessels congregate at a meeting point to the south of Cyprus; *Rachel Corrie* departs Malta.

92. Embarkation documents for the vessels leaving Turkey gave Gaza as the official destination, although customs documents stated the destination as Lebanon since the computer system did not include Gaza as a designated port of entry. Some crew members interviewed from certain boats said that they understood the intention to be to sail first to Egypt and then enter Gaza waters from the west.

93. The flotilla commenced its journey towards Gaza at 1554 hours on 30 May 2010 from the position approximately sixty-five nautical miles west of the coast of Lebanon.

(e) *Israeli advance plans to intercept the Flotilla*

94. According to the Israel Chief of Defence Staff, the Israeli authorities learned of planned flotilla in early February 2010 and understood that its intention was to break the blockade. Diplomatic efforts began immediately to prevent the flotilla from sailing and contingency plans began to be formulated. Formal initial orders to undertake preparations to intercept the flotilla were issued in mid-April and by 12 May a mission plan had been developed which was approved by the Israeli Chief of General Staff on 13 May 2010.

95. On 13 May 2010, the Israeli Chief of General Staff sent a letter to the Defence Minister and Prime Minister setting out options for dealing with the flotilla, including the military option of commandeering and impounding the ships and detaining the passengers. A further evaluation was made on 26 May and the Defence Minister formally authorised the operation. Extensive training and planning was undertaken, including the setting up of a processing centre for detainees at the Port of Ashdod.

96. According to information available to the Mission, the Israeli forces deployed to intercept the flotilla included a number of corvettes and missile boats, helicopters, zodiacs, surveillance aircraft and possibly two submarines. Soldiers from the “Shayetet 13” special naval forces unit took part in the operation. The operation was given the code name “Operation Sea Breeze” or “Operation Sky Winds”.

97. Advanced identification and surveillance of specific passengers by Israeli intelligence forces took place, as indicated by a laminated booklet, recovered from the possessions of one of the captured Israeli soldiers which contained the names and photographs of specific high profile individuals on each of the six vessels as well as photographs of each vessel. One passenger was able to confirm that the photograph of her included in the booklet was taken just a few days before the flotilla sailed. Advance surveillance is confirmed by evidence attributed to Defence Minister Ehud Barak before the Turkel Committee which indicated that specific orders were taken “to continue intelligence tracking of the flotilla organizers, with an emphasis on the possibility that amongst the passengers in the flotilla there would be terror elements who would attempt to harm Israeli forces.”<sup>66</sup>

(f) *Preparations to defend the vessels in the event of an attempt to board*

98. It is clear to the Mission that, as the flotilla was assembling off Cyprus, participants became aware of the full extent of Israeli plans to intercept, board and commandeer the ships. Details of the Israeli plans had been published in an Israeli newspaper. Many passengers said that, prior to this point, they believed that the Israelis would try to block the path of the flotilla and force it to divert, but they did not imagine that they would seek to

<sup>66</sup> Testimony of Ehud Barak, Minister of Defence, Turkel Committee: Public Commission of Inquiry.

board the vessels by force. This belief persisted with many less-experienced passengers right up to the moment of the interception, notwithstanding the precedent of the “Spirit of Humanity” in 2009. Many passengers told the Mission that they did not really believe that the Israelis would attempt to board until the first boats approached the Mavi Marmara on the morning of 31 May.

*Preparation and planning on the Mavi Marmara*

99. The full realisation that the Israelis were serious about commandeering the flotilla spread through the passengers on the Mavi Marmara during the course of 30 May. There is clear evidence that some people on board the Mavi Marmara, including senior IHH leaders, were prepared actively to defend the ship against any boarding attempt. Video evidence shows a meeting of about fifty to a hundred passengers on the ship on 30 May at which the IHH President and a number of other prominent passengers spoke with some bravado about preventing an Israeli takeover of the ship. The pressure of the water hoses was seen being tested on the decks the day before the interception.

100. Following radio communication with the Israeli Navy and the sightings of the Israeli vessels, it became apparent that a boarding of the ship was an imminent reality. Passengers were instructed to put on their life jackets. Although there does not seem to have been a coordinated plan involving all passengers, some individuals grouped together with the intention to defend the ship. There is little evidence of any unified command to coordinate the defence of the ship.

101. During the night of 30 to 31 May, some passengers took electric tools from the ship’s workshop, which was not kept locked and sawed sections of railings into lengths of approximately one and a half metres, apparently for use as weapons. Lengths of metal chains from between the railings were also removed. When the ship’s crew discovered this, the tools were confiscated and locked in the radio room on the bridge. A number of the passengers were also provided with gas masks to counter the effects of tear gas. However, the Mission notes that the ship’s standard fire-fighting equipment would have included breathing apparatus. Furthermore, the fact that some passengers engaged in last minute efforts to fashion rudimentary weapons shortly prior to the interception confirms the findings of the Mission that no weapons were brought on board the ship.

*Preparation and planning on the Challenger 1, Sfendoni, Eleftheri Mesogios and Rachel Corrie*

102. Passengers and crew on the Challenger 1 underwent training in passive resistance techniques, non-violence and what to do if detained in Israel (including contacting a lawyer before embarkation). Witnesses said discussions took place in advance amongst the passengers on how to respond to an Israeli attempt to board the ship during which the crew had insisted that there should be no attempts to repel boarders with physical force. The captain and crew opposed a suggestion that access to the bridge should be blocked, as it was feared this would incense the soldiers. The intention, according to witnesses, was to show a symbolic resistance to the soldiers sufficient to demonstrate that the boarding was unwanted. The planned response to a boarding of the Challenger 1 was in part informed by the experience of some of the passengers on previous boats which had been intercepted by the Israelis.

103. Witnesses aboard the Svendoni and the Eleftheri Mesogios confirmed similar discussions aboard their vessels. On the Eleftheri Mesogios, it was also decided that water hoses could be misconstrued as weapons and hence should not be used. On the Svendoni, passengers intended to sit on the decks and slow down any attempt to take control of the bridge through passive resistance.



104. The passengers on board the Rachel Corrie agreed and notified the Israelis before boarding that no resistance would be offered to the Israeli forces.

*Preparation and planning on the Gazze 1 and Defne Y*

105. There is no information to suggest that any specific preparations were made by the crew or passengers of Gazze1 and Defne Y to defend against a possible boarding.

## **B. The interception of the Gaza flotilla by the Israeli Navy on 31 May 2010**

### **1. Factual Description and Findings**

106. The Mission found the following facts to have been established to its satisfaction.

*(a) Contacts between the Israeli Navy and the vessels of the flotilla*

107. The flotilla left the rendezvous point at 1554 hours on 30 May 2010 and proceeded in a south-westerly direction on course 222 degrees. This course was altered to 185 degrees, approximately due south, at 2330 hours upon drawing level with the coast of Israel and in order to maintain a course roughly parallel to the coast. The flotilla maintained a distance of 70 nautical miles from the coast since a NAVTEX (Navigational Telex) advisory had warned that the Israeli military were conducting exercises up to 68 nautical miles from the coast.

108. The first radio contact with the Israeli Navy was at approximately 2230 hours. Each vessel was contacted by the Israeli Navy, one after the other, on Channel 16 and requested to switch to an alternative channel. Each vessel refused to switch in order that the conversation could be monitored by all shipping. The Israeli Navy requested each vessel to identify itself and state its destination. It then warned each vessel, with some variations, it was approaching an area of hostilities which is under a naval blockade, that the Gaza maritime area is closed to all vessels and that they must change course to deliver their supplies to the Port of Ashdod in Israel. In some of the messages, the captain of each vessel was warned that he would be held personally responsible for any consequences of a failure to comply with the Israeli request. The Israeli Navy's contacts were similar to those in relation to previous Free Gaza Movement efforts to enter Gaza by sea.

109. In response, the captains of the various vessels stated that their destination was Gaza and the purpose was to deliver humanitarian aid. They also asserted that the Israeli forces did not have the right to order the vessels to change course and that the blockade referred to was illegal. A representative of the Free Gaza Movement spoke to the Israelis on behalf of the whole flotilla, reiterating that the passengers were unarmed civilians delivering humanitarian aid and that none of the ships should be considered as any form of threat to Israel. At no stage was a request made by the Israeli Navy for the cargo to be inspected. Contacts with the Israeli Navy continued until around 0200 hours when communication equipment was jammed by the Israeli forces, cutting them off to all external communications. However, the vessels in the flotilla were able to maintain contact with one another via handheld two-way radios.

110. In early June 2010, audio recordings were released by the Israeli authorities of apparent exchanges between the Israeli Navy and the Defne Y which included insulting references by unknown persons referring to 'Auschwitz' and the 11 September 2001 attack on the World Trade Centre in New York. However, the Mission is not satisfied that these recordings are authentic, nor has the Israeli government made this material available to the Mission for appropriate examination. The Mission was given positive evidence that no such statements were made by anyone involved in communications on the flotilla.

111. The crew and passengers of the six vessels became visually aware of the presence of Israeli naval vessels some time after the initial communications, between 2300 hours and midnight, both through sightings and two-way radio communication between the vessels. The larger Israeli ships and helicopters came into view of the crew of the vessels at approximately 0100 hours on 31 May. Similar sightings were made by other vessels in the flotilla at around the same time.

(b) *Events on board the M.V. Mavi Marmara*<sup>67</sup>

(i) Initial attempt to board the Mavi Marmara from the sea

112. Israeli zodiac boats made a first attempt to board the Mavi Marmara from the sea shortly before 0430 hours. Several zodiac boats approached the ship at the stern from both the port and starboard sides. The approach was accompanied by the firing of non-lethal weaponry onto the ship, including smoke and stun grenades, tear-gas and paintballs. Plastic bullets may also have been used at this stage: however, despite some claims that live ammunition was also fired from the zodiac boats, the Mission is not satisfied that this was the case. The smoke and tear gas were not effective due to the strong sea breeze and later due to the downdraft from helicopters.

113. The Israeli forces attempted to board the ship through attaching ladders to the hull. Passengers engaged in efforts to repel the attempted boarding using the ship's water hoses<sup>68</sup> and the throwing of various items at the boats including chairs, sticks, a box of plates and other objects that were readily to hand. This initial attempt to board the ship proved unsuccessful. It is the view of the Mission that the Israeli forces should have re-evaluated their plans when it became obvious that putting their soldiers on board the ship may lead to civilian casualties.

(ii) Landing of soldiers from helicopters onto the Mavi Marmara

114. Just minutes after soldiers from the zodiac boats had made initial unsuccessful attempts to board, the first helicopter approached the ship at approximately 0430 hours, hovering above the top deck. At this point between 10 and 20 passengers were located in the central area of the top deck, although this number increased as other passengers learned of events on the top deck. The Israeli forces used smoke and stun grenades in an attempt to clear an area for the landing of soldiers. The first rope that was let down from the helicopter was taken by passengers and tied it to a part of the top deck and thereby rendered ineffective for the purpose of soldiers' descent. A second rope was then let down from the

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<sup>67</sup> For the purposes of this report, the following terms are used to describe the various decks of the Mavi Marmara: Top Deck – the roof of the ship where the satellite tower and funnel are located, Bridge Deck – the deck below the Top Deck which gives access to the Bridge, Bow Deck – lowest open deck with access to the front of the ship. Live television broadcasts were made from an open deck area at the back of the Bridge Deck.

<sup>68</sup> It is worth noting that in accordance with the International Maritime Organization's circular 'Guidance to ship owners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships' from June 2009, the use of water hoses is recommended as a means to prevent an attempted boarding by pirates and armed robbers. IMO Circular Msc.1/Circ.1334, date 23 June 2009, Annex, para. 57 states as follows: "The use of water hoses should also be considered though they may be difficult to train if evasive manoeuvring is also taking place. Water pressures of 80 lb per square inch and above have deterred and repulsed attackers. Not only does the attacker have to fight against the jet of water but the flow may swamp his/her boat and damage engines and electrical systems. Special fittings for training hoses could be considered which would also provide protection for the hose operator. A number of spare fire hoses could be rigged and tied down to be pressurized at short notice if a potential attack is detected."

helicopter and the first group of soldiers descended. The Mission does not find it plausible that soldiers were holding their weapons and firing as they descended on the rope. However, it has concluded that live ammunition was used from the helicopter onto the top deck prior to the descent of the soldiers.

115. With the available evidence it is difficult to delineate the exact course of events on the top deck between the time of the first soldier descending and the Israeli forces securing control of the deck. A fight ensued between passengers and the first soldiers to descend onto the top deck that resulted in at least two soldiers being pushed down onto the bridge deck below, where they were involved in struggles with groups of passengers who attempted to take their weapons. The equipment jacket of at least one soldier was removed as he was pushed over the side of the deck. A number of weapons were taken from the soldiers by passengers and thrown into the sea: one weapon, a 9mm pistol was unloaded by a passenger, a former US Marine, in front of witnesses and then hidden in another part of the ship in an attempt to retain evidence.

116. A number of the passengers on the top deck fought with the soldiers using their fists, sticks, metal rods and knives.<sup>69</sup> At least one of the soldiers was stabbed with a knife or other sharp object. Witnesses informed the Mission that their objective was to subdue and disarm the soldiers so that they could not harm anyone. The Mission is satisfied on the evidence that at least two passengers on the bridge deck also used handheld catapults to propel small projectiles at the helicopters. The Mission has found no evidence to suggest that any of the passengers used firearms or that any firearms were taken on board the ship. Despite requests, the Mission has not received any medical records or other substantiated information from the Israeli authorities regarding any firearm injuries sustained by soldiers participating in the raid. Doctors examined the three soldiers taken below decks and no firearm injuries were noted. Further, the Mission finds that the Israeli accounts so inconsistent and contradictory with regard to evidence of alleged firearms injuries to Israeli soldiers that it has to reject it.<sup>70</sup>

(iii) Deaths of nine passengers and wounding of at least 50 other passengers

117. During the operation to secure control of the top deck, the Israeli forces landed soldiers from three helicopters over a fifteen-minute period.<sup>71</sup> The Israeli forces used paintballs, plastic bullets and live ammunition, fired by soldiers from the helicopter above and soldiers who had landed on the top deck. The use of live ammunition during this period resulted in fatal injuries to four passengers,<sup>72</sup> and injuries to at least nineteen others, fourteen with gunshot wounds. Escape points to the bridge deck from the top deck were narrow and restricted and as such it was very difficult for passengers in this area to avoid

<sup>69</sup> The Mission has found no evidence of knives being taken on board by passengers except for one traditional ceremonial knife. However, the Mavi Marmara had six kitchens, each of which was stocked with usual culinary knives.

<sup>70</sup> In his testimony to the Turkel Committee on 11 August 2010, Chief of General Staff Ashkenazi refers to one soldier being “shot in his abdomen by one of the activists” and that “in the course of the battle, five soldiers are wounded by stabbings, blows and shooting.” However, at the Special Sitting of the Human Rights Council on 1 June 2010 Ambassador Aharon Leshno Yaar, Permanent Representative of Israel to the United Nations, Geneva stated that passengers “shot two Israeli soldiers”. In contrast, in the State’s Response at the Habeas Corpus hearing on 2 June 2010, no specific reference is made to any Israeli soldiers being shot.

<sup>71</sup> In his testimony to the Turkel Committee on 11 August 2010, Chief of General Staff Ashkenazi stated that the first helicopter carried 15 soldiers, the second helicopter carried 12 soldiers and the third helicopter carried 14 soldiers.

<sup>72</sup> Fahri Yaldiz, Furkan Doğan, İbrahim Bilgen and Ali Haydar Bengi.

being hit by live rounds. At least one of those killed was using a video camera and not involved in any of the fighting with the soldiers. The majority of gunshot wounds received by passengers were to their upper torsos in the head, thorax, abdomen and back. Given the relatively small number of passengers on the top deck during the incident, the Mission is driven to the conclusion that the vast majority were in receipt of gunshot wounds.

118. Israeli soldiers continued shooting at passengers who had already been wounded, with live ammunition, soft baton charges (beanbags) and plastic bullets. Forensic analysis demonstrates that two of the passengers killed on the top deck received wounds compatible with being shot at close range while lying on the ground: Furkan Doğan received a bullet in the face and İbrahim Bilgen received a fatal wound from a soft baton round (beanbag) fired at such close proximity to his head that parts such as wadding penetrated his skull entered his brain. Furthermore, some of the wounded were subjected to further violence including being hit with the butt of a weapon, being kicked in the head, chest and back and being verbally abused. A number of the wounded passengers were handcuffed and then left unattended for some time before being dragged to the front of the deck by their arms or legs.

119. Once the Israeli forces had secured control of the top deck they undertook measures to move down to the bridge deck below in order to take over the ship's bridge and thus take control of the ship. In relation to this operation, a series of shooting incidents occurred centred on the portside doorway which gives access to the main stairwell on the bridge deck. This door is near to the hatch and ladder, which allows access from the top deck to the bridge deck.

120. Israeli soldiers fired live ammunition both from the top deck at passengers on the bridge deck below and after they had moved down to the bridge deck. At least four passengers were killed,<sup>73</sup> and at least nine injured (five with firearms injuries) during this phase. None of the four passengers who were killed, including a photographer who at the time of being shot was engaged in taking photographs and was shot by an Israeli soldier positioned on the top deck above, posed any threat to the Israeli forces. There was considerable live fire from Israeli soldiers on the top deck and a number of passengers were injured or killed whilst trying to take refuge inside the door or assisting other to do so. Wounded passengers were brought into the ship through the stairwell and through the ship's bridge room and were helped downstairs where they could be given some form of medical treatment by doctors and others on board.

121. One witness described the circumstances in which one passenger was killed on the bridge deck:

I saw two soldiers on top of the roof standing there holding their guns down at something on the roof that I couldn't see. There were two guys hidden underneath a walkway of the ship to the right hand side and I was screaming at them not to move. The two passengers were below the soldiers. They could not see the soldiers and the soldiers could not see them while they were hidden under the walkway. Then the guys moved out making themselves visible as they tried to run towards the metal door. One man made it to open the door and got inside. The other man must have been shot. I think he was shot in the head from the way he looked, he wasn't moving at all. He was twenty or thirty metres away from me. When the second man got shot, the first man opened the door and using it as a shield tried to reach out for the second man. He managed to reach him and was pulling him by his right arm. I couldn't see any blood, but he wasn't moving at all.

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<sup>73</sup> Cevdet Kiliçlar, Cengiz Songür, Cengiz Akyüz and Çetin Topçuoğlu.

122. A group of up to twenty passengers, some holding sticks and rods and wearing gas masks, were located on or around the stairwell inside the ship. One passenger standing just inside the door was shot through the broken porthole in the door by a soldier standing a few metres away on the bridge deck outside.

123. During the shootings on the bridge deck and as it became apparent that a large number of passengers had become injured, Bulent Yildirim, the President of IHH and one of principal organisers of the flotilla, removed his white shirt which was then used as a white flag to indicate a surrender. This does not appear to have had any effect and live firing continued on the ship.

124. Israeli forces moved down to the bridge deck and moved rapidly to take over the bridge room towards the front of the ship. The doorway and windows of the bridge room came under fire and the ship's captain ordered the ship's engines to be cut. Israeli soldiers entered the bridge room through the door and broken window. The crew were made to lie on the ground at gunpoint. The captain remained standing but was held at gunpoint.

(iv) Shootings at the bow deck, the release of the Israeli soldiers and end of the operation

125. During the initial fighting on the top deck three Israeli soldiers were taken under control and brought inside the ship. While some passengers wished to harm the soldiers, other passengers ensured that they were protected and able to receive rudimentary medical treatment from doctors on board. Two of the soldiers had received wounds to the abdomen. One of the soldiers had a superficial wound to the abdomen, caused by a sharp object, which penetrated to the subcutaneous tissue. None of the three soldiers had received gunshot injuries, according to doctors who examined them. All three soldiers were in a state of shock and were suffering from cuts, bruises and blunt force trauma.

126. As the seriousness of incidents on the outer decks became apparent, there was growing concern among some of the flotilla organisers that holding the captured Israeli soldiers may have serious implications for the security of all passengers on board.<sup>74</sup> It was decided that the soldiers should be released and they were taken to the bow of the lower deck. Once on the bow deck two of the soldiers jumped into the sea and were picked up by Israeli boats. The third soldier did not jump and was rapidly joined by Israeli soldiers who came down from the top deck.

127. At least four passengers were injured on the bow of the ship, both before and around the time that the Israeli soldiers were released. At least two passengers received wounds from live ammunition, while others received injuries from soft baton charges, including one doctor who was tending to injured passengers.

128. The Israeli forces stated that the active phase of the Israeli forces operation concluded at 0517 hours,<sup>75</sup> once the ship was under their control and the three soldiers were released. During the 45-50 minute operation, nine passengers were killed, more than 24 passengers had received serious injuries caused by live ammunition and a large number of other passengers had received injuries caused by plastic rounds, soft baton charges (bean-bags) and other means.

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<sup>74</sup> It also appears that the Israeli forces were planning to enter the ship's cabins in order to locate the three soldiers: In his testimony to the Turkel Committee on 11 August 2010, COGS Ashkenazi stated that at the time when the Israeli forces spotted the three soldiers on the bow deck: "The force commander [was preparing] to rush the passengers' area in order to locate the missing soldiers."

<sup>75</sup> As stated by COGS Ashkenazi in his testimony to the Turkel Committee on 11 August 2010.

*Deaths occurring on the Top Deck (roof)**Furkan Doğan*

Furkan Doğan, a nineteen-year old with dual Turkish and United States citizenship, was on the central area of the top deck filming with a small video camera when he was first hit with live fire. It appears that he was lying on the deck in a conscious, or semi-conscious, state for some time. In total Furkan received five bullet wounds, to the face, head, back thorax, left leg and foot. All of the entry wounds were on the back of his body, except for the face wound which entered to the right of his nose. According to forensic analysis, tattooing around the wound in his face indicates that the shot was delivered at point blank range. Furthermore, the trajectory of the wound, from bottom to top, together with a vital abrasion to the left shoulder that could be consistent with the bullet exit point, is compatible with the shot being received while he was lying on the ground on his back. The other wounds were not the result of firing in contact, near contact or close range, but it is not otherwise possible to determine the exact firing range. The wounds to the leg and foot were most likely received in a standing position.

*İbrahim Bilgen*

İbrahim Bilgen, a 60 year old Turkish citizen, from Siirt in Turkey, was on the top deck and was one of the first passengers to be shot. He received a bullet wound to the chest, the trajectory of which was from above and not at close range. He had a further two bullet wounds to the right side of the back and right buttock, both back to front. These wounds would not have caused instant death, but he would have bled to death within a short time without medical attention. Forensic evidence shows that he was shot in the side of the head with a soft baton round at such close proximity and that an entire bean bag and its wadding penetrated the skull and lodged in the brain. He had a further bruise on the right flank consistent with another beanbag wound. The wounds are consistent with the deceased initially being shot from soldiers on board the helicopter above and receiving a further wound to the head while lying on the ground, already wounded.

*Fahri Yaldiz*

Fahri Yaldiz, a 42 year old Turkish citizen from Adiyaman, received five bullet wounds, one to the chest, one to the left leg and three to the right leg. The chest wound was caused by a bullet that entered near the left nipple and hit the heart and lungs before exiting from the shoulder. This injury would have caused rapid death.

*Ali Heyder Bengi*

According to the pathology report, Ali Heyder Bengi, a 38 year old Turkish citizen from Diyarbakir, received six bullet wounds (one in the chest, one in the abdomen, one in the right arm, one in the right thigh and two in the left hand). One bullet lodged in the chest area. None of the wounds would have been instantly fatal, but damage to the liver caused bleeding which would have been fatal if not stemmed. There are several witness accounts which suggest that Israeli soldiers shot the deceased in the back and chest at close range while he was lying on the deck as a consequence of initial bullet wounds.

*Deaths occurring on the Bridge Deck, portside**Cevdet Kiliçlar*

Cevdet Kiliçlar, a 38 year old Turkish citizen from Istanbul, was on the Mavi Marmara, in his capacity as a photographer employed by IHH. At the moment he was shot he was standing on the bridge deck on the port side of the ship near to the door leading to the main stairwell and was attempting to photograph Israeli soldiers on the top deck. According to the pathology reports, he received a single bullet to his forehead between the eyes. The

bullet followed a horizontal trajectory which crossed the middle of the brain from front to back. He would have died instantly.

*Cengiz Akyüz and Cengiz Songür*

41 year old Cengiz Akyüz from Hatay and 46 year old Cengiz Songür from Izmir, both Turkish citizens, were injured on the bridge deck in close succession by live fire from above. They had been sheltering and were shot as they attempted to move inside the door leading to the stairwell. Cengiz Akyüz received a shot to the head and it is probable that he died instantly.

The pathology report shows four wounds: to the neck, face, chest and thigh. Cengiz Songür received a single bullet to the upper central thorax below the neck, shot from a high angle, which lodged in the right thoracic cavity injuring the heart and aorta. Unsuccessful efforts were made by doctors inside the ship to resuscitate him through heart massage.

*Çetin Topçuoğlu*

Çetin Topçuoğlu, a 54 year old Turkish citizen from Adana had been involved in helping to bring injured passengers inside the ship to be treated. He was also shot close to the door on the

bridge deck. He did not die instantly and his wife, who was also on board the ship, was with him when he died. He was shot by three bullets. One bullet entered from the top the soft tissues of the right side of the back of the head, exited from the neck and then re-entered into the thorax. Another bullet entered the left buttock and lodged in the right pelvis. The third entered the right groin and exited from the lower back. There are indications that the victim may have been in a crouching or bending position when this wound was sustained.

*Deaths and seriously wounded occurring in unknown locations*

*Necdet Yildirim*

The location and circumstances of the shooting and death of Necdet Yildirim, a 31 year old Turkish citizen from Istanbul, remain unclear. He was shot twice in the thorax, once from the front and once from the back. The trajectory of both bullets was from top to bottom. He also received bruises consistent with plastic bullet impact

*Wounding of Uğur Suleyman Söylemez (in a coma)*

The serious nature of wounds to Uğur Suleyman Söylemez, a 46 year old Turkish citizen from Ankara, which include at least one bullet wound to the head, have left the victim in a coma in an Ankara hospital. He remains in a critical condition with a serious head injury.

(v) Treatment of injured on the Mavi Marmara

129. Whilst the Israeli operation was still under way, efforts were made to tend to wounded passengers inside the ship by other passengers, amongst whom were around 15 doctors, nurses and others with medical training, including an ophthalmologist and orthopaedic specialist. Prior to the attack the doctors had met and agreed to use the ship's small medical room, but there was no anticipated or preparation for the nature of injuries that transpired. The limited medicines and lack of appropriate equipment made it very difficult to properly treat wounded persons, particularly those who had received live fire injuries and required immediate surgery. By the end of the Israeli operation more than thirty persons were being treated inside the cabins, primarily in the lower deck in makeshift surgery areas, twenty of whom were in a critical condition.

130. The flotilla organisers and other passengers engaged in efforts to request the Israeli forces to provide the necessary treatment to the wounded persons. One organiser used the ship's intercom to request assistance in Hebrew and persons also communicated directly

through the cabin windows or by placing signs, written in English and Hebrew, in the ship's windows. These attempts proved unsuccessful and it was up to two hours before the Israeli forces took out the wounded persons. However, the wounded were required to leave the cabins themselves, or taken outside in a rough manner, without apparent concern for the nature of their injuries and the discomfort that this would cause.

131. The wounded passengers were taken to the front of the top deck where they joined other passengers injured during the operation on the top deck and where the bodies of persons killed during the operation had been left. Wounded passengers, including persons seriously injured with live fire wounds, were handcuffed with plastic cord handcuffs, which were often tied very tightly causing some of the injured to lose sensitivity in their hands. These plastic handcuffs cannot be loosened without being cut off, but can be tightened. Many were also stripped naked and then had to wait some time, possibly as long as two-three hours, before receiving medical treatment. Medical treatment was given to a number of wounded persons on the top deck by the Israeli forces.<sup>76</sup>

132. Over several hours the wounded passengers were then airlifted by Israeli forces helicopters from the ship to hospitals in Israel.<sup>77</sup> However, some of the wounded remained on board the Mavi Marmara, at least one of whom had injuries caused by live ammunition and did not receive appropriate medical treatment until after the ship's arrival at the port of Ashdod in Israel many hours later.

(vi) Search and initial detention of Mavi Marmara passengers

133. All other passengers on the Mavi Marmara were taken one-by-one from the cabin areas and onto the external deck areas and were searched. The vast majority of passengers, including the ship's captain and crew, were then handcuffed with plastic handcuffs and forced to kneel on the various decks for some hours. Some women, elderly men and persons from western countries were not handcuffed, or were temporarily handcuffed and then uncuffed after a relatively short period of time and were then permitted to sit on the benches. Most of those kneeling were drenched by water from the blades of the helicopter and were thus also in wet clothing throughout this period and were very cold. Other passengers exposed on open decks received serious sun-burn to their skin as a result of many hours exposure: medical reports show that at least thirteen passengers received first-degree burns as a consequence. During the course of the twelve-hour journey to the port of Ashdod in Israel the passengers were brought inside the ship and allowed to sit on the available seating.

134. In the process of being detained, or while kneeling on the outer decks for several hours, there was physical abuse of passengers by the Israeli forces, including kicking and punching and being hit with the butts of rifles. One foreign correspondent, on board in his professional capacity, was thrown on the ground and kicked and beaten before being handcuffed. The passengers were not allowed to speak or to move and there were frequent instances of verbal abuse, including derogatory sexual remarks about the female passengers. Passengers were denied access to toilet facilities or made to wait for lengthy periods before being escorted to the toilet and then forced to use the toilet with Israeli soldiers watching and while handcuffed. Some passengers were in serious discomfort as a result, while others used makeshift receptacles, such as plastic bottles and others still were

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<sup>76</sup> According to the testimony of COGS Ashkenazi to the Turkel Committee on 11 August 2010, field surgeries were performed on fourteen passengers on board the ship.

<sup>77</sup> According to the testimony of COGS Ashkenazi to the Turkel Committee on 11 August 2010, 31 wounded passengers and seven wounded Israeli soldiers were airlifted from the ship utilizing "approximately 40 helicopter evacuations" and all wounded had been evacuated by 1230 hours.



forced to urinate on themselves. The Israeli forces also employed dogs and some passengers received dog bite wounds. Some witnesses who suffer from chronic medical conditions, such as diabetes or heart conditions, were not provided access to their required medicines which were taken by Israeli soldiers.

135. The manner in which plastic handcuffs were attached to the wrists of passengers caused severe pain and discomfort. There was widespread misuse of the handcuffs by the Israeli soldiers who tightened the plastic handcuffs to an extent that caused pain, swelling, a loss of blood circulation in the hands and the loss of sensitivity in their hands and fingers. Most passengers who requested that the handcuffs be loosened were ignored or it resulted in the handcuffs being further tightened. A number of passengers are still experiencing medical problems related to the handcuffing three months later and forensic reports confirm that at least fifty-four passengers had received injuries, transversal abrasions and bruises, as a result of handcuffing on board the Mavi Mamara.

(c) *Events aboard the Challenger 1*

136. Passengers and crew on the Challenger 1, the smallest and fastest vessel in the flotilla, were able to witness the first moments of the assault on the Mavi Marmara. Once it became apparent that the Israelis intended to commandeer the ships, the decision was made for the Challenger 1 to accelerate out of the formation of the flotilla to allow more time for the journalists aboard to transmit news of the assault to the outside world via the boat's satellite internet connection which remained in operation, but also in the hope that at least one boat might still be able to reach Gaza. The boat was chased by one of the Israeli corvette boats which it was unable to outrun. Eventually the starboard engine lost oil pressure and the captain, concerned the Israelis might ram the boat, shut down the engines.

137. The boat was intercepted by two Israeli boats and a helicopter. Passengers on the board said that at least one stun grenade was launched at the boat by the Israelis before they attempted to board. Passengers on the decks had decided in advance to employ passive resistance techniques to resist symbolically the Israeli soldiers boarding the boat. The passengers stood unarmed side-by-side blocking the path of the soldiers. Soldiers opened fire with paintballs and rubber bullets as they boarded, hitting and injuring one woman in the face with either a plastic bullet or a paintball. Another woman was bruised on her back by from rubber bullets.

138. Once on board, the soldiers moved to take control of the fly bridge. Passengers obstructing access were forcibly removed. On entering the fly bridge, the soldiers were met with no resistance, but a female journalist sustained burns on her arms from an electroshock weapon fired by an Israeli soldier. Witnesses said that the primary concern of the soldiers seemed to be the confiscation of photographic equipment and media.

139. The passive resistance offered by the passengers was met with force. One woman's head was hit against the deck of the boat and then stepped on by an Israeli soldier. Passengers were handcuffed very tightly with plastic ties behind their backs, while the woman injured in the face was left unattended.

140. Several passengers said that it was clear that the Israeli soldiers knew who was onboard as they referred to some passengers by name. A plasticised booklet recovered from a soldier on the Mavi Marmara and filmed identified specific passengers on several boats with names and photographs including the Challenger 1.

141. One crew member observed that the soldiers were very young, seemed frightened and that were initially poorly organized. Soldiers behaved aggressively from the outset towards the passengers. Passengers were handcuffed with plastic ties and denied access to the toilet. One elderly man was obliged to urinate in his clothes because he was refused access to the toilet. There was an attempt to forcibly eject one woman from the boat into

one of the zodiacs. Two women had hemp bags placed over their heads for an extended period. The woman injured in the face in the initial stage of boarding was left unattended for an extended period, even though there was an army medic on board. The physical violence was described as “unwarranted and excessive”. No distinction was made between activists and journalists, despite the presence of several well-respected international journalists on board.

142. The boat arrived in Ashdod at around 1100 hours on 31 May. Several passengers joined arms to resist disembarkation, protesting that they had been brought to Israel against their will from international waters. Two female passengers were handcuffed and forcibly removed while a male passenger was threatened with an electroshock weapon at point blank range. Passengers were led off the boat one-by-one accompanied by two Israeli officers.

(d) *Events aboard the Sfondoni*

143. The operation to board the Sfondoni took place simultaneously with the assault on the Mavi Marmara. Soldiers were able to climb directly on board in a straightforward manner from zodiac boats without the need to use grappling irons or other equipment. Prior to boarding a number of stun grenades, plastic bullets and paint balls were fired at the boat from soldiers on the zodiacs: at least two passengers were hit, one on the back of the head. According to a medical doctor on board, one of stun grenades landed in the confined space of the bridge, injuring a number of people and causing damage to the hearing of one man.

144. Once aboard, the soldiers proceeded to the bridge of the ship. The passengers had planned to sit down on the decks of the boat to show passive resistance, but in the event the plan was only partially implemented. Many of the passengers, including the elderly, stayed below decks in the main lounge. On deck, passengers linked arms around the bridge. The Israelis then proceeded to fire electroshock weapons at the protesting passengers to clear access; a medical doctor, who was himself hurt in this way, later treated numerous electrical burn injuries to passengers. When two Israeli soldiers entered the bridge, one of the crew grabbed the wheel tightly, protesting that the boat was in international waters. A soldier hit him with the butt of his gun and in the ensuing scuffle the captain was kicked in the back, punched several times in the face and received electric shock burns from an electroshock weapon.

145. At one point after the boat was taken under control one passenger was roughly treated and restrained at the hands and feet with plastic ties. He screamed in protest and because the ties were too tight. At the insistence of a medical doctor, the handcuffs were removed. The man then ran and jumped into the sea. The passenger was later picked up by another boat.

146. The Israeli forces took control of the boat and the passengers were made to sit down. Some passengers were restrained with plastic ties for an initial period, but most were not. The soldiers attempted to stop a medical doctor from treating the passengers’ injuries, saying that the army medical officer on board would treat them. But since he was masked and armed like the other soldiers, no passengers would consent to be treated by him. The doctor said that they would have to shoot him to prevent him doing his job.

147. Passengers were searched one-by-one and taken to the main salon. Passengers said that access to water and to the toilet was only possibly with difficulty after repeated requests and not all passengers were granted access. Passengers were allowed to prepare food which they refused to eat until an army cameraman ceased filming them for propaganda reasons. Witnesses said that the soldiers were always aggressive and shouting and pointing their guns, but otherwise no one was ill-treated or restrained.

(e) *Events aboard the Eleftheri Mesogios*

148. Israeli forces boarded the Eleftheri Mesogios after 0430 hours, concurrently with the assault on the Mavi Marmara and Sfendoni. Soldiers boarded from three zodiac boats, using grappling irons and rope ladders to climb the sides of the ship. Although barbed wire had been placed around the ship, the soldiers were able to board relatively quickly.

149. The passengers did not engage in any pro-active resistance to the take-over of the ship but used passive resistance methods, blocking access to the bridge with their bodies. The Israeli forces used physical force, electroshock weapons, plastic bullets and paint balls to clear the area. A number of passengers were injured, including one passenger whose leg was fractured leg.

150. All the passengers and crew were handcuffed. Israeli soldiers confiscated their passports and subjected them to body searches. Those who refused to cooperate were roughly treated. According to a number of witnesses, some people who refused to surrender their passports were assaulted, including one woman who was punched in the stomach and one man who was wrestled to the ground by two soldiers, kicked and beaten. One passenger said that the hand ties were too tight and when he asked for them to be loosened they were instead tightened further.

151. Witnesses stated that the passengers were almost continuously filmed on video cameras by the Israeli forces. One passenger said that he felt this was being done deliberately to humiliate the passengers and that this contributed directly to an elderly passenger experiencing an anxiety attack.

(f) *Events aboard the M.V. Gazze 1 and M.V. Defne Y*

152. Israeli forces boarded the M.V. Gazze 1 from zodiacs boats sometime after 0530 hours. The crew and passengers on board offered no resistance and the Israeli forces took control of the ship without incident. Passengers were ordered onto the deck while the ship was searched with dogs and then later taken to the dining hall where they were body-searched. During the eight-hour journey to Ashdod they were not handcuffed and were provided with food.

153. Israeli forces boarded the M.V. Defne Y by fast rope from helicopters at approximately 0530 hours. The crew and passengers on board offered no resistance and the Israeli forces took control of the ship without incident. They were then kept within the cabins until they arrived in the port of Ashdod. No crew members or passengers were handcuffed and the Israeli soldiers brought food from the kitchens for them to eat. One passenger, a cameraman working for the IHH organisation, said that he was interrogated for a five hour period and physically assaulted, in relation to a video tape that he had hidden.

(g) *Events aboard the M.V. Rachel Corrie on 5 June 2010*

154. The Rachel Corrie was delayed in departing Ireland and stopped in Malta for passengers to embark. The ship therefore was unable to join the rest of the flotilla at the meeting point south of Cyprus. Nevertheless, it was intercepted by the Israeli forces and the people on board went through similar experiences to those on the other ships. There was a total of nine crew and eleven passengers on board including a number of high-profile public figures.

155. The passengers aboard the Rachel Corrie, having learned of the interception of the flotilla by satellite phone, unanimously decided to proceed to Gaza as planned as a mark of respect for those who had died. The crew were consulted and also agreed to continue. A press release was issued confirming the decision to continue.

156. On 3 June, the Irish Government engaged in negotiations with the Government of Israel to guarantee that the cargo of aid aboard the Rachel Corrie could be delivered to Gaza if the ship diverted to the port of Ashdod. The passengers on the ship did not participate in these negotiations and decided to reject the offer since their objective was not only to deliver the aid but also to break what they considered the illegal siege of Gaza.

157. The ship continued its journey towards Gaza. The interception of the vessel followed the precedent of the earlier interceptions, but without violence, on 5 June. A number of Israeli naval vessels came into view and radio contact commenced at about 0630 hours. The captain was informed that Gaza was a closed military zone and that the ship should not proceed. The Rachel Corrie responded that it was a civilian ship delivering humanitarian aid and that their cargo, which had been checked and sealed by the authorities in Ireland, did not constitute a threat to Israel.

158. The passengers on the ship noted with irritation that the Israelis continually referred to the ship by its former name, the M. V. Linda. The ship had been renamed shortly before leaving Ireland to commemorate an American woman, Rachel Corrie, who had been killed by an Israeli bulldozer in the Gaza Strip in 2003.

159. When the Israelis warned of their intention to board the vessel, the passengers rejected Israel's right to board since they were in international waters and did not constitute a threat but stated that there would be no violent resistance to a boarding. The ship's communication capability was jammed. The engines were cut by the captain and, at around 1100 hours, zodiacs approached the ship and soldiers boarded in accordance with an agreed procedure. The passengers and crew were gathered amidships and sit with their hands outstretched, while one man controlled the boat in the wheel house. Around 35 armed soldiers, including three women, boarded in full riot gear. The boarding proceeded peacefully. According to one witness, the ship was 35 nautical miles from Gaza at this point.

160. The lead passenger, who had control of the ship just prior to the boarding, was handcuffed and made to kneel at the back of the ship for approximately 45 minutes after which he was placed with the crew. His wife was not allowed to see him during most of the journey to Ashdod. The other passengers had their passports checked, were searched and then made to sit in the sun for several hours while the ship was searched. The ship was then taken to Ashdod without incident.

161. The Israeli Chief of General Staff, testifying before the Turkel Committee, cited the Rachel Corrie as an example of a humanitarian ship which had accepted to be diverted to Ashdod in order that the aid could be delivered to the Gaza Strip by land. This contradicts the assertion by passengers of the ship that they were boarded after protest and were taken to Ashdod against their will.

## **2. Legal Analysis of the use of force in intercepting the Gaza flotilla**

### *(a) Excessive use of force and the right to life and to physical integrity*

162. Article 6, paragraph 1 of the International Covenant on Civil and Political Rights states:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

This right is non-derogable.

163. Insofar as the Israeli interception of the flotilla was unlawful—and the Mission considers that it was unlawful—the use of force by the Israeli forces in seizing control of the Mavi Marmara and other vessels was also *prima facie* unlawful since there was no legal

basis for the Israeli forces to conduct an assault and interception in international waters. Moreover, in undertaking these operations and regardless of the legality of the operation, the Israeli forces were obliged to do so in accordance with the law, including Israel's international human rights obligations.

164. The Code of Conduct for Law Enforcement Officials prescribes in Article 2 that “in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons”; and article 3 continues “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”. This article clearly determines that the use of firearms is considered as an extreme measure and that whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall minimize damage and injury and respect and preserve human life.

165. In boarding the Mavi Marmara, both from the sea and from the air, the Israeli forces met a level of resistance from some of the passengers on board that was significant and, it appears, unexpected. However, there is no available evidence to support the claim that any of the passengers had or used firearms at any stage. In the initial phases of fighting with the Israeli soldiers on the top deck, three Israeli soldiers were disarmed and taken inside the ship. At this point, there may have been a justifiable belief of an immediate threat to life or serious injury of certain soldiers which would have justified the use of firearms against specific passengers.<sup>78</sup>

166. Principle 9 of the Basic Principles on the Use of Firearms by Law Enforcement Officials stipulates that “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life [...] and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

167. Nevertheless, throughout the operation to seize control of the Mavi Marmara, including before the live fire restriction was eased, lethal force was employed by the Israeli soldiers in a widespread and arbitrary manner which caused an unnecessarily large number of persons to be killed or seriously injured. Less extreme means could have been employed in nearly all instances of the Israeli operation, since there was no imminent threat to soldiers; for example in relation to the operation to move down to the bridge deck and seize control of the ship and the firing of live ammunition at passengers on the bow deck of the ship. Even in a situation where three individual soldiers have been injured and detained, the objective of freeing these soldiers does not legitimate the use of force outside applicable international standards and soldiers must continue to respect and preserve life and to minimize injury and damage.

168. In such circumstances the use of less extreme means, such as available less-lethal weaponry, would have been sufficient to achieve the required objective as required by Principle 4 of the Basic Principles on the Use of Firearms by Law Enforcement Officials.<sup>79</sup>

<sup>78</sup> The Israeli Chief of Defence Staff is attributed with saying that the rules of engagement of the soldiers made clear that live fire was initially only to be used in life-threatening situations and that this restriction was only later eased in order to target protesters deemed to be violent in response to unexpected level of violent resistance and the unknown whereabouts of some soldiers. IDF Chief of General Staff, Gabi Ashkenazi's testimony to the Turkel Committee: Public Commission to Examine the Maritime Incident of May 31, 2010, Session Number 4, 11 August 2010.

<sup>79</sup> Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other

A well-trained force such as the Israeli Defence Force should have been able to successfully contain a relatively small group of passengers armed with sticks and knives and secure control of the ship without the loss of life or serious injury to either passengers or soldiers.

169. A large number of injured passengers received wounds to critical areas of the body containing vital organs – the abdomen, thorax and head. Furthermore, a number of passengers who were clearly not engaged in any activities to resist the boarding by the Israeli forces, including a number of journalists and persons who had been sheltering from the fire, received injuries, including fatal injuries. It is apparent that no effort was made to minimise injuries at certain stages of the operation and that the use of live fire was done in an extensive and arbitrary manner. It is difficult not to conclude that, once the order to use live fire had been given, no one was safe. Under the circumstances, it seems a matter of pure chance that there were not more fatalities as a result. Principle 5 of the Basic Principles on the Use of firearms by Law Enforcement Officials stipulates that “whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; and (b) Minimize damage and injury and respect and preserve human life.”

170. The circumstances of the killing of at least six of the passengers were in a manner consistent with an extra-legal, arbitrary and summary execution. Furkan Doğan and İbrahim Bilgen were shot at near range while the victims were lying injured on the top deck. Cevdet Kiliçlar, Cengiz Akyüz, Cengiz Songür and Çetin Topçuoğlu were shot on the bridge deck while not participating in activities that represented a threat to any Israeli soldier. In these instances and possibly other killings on the Mavi Marmara, Israeli forces carried out extra-legal, arbitrary and summary executions prohibited by international human rights law, specifically article 6 of the International Covenant on Civil and Political Rights.<sup>80</sup>

171. It is apparent that a number of the passengers on the top deck were subjected to further mistreatment while lying injured. This included physical and verbal abuse some time after the operation to secure control of the deck had concluded. Furthermore these passengers were not provided with medical treatment for two to three hours after the cessation of the operation. Similarly injured passengers who were inside the ship at the end of the operation of the Israeli forces were denied proper medical treatment for a similar length of time despite frequent efforts by other persons on board, including flotilla organizers, requesting such assistance to be provided. Other passengers suffering from chronic medical conditions were also denied access to their required essential medicines. The Israeli forces failed to meet the requirement to provide proper medical treatment to all those injured as rapidly as possible.<sup>81</sup> Furthermore, the use of firearms should have been preceded by clear warnings of the intent to do so.<sup>82</sup> While the circumstances of the initial stages on the top deck may not have been conducive to the issuance of such warnings, later

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means remain ineffective or without any promise of achieving the intended result.

<sup>80</sup> See Principles 1 and 2 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

<sup>81</sup> As set out in principle 4 (c) of the Basic Principles on the Use of firearms by Law Enforcement Officials states that law enforcement officials shall: “Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment”.

<sup>82</sup> Principle 10 of the Basic Principles on the Use of firearms by Law Enforcement Officials stipulates that “law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

stages in the Israeli operation to secure control of the ship certainly were possible and necessary.

172. The Mission is satisfied that much of the force used by the Israeli soldiers on board the Mavi Marmara and from the helicopters was unnecessary, disproportionate, excessive and inappropriate and resulted in the wholly avoidable killing and maiming of a large number of civilian passengers. On the basis of the forensic and firearm evidence, at least six of the killings can be characterised as extra-legal, arbitrary and summary executions. As such, the conduct of the Israeli forces amounted to violations of the right to life and of the right to physical integrity, as stipulated in articles 6 and 7 of the International Covenant on Civil and Political Rights.

173. The Mission is also concerned with the nature of the force used by the Israeli forces in the interception of the three further vessels in the flotilla: Challenger 1, Sfendoni and the Eleftheri Mesogios. One each of the vessels some of the passengers merely used passive resistance techniques – placing their bodies in the paths of the Israeli soldiers – as a symbolic gesture in opposition to the respective boarding. However, in securing control of these vessels the Israeli forces used significant force, including stun grenades, electroshock weapons, soft-baton charges fired at close range, paintballs, plastic bullets and physical force. This resulted in a number of injuries to passengers including burns, bruises, hematomas and fractures. One passenger who was not participating in passive resistance activities, a photo-journalist, received burns from an electroshock weapon. The Mission has found that the force used by the Israeli soldiers in intercepting the Challenger 1, the Sfendoni and the Eleftheri Mesogios was unnecessary, disproportionate, excessive and inappropriate, and amounted to violations of the right to physical integrity, as stipulated in article 7 of the International Covenant on Civil and Political Rights.

(b) *Right to liberty and security of person and treatment of detainees, including torture and other cruel inhuman and degrading treatment or punishment*

174. Article 9, paragraph 1 of the International Covenant on Civil and Political Rights states:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Since the Mission considers the Israeli interception of the flotilla was unlawful, the detention of passengers on board each of the vessels was also *prima facie* unlawful.

175. The deprivation of the liberty of the passengers further meets the criteria for being arbitrary in nature in accordance with the definitions adopted by the United National Working Group on Arbitrary Detention. Deprivation of liberty is considered category I arbitrary detention: “When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty [...]”

176. The mass detention of more than 700 passengers and crew on board the six vessels had no basis in law, was arbitrary in nature and is a violation of Article 9 of the International Covenant on Civil and Political Rights.

177. Furthermore, no one on board the flotilla was informed of any reason for their detention. Article 9, paragraph 2 of the International Covenant on Civil and Political Rights states:

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

While detained on board the vessels of the flotilla, a period which lasted up to 12 hours, all passengers should have been informed of why they were being subject to detention and the natures of the specific charges being brought against them. This was not done and in some instances passenger requests for such information were met with verbal abuse or physical violence. As such, the concerned Israeli forces violated article 9 of the International Covenant on Civil and Political Rights.

178. During the period of detention on board the Mavi Marmara the passengers were subjected to treatment that was cruel and inhuman in nature and which did not respect the inherent dignity of persons who have been deprived of their liberty. This included a large number of persons being forced to kneel on the outer decks in harsh conditions for many hours, the physical mistreatment and verbal abuse inflicted on many of those detained, the widespread unnecessarily tight handcuffing and the denial of access to basic human needs such as the use of toilet facilities and provision of food. In addition there was a prevailing climate of fear of violence that had a dehumanizing effect on all those detained on board. On other vessels in the flotilla there was additional instances of persons being subjected to similar severe pain and suffering, including a person being seriously physically abused for refusing to provide his passport without a receipt. Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.” In addition, Principle 6 states: “No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.”

179. The Mission is particularly concerned with the widespread use of tight handcuffing of passengers on board the Mavi Marmara in particular and to an extent of passengers on board the Challenger 1, Sfendoni and the Eleftheri Mesogios. Numerous passengers described the pain and suffering caused by being shackled by plastic handcuffs (also known as ‘plasticuffs’) in an overly tight manner, frequently behind their backs, causing further suffering. Many were experiencing neurological damage up to three months after the events of the flotilla. As has been highlighted, the manner in which handcuffs were used on passengers on board the flotilla is consistent with the systematic use of handcuffs by the Israeli forces in a manner that causes pain and injury.<sup>83</sup> The Mission is satisfied that the

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<sup>83</sup> In June 2009 the Public Committee Against Torture in Israel (PCATI) published a report on the use of handcuffs by the Israeli Defence Forces entitled “Shackling as a Form of Torture and Abuse”. PCATI finds that: “Soldiers routinely handcuff detainees in a painful and injurious manner from the moment of their arrest and through their transfer to the various interrogation facilities. The systematic nature of the practice suggests disregard for the suffering caused to detainees and perhaps even deliberate intent to cause pain. This treatment often breaks the detainee’s spirit and “softens” them up before they arrive for interrogation at the GSS facility. This is particularly true in the case of minors. The systemic use of the cuffing position as explained above may also reflect the collective punishment and intimidation of security detainees in general. Every month PCATI receives dozens of complaints describing this form of shackling. Over the past year alone, PCATI has documented 574 such cases. Though this figure is surely only the tip of the iceberg, it may indicate the scope of the phenomenon.” Furthermore, an expert medical opinion by neurological specialist Dr. Hannah-Bettina Steiner-Birmanns is annexed to the report. Dr. Steiner-Birmanns states that: “Tight handcuffs – such as narrow and rigid plastic handcuffs tightened so that there is no space between the handcuffs and the detainee’s hands – press strongly against the wrists. The handcuffs may remain on the detainee’s hands for protracted periods. In such conditions the handcuffs can cause abrasions and damage to soft tissues, skin bruises and even bone fractures. The handcuffs also press against the nerves in the palms, leading to paralysis and a loss of sensation in the palms. These neurological damages can be transient



manner in which the handcuffs were used was clearly unnecessary and deliberately used to cause pain and suffering to passengers.

180. Torture is prohibited under the non-derogable article 7 of the ICCPR. Furthermore, Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states:

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Article 2(2) of the Convention emphasizes the absolute prohibition of torture:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Insofar as these abuses amounted to the deliberate punishment of the passengers, or were an attempt to intimidate or coerce one or more of the passengers for participation in the flotilla and/or activities to prevent the interception of the flotilla, the treatment tended towards torture.

181. The Mission thus determines that the treatment of passengers on board the Mavi Marmara and in certain instances on board the Challenger 1, Sfendoni and the Eleftheri Mesogios, by the Israeli forces amounted to cruel, inhuman and degrading treatment and, insofar as the treatment was additionally applied as a form of punishment, torture. This represents a violation of articles 7 and 10 (1) of the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(c) *Possible violations of the Fourth Geneva Convention and customary international humanitarian law*

182. In addition to the international human rights violations set out above, the Mission considers that the same factual circumstances provide prima facie evidence that protected persons suffered violations of international humanitarian law committed by Israeli forces during the interception, including wilful killing, torture or inhuman treatment and wilfully causing great suffering or serious injury to body or health within the terms of article 147 of the Fourth Geneva Convention.

## C. Detention of flotilla passengers in Israel and deportation

### 1. Factual Description and Findings

183. The Mission found the following facts to have been established to its satisfaction.

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but they can also be permanent. From the neurologist's perspective tight handcuffs may cause transient or irreversible damage to the detainee and, accordingly, the use of loosened handcuffs should be considered."

(a) *Processing of the passengers at the Port of Ashdod*

184. All of the intercepted vessels in the flotilla were taken to the Israeli port of Ashdod where a processing centre had been set up in advance in marquees on the quayside to receive the passengers. The Challenger 1, the fastest vessel in the flotilla, arrived around 1100 hours on 31 May. The last ship to arrive was the Mavi Marmara at around 1800 hours on the same day. As a result of the numbers of passengers to be processed, the disembarkation process was extremely lengthy. Some passengers from the Mavi Marmara said that they had to wait up to twelve hours inside the ship under armed guard after it had arrived at the port and some did not disembark until the next morning.

185. The vessels were greeted by crowds of soldiers and sometimes civilians, including school children, at the quayside, waving flags and cheering the return of the Israeli forces. Some passengers said that they were jeered or taunted by the people on the quay. There were also television camera crews and journalists recording the disembarkation of the passengers. Many passengers said that they found the experience of being “paraded” before the media and the sometimes hostile crowds unsettling and humiliating.

186. Injured passengers who had not been airlifted were diagnosed and sent to nearby hospitals for treatment. Some passengers with serious injuries were made to walk off the Mavi Marmara unaided. Due to the delay in disembarking and processing all passengers, some injured passengers had to wait for considerable periods before they were diagnosed and sent to hospital. Others were not diagnosed until they arrived at the prison later.

187. During processing, all passengers were presented with official papers to sign. Various translations of the papers were in circulation, in English, Turkish and Arabic, but most passengers said that they were given a version in Hebrew and that the contents were not explained to them. According to those able to understand the papers, they stated that the signatory admitted to having entered Israel illegally and consented to deportation and be banned from re-entering Israel for a 10-year period. Some passengers were told that signing the document would expedite early release from custody and repatriation whereas failure to sign would result in a lengthy detention period pending court proceedings.

188. Almost all passengers refused to sign the document on the basis that they had been brought to Israel from international waters against their will or because they did not want to sign a document that they did not understand. There were concerted efforts by some Israeli officers to coerce passengers into signing the forms. Some passengers did sign under duress having annotated the text to reflect the circumstances of their entry into Israel or stating that it was signed “under protest”. Some passengers were threatened with physical violence for refusing to sign; others were beaten or physically abused for refusing to sign or for advising others not to sign. Efforts to persuade passengers to sign the forms continued at the airport almost up to the moment of departure.

189. Passengers were subjected to a series of meticulous searches, including strip searches. Although female officers generally searched the women, some complained that they were searched in full or partial view of male officers. Some male passengers said that they were subjected to or threatened with internal cavity searches. A number of passengers described the process of being searched as being deliberately degrading and humiliating, accompanied by taunts, provocative and insulting language and physical abuse. During the course of their detention in Israel, many passengers were searched multiple times, long after such searches could serve a useful security purpose.

190. During processing, passengers were photographed either for official documentation or, in some cases, for “trophy pictures”. The processing of some passengers was also videotaped. Passengers had their fingerprints and in some cases DNA swabs, were taken. Whilst some successfully declined to submit to fingerprinting, some had their prints taken by force. A victim and witnesses provided a vivid description of the circumstances in which

one passenger, a Greek national, was severely beaten for refusing to provide his fingerprints to the Israeli authorities. The passenger was dragged along the ground for some distance and then surrounded by a large group of Israeli officials who proceeded to beat him severely, including the deliberate fracture of his leg. His cries for help were ignored, and one witness noted uniformed officials, both male and female, laughing at him. The passenger's broken leg was not treated until after he had left Israel.

191. Passengers were also given a medical check, although some were able to and did refuse. Many passengers considered the medical checks to be cursory and pro forma. The medication of some passengers who were following special medical prescriptions for existing conditions had been confiscated by soldiers or left behind on the vessels. Requests for these medications to be returned were not met promptly although some people did receive their medication later after repeated requests.

192. In addition to the examples described above, there were other incidents of physical violence being perpetrated against individual passengers deemed non-cooperative, which resulted in physical injuries and trauma. One passenger, who made a general protest about the way the passengers were being treated, was told by an Israeli officer: "You are in Israel now; you have no rights".

193. Passengers were not allowed access to a lawyer or to consular services during processing at the port. Some passengers said that there were translators available in some languages and some officials involved in the processing spoke languages other than Hebrew. However, many passengers were unable to understand what was being said to them.

194. The wife of one of the deceased passengers was treated with complete insensitivity to her bereavement. She was not allowed to make a phone call to inform her family of her loss. There were examples of members of the same family who were separated and kept in complete ignorance of the whereabouts and well-being of their relatives until repatriation. This separation added to the distress and anxiety experienced by the passengers.

(b) *Detention of passengers and crew at Ella prison near Beersheva*

195. After processing at Ashdod, the majority of passengers were transferred in batches to Ella Prison, near Beersheva, a one to two hour journey by road. Passengers were transferred in regular prison vehicles with barred windows. Some passengers had to wait in the vehicles for several hours. One passenger said that he spent twenty hours waiting in a van both at Ashdod and at the prison. Many passengers complained that excessive air-conditioning made the vans very cold. Others complained that they were locked in the vans with closed windows in the sun for long periods so that the atmosphere became suffocating. Requests to adjust the temperature or to allow access to the toilet were either ignored or in some cases resulted in threats of or actual violence.

196. On arrival at the prison, most passengers were placed in cells in groups of up to four persons. A number of passengers reported that they were kept in isolation and did not meet with other passengers until they left the prison.

197. Most witnesses reported that the conditions at the prison were acceptable, although some complained that on arrival at the facility they had to clean the cells and the communal areas. Some also stated that the toilets did not function properly and some, including women, reported discomfort in using the showers due to the presence of surveillance cameras. Passengers were generally provided with food and water. Many passengers complained that they were prevented from sleeping in the prison due to regular roll-calls, noise from the prison guards and other deliberate disturbances.

198. Many passengers were subjected to further interrogations while in detention; some said that this was done repeatedly. There were a number of allegations of beatings during these interrogations.

199. Most witnesses reported that they continued to be denied access to a lawyer and to contact with their embassies. Lawyers from one Israeli legal aid NGO said that they made repeated attempts to visit the detainees but were denied entry for some time. When they were granted access, the lawyers had a very limited time with each detainee and could only conduct cursory interviews. Some passengers received a visit from their embassy representative but the majority had no such contact. Although there was some access to telephones, telephone cards, when distributed, allowed very limited calling time making it practically impossible to call abroad.

200. No foreign national detained at Beersheva was charged with any offence or brought before a judge. One passenger was however taken, after he had protested his right to appear before a judge, before what he considered to be a “sham court” close to the airport to have his deportation confirmed.

(c) *Ill-treatment of passengers at the airport and repatriation*

201. Depending on their time of arrival, passengers were detained from between 24 and 72 hours. Jordanians and passengers from certain other countries with no diplomatic relations with Israel were released early and transported back to Jordan by road. The majority of passengers were taken from the prison to Ben Gurion International Airport in Tel Aviv for repatriation by air. Many passengers complained that they had again to wait for many hours in the sun inside prison vans both at the prison and on arrival at the airport during the deportation phase. One woman, overcome by the oppressive conditions in her vehicle said that she was refused access to a toilet despite making clear that she was menstruating.

202. Perhaps the most shocking testimony, after that relating to the violence on the Mavi Marmara, provided to the Mission was the consistent accounts of a number of incidents of extreme and unprovoked violence perpetrated by uniformed Israeli personnel upon certain passengers during the processing procedures inside the terminal at Ben Gurion International Airport on the day of deportation. These accounts were so consistent and vivid as to be beyond question. An intimidating number of armed soldiers and police were present inside the terminal building. Some passengers said that these officers were “spoiling for a fight”. All passengers had been subjected to multiple searches and were completely under the control of the Israelis by this stage. Most passengers were continuing to refuse to sign deportation documents and some were determined to make a point about the legality of the process by insisting on a court hearing to confirm the deportation. None of the violence described seems to have been justified.

203. Some passengers in the passport checking area saw an older passenger being roughly treated after receiving what appeared to be a beating. When other passengers, including Irish and Turkish, protested at this treatment, they were charged by soldiers using batons. In the foray, around 30 passengers were beaten to the ground, kicked and punched in a sustained attack by soldiers. One Irish passenger was seen being particularly badly beaten around the head and held in a choke position to the point of near suffocation. He identified his attackers as police officers. He was taken to a holding cell.

204. One Turkish passenger involved in the fight said that he was subsequently taken by soldiers, handcuffed with metal cuffs, picked up by the cuffs, taken to a small room and beaten and kicked by five more soldiers while others shielded the scene from outside. The police intervened to stop the violence in this case.

205. A number of women were pushed around by soldiers, one of whom was beaten with fists. They were also subjected to sexual taunts.

206. In a separate incident, a passenger was physically attacked by around seventeen officers when he refused to sign deportation paper, kicked in the head and threatened at gunpoint. A number of passengers had resolved to resist deportation in order to have the opportunity to demonstrate their innocence in an Israeli court. This was taken as a provocation by the Israelis.

207. One medical doctor gave a detailed account of his treatment. On arrival at the airport, the officer accompanying him jostled him and tried to trip him up on the stairs. He was then subjected to verbal insults as he passed through a check point. An officer slapped him on the back of the head and when he protested he was set upon by a group of uniformed officers, knocked to the ground and repeatedly punched and kicked. He was then dragged out of sight of other passengers where the attacks resumed. Attempts were made to break his fingers. He was restrained with metal handcuffs behind his back so tightly that he lost feeling to one hand. He was then hoisted up by the cuffs and pushed against a wall. When he asked for the cuffs to be loosened, he was told this was the price he had to pay for attempting to go to Gaza and that "it would be good for his health". The doctor was wearing a jacket which clearly identified him as a medical doctor and said the attacks were completely unprovoked.

208. There were other incidents of isolated violence against individual passengers who were deemed to be uncooperative. One passenger was seen having his arm twisted behind his back by police to the point that the arm broke. Another was kicked and hit by some ten soldiers, handcuffed and taken by vehicle to another place 10-15 minutes away, where soldiers abused him for up to two hours. When he returned to the airport, he was bleeding from the head.

209. A large number of the military and police personnel at the airport exhibited serious and unprofessional lapses of military discipline whilst commanding officers failed in most cases to intervene promptly. Much of the behaviour was surely criminal under domestic Israeli law.

210. The majority of the passengers regardless of nationality were deported from Israel aboard aircraft provided by the Turkish Government. The Jordanian detainees however were deported by bus across the land border between Israel and Jordan. The Greek passengers were airlifted back to Athens aboard a Greek military aircraft sent by the Greek Government. At least one passenger with dual nationality including Israeli nationality elected not to be deported in order not to jeopardise his Israeli citizenship. He was threatened with prosecution but was released in Israel and later left the country without hindrance.

211. Some passengers were made to wait for many hours on board the aircraft while the deportation procedures for the other passengers were being completed. Some passengers said that they boarded the plane in the morning but did not take off until after midnight.

(d) *Treatment of injured passengers in Israeli hospitals*

212. According to Israeli sources, thirty-one wounded passengers from the Mavi Marmara were air-lifted to various hospitals in Tel Aviv, Jerusalem, Haifa and other locations. All witnesses reported that there were guards, either police or soldiers or both, at the bedside or stationed outside their rooms. They remained in the hospitals for between three and five days receiving medical treatment and were then transferred to Turkey by aeroplane. Most were then taken directly to the Atatürk Research Hospital in Ankara for further treatment.

213. Some of the passengers treated in Israeli hospitals acknowledged that they were well cared for by the medical personnel, but others reported verbal abuse and taunting by their guards. A number of witnesses said that they were unable to sleep properly throughout their stay in hospital due, in some cases, to deliberate disturbance by the guards. The patients were subjected to the same repeated questioning by police or soldiers and heavy pressure to sign documents in Hebrew as other passengers had experienced at Ashdod. Some patients were visited by a representative of their embassy or by representatives of the International Committee of the Red Cross.

214. Many of those treated in the Israeli hospitals reported that they were handcuffed to their beds using standard metal handcuffs throughout their stay. Some were also restrained at their ankles. These were seriously injured people and the cuffing was done with no apparent regard to their injuries.

## **2. Legal Analysis of the treatment of the passengers in Israel**

### *(a) Arbitrary or illegal arrest or detention*

215. As stated above, Article 9, paragraph 1 of the International Covenant on Civil and Political Rights guards against arbitrary arrest or detention. Since the Israeli interception of the flotilla was unlawful, the detention of the passengers and crew from the seven vessels at Ashdod was also prima facie unlawful since there was no legal basis for the Israeli authorities to have detained and transported these people to Israel. The passengers found themselves in Israel on the basis of an unlawful act by the State of Israel. The Israeli authorities were therefore under an obligation to deal with these people in accordance with their international human rights obligations. However, once they arrived in Israel, the Israeli authorities attempted to shroud the illegality of the interception in a veil of legality.

216. On arrival in Ashdod, attempts were made to get passengers to sign certain documents which passengers understood to be a confession of illegal entry into Israel. The passengers almost universally refused to sign these documents based on the logic that since they had been brought to Israel against their will, they could not themselves be held to have illegally entered the country. They objected to the implication that they, as victims of an illegal act by the State of Israel, could then be held guilty of the illegal act of entering Israel. The Mission shared this objection and is of the view that the continued detention of the passengers at Ashdod, Beersheva and at the airport constituted a continuation of their unlawful detention initiated by the soldiers on the vessels after the interception.

217. Some passengers wished to challenge the legality of that detention as a means of drawing attention to the illegal acts which had resulted in their arrival in Israel. They insisted on their right to appear before a judge and said that they had received summons to appear in court to face charges. The Mission did not receive copies of any court documents showing that foreign nationals involved in the flotilla were charged with any criminal offences in Israel. If they were, then the denial of the right to a fair hearing before an independent, impartial and competent tribunal would constitute a violation of their rights under article 14 of the ICCPR.

### *(b) Torture and other cruel inhuman and degrading treatment or punishment*

218. At all times, the Israeli authorities were bound to treat the detainees in accordance with Israel's international human rights obligations and to protect them from harm. The Mission considers that, whilst the detention phase purported to proceed within a framework of legality, there was pervasive hostility towards the passengers which allowed abuse to take place.

219. Passengers' testimony included a number of credible allegations of physical violence and abuse perpetrated by Israeli officers, soldiers and policemen at the processing centre in Ashdod, at the prison and at the airport. In some cases, this violence seemed gratuitous; in other cases, it seemed aimed specifically at forcing compliance with particular procedures (signing forms, fingerprinting) or punishing individuals for non-compliance. The Mission considers that acts of torture were committed by Israeli officials against passengers during their period of detention in Israel in violation of article 1 of the Convention against Torture and articles 7 and 10 of the International Covenant on Civil and Political Rights.

220. There were other instances of behaviour by Israeli officials which was aimed at humiliating individuals which, if not torture, would constitute cruel, inhuman or degrading treatment or punishment under the terms of article 16 of the Convention against Torture. Body searches were not always conducted in accordance with accepted procedures aimed at protecting the dignity of the person being searched and the frequency of the searches raises the suggestion that they served to humiliate and degrade rather than meet security needs. The Mission would like to draw particular attention to the treatment received by some women by female Israeli officers at the processing centre that fell well short of acceptable behaviour.

(c) *Parading of detainees*

221. Whilst the passengers and crew arriving at Ashdod cannot be classified as prisoners of war, the scene at the quayside described by those interviewed carries the hallmarks of a 'triumph' at which captured prisoners of war are paraded in front of flag-waving crowds. Prisoners of war would have been protected against this humiliating spectacle by article 13 of the Third Geneva Convention which protects them from "insults and public curiosity". As civilians, the flotilla passengers should have been entitled to the same basic level of protection, which would also fall under general customary law provisions protecting civilians from assaults on their dignity. The failure of the Israeli authorities to afford this protection may also be construed, *inter alia*, as a violation of the presumption of innocence under article 14, paragraph 2 of ICCPR comparable to the public display of those suspected of criminal offences. Regardless of whether any passengers on board the flotilla were suspected of having committed of criminal acts, all passengers should have been protected from public curiosity.

(d) *Right to security of the person and to human dignity*

222. The serious incidents of physical violence perpetrated by Israeli military and/or police officers against the passengers at Ben Gurion International Airport clearly constitute grave violations of the protection that should be afforded to detainees under international human rights law and international humanitarian law. Article 9 of the ICCPR provides for the right to security of person and article 10 guarantees that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Insofar as the treatment meted out at the airport was perpetrated by soldiers and police, sometimes with the acquiescence of their superiors, this behaviour can also be considered torture. It seems clear to the Mission that these acts at the airport, at a time when the passengers were completely under the control of the authorities, constituted an attempt by individual groups of officers to "give them a bloody nose" just before departure.

223. Other reported acts of physical abuse and ill treatment during the detention and deportation phase would similarly constitute violations of the right to security of person.

224. The Code of Conduct for Law Enforcement Officials sets out some basic obligations which should have been followed by all Israeli military and police personnel whilst they were charged with the care of the passengers. These include the duty to respect and protect

human dignity and maintain and uphold the human rights of all persons (article 2), to use force only when strictly necessary and to the extent required for the performance of their duty (article 3) and not to inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment (article 5). Each of these duties was disregarded by certain Israeli officials at certain points during the detention and deportation process.

(e) *Other detention rights*

225. Regardless of the pretended claim to legality of the detention of the flotilla participants inside Israel, the State of Israel was bound to afford the detainees certain basic rights whilst in detention. In certain instances, the facts as presented to the Mission indicate that these rights were not respected.

226. Article 10 ICCPR provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. This provision is supplemented, *inter alia*, by the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) and the Code of Conduct for Law Enforcement Officials (1979). Whilst a system was put in place at Ashdod for the processing of the disembarking passengers, it is clear that officers showed a hostility towards the passengers under their care which encouraged behaviour which violated basic standards of civilized treatment of detainees.

227. There were problems with ensuring that all disembarking passengers understood the legal processes and procedures to which they were being subjected due to language difficulties. Although the Israeli authorities clearly attempted to provide documents in languages other than Hebrew and some officers were on hand able to speak English, Arabic and Turkish, it is clear that many passengers did not understand what was happening to them. Article 9, paragraph 2 ICCPR requires that detained persons are informed about the reasons for their arrest and detention. Principle 14 of the Body of Principles states that a person who does not adequately understand or speak the language used by the authorities responsible for the arrest, detention or imprisonment is entitled to receive promptly in a language which he understands certain specific information relating to his arrest and detention and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to arrest. The Mission considers that many detainees were not afforded these rights.

228. Furthermore, there is evidence that some detainees were specifically misinformed about their legal situation by Israeli officers, particular with regard to the deportation papers they were asked to sign. In one absurd example, an individual says that he was told that refusing to sign the deportation form would incur the death penalty – an assertion which the detainee did not take seriously. Principle 21 of the Body of Principles prohibits taking “undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against another person.”

229. Many of the detainees specifically requested, on numerous occasions, access to legal counsel and/or the consular services of their embassies or diplomatic representatives in Israel. Although some did eventually receive visits from legal aid lawyers and diplomatic consuls, other did not. Principle 17 of the Body of Principles states that “a detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.” Principle 16 (2) furthermore provides:

If a detained person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post of the diplomatic mission



of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of a competent international organization, if he is a refugee or is otherwise under the protection of an international organization.

Any communication under this provision must be made or permitted without delay. Most detainees who gained access to a consul were only allowed such access several days after they had originally been detained and requested access.

230. Principle 18 provides that “a detained person shall be entitled to communicate and consult with his legal counsel [and] shall be allowed adequate time and facilities for consultation”. Israeli legal aid lawyers who gained access to some of the detainees were barely able to spend more than a few minutes with each detainee in the time allocated by the authorities for the visit.

231. All detainees complained that they were not allowed the means to contact their families who would have been distressed and concerned after hearing from news reports about the interception of the flotilla. In one extreme and insensitive example, the wife of one of the deceased was not able to call her family to notify them of her bereavement. Although telephones were available to some detainees in prison, they could not be used to make the numerous international telephone calls necessary for this particular cohort of detainees from more than forty countries. Principle 16 (1) of the Body of Principles states that “Promptly after arrest and after each transfer from one place of detention to another, a detained person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or for the transfer and of the place of detention where he is kept in custody.” There should be no delay in the implementation of this requirement.

*(f) Treatment of injured people in detention*

232. Most passengers were offered a medical examination, albeit perfunctory, in accordance with Principle 24 of the Body of Rules which states that “a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment.”

233. In some instances, passengers who had been injured, including those injured by assaults committed by Israeli officials did not receive immediate medical attention. Article 6 of the Code of Conduct states that “law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.”

## **D. Confiscation and Return of Property by the Israeli authorities**

### **1. Factual Description and Findings**

234. The Mission found the following facts to have been established to its satisfaction.

*(a) Possessions of passengers confiscated by the Israeli authorities*

235. The Mission received accounts from passengers who were on board all six vessels in the flotilla on the confiscation by the Israeli authorities of cash and a wide variety of personal belongings, including passports, identification cards, driving licenses, mobile telephones, laptop computers, audio equipment including MP3 players, photographic and video recording equipment, credit cards, documents, books and clothing. These items were taken at a number of stages, primarily while on board the vessels (during body searches and items left in others parts of the vessels that they were not permitted to retrieve) or during

processing at the Ashdod detention facility. The Mission estimates that many hundreds of expensive electronic items remain in the possession of the Israeli authorities. Many passengers were carrying considerable amounts of cash donations to be distributed in Gaza, in some cases amounting to tens of thousands of dollars. There was inconsistent practice by the Israelis with regard to cash: some passengers were allowed to hold on to cash throughout their detention, some had cash confiscated and then returned and others had the cash taken and it was not returned.

236. Furthermore, while most passports were returned to passengers prior to their departure from Israel and others have since been returned, some passengers have still not received their passports nearly four months after the incident.

237. It is clear in the view of the Mission that the Israeli authorities did not put a system in place to properly record items that were confiscated and identify personal effects with the aim of returning them to the rightful owners. On board the various vessels, the Israeli forces conducted extensive searches of the passengers' luggage that left personal possessions strewn across the cabins in a highly disordered state. One witness, who had been isolated and beaten, described the surreal experience of sitting handcuffed on a large heap of laptops and electronic devices and being "serenaded" by mobile telephones reconnecting to the network as the ship approached Ashdod.

238. Some items were returned to the Turkish authorities and passengers were able to retrieve some items of luggage from the forensic office in Istanbul. When the vessels were later returned from Israeli custody, some luggage and other items still on board were stored at an IHH warehouse in Istanbul. However, passengers who went to the warehouse were only able to reclaim a few clothing items or empty suitcases. The mission was informed that items belonging to some of the British passengers were also returned to them by post via the British Consulate in Israel but that these items were damaged or not actually theirs.

239. The mission's attention has been drawn to several allegations regarding misuse of items confiscated by the Israeli authorities, including laptop computers, credit cards and mobile telephones. On 20 August 2010 it was reported in the Israeli media that "at least four" Israeli soldiers had been detained on suspicion of stealing and selling laptops belonging to passengers that were on board the flotilla.<sup>84</sup> Furthermore, at least four passengers have stated that their personal items, including credit cards and mobile telephones, have been subsequently used in Israel. There is an account of a particular witness, a journalist, who was on board the *Svendoni* and alleged that his credit card was used to purchase items in Israel, both while he was detained at the Beersheva prison and after he had been released.<sup>85</sup> There is another specific account where more than \$1,000 was spent on a confiscated credit card in Israel.<sup>86</sup>

240. Amongst the items confiscated and not returned by the Israeli authorities is a large amount of video and photographic footage that was recorded on electronic and other media by passengers, including many professional journalists, on board the vessels of the flotilla. This includes a large number of photographic and video material of the Israeli assault and interception on the *Mavi Marmara* and other vessels. The Israeli authorities have

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<sup>84</sup> <http://www.haaretz.com/news/diplomacy-defense/idf-soldiers-suspected-of-theft-from-gaza-flotilla-ship-1.308862>

<sup>85</sup> <http://www.haaretz.com/print-edition/news/italian-flotilla-journalist-my-credit-card-was-used-after-idf-confiscated-it-1.295493>

<sup>86</sup> <http://www.guardian.co.uk/world/2010/jun/18/gaza-convoy-activists-debit-card-fraud>

subsequently released a very limited amount of this for public access, in an edited form,<sup>87</sup> but the vast majority has remained in the private control of the Israeli authorities.

241. The Mission is satisfied that this represents a deliberate attempt by the Israeli authorities to suppress or destroy evidence and other information related to the events of 31 May on the Mavi Marmara and other vessels of the flotilla.

242. Many 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 the approximately 60 journalists that was sent to request action of the European Commission. 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. The Mission estimates the value of such property to be not inconsiderable.

(b) *Vessels of the flotilla confiscated by the Israeli authorities*

243. The six vessels of the flotilla were held by the Israeli authorities for an extended period of time. For example, the Mavi Marmara, Defne Y and Gazze 1 ships were only taken to the Turkish port of Iskenderun on 7 August, more than two months after arriving at the port of Ashdod in Israel.

244. The Mavi Marmara was in a state of disrepair on its return to Turkey. The ship's captain and other crew members confirmed that items damaged had been in full working order when the ship was taken under the control of the Israeli authorities on 31 May. The Mission's own investigations confirmed that equipment had been destroyed or badly damaged including two Automatic Identification Systems (AIS) and a gyro-screen, two Very High Frequency (VHF) handset radio loud speakers, surveillance and other equipment, the VHF radio and VHF DSC Watch Receiver, MF-HF radio and DSC equipment, the control panel indicator, the speed log screen, the INMARSAT-C screen, the Raytheon Plotter-Radar replacement screen, two mobile Global Positioning Systems (GPS) and the fire alarm control panel. Other items had been removed, including the satellite telephone, the ship survey recording computer and its spare equipment and the ship's journal and all records, including the ship's certificate file. In the engine room, the control room generator and main control dash were destroyed and the gear dash was damaged. There was oily water and submergible pumps in the bilge water compartment of the engine and the diesel generator spare parts were scattered with some sea water as well as oil leaks were present. Furthermore, the engine command and control systems had been tampered with.

**2. Legal Analysis of the denial of property and right to freedom of expression**

245. The Mission is concerned that the actions of the Israeli authorities in confiscating, withholding, and in some cases destroying the private property of many hundreds of passengers on board the various vessels of the flotilla represents both a violation of rights related to property ownership and to the freedom of expression.

246. Article 17 of the Universal Declaration of Human Rights states that "Everyone has the right to own property alone as well as in association with others; No one shall be arbitrarily deprived of his property." Insofar as the Universal Declaration is considered to form part of customary international law, no State may arbitrarily deprive someone of their

<sup>87</sup> For example, footage taken by a passenger on the top deck while Israeli soldiers descended onto the deck: <http://www.youtube.com/watch?v=S6Xm8Irz-so>

own property. The Mission considers that the Israeli authorities, in disregarding the rights of many hundreds of passengers on board the flotilla to their possessions, fails to meet a State's obligations in relation to rights to own property.

247. In relation to International Humanitarian Law, Article 97 of the Fourth Geneva Convention states: "Internees shall be permitted to retain articles of personal use. Monies ... and valuables in their possession may not be taken from them except in accordance with established procedure ... On release or repatriation; internees shall be given all articles, monies or other valuables taken from them during internment ... with the exception of any articles or amounts withheld by the Detaining Power by virtue of its legislation in force. If the property of an internee is so withheld, the owner shall receive a detailed receipt. Family or identity documents in the possession of internees may not be taken away without a receipt being given ...".

248. Furthermore, the International Criminal Tribunal for the Former Yugoslavia has established that as far as the destruction or appropriation of property cannot be justified by military necessity, it is unlawful.<sup>88</sup> Clearly no military necessity existed to justify the confiscation and continuing appropriation of the property of the passengers of the Flotilla. Furthermore, the Mission has been made aware of communications between the Israeli government and a law firm in the UK, where the Israeli government admits to retaining property of the passengers, but does not claim reasons of military necessity but only that the items are necessary for ongoing investigations within Israel.

249. Article 19(2) of the International Covenant on Civil and Political Rights states that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." While this right may be subject to certain restrictions, as set out in article 19(3), none of these are met in this case that would allow the Israeli authorities to restrict the rights of journalists and other passengers to freely utilize and share information gathered on board the vessels of the flotilla. Journalists in particular have the right to utilize the tools of their trade. The Mission considers that the actions of the Israeli authorities represent a continuing violation of the right to freedom of expression for the journalists and other passengers on board the flotilla.

## **E. Consequences for Israeli Citizens of participation in the Flotilla**

### **Factual Description and Findings**

250. The Mission found the following facts to have been established to its satisfaction.

#### *(a) Detention and criminal prosecution of Israeli citizens*

251. Passengers with Israeli citizenship were separated from other passengers on arrival in Ashdod. After interrogation, they were informed that they would be detained and face charges under Israeli law, including attempting to kill a soldier, seizing arms, shooting from a soldier's gun, organizing violence and being present in a military zone. Although taken to a different prison, they had similar experiences as the other passengers including sleep deprivation and denial of access to a lawyer.

252. On 1 June 2010, the Ashkelon Magistrate's Court remanded in custody four Palestinian Israelis: Mr. Muhammed Zeidan, Chairman of the High Follow-up Committee

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<sup>88</sup> ICTY, Judgment, *The Prosecutor v. Dario Kordic and Mario Cerkez*, IT-95-14/2-T.

for Arab Citizens of Israel; Sheikh Raed Salah, the Head of the Islamic Movement of Israel (northern branch); Sheikh Hamad Abu Daabe, Head of the Islamic Movement in Israel (southern branch) and Ms. Lubna Masarwa of the Free Gaza Movement. On 3 June 2010, the same court decided to release the group with certain conditions, including a period of house arrest until 8 June, prohibition from leaving the country for 45 days and the posting of a bond of 150,000 Shekels by a third party.

253. The four people have not since been indicted but the file is still open and the charges have not been withdrawn.

(b) *Reprisals against an elected member of the Knesset*

254. One member of the Israeli Knesset, Ms Haneen Zouabi, was a passenger on the Mavi Marmara. Ms. Zouabi was not detained, but was extensively interrogated.

255. As a result of her participation in the flotilla, the Knesset voted on 7 June 2010 to remove three of parliamentary privileges available to Ms. Zouabi as a Member of the Knesset: her privileges in overseas travel; her diplomatic passport; payment of any legal fees in case of removal of her parliamentary immunity from criminal prosecution. The Knesset held several sessions on the issue of her participation in the Flotilla during which there were racist and sexist remarks and physical threats made against her. Some parliamentarians have also called for her to face criminal prosecution and measures, such as revoking her membership in the Knesset, were discussed. The Israeli Minister of Interior accused Ms. Zouabi of treason and requested authorization from the Attorney General to revoke her citizenship. To date, no criminal proceedings have been initiated against Ms. Zouabi. Since her participation in the Gaza Flotilla, Ms. Zouabi has received many death threats.

256. The Inter-Parliamentary Union's Committee on the Human Rights of Parliamentarians adopted a confidential decision at its 130th session in July 2010,<sup>89</sup> holding the punishment of Ms. Zouabi for exercising her freedom of speech by expressing her political position to be unacceptable and calling on the Knesset to reconsider its decision.

257. The Mission refrains from any comment on any domestic legal proceedings which may be *sub judice*. However, the Mission notes that these actions against Israeli citizens could give rise to certain violations of Israel's international human rights obligations, including freedom of expression, political participation rights and rights to due process.

#### **IV. Accountability and effective remedy**

258. The Mission notes that the facts established give rise to a series of violations in law. In accordance with the provisions of the International Covenant on Civil and Political Rights, the victims of such violations have a right to an effective remedy which includes judicial remedies as well as the right to reparations which should be proportionate to the gravity of the violations. In cases of torture, victims should in addition be afforded medical and psychological care. Finally, article 9 (5) of the Covenant provides for a specific right to compensation. As far as the grave breaches of the Fourth Geneva Convention are concerned, these may give rise to individual criminal responsibility.

259. In the past, Israel has not honoured its obligations referred to in the preceding paragraph. It is hoped that on this occasion the Israeli authorities and those concerned will carry out prompt, independent and impartial judicial investigations of violations of

<sup>89</sup> Case No. IL/04 – Haneen Zoabi – Israel

international law, including international humanitarian law and human rights law, with a view to bringing the perpetrators to justice.

## V. Conclusions

260. The attack on the flotilla must be viewed in the context of the ongoing problems between the Israeli Government and the Palestinian Authority and People. In carrying out its task, the Mission was exposed to the depth of conviction on both sides of the correctness of their respective positions. Similar disasters are likely to reoccur unless there is a dramatic shift in the existing paradigm. It must be remembered that might and strength are enhanced when attended by a sense of justice and fair play. Peace and respect have to be earned not bludgeoned out of any opponent. An unfair victory has never been known to bring lasting peace.

261. The Mission has come to the firm conclusion that a humanitarian crisis existed on the 31 May 2010 in Gaza. The preponderance of evidence from impeccable sources is far too overwhelming to come to a contrary opinion. Any denial that this is so cannot be supported on any rational grounds. One of the consequences flowing from this is that for this reason alone the blockade is unlawful and cannot be sustained in law. This is so regardless of the grounds on which it is sought to justify the legality of the blockade.

262. Certain results flow from this conclusion. Principally, the action of the IDF in intercepting the Mavi Marmara in the circumstances and for the reasons given on the high sea was clearly unlawful. Specifically, the action cannot be justified in the circumstances even under Article 51 of the United Nations Charter.

263. Israel seeks to justify the blockade on security grounds. The State of Israel is entitled to peace and security like any other. The firing of rockets and other munitions of war into Israeli territory from Gaza constitutes serious violations of international and international humanitarian law. But action in response which constitutes collective punishment of the civilian population in Gaza is not lawful in the present or any circumstances.

264. The conduct of the Israeli military and other personnel towards the flotilla passengers was not only disproportionate to the occasion but demonstrated levels of totally unnecessary and incredible violence. It betrayed an unacceptable level of brutality. Such conduct cannot be justified or condoned on security or any other grounds. It constituted grave violations of human rights law and international humanitarian law.

265. The Mission considers that several violations and offences have been committed. It is not satisfied that, in the time available, it can say that it has been able to compile a comprehensive list of all offences. However, there is clear evidence to support prosecutions of the following crimes within the terms of article 147 of the Fourth Geneva Convention:

- wilful killing;
- torture or inhuman treatment;
- wilfully causing great suffering or serious injury to body or health.

The Mission also considers that a series of violations of Israel's obligations under international human rights law have taken place, including:

- right to life (article 6, ICCPR);
- torture and other cruel, inhuman or degrading treatment or punishment (article 7, ICCPR; CAT);

- right to liberty and security of the person and freedom from arbitrary arrest or detention (article 9, ICCPR);
- right of detainees to be treated with humanity and respect for the inherent dignity of the human person (article 10, ICCPR);
- freedom of expression (article 19, ICCPR).

The right to an effective remedy should be guaranteed to all victims. The mission must not be understood to be saying that this is a comprehensive list by any means.

266. The Mission notes that the retention by the Israeli authorities of unlawfully seized property remains a continuing offence and Israel is called upon to return such property forthwith.

267. The perpetrators of the more serious crimes being masked cannot be identified without the assistance of the Israeli authorities. They reacted in a violent manner whenever they thought that anyone was attempting to identify them. The mission sincerely hopes that there will be cooperation from the Israeli government to assist in their identification with a view to prosecuting the culpable and bring closure to the situation,

268. The Mission is aware that this is not the first time that the Government of Israel has declined to cooperate with an inquiry into events in which its military personnel were involved. On this occasion the Mission accepts the assurances of the Israeli Permanent Representative that the position which he was directed to follow was in no way directed towards the members of the Mission in their personal capacities. It is nonetheless regrettable that, on yet another occasion of an enquiry into events involving loss of life at the hands of the Israeli military, the Government of Israel has declined to cooperate in an enquiry not appointed by it or on which it was significantly represented.

269. The Mission regrets that its requests to the Permanent Mission of Israel for information were not entertained. The reason initially given was that the Government of Israel had established its own independent panel of distinguished persons to investigate the flotilla incident. The Mission was told that for that reason and also because the Secretary-General had also announced the establishment of another distinguished panel with a similar mandate, that “an additional Human Rights Council initiative in this regard are both unnecessary and unproductive”.

270. The Mission did not agree with that position and for that reason suggested to the Permanent Representative of Israel that he should direct to the Council and not the Mission a request that the Mission defer submitting its report to permit other enquiries to complete their tasks. The Mission has not received any direction from the Council to date and considers that it would have been obligated to respond positively to any such directive from the Council.

271. In the light of the fact that the Turkel Committee and the Secretary-General’s panel have not concluded their sittings, the Mission will refrain from any remarks which are capable of being construed as not allowing those bodies to complete their tasks “unfettered by external events”. The Mission confines itself to the observation that public confidence in any investigative process in circumstances such as the present is not enhanced when the subject of an investigation either investigates himself or plays a pivotal role in the process.

272. Elsewhere in this report the Mission has referred to the fact that it found it necessary to reinterpret its mandate because of the manner in which the resolution appointing it was couched. It is important in the drafting of matters of the sort that the impression is not given of the appearance of any pre-judgment. The Mission took particular care at the first opportunity to indicate that it interpreted its mandate as requiring it to approach its task

without any preconceptions or prejudices. It wishes to assure all concerned that it has held to that position scrupulously.

273. All the passengers on board the ships comprising the flotilla who appeared before the Mission impressed the members as persons genuinely committed to the spirit of humanitarianism and imbued with a deep and genuine concern for the welfare of the inhabitants of Gaza. The Mission can only express the hope that differences will be resolved in the short rather than the long term so that peace and harmony may exist in the area.

274. Nine human beings lost their lives and several others suffered serious injuries. From the observations of the Mission deep psychological scars have been inflicted by what must have been a very traumatic experience not only for the passengers but also the soldiers who received injuries. The members of the Mission sympathise with all concerned and particular with the families of the deceased.

275. The Mission is not alone in finding that a deplorable situation exists in Gaza. It has been characterized as ‘unsustainable’. This is totally intolerable and unacceptable in the 21st Century. It is amazing that anyone could characterise the condition of the people there as satisfying the most basic of acceptable standards. The parties and the international community are urged to find the solution that will address all legitimate security concern of both Israel and the people of Palestine both of whom are equally entitled to “their place under the heavens”. The apparent dichotomy in this case between the competing right of security and the right to a decent living can only be resolved if old antagonisms are subordinated to a sense of justice and fair play. One has to find the strength to pluck from the memory rooted sorrows and to move on.

276. The Mission has given thought to the position of humanitarian organizations who wish to intervene in situations of long-standing humanitarian crisis where the international community is unwilling for whatever reason to take positive action. Too often are they accused as being meddlesome and at worst as terrorists or enemy agents.

277. A distinction is made between activities taken to alleviate crises and action to address the causes creating the crisis. The latter action is characterized as political action and therefore inappropriate for groups that wish to be classified as humanitarian. This point is made because of the evidence that while some of the passengers were solely interested in delivering supplies to the people in Gaza, for others the main purpose was raising awareness of the blockade with a view to its removal, as the only way to solve the crisis. An examination should be made to clearly define humanitarianism as distinct from humanitarian action so that there can be an agreed form of intervention and jurisdiction when humanitarian crises occur.

278. The Mission sincerely hopes that no impediment will be put in the way of those who suffered loss as a result of the unlawful actions of the Israeli military to be compensated adequately and promptly. It is hoped that there will be swift action by the Government of Israel. This will go a long way to reversing the regrettable reputation which that country has for impunity and intransigence in international affairs. It will also assist those who genuinely sympathise with their situation to support them without being stigmatised.

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