

**INTERIM REPORT ON THE ISRAELI ATTACK
ON THE HUMANITARIAN AID CONVOY TO GAZA
ON 31 MAY 2010**

TURKISH NATIONAL COMMISSION OF INQUIRY

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EXECUTIVE SUMMARY

Israeli military forces on the early hours of 31 May 2010 attacked in international waters an international and multi-faith convoy of six ships organized by a coalition of NGOs from 37 countries transporting certified humanitarian aid to the Gaza Strip. The attack took place 72 nautical miles from the coast of Israel. As a result of the attack on the Mavi Marmara, the passenger vessel with 600 civilians on board, nine civilians were killed, eight of whom were Turkish citizens and one was US citizen of Turkish descent. More than 40 civilians were also injured.

The necessary security checks, passport controls and vessel safety of the ships that set sail from Turkey had been completed within the letter in law. The passengers on board the three vessels, their personal belongings and the large volume of humanitarian aid had also been thoroughly checked. No firearms or any sort of weapons were found. Those Turkish ports from where the ships in the convoy set sail are duly certified under the International Ship and Port Facility Security Code (ISPS) of the International Maritime Organization.

The Israeli forces which mounted a full-fledged and pre-meditated attack with frigates, helicopters, zodiacs and submarines, were heavily armed with machine guns, laser-guided rifles, pistols and modified paintball rifles. The Israeli soldiers shot from the helicopter onto the Mavi Marmara using live ammunition and killing two passengers before any Israeli soldier descended on the deck. During the attack, excessive, indiscriminate and disproportionate force was used by the Israeli soldiers against the civilians on board. The passengers only exercised a lawful right of self-defense, without any firearms, against the armed attack of the Israeli forces.

Once the Israeli forces took over the vessel, instead of exercising caution and restraint, they continued to brutalize and terrorize the passengers, abusing them physically and psychologically. The passengers were beaten, kicked, elbowed, punched, deprived of food and water, hand-cuffed, left exposed to sun for hours, denied toilet access and subjected to verbal abuse.

After ten hours of sailing to the port of Ashdod in Israel, most of the passengers were kept handcuffed. Some of them were stripped and searched; women were subjected to sexually humiliating treatment; one of them, a journalist, was forced to strip multiple times and a metal detector was placed between her legs.

All passengers were forced to sign incriminatory statements; they were not allowed access to legal assistance to consular officials, nor provided with proper and timely medical care. They were denied adequate food and were placed in restricted spaces with extreme temperatures.

The Israeli officials confiscated all property belonging to the passengers. Aside from the unlawful seizure of personal property, evidences of critical importance to shed light on the attack was destroyed, tampered with or despoiled.

The bodies of the deceased were completely washed and repatriated to Turkey without any accompanying medical and autopsy reports. The Mavi Marmara itself, when returned after being held for 66 days in Ashdod, had been scrubbed down thoroughly, blood stains completely washed off, bullet holes painted over; ship records, Captain's log, computer hardware, ship documents seized, CCTV cameras smashed, all photographic footage seized and presumably destroyed or withheld.

The killing of nine civilian passengers on the Mavi Marmara was first and foremost a violation of the right to life as enshrined in the Universal Declaration of Human Rights and also in the International Covenant on Civil and Political Rights (ICCPR) to which Israel has been a party since 1991. International law was also violated as a result of mistreatment of injured and other passengers on board of the Mavi Marmara and in Ashdod by the Israeli forces and officials.

Furthermore, the fact that the Israeli forces committed torture, engaged in degrading and inhuman treatment; forcibly deprived passengers of their human rights and fundamental freedoms, including the right to privacy, physical security and due process; and abused them physically and psychologically constitutes clear violations of the prohibition of torture and ill-treatment under Article 7 of the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) to which Israel has been a party since

1991. These acts also constitute a breach of Article 3 of the European Convention on Human Rights (ECHR).

Israeli attack on the humanitarian aid convoy in international waters constitute a violation of freedom of navigation and safety of navigation on the high seas. Freedom of navigation on the high seas is a long-standing rule of customary international law. The 1958 High Seas Convention and the 1982 United Nations Law of the Sea Convention codify what widely recognized to be the customary international rules of the freedom of the high seas. One of the components of freedom of the high seas is the exclusive jurisdiction of the flag State.

The 1958 and the 1982 Conventions restrict the right of a warship to seize a foreign ship, and its property and arrest the persons on board only in the case of *pirate ships* or aircraft.

According to the San Remo Manual, vessels engaged in humanitarian missions, including vessels carrying supplies, are exempt from attack. The Mavi Marmara and the other ships of the convoy were all transporting humanitarian aid vital for the survival of the civilian population in Gaza. Based solely on this ground, the Israeli forces failed to meet the established rules of maritime interdiction in international waters. In other words, the conduct of Israel is *de jure* unlawful.

Israel's naval blockade against the Gaza Strip, as it existed on May 31, 2010, violated the principles of international law, as also laid down in the San Remo Manual, governing blockade. The Israeli blockade was excessive in relation to any advantage to Israel's military objective and has a disproportionate impact on the civilian population as documented by numerous UN agencies and the international community at large. The UN Security Council, the OCHA, the World Food Programme, the ICRC, the World Bank, the UN High Commissioner for Human Rights, the UNHCR and the UNDP all described the humanitarian situation in Gaza as dire, unacceptable and unsustainable.

Numerous authoritative commentators have stated that Israel's blockade was "illegal" and had to be lifted, describing the blockade as "collective punishment on civilians."

The blockade failed to meet the other requirements of a lawful naval blockade under international law, such as specifying the duration and extent of the blockade.

Israel remains the occupying power in the Gaza Strip and as a result, any imposition of a naval blockade of the territory of the Gaza Strip is a legal nullity: a State cannot, by definition, blockade the borders of territory it occupies. Therefore, Israeli blockade is illegal and any interdiction based on such blockade is unlawful.

Finally, it is a central principle of international law that when a state violates its international obligations, it has a duty to make reparations for the wrongs committed and provide for compensation.

This case is a critical litmus test for the international community in upholding the rule of law. No State should be allowed to act above the law. Impunity must give way to accountability. Israel must acknowledge its responsibility and accordingly convey a public apology to the Republic of Turkey and provide compensation for all damages and losses resulting from its unlawful attack.

INTRODUCTION

On 11 August 2010, a Turkish National Commission of Inquiry was established to examine the Israeli military attack in international waters against the international aid convoy on 31 May 2010 which resulted in the killing of nine civilians and injury of many others. The Commission investigated the factual background of the attack, the ensuing violence and mistreatment endured by the passengers on the convoy and the legal implications and consequences of these acts.

The Turkish National Commission of Inquiry includes senior officials from the Board of Inspectors in the Office of the Prime Minister, the Ministry of Foreign Affairs, the Ministry of Justice, the General Directorate for Security of the Ministry of the Interior and the Under-Secretariat for Maritime Affairs. The Commission met throughout the month of August, received verbal and written testimonies from key witnesses, met with the relevant authorities and carried out an on-site inspection in the Port of İskenderun on those vessels in the convoy which had set sail from Turkish ports committed by Israeli military forces and officials.

The Turkish Commission of Inquiry was also tasked to prepare a report for consideration by the Panel of Inquiry set up by the UN Secretary-General on 2 August 2010 on the matter, in accordance with the Presidential Statement issued by the UN Security Council on 1 June 2010 which called for a “prompt, impartial, credible and transparent investigation conforming to international standards”. It is one of the tasks of the Panel to review reports of national investigations by Turkey and Israel. This report is in pursuance of that objective.

The Commission remains committed to the fullest possible cooperation with the UN Panel of Inquiry and accordingly stands ready to furnish further information and clarification, where required.

I. STATEMENT OF THE FACTS

“In international law, as in internal law, the ends do not justify the means. The state’s power is not unlimited. Not all of the means are permitted.” “It is when the cannons roar that we especially need the laws.”

The Israeli Supreme Court

A. The international humanitarian aid convoy

An international and multi-faith convoy of ships transporting certified humanitarian aid to Gaza responding to the call made by the United Nations Security Council Resolution 1860¹, set sail on 30 May 2010 coming from the ports of different countries. The convoy consisted of passenger vessels “*Mavi Marmara*” (Comoros), “*Sfendoni*” (Togo), “*Challenger I*” (US) and cargo vessels “*Gazze I*” (Turkish), “*Eleftheri Mesogeio*” (Greek), “*Defne-Y*” (Kiribati).² The total cargo on the six ships was in excess of 10,000 tons.³

The passengers included members of parliaments of different European countries as well as a member of the Knesset, academics, journalists, former diplomats including a retired US ambassador, religious leaders, elderly people, women and the one-year-old son of the chief engineer of the *Mavi Marmara*.^{4, 5} There was even an Israeli Holocaust survivor on board.

¹Security Council, United Nations, Resolution on the Situation in the Middle East, including the Palestinian question, S/RES/1860 (2009)

²For photographs of the vessels, see: The Foundation for Human Rights and Freedoms and Humanitarian Relief, Palestine Our Route Humanitarian Aid Our Load Convoy Campaign Summary Report, p.12

³http://www.ihh.org.tr/uploads/2010/insaniyardim-filosu-ozet-raporu_en.pdf, (Accessed 14 July 2010)

⁴For a comprehensive description of the cargo, see Annex 3 (Section 1-4).

⁵For the crew and passenger lists of the vessels *Mavi Marmara*, *Gazze* and *Defne-Y*, see Annex 3 (Section 1-4).

⁵ A video footage of the said baby is in Annex 7 (Clip19).

The Mavi Marmara, left the Port of Istanbul, which, as with all Turkish ports used by the vessels in the convoy, has the requisite ISPS Security Certificate⁶, on 22 May 2010, with a crew of 29 and 42 passengers. All crew members and passengers were subjected to standard x-ray checks and customs and passport controls.⁷ The vessel docked at the Port of Antalya on 25 May 2010, and left Antalya on 28 May 2010 with a total of 546 passengers and 29 crew members.⁸ All the passengers and crew were subjected to stringent x-ray checks and customs and passport controls. All personal belongings and cargo were also thoroughly inspected and cleared.^{9, 10}

The M/V Gazze, left the Port of İskenderun on 22 May 2010 with a crew of 13, and five passengers and the M/V Defne-Y departed the Port of Zeytinburnu, İstanbul on 24 May 2010 with a crew of 13, and seven passengers, having gone through similar checks and controls.

On 28 May 2010, the Mavi Marmara sailed towards the meeting point south of the island of Cyprus where all the vessels in the convoy were expected to get together, whereupon 14 passengers boarded the vessel from M/V Challenger-II, which had developed an unexplained puncture in the hull.¹¹ The personal effects of the new arrivals were thoroughly checked by the vessel crew.

The convoy sailed from the meeting point on 30 May 2010 at 16.00 on a bearing of 222°.¹²

B. Diplomatic contacts prior to the departure of the convoy

Several diplomatic representations were carried out by Israeli authorities in Tel Aviv, Jerusalem and Ankara, demanding that Turkish authorities refuse to allow the convoy from departing Turkish ports and insisting that, should the convoy sail on as planned, the aid should be routed to Israel instead for necessary inspection and subsequent conveyance to its destination. In reply, the Turkish authorities stressed the difficulty, in an open and democratic

⁶ For the Statement of Compliance Documents (ISPS) of the Ports of Istanbul, Antalya, İskenderun and Zeytinburnu, see Annex 3 (Section 5)

⁷ For the customs records of the passengers and crew of the Mavi Marmara, see Annex 4 (Section 2 & 7)

⁸ *Ibid.*

⁹ For the written deposition of First Captain Mr. Mahmut Tural, see Annex 5 (Section 1/i)

¹⁰ For the Statement of Compliance Documents of the Port of Antalya, see Annex 3 (Section 5)

¹¹ For a list the passengers who boarded the Mavi Marmara from the M/V Challenger-II, see Annex 3 (Section 6)

¹² For the map of the coordinates of the vessels during the time of journey see, Annex 3 (Section 5)

society, to prevent an NGO-led endeavor from departing Turkish ports lawfully. Nonetheless, the Turkish authorities pledged to inform the Turkish participants to the undertaking of the messages conveyed by Israel and strive to convince them to land the aid to Ashdod in Israel or to Al-Arish in Egypt, which they did prior to the departure of the convoy. The Turkish authorities also urged Israel several times to act with maximum restraint and avoid use of force to intercept the vessels.

On 28 May 2010, the Undersecretary of the Turkish Ministry of Foreign Affairs Ambassador Feridun Sinirlioğlu told the US Ambassador in Ankara that the Ministry's contacts with the Turkish participants in the convoy were starting to bear fruit, and the IHH representatives indicated that they would eventually dock at Al-Arish. But the convoy would first try to approach Gaza, and when stopped by the Israeli army, they would not resist and change their route south to Al-Arish. Ambassador Sinirlioğlu emphasized that Israel should act with maximum restraint and avoid using force by any means so that things would work out as planned. He asked the US Ambassador to pass on this message to Israel.

A few hours later, Ambassador Yossi Gal, Director General of the Israeli Ministry of Foreign Affairs called Ambassador Sinirlioğlu to confirm the foregoing. Ambassador Sinirlioğlu gave the same messages to Ambassador Gal. Both the US and Israel seemed to be content with this understanding.

C. The Israeli attack

Despite this understanding, in the early hours of 31 May 2010, the convoy was attacked by Israeli military forces in international waters, 72 nautical miles from the nearest coast and 64 nautical miles from the naval zone blockaded by Israel.¹³ The Israeli soldiers were heavily armed with machine guns, laser-guided rifles, stun grenades, tasers, pistols and modified paintball rifles.^{14, 15} The Israeli forces mounted a full-fledged military attack with frigates, helicopters, Zodiac inflatable military boats and submarines.¹⁶ The attack on the Mavi Marmara resulted in the death of nine passengers, of whom eight were Turkish citizens and

¹³ For the coordinates of the area in international waters where the Mavi Marmara was attacked, see Annex 3 (Section 7)

¹⁴ For witness accounts of weapons deployed by Israeli military personnel, see Annex 5

¹⁵ For video footage of Israeli soldiers during the attack, see Annex 7 (Clip 6 & 9)

¹⁶ For video footage of Israeli naval vessels used during the attack, see Annex 7 (Clip 2, 3 & 7)

one was a US national of Turkish descent.¹⁷ Moreover, several dozen civilians were injured in the attack, some with serious bullet wounds.¹⁸ Other vessels in the convoy were not immune from the premeditated military attack by Israeli forces, either.

i. Timeline of the attack

22.00 - Israeli interference on the satellite communications of the Mavi Marmara¹⁹, as it sails at a bearing of 222°, sailing towards southwest.²⁰

22.30 - The Mavi Marmara receives the first communication from Israeli naval forces but no visual contact established yet. The Israeli navy forces demand the ship “*to report the ship’s identity and destination*”. Captain Mahmut Tural responds by “*identifying the ship, stating the number of passengers on board, describing the humanitarian mission of the ship and notifying the port of destination as Gaza*”. Upon that, the Israeli navy forces caution the Captain that a naval blockade exists of the coast of Gaza and that the ship is approaching an area of hostilities. The Captain insists that “*the convoy is in international waters and Israel cannot demand a vessel on the high seas to change course.*” Other ships in the convoy receive similar calls from the Israeli navy.^{21, 22} However, no demand was made by the Israeli forces to “stop, visit and search” the vessel. Panic begins among passengers on the Mavi Marmara, passengers don their life jackets.²³

23.20 - The vessel adopts a course at a bearing of 185°, the final destination of which would be a point between Al-Arish and the Suez Canal; radar spots first Israeli naval craft about three or four miles away. Israeli warnings continue in international waters, almost 100 nautical miles from the shores of Israel.

02.00 - The Captain spots the lights of several craft sailing behind the convoy.

¹⁷ For autopsy reports of those killed in the attack, see Annex 1

¹⁸ For treatment reports of those injured and treated in Turkey, see Annex 2

¹⁹ For the testimony of Mr. Ümit Sönmez see, Annex 5 (Section 1/v)

²⁰ For the testimony of First Captain Mr. Mahmut Tural, see Annex 5 (Section 1/i)

²¹ Ibid.

²² rabbletv, 9 July 2010; *Gaza Freedom Convoy: Farooq Burney’s eyewitness report (1/3)*.

<http://www.youtube.com/watch?v=gAbm-0yWZzw&feature=related> (Accessed 6 August 2010)

²³ For the testimony of Mr. Abdülhamit Ateş, see Annex 5 (Section 5/xi)

02.00 - 04.30 - The Israeli communication with the convoy comes to an end; no Israeli demand to stop and allow inspection of the vessel or change course; pursuit of the Israeli naval craft continues.

04.00 - Israeli forces impose a total blackout on the satellite communication of the vessels.²⁴

04.32 - Without any warning, the Mavi Marmara is attacked by a group of Zodiacs which open fire, in the dark, with high-powered and modified paintball guns followed by stun grenades and tear gas.^{25, 26}

04.35 - The Captain changes the vessel's course to a bearing of 270° heading west, away from the direction of Israel, under full power; the Israeli frigates approach from the starboard bow and close in, forcing the convoy to return to the direction of Israel.²⁷

05.00 onwards - Israeli forces seize control and re-route the vessel on a bearing of 130° towards Ashdod.

ii. Accounts of witnesses of the Israeli attack on the Mavi Marmara

As corroborated by eyewitness accounts and supported by forensic data, Israeli soldiers used excessive and indiscriminate force before and after boarding the Mavi Marmara.

The Israeli Zodiacs, warships and helicopters concentrated at first on the Mavi Marmara. There were witness accounts of machine guns being used from the Zodiacs as they approached the ship.²⁸ There was widespread use of paintball guns by soldiers on the Zodiacs. While Israel underestimates the impact of paintballs, these are military variants specifically adapted for use in close quarter assaults by Special Forces. The pellets contain not only 'paint' but are usually filled with compressed gases and other chemical irritants to debilitate human targets at a localized level. They are intended to sting sharply and shock the recipient,

²⁴ For the testimony of Mr. Hüseyin Oruç, see Annex 5 (Section 1/vi)

²⁵ For various accounts that verify the timing and the conduct of the attack, see Annex 5

²⁶ For a video footage of the moment of attack, see Annex 7(Clip 1)

²⁷ For the testimony of First Captain Mr. Mahmut Tural, see Annex 5 (Section 1/i)

²⁸ For various accounts, see Annex 5 (Section 1/viii)

and so give assailants the initiative, in this case to gain control of the ship.²⁹ Reports were given that the Israeli soldiers used the largest size paintballs to inflict the greatest injury. Evidence further shows the magnitude of actual injuries received from paintballs.³⁰

Once the passengers saw the hostile approach of the Israeli forces, they panicked and, in fear for their lives, attempted to dissuade the Israeli soldiers in the Zodiacs by throwing plastic bottles, waste bins and boxes, and by swinging chains.³¹ Many passengers expressed their belief and fear that the Israeli soldiers would kill them once on board.³²

Together with the initial attacks by the Zodiacs, helicopters appeared on the scene. The Captain of the Mavi Marmara and other eyewitnesses agree that the Israeli soldiers began firing on the vessel as they descended from helicopters.³³ News producer Jamal Elshayyal saw live fire from the helicopter before the first Israeli soldier descended and said that one of the passengers killed was clearly shot from above. Soldiers pointed their guns down through some sort of hatch in the helicopter and fired live ammunition indiscriminately.³⁴ The Turkish Commission of Inquiry, which inspected the Mavi Marmara, established that some of bullet marks on the vessel were clearly the result of fire from above.³⁵

Two passengers were killed on the spot by the Israeli forces before they had even landed on the ship. Kuwaiti MP Waleed Al-Tabtabaei said that it was the killing of two unarmed Turkish men which provoked the resistance on the first three soldiers rappelling onto the vessel. Kuwaiti lawyer Mubarak Al-Mutawa said that the soldiers opened fire from above without giving any warning, killing a number of volunteers before even boarding the ship.³⁶

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²⁹ Counterfeet, Israel Vs Turkey – Hanin Zoabi UNCENSORED, Youtube, 1 June 2010
<<http://www.youtube.com/watch?v=ZkFnNss490&feature=related>> (27 July 2010)

³⁰ For the testimony of Doctor Hasan Hüseyin Uysal, see Annex 5 (Section 1/x)

³¹ For a video footage of the moment of attack, see Annex 7 (Clip 1)

³² For the testimony of Elif Akkuş, see Annex 5 (Section 1/ix)

³³ For the testimony of Kenneth O’Keefe, Anne de Jong and Mehmet Ali Zeybek, see Annex 5 (Section 3/xvi & xii and Section 1/xii)

³⁴ Jamal Elshayyal, “Kidnapped by Israel, forsaken by Britain,” The Middle East Blog, 6 June 2010
<<http://blogs.aljazeera.net/middle-east/2010/06/06/kidnapped-israel-forsaken-britain>> (27 August 2010)

³⁵ For the relevant photos, see Annex 8 (Section 2)

³⁶ Abdullah Al-Qattan, “Gaza heroes’ welcomed home”, Kuwait Times, 3 June 2010
<http://www.kuwaittimes.net/read_news.php?newsid=NDg0MzQ1OTYy> (8 June 2010)

³⁷ For the testimony of Mehmet Ali Zeybek see Annex 5 (Section 1/xii)

Prof Mattias Gardell said that four helicopters launched the assault that began with firing from the air.³⁸ A video footage taken during the attack that shows red-laser beams being directed on the passengers below supports this account.³⁹

Most of the deaths and injuries occurred before the boarding and during the time it took for the soldiers to go from the upper deck to the lower deck after boarding the ship. According to the Captain of the Mavi Marmara, during this time, the soldiers fired from above towards the lower decks with indiscriminate as well as targeted shooting at everyone who was outside on deck.⁴⁰ One man was shot in the leg just in front of Kevin Ovenden and another man immediately to his right was shot in the abdomen. He said that the shots came from above, and that the victims could not have posed any threat to the shooter.⁴¹ Kevin Neish witnessed two bodies with twin bullet holes in the sides of their heads, appearing to have been shot in execution style killing.⁴²

There were several reports of Israeli soldiers beating people with batons. Moroccan MP Abdelqader Amara said that the soldiers hit victims with their rifle butts before shooting them dead.⁴³ Video footage shows Israeli soldiers beating and shooting at point blank an unidentified passenger (most probably the 19-year-old Furkan Doğan) who was clearly lying on deck.⁴⁴ Rifat Audeh was thrown onto the lower deck by four Israeli soldiers, blindfolded and had his hands tied behind his back while a soldier's knee was digging in his ribs.⁴⁵

³⁸ Free Gaza Team, "Testimonies from Passengers begin to come in", [The Free Gaza Movement](http://www.freegaza.org/en/boat-trips/passenger-lists/75-ninth-trip-to-gaza-in-may-2010/1200-testimonies-from-passengers-begin-to-come-in), 3 June 2010 <<http://www.freegaza.org/en/boat-trips/passenger-lists/75-ninth-trip-to-gaza-in-may-2010/1200-testimonies-from-passengers-begin-to-come-in>> (6 July 2010)

³⁹ For the said video footage, see Annex 7 (Clip 9)

⁴⁰ Mavi Marmara attack: Exclusive first interview with Gaza Convoy activist Kevin Neish", [Rabble.ca](http://rabble.ca), 3 Jun 2010 <<http://rabble.ca/podcasts/shows/rabble-radio/2010/05/106-interview-gaza-peace-activist-kevin-neish>> (27 August 2010)

⁴¹ Mavi Marmara Report: Ovenden, Doares and the Vile Zionists, [Youtube](http://www.youtube.com/watch?v=d5q1CVS3D6o), 21 June 2010 <<http://www.youtube.com/watch?v=d5q1CVS3D6o>> (18 July 2010)

⁴² See *supra* note 40

⁴³ Abdullah Al-Qattan, Gaza heroes welcomed home, [The Kuwait Times](http://www.kuwaittimes.net/read_news.php?newsid=NDg0MzQ1OTYy), 3 June 2010 <http://www.kuwaittimes.net/read_news.php?newsid=NDg0MzQ1OTYy> (8 June 2010)

⁴⁴ For the said video footage, see Annex 7 (Clip 4)

⁴⁵ Rifat Audeh, Israeli terror then and now: Rifat Audeh experienced first-hand what the sailors on the US warship experienced 43 years ago, [Uruknet.info](http://www.uruknet.info), 10 July 2010 <<http://www.uruknet.info/?p=67783>> (27 August 2010)

The bridge was taken over when ten Israeli soldiers rushed in with guns ready and aimed to shoot. All the crew were made to lie down and handcuffed. All documents including the ship's certificates were seized.⁴⁶

Several witnesses reported that while passengers were handcuffed and forced to kneel on the upper deck of the Mavi Marmara, several helicopters hovered above the vessel one after another for a number of hours deliberately spraying passengers with cold sea water.⁴⁷

iii. Deaths

Turkish autopsy reports concluded that five of the deceased were shot in the head at close range, as detailed in Annex 1. The said reports also reported that the gunshot residues around the wounds have been deliberately cleansed prior to their repatriation to Turkey for the purpose of suppression of ballistic evidence. The following passengers lost their lives:

- Furkan Doğan received five gunshot wounds in the back of his head, nose, left leg, left ankle and in the back, all from close range. A citizen of the United States, Mr. Doğan was a 19-year-old high school student with ambitions of becoming a medical doctor.^{48,49}
- Cengiz Akyüz received four gunshot wounds, in the back of his head, right side of his face, the back and the left side of his leg.⁵⁰ Mr Akyüz was married and a 41-year-old father of three.
- Ali Haydar Bengi received a total of six gunshot wounds, in the left side of his chest, belly, right arm, right leg and twice in the left hand. Mr. Bengi was married, a 39-year-old father of four.⁵¹
- İbrahim Bilgen received four gunshot wounds, in the right temple, right chest, right hip and back.⁵² Mr. Bilgen was married, 61-year-old father of six, who worked as an electrical engineer.

⁴⁶ For the testimony of First Captain Mahmut Tural, see Annex 5 (Section 1/i)

⁴⁷ See *supra* note 32

⁴⁸ Lawrence of Cyberia, Blog Post: Putting Names To Faces, 3 June 2010 <<http://lawrenceofcyberia.blogs.com>> (4 August 2010)

⁴⁹ For Furkan Doğan's autopsy report, see Annex 1 (Section 7)

⁵⁰ For Cengiz Akyüz's autopsy report, see Annex 1 (Section 2)

⁵¹ For Ali Haydar Bengi's autopsy report, see Annex 1 (Section 1)

⁵² For İbrahim Bilgen's autopsy report, see Annex 1(Section 8)

- Cevdet Kılıçlar was killed by a single distant shot to the middle of the forehead.⁵³ Mr. Kılıçlar was married, 38-year-old father of two and worked as a cameraman.
- Cengiz Songür was killed by a single gunshot wound in the front of the neck.⁵⁴ He was a 47-year-old textile worker, married and the father of seven.
- Çetin Topçuoğlu was killed by three gunshot wounds in the back of the head, the hip and the belly.⁵⁵ He was 54-years old, married and father of one.
- Fahri Yıldız was killed by four gunshot wounds: left chest, left leg and twice in the right leg.⁵⁶ He was 43 years-old, married and father of four, and worked as a fire-fighter.
- Necdet Yıldırım received two gunshot wounds in the right shoulder and left back.⁵⁷ He was 32-years-old, married, a father of one.

iv. Injuries

In addition to the deaths as a result of widespread shooting by Israeli soldiers, many passengers were injured on the Mavi Marmara:

- Abdülhamit Ateş reported that he was shot from his knee and he collapsed on the deck. Soldiers hit him in the forehead and his right eye and turned him over shot him with a plastic bullet in the chest. The victim survived, but moaned in pain for hours.⁵⁸
- Muharrem Güneş was lying on the deck when soldiers wielding laser-guided rifles approached him and shot him at close range in the left cheek. The bullet exited through his lower right jaw.^{59, 60}
- Mustafa Batırhan was shot in the lower abdomen from a range of about one meter.⁶¹
- Sadreddin Furkan, who was in the control centre on the bridge at the time, said that the soldiers were shooting in all directions, and that he felt a strong pain in his leg which

⁵³ For Cevdet Kılıçlar's autopsy report, see Annex 1 (Section 4)

⁵⁴ For Cengiz Songür's autopsy report, see Annex 1 (Section 3)

⁵⁵ For Çetin Topçuoğlu's autopsy report, see Annex 1 (Section 5)

⁵⁶ For Fahri Yıldız's autopsy report, see Annex 1 (Section 6)

⁵⁷ For Necdet Yıldırım's autopsy report, see Annex 1 (Section 9)

⁵⁸ For the testimony of Abdülhamit Ateş, see Annex 5 (Section 1/xi).

⁵⁹ For the interview of Muharrem Güneş, see Annex 7 (Clip 27)

⁶⁰ For Muharrem Güneş's medical report, see Annex 2 (Section 13)

⁶¹ For Mustafa Batırhan's medical report, see Annex 2 (Section 6)

began bleeding. He was shot from behind, three times in the leg and once in the foot.⁶²

- Osman Çalık was shot in the knee.⁶³
- Ali Buhamd said: “I saw a soldier shooting a wounded Turk in the head. There was another Turk asking for help, but he bled to death.”⁶⁴

The Israeli soldiers also prevented timely first aid to the injured. The Captain asked an Israeli officer several times for medical assistance for these passengers, but was eventually told that no medical aid would be provided unless the engines were restarted and the ship set sail on a bearing of 130° for Ashdod.⁶⁵ Once the soldiers took control of the ship, Dr. Hasan Hüseyin Uysal, who treated the lightly wounded Israeli soldiers, was handcuffed tightly and made to kneel for three hours like the rest of the passengers.⁶⁶ When he developed shoulder pains, he asked soldiers for help several times, but was ignored for a long time. He was not allowed to go to the toilet.⁶⁷

v. Attacks on the other ships

The brutal and tragic nature of the Israeli attack on the Mavi Marmara has overshadowed the raid on the remaining ships that were part of the humanitarian aid convoy. Contrary to the repeated claims by Israel that the remaining ships were boarded peacefully, Israeli soldiers used force on the other vessels as well and subjected their passengers to violent treatment.

The Sfendoni was sailing about 300-400 meters astern of the Mavi Marmara and was attacked simultaneously with the cruise ship by high-powered paintballs fired from Zodiacs on either side.⁶⁸ The Captain disabled the engines and stopped the ship⁶⁹ and about 15 to 20 masked

⁶² For Sadreddin Furkan’s medical report, see Annex 2 (Section 11)

⁶³ For Osman Çalık’s medical report, see Annex 2 (Section 10)

⁶⁴ Israeli attack written into history with chilling survivor accounts, Today’s Zaman, 5 June 2010, <<http://www.sundayszaman.com/sunday/detaylar.do?load=detay&link=212265>> (5 July 2010)

⁶⁵ For the written deposition of First Captain Mr. Mahmut Tural, see Annex 5 (Section 1/i)

⁶⁶ See *supra* note 30

⁶⁷ Robert Mackey & Sebnem Arsu, Turkish Doctor Describes Treating Israeli Commandos During Raid, The Lede Blog, The New York Times, 9 June 2010 <<http://thelede.blogs.nytimes.com/2010/06/09/turkish-doctor-describes-treating-israeli-commandos-during-raid/#more-65643>> (10 June 2010)

⁶⁸ Czech camera man describes beating of Irish activist in Israeli prison, Workers Solidarity Movement, 2 June 2010 <<http://www.wsm.ie/c/beatng-irish-activist-israeli-prison>> (7 July 2010)

⁶⁹ TrishMaryHill, Dr Hasan Nowrah Convoy Massacre Survivor Clip of 1/3, YouTube, 10 June 2010, <http://www.youtube.com/watch?v=BNfq12_PLxk&feature=related> (9 July 2010)

Israeli soldiers boarded the vessel.⁷⁰ Youssef Benderbal said that he witnessed a passenger being punched on the jaw after he tried to start up a conversation with a soldier and that the Captain had a torn ear and injuries to his neck and one leg.⁷¹

Other eye witness reports are as follows:

- Bilal Abdulazziz witnessed soldiers using stun grenades and batons against activists who were merely locking arms. He was tasered in the head, legs and back. He also witnessed elderly people being beaten.⁷²
- Dimitris Gielalis saw Israeli soldiers using plastic bullets and tasers and beating people.⁷³ He witnessed a cameraman getting hit in the eye with a rifle butt.⁷⁴
- Al Mahdi Alharati was hit with rubber bullets in the leg, beaten in the groin and over the head, hit with the back of a gun in the eye and hit with the butt of a machine gun on the back of the head.^{75, 76}
- Gene St Onge was kicked and hit with a ‘rifle or something’ suffering a gash on his head. He was then restrained with handcuffs. He said their captain, who was pulled and hit, sustained a punctured eardrum along with neck and back injuries.⁷⁷
- Edward Peck said that as a result of the non-violent resistance outside the wheelhouse, the Israeli soldiers roughly treated some people. Some ended up needing crutches, bandages and arm slings, and the Captain was in need of a neck brace.

⁷⁰ Mikael Stengård and Josefine Hökerberg, Teologen Ulf Carmesund tillbaka från Israel, Aftonbladet, 2 June 2010 <<http://www.aftonbladet.se/nyheter/article7231718.ab>> (7 July 2010)

⁷¹ “We were unarmed and didn’t provoke anybody” – aid convoy member, RT, 6 June 2010 <http://rt.com/Top_News/2010-06-06/gaza-aid-convoy-eyewitness.html> (5 July 2010)

⁷² Adycousins, Gaza Flotilla Testimony of Bilal Abdulazziz, YouTube, 9 June 2010. <<http://www.youtube.com/watch?v=1FJh91mCbKI&feature=related>> (1 July 2010)

⁷³ Robert Booth et. al., Gaza convoy raid: We heard gunfire – then our ship turned into lake of blood, guardian.co.uk, 2 June 2010 <<http://www.guardian.co.uk/world/2010/jun/02/gaza-flotilla-raid-gunfire-ship-blood>> (5 June 2010)

⁷⁴ Elena Becatoros and Suzan Fraser, Troops boarded and ship turned into a lake of blood, independent.ie, 2 June 2010 <<http://www.independent.ie/national-news/troops-boarded-and-ship-turned-into-a-lake-of-blood-2203364.html>> (5 July 2010)

⁷⁵ Genevieve Carbery, Irish citizen ‘beaten’ by Israeli forces, theirishtimes.com, 9 June 2010 <<http://www.irishtimes.com/newspaper/world/2010/0609/1224272122281.html>> (12 June 2010)

⁷⁶ For the medical report of Almahdi Abdulhameed Alharati, see Annex 2 (Section 2)

⁷⁷ Testimony of Gene St. Onge, The Free Gaza Movement, 7 June 2010 <<http://www.freegaza.org/en/testimonies-from-israeli-jail/1221-in-their-own-words-survivor-testimonies-from-flotilla-31-may-2010>> (27 August 2010)

- Dr. Hasan Nowarah was with Edward Peck on a lower deck, where an Israeli soldier hit the 81-year-old former U.S. Ambassador on the back of the head knocking him to the floor.
- Television journalist Manolo Luppichini saw two people hurt by tasers. The soldiers seized two cameras, microphones, a stand and equipment belonging to him along with his wallet, passport, bag and all his personal effects.⁷⁸

Upon the beginning of the Israeli raid, Challenger-I attempted to flee the scene and transmit information on the raid but was unable to do so because its radio was jammed and it had to slow down because of loss of oil pressure to the engines. The eyewitnesses on the ship said rubber bullets were fired before they were boarded, and many passengers were hit.⁷⁹

Witnesses recounted later that Israeli soldiers used stun grenades, hit people with their rifle butts, pushed people onto the deck and stood on them, used high-powered paintball guns and smashed windows.

- Fintan Lane had a gun pointed in his face by a screaming soldier causing him to genuinely fear for his life. He saw Fiachra Ó Luain dragged around the deck.⁸⁰
- Photographer Kate Geraghty was trying to take photographs when she was tasered on the upper arm, which caused her to be thrown a meter and a half and collapse vomiting on the deck.^{81, 82}
- Huwaida Arraf told CNN that her head was banged on the deck after she was handcuffed and hooded.⁸³ She said soldiers beat many passengers on the ship and one volunteer ended up with a bloody face.⁸⁴

⁷⁸ Dimi Reider, Italian convoy journalist: My credit card was used after IDF confiscated it, [Haaretz.com](http://www.haaretz.com/print-edition/news/italian-flotilla-journalist-my-credit-card-was-used-after-idf-confiscated-it-1.295493), 11 June 2010 <<http://www.haaretz.com/print-edition/news/italian-flotilla-journalist-my-credit-card-was-used-after-idf-confiscated-it-1.295493>> (12 June 2010)

⁷⁹ See *supra* note 78

⁸⁰ *Ibid.*

⁸¹ Fear, pain and propaganda: an activist's story, [The Herald Scotland](http://www.heraldscotland.com/news/world-news/fear-pain-and-propaganda-an-activist-s-story-1.1033113), 6 June 2010 <<http://www.heraldscotland.com/news/world-news/fear-pain-and-propaganda-an-activist-s-story-1.1033113>> (29 August 2010)

⁸² See *supra* note 43

⁸³ CNN Wire Staff, Eyewitnesses recount Israel convoy raid, [CNN](http://edition.cnn.com/2010/WORLD/meast/06/01/gaza.raid.eyewitnesses), 1 June 2010. <<http://edition.cnn.com/2010/WORLD/meast/06/01/gaza.raid.eyewitnesses>> (1 June 2010)

⁸⁴ axis4 peace2, Convoy Survivor says Israeli marines boarded unarmed American ship throwing grenades, [YouTube](http://www.youtube.com/watch?v=cfn_bScn08E&feature=related), 2 June 2010 <http://www.youtube.com/watch?v=cfn_bScn08E&feature=related> (6 June 2010)

- Theresa McDermott saw a Belgian woman named Margarita hit in the face by a projectile which burst her nose causing heavy bleeding. She also saw Huwaida Arraf and a Dutch woman, who tried to block the stairs, thrown to the ground, their hands cuffed with plastic ties that cut into their wrists and their faces pushed on to the deck that was full of broken glass. When Theresa shouted and tried to get to the two women, a soldier put his pistol to her head and said he would shoot her if she did not do what she was told.⁸⁵
- Ewa Jasiewicz was told by a soldier ‘*fuck you; fucking bitch, I’ll kill you*’.⁸⁶
- Paul McGeough referred to “...men with zip ties on their wrists, on their knees for hours, denied permission to go to the toilet, forced to soil their pants, women pleading to be able to give drinks to men...”⁸⁷
- An 80-year-old man was not allowed to go to the toilet, forcing him to soil his clothes.⁸⁸

Zodiacs and helicopters surrounded the M/V Gazze at around 06:00 and fully armed Israeli troops came aboard shortly thereafter. The detainees were searched and taken for individual questioning. They remained in the galley until the ship reached Ashdod.⁸⁹

The attack against the Defne-Y occurred at 06:10 when helicopters landed soldiers on the ship. Everyone was transferred to the galley. The 20 persons were kept in a 15-square-meter unventilated area until the ship reached Ashdod.⁹⁰

D. Mistreatment of passenger victims including journalists

i. Mistreatment of passenger victims

When the vessels docked at Ashdod, passengers were taken to a specially prepared detention area with numerous tents designed for processing.⁹¹ In several cases, groups of female

⁸⁵ See *supra* note 81

⁸⁶ Emine Saner, Gaza Convoy: protesters’ story, [guardian.co.uk](http://www.guardian.co.uk), 5 June 2010

<<http://www.guardian.co.uk/theguardian/2010/jun/05/gaza-flotilla-protesters-story>> (5 June 2010)

⁸⁷ Amy Goodman, The Gaza Freedom Flotilla: Framing the Narrative, [thetruthdig.com](http://www.truthdig.com), 8 June 2010,

<http://www.truthdig.com/report/item/the_gaza_freedom_flotilla_framing_the_narrative_20100608> (15 June 2010)

⁸⁸ For the testimony of Anne de Jong, see Annex 5 (Section 1/xii)

⁸⁹ See *supra* note 2, p29.

⁹⁰ *Ibid.* p27.

passengers were taken into the same tent and forced to remove all their clothes in front of military personnel including men, in a move that was clearly intended to cause severe embarrassment and humiliation.⁹² In at least one instance, soldiers pushed a metal detector between the legs of a Turkish female passenger who wishes to remain anonymous.

Mahmut Tural, First Captain of the Mavi Marmara, was part of the first group of people taken off the ship at Ashdod. Upon arrival at Ashdod, he was handcuffed, finger-printed, put through a medical check in special arrival tents and taken for interrogation. He was held in a transfer vehicle for four or five hours and then taken to an isolated cell where, apart from interrogations, he was held incommunicado until taken to the airport. He was not permitted to make outside contact.⁹³ The interrogations were secretly filmed and the video later released to the media was taken during the later sessions after he had been asked the same questions many times. The footage had been cut and edited and gave a misleading impression of what had been said.⁹⁴

Passenger victims were required to sign Hebrew-only statements, which most did not understand, saying “they regretted attacking the State of Israel”⁹⁵ and that “willingly and illegally entered Israel.”⁹⁶ People who refused were beaten and threatened with prosecution. Some of those beaten were given injections to calm them down if they began to shake, after which they were often beaten again.⁹⁷ Greek passenger victims were eventually placed in cells without windows where the light was constantly on and where they were given limited amounts of water but no food. Israeli officials laughed at them when they asked to see Greek consular staff. The accounts of some passenger victims mention that only American Embassy officials achieved access to their citizens.⁹⁸ Scott Hamman saw two Americans beaten by Israeli officials when they refused to sign the deportation documents without having access to

⁹¹ For the relevant footage, see Annex 7 (Clip 20)

⁹² See *supra* note 32

⁹³ For the testimony of First Captain Mr. Mahmut Tural, see Annex 5 (Section 1/i)

⁹⁴ İnsani Yardim Vakfı, Captain of The Mavi Marmara Recounts Attack On Convoy. <<http://www.ihh.org.tr/mavi-marmara-nin-kaptani-konustu/en/>> (30 July 2010)

⁹⁵ For the testimony of Ümit Sönmez, see Annex 5 (Section 1/v)

⁹⁶ See *supra* note 88

⁹⁷ See *supra* note 30

⁹⁸ CyprusMail, 2 June 2010; *Greeks return home after Israeli detention*. “<http://www.cyprus-mail.com/cyprus/greeks-return-home-after-israeli-detention/20100602>” (Accessed 9 June 2010)

a lawyer.⁹⁹ Australian journalists also reported being denied consular access and legal representation.¹⁰⁰

Lubna Masarwa, an Arab-Israeli citizen, was held in isolation and subjected to strip searches four times a day. She was taken to court in a small metal box inside a police car in which she was held for eight hours with her hands and legs shackled.¹⁰¹

Fiachra Ó'Luain stated that he feared for his life while in custody. He said that at one stage he asked to see a Rabbi and was told that he would only see a Rabbi when they killed him. On the way to the airport he was taken off the bus, kicked and punched on the ground by 15 or 20 Israelis. Israeli officials put his arm in stress positions and tried to break his finger.¹⁰²

On the day of her deportation Theresa McDermott was crammed into a tiny cell in high-security vehicle with two other women. They were kept in the vehicle for five hours. One of the women in the cell was pregnant. When they entered the airport they were jostled and jeered by soldiers.. Only the wounded who could not physically walk to the planes were assisted. Those who had drip or drainage bags were left unassisted.¹⁰³ Many who had been wounded in the feet were denied assistance. Anyone trying to help them was shouted at, pulled away and beaten.¹⁰⁴ Some people were slapped in the back of the head as they went up a staircase.¹⁰⁵

⁹⁹ News 13, 5 June 2010; *South Portland filmmaker home after Israeli raids*.

<http://tinyurl.com/3xclgug> (Accessed 20 June 2010)

¹⁰⁰ Mel Frykberg, 4 June 2010; *Israel censors news on deadly Convoy raid*; Electronic Intifada.

<<http://electronicintifada.net/v2/article11317.shtml>> (Accessed 6 June 2010)

¹⁰¹ Lubna Masarwa, *Time to break the siege on Gaza: A survivor's account of Mavi Marmara*; International Solidarity Movement, 7 June 2010,

<[http://palsolidarity.org/2010/06/12704/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+palsolidarity+\(International+Solidarity+Movement\)](http://palsolidarity.org/2010/06/12704/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+palsolidarity+(International+Solidarity+Movement))> (7 June 2010)

¹⁰² See *supra* note 38

¹⁰³ See *supra* note 81

¹⁰⁴ For the Gaza Convoy Testimony of Alex Harrison, see *supra* note 72

¹⁰⁵ See *supra* note 38

Maryam Luqman Talib was one of thirteen women forced to wait in a van for some eleven hours at the airport. After being let out, they asked for consular access and were ignored. An aggressive fully armed soldier hit one of the women three times and pulled her hair.¹⁰⁶

ii. Mistreatment of journalists

At least 60 journalists were covering the convoy.¹⁰⁷ Cevdet Kılıçlar, a photographer, was the first person to be killed on board. Indonesian cameraman Sura Fachrizaz was shot in the chest, while Issam Za'atar was hit with a stun gun while filming and suffered a broken arm. Despite his injury, he had to endure a long and exhausting interrogation.¹⁰⁸ Cameraman Valentiv Vassilev's medication for hyper-tension was taken from him.¹⁰⁹

Journalists on the Mavi Marmara were identifiable by their press vests so they were grouped, searched, handcuffed and left in the sun for five hours.¹¹⁰ Marcello Faraggi was forced to undress, which he found humiliating. He was squeezed into a truck with other prisoners in which they had to wait for more than an hour in the sun without air conditioning.¹¹¹

Mario Damolin said there were surveillance cameras in the showers and toilets.¹¹² At breakfast there was not enough food and they had to use the sink to get water.

After prison Jan Líněk was put in a van with an extremely small cell which was left parked in the sun with the air conditioning off for 45 minutes. At the airport he was locked into a cell with about seven other people. The light was on all the time and they were woken up every

¹⁰⁶ İnsani Yardım Vakfı, I am just waiting for an announcement to go back to Gaza again, <<http://www.ihh.org.tr/yeniden-gazze-ye-gitmek-icin-sadece-bir-duyuru-bekliyorum/en/>> (30 July 2010)

¹⁰⁷ See *supra* note 88

¹⁰⁸ Journalists on raided convoy speak out; one journalist killed in attack, International Freedom of Expression Exchange, 9 June 2010 <http://www.ifex.org/israel/2010/06/09/speak_out/> (5 July 2010)

¹⁰⁹ Bulgarian Gaza Reporter: Turkish Ship Was Provocation for Israel, novinite.com, 3 June 2010 <http://www.novinite.com/view_news.php?id=116792> (5 July 2010)

¹¹⁰ Interview with convoy journalist, Reporters without Borders, 7 June 2010, <<http://en.rsf.org/israel-interview-with-flotilla-journalist-07-06-2010,37682.html>> (9 June 2010)

¹¹¹ Marcello Faraggi, As Turkish photographer is buried, other journalists aboard flotilla speak out, International Freedom of Expression Exchange, 9 June 2010, <http://www.ifex.org/israel/2010/06/10/kiliclar_buried> (13 July 2010)

¹¹² Mario Damolin, Eyewitness report from the Gaza fleet, Frankfurter Allgemeine Zeitung, 7 June 2010 <<http://www.faz.net/s/RubB30ABD11B91F41C0BF2722C308D40318/Doc~E08164C9F915B4356A59A4A028667A884~ATpl~Ecommon~Scontent.html>> (29 August 2010)

hour. Linek mentions that an Irish national was beaten in the cell in front of him. An Israeli official said they were all terrorists and crooks and called Línek a '*fucking Russian*'.¹¹³

All journalists' personal belongings were confiscated and no receipts were issued.¹¹⁴ Of those confiscated electronic media equipment, some were later returned, but without any memory units or memory cards.¹¹⁵

Apart from photographic equipment, many activists also reported the confiscation of money, credit cards, mobile phones, computers, electronic goods¹¹⁶ and clothes.¹¹⁷ Some electronic equipment were returned totally damaged.¹¹⁸

The missing items included approximately 600 mobile phones, 400 video cameras, 350 laptops and large amounts of cash raised for charities in Gaza. There are no reports of any detainees being allowed to keep money or of any money being subsequently returned. Some activists have reported that their stolen credit cards have since been used.¹¹⁹ There were recent articles in the media reporting that were selling property such as laptops confiscated from the passengers.

¹¹³ See *supra* note 68

¹¹⁴ See *supra* note 110.

¹¹⁵ See *supra* note 32.

¹¹⁶ Robert Booth, Gaza convoy attack: British activists arrive in Turkey, [guardian.co.uk](http://www.guardian.co.uk), 3 June 2010 <<http://www.guardian.co.uk/world/2010/jun/03/gaza-flotilla-attack-british-activists-return-turkey>> (5 June 2010)

¹¹⁷ Kate Connolly, Henning Mankell on Gaza convoy attack: 'I think they went out to murder'. [guardian.co.uk](http://www.guardian.co.uk), 3 June 2010 <<http://www.guardian.co.uk/world/2010/jun/03/gaza-flotilla-attack-henning-mankell>> (5 June 2010)

¹¹⁸ Stanley Heller, Grand Theft Convoy, [OpEdNews.com](http://www.opednews.com), 17 June 2010

<<http://www.opednews.com/articles/Grand-Theft-Flotilla-by-Stanley-Heller-100616-410.html>> (17 June 2010)

¹¹⁹ Encryptereality, \$3.5mn stolen from Gaza convoy survivors by Israeli pirates, [YouTube](http://www.youtube.com), 11 June 2010,

<http://www.youtube.com/watch?v=HBqorI059xI&feature=player_embedded> (1 July 2010)

II. STATEMENT OF THE LAW

A. The right to freedom of navigation on the high seas

Under the rule of *pacta sunt servanda*, a State is bound by a treaty to which it has consented and must perform its obligations in good faith.¹²⁰ Israel, while not a party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), has signed and ratified the 1958 Geneva Convention on the High Seas. UNCLOS, by its express terms, replaces the 1958 Convention between State Parties.¹²¹ As a result, Israel remains bound by the 1958 Convention.

Freedom of the high seas is a long-standing rule of customary international law. As widely acknowledged, the 1958 Convention is declaratory of customary international law as are the provisions of UNCLOS on freedoms of the high seas, which are almost identical to the parallel provisions in the 1958 Convention. The burden is thus on Israel to demonstrate the development of any new customary law either expanding on or inconsistent with the purpose and objective of the 1958 Convention and UNCLOS in so far as the latter reflects customary international law.

Freedom of the high seas as one of the pillars of international law has been zealously guarded over the centuries.¹²² It is a right that belongs to all States.¹²³ One of the components of freedom of the high seas is the exclusive jurisdiction of the flag State, which was expounded in the well-known *S.S. Lotus Case*.¹²⁴

Article 2 of the 1958 Convention establishes the universal character of freedom of the high seas and provides a non-exhaustive list, including freedom of navigation, that was reaffirmed

¹²⁰ Vienna Convention on the Law of Treaties, 1969. Article 26

¹²¹ Article 311(1) provides that “This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958. “

¹²² RR. Churchill and A.V. Lowe, The Law of the Sea (Third Edition), (Manchester University Press 1999), p.204.

¹²³ Article 89

¹²⁴ *S.S. Lotus Case* (Fr. v. Turk.), 1927 P.C.I.J.

and expanded under UNCLOS.¹²⁵ The exercise of these freedoms is subject to the conditions provided in the Conventions and by other rules of international law. Furthermore, both Conventions require that “These freedoms, and others which are recognized by the general principle of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of freedom of the high seas.”¹²⁶ Furthermore, the high seas are to be “reserved for peaceful purposes.”¹²⁷

B. Exceptions to freedom of navigation and the exclusivity of flag State jurisdiction

i. Right of visit

A state does not have any authority or jurisdiction to interfere in peacetime with the passage of a foreign vessel on the high seas, except in limited cases. The “right of visit”, which permits a warship to stop and board a foreign vessel on the high seas, is a narrowly-drawn exception to the right of freedom of navigation and the flag exclusivity rule. Codifying customary international law, both the 1958 Convention and UNCLOS limit the right of visit to a set of well-defined and exhaustive circumstances. The grounds allowing a right of visit found in Article 22 of the 1958 Convention and Article 110 of UNCLOS are identical *mutis mutandis* and limit the competence of a warship to stop and board a foreign-flagged vessel on the high seas.

These grounds arise when:

- There is bilateral treaty in force;
- a ship is engaged in piracy;
- a ship is engaged in the slave trade; or
- though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

UNCLOS has added two more exceptions:¹²⁸

¹²⁵ The other enumerated freedoms are freedom of fishing, freedom to lay submarine cables and pipelines, and freedom of overflight.

¹²⁶ Article 87 (2)

¹²⁷ Article 88

¹²⁸ Examples of permissible acts of interference derived from powers conferred by treaty include the 1995 *United Nations Convention on Straddling Fish Stocks and Highly Migratory Fish Stocks* under which the Contracting parties agree to have fishing vessels under their flag subject to boarding and inspection on the high seas; and the

- a ship engages in unauthorized broadcasting subject to Article 109, and
- a ship is without nationality.

Both Conventions, reflecting customary international law, provide in identical language clear procedural limitations on how to stop and board a foreign merchant vessel on the high seas. The warship can only first “proceed to verify the ship’s right to fly the flag,” and *this can only be done by sending one boat (emphasis added)*, the language is in the singular, under the command of an officer to make an initial inspection of the ship’s flag. Only if, after this initial inspection of the documents, suspicion remains as to the flag of the ship, may the warship engage in further inspection on board the ship “which must be carried out with *all possible consideration.*” (*emphasis added*). This procedure applies in the cases of suspected slavery transport, piracy or when there are questions as to the flag of the ship. The provision is silent as to the right of the warship to seize the ship, property or persons on board. This procedural limitation is identical in both the 1958 Convention and UNCLOS. Both Conventions stipulate that, if the suspicions are unfounded, the seizing State is obliged to pay compensation for any losses or damages sustained.¹²⁹

The 1988 Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) was adopted by the International Maritime Organization (IMO) following the 1985 *Achille Lauro* terrorist attack that took place on the high seas and resulted in the death of a US citizen.

The 2005 Protocol adopted a set of well-defined procedures for boarding a ship in international waters suspected of violating its provisions. It is significant that the participating Parties at the diplomatic conference were extremely cautious to maintain the primary jurisdiction of the flag State in line with codified and customary international law. The Protocol subjects the right to board a vessel suspected of committing violation of the acts

1969 *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties*, which allows Parties to the Convention to take the necessary measures on the high seas following a maritime accident to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, which may reasonably be expected to result in major harmful consequences. However, unless there is extreme urgency the Convention requires prior notification and consultation with the flag State. Measures that exceed what is allowed under the Convention creates liability in the Party who must provide compensation for any losses and damages.

¹²⁹ Article 110 (3)

provided under the Convention to the express consent of the flag State.

It stands to reason that if international consensus existed for expanding the right to interdict foreign vessels in international waters, certainly the 2005 Protocol which deals with the prevention of international terrorism would have provided the right legal forum. The strong will of States to maintain flag State jurisdiction over a vessel on the high seas was reaffirmed by the international community under the 2005 Protocol. This provides further evidence of State practice in limiting the exceptions allowed to interfere with the right of freedom of navigation on the high seas.

Immediately following the terror attack against the United States on 11 September 2001, IMO convened and amended Chapter XI of the International Convention for the Safety of Life at Sea (SOLAS) 1974, as well as adopting the Special Measures to Enhance Security, and the new International Ship and Port Facility Security Code (ISPS Code) which went into effect 1 July 2004.¹³⁰ Its objectives include establishing an international framework involving cooperation to detect security threats and take preventative measures.¹³¹ The ISPS Code introduced for the first time measures intended to prevent the occurrence of a terror incident against a ship or a port facility. With some 80 percent of the world's trade carried by sea, the security of shipping is of the utmost concern for international trade and military security. The ISPS Code was the first international regulation designed to detect and prevent terror at sea.

The “clear grounds” standard is found in the provisions of UNCLOS Article 220 for enforcement by the coastal State of any violations of its rules and regulations adopted under the Convention itself or in accordance with applicable international rules and standards for the prevention, reduction and control of vessel-sourced pollution. According to the same Article, if there are clear grounds for the coastal State to believe that the vessel has violated such rules in either its territorial waters or exclusive economic zone (and has refused to provide information when requested under subsection 3), the State can detain, inspect and institute proceedings against the ship.

¹³⁰ The IMO Doc. MSC 78/7 Annex (Proposed Draft Amendment to SOLAS XI-2 Measures to Enhance Maritime Security) < <http://www.iaphworldports.org/new/MS78-7Add.1.pdf> >

¹³¹ Article 1.2.1, ISPS Code, Part A.

Both Turkey and Israel are Parties to SOLAS and have accepted the ISPS Code. This means that when the ships set sail from Turkish ports, in addition to undergoing Turkish customs inspection, all cargo was shipped from ports that have been recognized internationally, under the ISPS Code, as secure.¹³²

Israel should, therefore have accepted the assurances resulting from both the possession of the ISPS Codes by the ports of departure as well as the regular detailed checks conducted by the Turkish authorities on the ships, that the cargo contained no arms, munitions or other material that would constitute a threat to its security.

ii. Right of seizure and arrest on the high seas

Customary international law does not recognize a general right of visit and seizure of vessels on the high seas.¹³³ There are limited cases when a warship may visit or seize a foreign ship in international waters. The 1958 Convention and UNCLOS restrict, in identical language, the right of a warship to seize a foreign ship, its property and arrest the persons on board only in the case of pirate ships or aircraft.¹³⁴ Neither Convention recognizes a right of seizure or arrest on any other grounds.

The restricted scope of the existing lawful grounds for seizing a vessel on the high seas was demonstrated by the conduct of the United States during the *So So* incident on 10 December 2004. Following a request from the United States, the Spanish naval forces intercepted and boarded a ship on the high seas some 600 miles from the coast of Yemen. The ship was not flying a flag and its name had been painted over. However, it was discovered that the ship was registered to Cambodia. During the search of the vessel, fifteen Scud missiles, not listed in the ship's manifest, were discovered beneath a cargo of cement. Upon verifying that Yemen had purchased the missiles, the United States administration decided to release the vessel and its cargo. The US found that, as the lack of a flag gave legal grounds only for the initial boarding of the vessel, there was no 'clear authority' for seizing the missiles under international law. No provision under UNCLOS or other sources of international law prohibits the transport of

¹³²For the Statement of Compliance Documents (ISPS) of the Ports of Istanbul, Antalya, İskenderun and Zeytinburnu, see Annex 3 (Section 5)

¹³³ Ian Brownlie, Principles of Public International Law 5th Edition, (Oxford University Press, 1999)

¹³⁴ Article 19 of the 1958 High Seas Convention and Article 105 of UNCLOS

missiles.¹³⁵

iii. Hot pursuit

One other exception that permits a State to interfere with a foreign ship on the high seas is in the case of hot pursuit. The provisions for hot pursuit, identical in both the 1958 Convention¹³⁶ and UNCLOS,¹³⁷ stipulate the following:

“The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted.”

C. The concept of self-defence in international law

The right of self-defence is the only exception to the prohibition against the use of force by States under the Charter of the United Nations and customary international law. Article 51 of the UN Charter expressly limits the right of States to exercise self-defence against an armed attack. The extension of the right of self-defence to include anticipatory self-defence to justify the interdiction of a foreign ship on the high seas has extremely limited support in international law. Even accepting *in arguendum* the right of anticipatory self-defence, the widely accepted criteria that must be fulfilled are those that were famously stated by Daniel Webster in the *Caroline* incident where “necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation” and furthermore, that “the act justified by the necessity of self-defence, must be limited by that

¹³⁵ Michael A. Becker, The Shifting Public Order of the Oceans: Freedom of Navigation and the Interdiction of Ships at Sea, Harvard International Law Journal 131 (2005), p. 153

¹³⁶ Article 23

¹³⁷ Article 111 is adopted *mutis mutandis* from Article 23 of the 1958 Convention, with the addition of the Exclusive Economic Zone.

necessity, and kept clearly within it.”¹³⁸ In short, acts of self-defense must be based on necessity and be proportionate to the threat.

A review of State practice reveals the general rejection by the international community and the judiciary of anticipatory self-defence as an exception to the right of freedom of the high seas and the rule of flag State exclusivity. The proposal to allow a warship the right to visit a vessel on the high seas, based on suspicions that the vessel is hostile to or poses an imminent threat to the security of the State of the warship, was rejected by the UN International Law Commission during the negotiations on the Draft Articles of the 1958 Convention.

There has been a systematic rejection of the invocation of anticipatory self-defence by a State to interdict ships on the high seas.

In the case of *Nicaragua v United States of America (Merits)*, the International Court of Justice rejected the claims of the United States to exercise the right of self-defence under Article 51 of the Charter and customary international law.¹³⁹ The Court clearly stated that Article 51 could only be invoked against an armed attack and that “whether the response to an attack is lawful depends on the observance of the criteria of the necessity and the proportionality of the measures taken in self-defence.” In defining the substance of what would constitute an “armed attack” the court rejected the argument that an armed attack would include assistance to rebels in the form of the provision of weapons or logistical or other support. According to the Court, an “armed attack” that would justify the exercise of self-defence “is to be understood as meaning not merely action by regular armed forces across an international border, but also the sending by a State of armed bands on to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack had it been carried out by regular armed forces.”¹⁴⁰ The Court noted in *dictum* that the “normal purpose of an invocation of self-defence is to justify conduct which

¹³⁸Letter from Daniel Webster, Secretary of State, to Lord Ashburton, British Plenipotentiary, 6 August 1842, in John B. Moore, *Digest of International Law* 412 (1906)

¹³⁹ Case Concerning Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua V. United States of America*, (Merits), *ICJ Reports*, (1986)

¹⁴⁰ *Ibid.* Para. 195, p. 93 The Court also noted that Article 3, paragraph (g), of the Definition of Aggression annexed to General Assembly resolution 3314 (XXIX), may be taken to reflect customary international law.

would otherwise be wrongful.”¹⁴¹

The general international opposition to expanding the limited right to visit and board a foreign vessel on the high seas on grounds of anticipatory self-defence is borne out by several other examples. One is the decision of the United States to adopt the Proliferation Security Initiative (PSI) based on flag State consent instead of relying on a questionable right of anticipatory self-defence as grounds for boarding ships on the high seas suspected of transporting weapons of mass destruction (WMD) to hostile States or terrorists. As part of the PSI, the United States concluded bilateral treaties with flag States granting the US the right to board and inspect their vessels while on the high seas. A considerable volume of literature was penned following the adoption of the PSI by the United States. Collectively, the common view was that the US recognized the strength of freedom of the high seas and sought to conclude bilateral agreements in order to obtain the consent of flag States. These agreements could be considered as falling within the provision of “Except where acts of interference derive from powers conferred by treaty” found in both the 1958 Convention and UNCLOS, constituting customary international law.¹⁴²

D. The naval blockade of the Gaza Strip by Israel was unlawful

i. Israeli blockade of the Gaza Strip did not comply with notification requirements

The law governing naval blockades is based on customary international law, which has been reflected in the San Remo Manual. On International Law Applicable to Armed Conflict at Sea (San Remo Manual).¹⁴³ One of the requirements for a naval blockade to be lawful under customary international law is that explicit notice be given of the nature and limits of each blockade.¹⁴⁴ Article 94 of the Rules in the SAN REMO MANUAL requires that blockades be formally declared, providing “the commencement, duration, location, *and extent* of the

¹⁴¹ *Ibid.* p 45

¹⁴² Article 110

¹⁴³ SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA, 12 JUNE 1994 (Institute of International Humanitarian Law, 1995), <<http://www.icrc.org/IHL.nsf/webPrint/560-FULL?OpenDocument><

¹⁴⁴ Notice has always been an essential requirement of blockade law, and is still required. See Michael G. Fraunces, Note, *The International Law of Blockade: New Guiding Principles in Contemporary State Practice*, 101 YALE LAW JOURNAL 893-908 (1992). at 913-17

blockade” (emphasis added).¹⁴⁵ Between 2005¹⁴⁶ and 2008,¹⁴⁷ Israel notified mariners of its maritime policy, which restricted the movements of vessels surrounding the Gaza coast. The current blockade against Gaza was declared on Jan. 3, 2009.¹⁴⁸

But these notices have not met the requirements governing naval blockades, because Israel never made it clear the “extent” of the blockade, namely, which products were actually being banned.¹⁴⁹ The 2009 U.N. Fact Finding Mission on the Gaza Conflict (led by Justice Richard Goldstone) stated that “[n]either the list of items allowed into the Gaza Strip nor the criteria for their selection are made known to the public.”¹⁵⁰ According to a May 3, 2010 report on BBC:

Israel has never published a list of banned items, saying it approves requests on a case-by-case basis. Items allowed have changed over time, which has left humanitarian organisations and commercial importers constantly attempting to guess what will be approved.¹⁵¹

In fact, Israel itself decided to adjust the terms of the blockade after the attack, and on July 6, 2010 it began to allow many more items into Gaza.¹⁵²

¹⁴⁵ San Remo Manual, *supra* note 144, art. 94.

¹⁴⁶ Marian Houk, Free Gaza" Ships Set Off from Cyprus on Expedition to "Break Siege" of Gaza Strip, American Chronicle, 22 August 2008 <<http://www.americanchronicle.com/articles/printFriendly/72046>> (20 August 2010)

¹⁴⁷ Admiralty Notices to Mariners, 20 October 2008, <http://nms.ukho.gov.uk/2008/Week40_5327-5486/40snii08.pdf>; Notice to Mariners (2008) <nms.ukho.gov.uk/2008/Week40_5327-5486/Wk40-magnote.pdf>.

¹⁴⁸ Cargo Boat Attempting Illegal Entry to Gaza Intercepted, Israel Ministry of Foreign Affairs, 5 February 2009, <http://www.mfa.gov.il/MFA/Government/Communiques/2009/Cargo_boat_illegal_entry_Gaza_waters_intercepted_5-Feb-2009.htm?DisplayMode=print> (20 August 2010); Carol Migdalovitz, Israel's Blockade of Gaza, the Mavi Marmara Incident, and Its Aftermath, Congressional Research Service, 23 June 2010 <<http://www.fas.org/sgp/crs/mideast/R41275.pdf>> (20 August 2010)

¹⁴⁹ According to reports of observers, Israel allowed only 81 items into Gaza, and prohibited dual-use items such as steel pipes, concrete, cement, and fertilizer.

¹⁵⁰ Human Rights Council, *Human Rights in Palestine and Other Occupied Arab Territories*, at 97, ¶316, A/HRC/12/48, Sept. 15, 2009.

¹⁵¹ Details of Gaza Blockade Revealed (citing Israeli Supreme Court documents), BBC, 3 May 2010 <http://news.bbc.co.uk/2/hi/middle_east/8654337.stm> (20 August 2010)

¹⁵² State of Israel Ministry of Defense Coordinator of Government Activities in the Territories, *The Civilian Policy Towards the Gaza Strip – The Implementation of the Cabinet Decision (June 2010)* (listing items that would continue to be prohibited from importation into Gaza); *Guide: Eased Gaza Blockade*, BBC NEWS, 19 July 2010, <<http://www.bbc.co.uk/news/world-middle+east=10520844>>

Reports from early in the blockade's enforcement mention that goods entering into Gaza were subject to ministerial review. No comprehensive list of banned items had been published as of 31 May, 2010.¹⁵³ Even under the recently relaxed blockade policy,¹⁵⁴ Israel has only published a list of broad categories of banned items;¹⁵⁵ in comparison, other control orders have published extensive lists of items that relate to specifically prohibited practices (i.e. the manufacture of weapons).¹⁵⁶

ii. Israeli blockade of the Gaza Strip was not reasonable, proportional or necessary

Dr. Stephen C. Neff, of the University of Edinburgh School of Law, has explained that “[a]ccording to the principle of necessity, blockades would only be permissible under certain restricted circumstances (*i.e.*, when necessity was actually present) - it would not be an automatic right . . .”¹⁵⁷ The principle of proportionality, he has explained, “would imply that only certain types of trade could be stopped (*i.e.*, trade in goods that furthered the aggression). . . . [and] would furthermore imply that the self-defending state would only be entitled to divert neutral ships away from the blockaded area, not to capture and confiscate them.”¹⁵⁸ The principles of proportionality and necessity are also central to the rules found in the San Remo Manual on International Law Applicable to Armed Conflicts at Sea¹⁵⁹ discussed below.

The principle of reasonableness, which could replace “traditional principles of establishment, effectiveness, and respect for neutral rights,” might consider factors such as size of blockade, proportionality, probability of severe damage, rights of neutrals, method of enforcement, and accommodation.¹⁶⁰ Under the principle of reasonableness, states can tailor their blockade

¹⁵³ See List of commercial goods allowed for import into Gaza, April 2010, [BBC NEWS](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/05_05_10_gazaimports.pdf), <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/05_05_10_gazaimports.pdf>.

¹⁵⁴ On July 6, 2010, Israel adjusted the terms of the blockade and began to allow many more items into Gaza.

¹⁵⁵ CIVILIAN POLICY TOWARDS THE GAZA STRIP, Ministry of Defense, June 2010, *at* <<http://www.pmo.gov.il/NR/rdonlyres/EBDB36CF-2BA0-4719-B532-F723C7CF2456/0/gazaENG.pdf>>

¹⁵⁶ The list of items banned from Iraq during the Second Gulf War, for instance, was extensive and specific compared to the list published by Israel's Ministry of Defense. S. C. Res, S/2002/515 (May 31, 2002) (describing specific chemical compounds, including diagram of molecular structure, prohibited from entering Iraq). See also S.C. Res, 1454, U.N. Doc. S/RES/1454 (Dec. 30, 2002) (describing how list of banned goods is subject to review for humanitarian purposes).

¹⁵⁷ Stephen C. Neff, Towards a Law of Unarmed Conflict: A Proposal for a New International Law of Hostility, 28 Cornell International Law Journal 1, 24 (1995) p. 19

¹⁵⁸ *Ibid.*

¹⁵⁹ *Supra* note 144. See generally Matthew L. Tucker, *Mitigating Collateral Damage to the Natural Environment in Naval Warfare: An Examination of the Israeli Naval Blockade of 2006*, 57 NAVAL L. REV. 161, 176 (2009).

¹⁶⁰ See *supra* note 145.

policy to meet their specific needs because “the law retains flexibility to guide state practice in the varied environment of modern conflict.”¹⁶¹ The present law on naval blockades is thus based on the principles of proportionality, necessity, and reasonableness.

Israel’s blockade against Gaza as it existed on May 31, 2010 violated the requirements of proportionality and reasonableness. The principle of proportionality and the duty to protect civilians requires that Israel ban only items that can be utilized to attack Israeli communities,¹⁶² and the principle of reasonableness requires Israel to implement a policy that maintains an “acceptable balance between belligerent and neutral interests.”¹⁶³ As of May 31, 2010, Israel’s blockade policy banned consumer items that had no relationship to the ability of Hamas to attack Israel, and Israel’s blockade policy had not struck a reasonable balance between the interests of self-defense and the humanitarian needs of the civilian population of Gaza.

For the past three years, goods flowing into Gaza sharply declined,¹⁶⁴ and until the recent relaxation on July 6, 2010,¹⁶⁵ ordinary items were banned,¹⁶⁶ apparently for punitive purposes.¹⁶⁷ For example, canned meat and tuna have been allowed, but not canned fruit; mineral water has been allowed, but not fruit juice; sesame paste (tahini) has been permitted but not jam; tea and coffee were permitted but not chocolate; cinnamon was permitted, but not coriander.¹⁶⁸ Commentators have criticized Israel’s review process, stating that the problem

¹⁶¹ *Id.* at 913.

¹⁶² Neff, *supra* note 158, at 19.

¹⁶³ Fraunces, *supra* note 145, at 913.

¹⁶⁴ The 1.5 million people of Gaza “have relied on less than a quarter of the volume of imported supplies they received in December 2005.” *Guide: Gaza under Blockade*, BBC, July 6, 2010, <http://news.bbc.co.uk/2/hi/middle_east/7545636.stm>

¹⁶⁵ As of July 6, 2010, Israel’s blockade has been relaxed. *See supra* note 4. “Israeli authorities will allow more civilian goods to enter, including all food items, toys, stationery, kitchen utensils, mattresses and towels. Construction materials for civilian projects will be allowed in under international supervision.” *Guide: Gaza under Blockade*, BBC, July 6, 2010, <http://news.bbc.co.uk/2/hi/middle_east/7545636.stm>; Israel eases blockade of cargo to Hamas-ruled Gaza, Reuters News Service, June 21, 2007, http://uk.reuters.com/article/idUKL21817222._CH_.242020070621.

¹⁶⁶ “Among the large range of goods currently forbidden [as of May 3, 2010] are jam, chocolate, wood for furniture, fruit juice, textiles, and plastic toys.” *Details of Gaza Blockade Revealed*, BBC, May 3, 2010, <http://news.bbc.co.uk/2/hi/middle_east/8654337.stm>

¹⁶⁷ United Nations bodies have said that the blockade against Gaza is a form of collective punishment.

¹⁶⁸ This partial list describes banned goods as of May 2010. *Details of Gaza Blockade Revealed*, BBC, 3 May 2010 <http://news.bbc.co.uk/2/hi/middle_east/8654337.stm> (20 August 2010). The partial list was published

“is not just the shortages themselves, but the unpredictability and changing nature of what is permitted for import.”

Israel has acknowledged that one purpose of its naval blockade has been to put pressure on and to isolate Hamas, which controls the existing government in Gaza.¹⁶⁹ The Israeli Supreme Court has confirmed this as one of reasons for the blockade: “The limitation on the transfer of goods is a central pillar in the means at the disposal of the State of Israel in the armed conflict between it and Hamas.”

This “economic warfare” is described by many observers as a form of collective punishment.¹⁷⁰ Food and fuel shortages have been common in Gaza, requiring people to ration these resources.¹⁷¹ Israel has banned cement from Gaza because it is viewed a dual-use item; although necessary to rebuild buildings destroyed during Israel’s incursion into Gaza in Operation Cast Lead (Dec. 2008- Jan. 2009),¹⁷² cement could also help “build bunkers and launch rockets.”¹⁷³

The length of time that Israel has maintained its naval blockade, and Israel’s persistent attempts to intercept ships delivering humanitarian aid, also supports the conclusion that the blockade violates international law. Critics have condemned the blockade, stating that it “has contributed to a humanitarian crisis, deepened poverty and ruined the economy [of Gaza],”¹⁷⁴ and the United Nations “says the blockade has caused the economy ‘irreversible damage.’”¹⁷⁵ The U.N. Security Council’s Presidential Statement of June 1, 2010 reiterated the Council’s

again in July 2010. Guide: Gaza under Blockade, [BBC](http://news.bbc.co.uk/2/hi/middle_east/7545636.stm), 6 July 6 2010
<http://news.bbc.co.uk/2/hi/middle_east/7545636.stm> (20 August 2010)

¹⁶⁹ *Id.*

¹⁷⁰ “Israel’s continuing blockade of the Gaza Strip . . . is depriving its population of food, fuel, and basic services, and constitutes a form of collective punishment.” Sarah Leah Whitson, *Letter to Olmert: Stop the Blockade of Gaza*, HUMAN RIGHTS WATCH, Nov. 20, 2008, <<http://www.hrw.org/en/news/2008/11/20/letter-olmert-stop-blockade-gaza>>

¹⁷¹ See *Supra* note 168.

¹⁷² Cement is also necessary to repair the water and sewage system destroyed during Operation Cast Lead. Access to adequately treated water is below UN standards, and “Gaza’s sewage treatment body estimates that at least 50m litres of raw or poorly-treated sewage is released into the sea daily.” *Guide: Gaza under Blockade*, BBC NEWS, July 6, 2010, http://news.bbc.co.uk/2/hi/middle_east/7545636.stm.

¹⁷³ Sheera Frenkel, *Pressure Mounts On Israel To Ease Gaza Blockade*, NPR, June 16, 2010, <<http://www.npr.org/templates/story/story.php?storyId=127886050>>.

¹⁷⁴ See *supra* note 174

¹⁷⁵ See *Supra* note 168

“grave concern at the humanitarian situation in Gaza and stresse[d] 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.”¹⁷⁶ Economic warfare, as Israel has been utilizing against Gaza is not only illegal because it is not proportional or reasonable, but in addition “[t]here is a very strong argument that in most cases punitive measures are ineffective and may even harm chances for a peaceful settlement.”¹⁷⁷

iii. Israeli enforcement of the naval blockade was erratic and partial

Israel’s enforcement of the blockade has also been erratic, making it difficult for vessels to understand what was expected of them. In 2008, prior to the Jan. 3, 2009 formal declaration of the blockade, at least six voyages from Cyprus to Gaza occurred without naval interception.¹⁷⁸ After January 2009, enforcement seems to have increased, with one report stating that the Israeli Navy deliberately rammed the *Dignity*, as it was attempting to break the blockade in April 2009.¹⁷⁹ At least two other attempts to break the blockade occurred in 2009: (1) on Feb. 5, 2009, the *Tali* attempted to enter the blockaded zone,¹⁸⁰ and (2) on June 30, 2009, the *Spirit of Humanity* tried to break the Gaza blockade.¹⁸¹

Israel, arguably has had a form of a naval blockade of Gaza since the 1995 Interim Agreement on the West Bank and the Gaza Strip when the currently enforced 20 nautical-mile zone was established. Under the accord Israel maintained exclusive control over the air space and marine area of Gaza. On example of the “blockade” aspect of this 20-nm zone established in

¹⁷⁶ *U.N. Security Council Statement on Gaza Flotilla*, [REUTERS](http://in.reuters.com/article/idINIndia-48956620100601), 1 June 2010, <<http://in.reuters.com/article/idINIndia-48956620100601>>

¹⁷⁷ Encyclopedia of the Nations, *The Security Council – Maintaining International Peace and Security*, <<http://www.nationsencyclopedia.com/United-Nations/The-Security-Council-MAINTAINING-INTERNATIONAL-PEACE-AND-SECURITY.html>>

¹⁷⁸ “The Free Gaza Movement has successfully challenged the Israeli blockade on six previous occasions this year, landing missions in Gaza in August, October and November. The Free Gaza ships were the first to dock at Gaza’s port in over 41 years.” Nathan Morley, *Gloomy Mood as Mercy Mission Leaves Cyprus for Gaza*, *CYPRUS MAIL*, Dec.30, 2008, available at 2008 WLNR 24903958.

¹⁷⁹ The *Dignity*, a Free Gaza Movement boat, was reportedly rammed by the Israeli navy 90 miles off the coast of Gaza. Pat McDonnell, *Free Gaza*, *MIDDLE E.*, May 1, 2009, at 78, available at 2009 WLNR 9919095.

¹⁸⁰ Israel Ministry of Foreign Affairs, *Cargo Boat Attempting Illegal Entry to Gaza Intercepted*, Feb. 5, 2009, <http://www.mfa.gov.il/MFA/Government/Communiques/2009/Cargo_boat_illegal_entry_Gaza_waters_intercepted_5-Feb-2009.htm?DisplayMode=print>

¹⁸¹ Yaakov Katz, *Navy Stops Ship on Way to Gaza*, *JERUSALEM POST*, July 1, 2009, at 3, available at 2009 WLNR 12809496.

1995 is the 2002 *Karin-A* incident when Israel interdicted in the Red Sea in international waters a merchant vessel suspected of transporting arms to Gaza.

Conflict between Gaza and Israel escalated following Israeli disengagement from the Occupied Territories of Gaza in 2005 and the election of Hamas in 2006. In response Israel declared Gaza, including the 20 nm maritime zone, a “hostile zone” in 2007, a “combat zone” in 2008 and finally, as part of its Cast Lead operations, a “military enclosure” in 2009. The “humanitarian flotilla” phenomena emerged in 2008 as a direct consequence of Israeli’s increasingly severe economic blockade on Gaza. These ships carrying humanitarian aid created a “public relations” problem for Israel. As Defense Minister Ehud Barak explained to the Turkel Commission, during the latter half of 2008 various convoy of ships began sailing in the direction of Gaza presumably to breach the siege imposed on the Gaza strip. On 11 August 2008 a notice to mariners was issued declaring the defined area as a “combat zone” so that Israeli navy could act against vessels. However, Israel did not fully enforce the blockade and allowed vessels to pass. Defense Minister Barak admits that the navy lawyers warned that the naval blockade was not on solid grounds as ships had been allowed to pass through the blockade.¹⁸² To remedy this Israeli government imposed another “maritime enclosure”, in other words, a blockade on 3 January 2009.

The Israeli government claims that the naval blockade is for security reasons only, primarily to prevent the delivery of armaments and supplies that could be used as such to Hamas. According to Israel, the land blockade, on the other hand, has three purposes:

- 1) limitation of the flow of goods to Gaza,
- 2) security,
- 3) restriction on the movement of people.

In the actual implementation, one cannot distinguish the two blockades. All shipments must be unloaded in Ashdod and can only then be transported to Gaza by land. Consequently, the naval blockade is an integral part of the land blockade and must be examined in tandem. Israel would have to demonstrate that all shipments brought to the port of Ashdod are subject to a

¹⁸² Public Commission for Examining the Naval Incident of 31 May 2010 (The Turkel Commission), Session Three, 10.08.2010

different procedure based purely on security. One important indicia would be to show that cargo brought by sea were given expedited and priority delivery to Gaza. If ships cannot come into Gaza, it is to be assumed that they cannot leave either. This would entail a restriction on the export of goods and movement of people as well. Thus the purpose of the naval blockade is economic and a restriction the freedom of movement of civilians in the Gaza area.

And by Israel's own admission, Israel has not systematically and uniformly applied the blockade, including in 2008. Defense Minister Barak admits to the Turkel Commission that the naval blockade in force until the 2009 revised military enclosure was legally defective.¹⁸³ Israel cannot claim that the 2009 blockade was a new and different blockade simply with a new decision and new notice to mariners. It has in effect and fact been the same defective blockade, at least since 2007. The Gaza naval blockade must be examined and assessed in its entirety, as a single unbroken continuum and not in fragmentation as Israel is attempting to do.

One cause of the erratic enforcement of the blockades lies in Israel's concerns with managing its public relations internationally. Ehud Barak explained to the Turkel Commission that in the discussions in 2008 on how to handle the aid ships seeking the enter Gaza, the question of public relations and media coverage was important. Chief of the Israeli General Staff, Gabi Ashkenazy, explains to the Turkel Commission that when the "protest convoy phenomenon" emerged in 2008, a directive was adopted to exclude vessels from Gaza "as long as it would be achieved with the minimum possible international and public relations damage that could be caused by it."¹⁸⁴ Likewise, in the deliberations over how to handle the aid convoy in May 2010, the Government weighed the impact on public relations and media. This is the reason why they chose to interdict the convoy at night, some ten hours away from the coast of Israel and also engaged in electronic warfare. The concerns of Israel in stopping the convoy very much included political protection against negative media coverage. As testified to by Ashkenazy, before the attack on the Mavi Marmara, the Israeli forces employed electronic warfare blockages to "prevent the entry of ships at a low-as-possible media profile."¹⁸⁵

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

Political and public relations concerns are not a legitimate grounds for enforcement of a blockade in international waters.

iv. Israeli blockade of the Gaza Strip is collective punishment

Israel had not published a list of which items would be permitted and which would be prohibited, but monitoring organizations reported that Israel permitted only 81 items to enter Gaza, compared to the 6,000 items deemed appropriate for normal human existence.¹⁸⁶

Numerous authoritative commentators have stated that Israel's blockade as of May 31, 2010 was "illegal" and had to be lifted. U.N. High Commissioner for Human Rights Navi Pillay said repeatedly that the blockade was "illegal," stating that "[i]nternational humanitarian law prohibits starvation of civilians as a method of warfare," and has described the blockade it as "collective punishment on civilians."¹⁸⁷ Her predecessor as High Commissioner, Louise Arbour, also condemned the blockade of Gaza, stating that it violated "international human

¹⁸⁶ The European Parliament's Resolution of June 17, 2010 on the Israeli Military Operation Against the Humanitarian Flotilla and the Gaza Blockade, ¶E, P7_TA-PROV(2010)0235, says that only 81 products are allowed into Gaza, although "the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) estimates that 6,000 products are required to meet basic humanitarian needs." *See List of Commercial Goods Allowed for Import Into Gaza, April 2010*, BBC NEWS, May 5, 2010, <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/05_05_10gazaimports.pdf>.

Israel greatly expanded the items permitted into Gaza on July 6, 2010. "Israeli authorities will allow more civilian goods to enter, including all food items, toys, stationery, kitchen utensils, mattresses and towels. Construction materials for civilian projects will be allowed in under international supervision." *Guide: Gaza under Blockade*, BBC NEWS, July 6, 2010, <http://news.bbc.co.uk/2/hi/middle_east/7545636.stm>; Israel eases blockade of cargo to Hamas-ruled Gaza, *Reuters*, 21 June 2007, http://uk.reuters.com/article/idUKL21817222._CH_.242020070621. See Israel's List of Banned Goods into Gaza, *MA'AN NEWS AGENCY*, 31 July 2010, <<http://www.maannews.net/eng/Print.aspx?ID=297438>>; Gisha – Legal Center for Freedom of Movement, Partial List of Items Prohibited/Permitted into the Gaza Strip – June 2010, *GISHA WEBSITE*, <www.gisha.org>.

¹⁸⁷ Gaza Blockade Illegal, Must Be Lifted – UN's Pillay, *Reuters*, 5 June 2010, <<http://www.alertnet.org/thenews/newsdesk/LDE65407X.htm>>. Ms. Pillay (a South African who previously served as a judge on the High Court of South Africa and on the International Criminal Court) had made similar statements frequently in previous years. *See, e.g., UN Human Rights Chief Calls for End to Israeli Blockade of Gaza Strip*, UN News Centre, Nov. 18, 2008, <<http://www.un.org/apps/news/story.asp?NewsID=28983&Cr=palest>>... (stating that the blockade was "in direct contravention of international human rights and humanitarian law" and that "[i]t must end now"); U.N. Human Rights Chief: Israel's Blockade of Gaza Strip Is Illegal, *foxnews.com*, 14 August 2009, <http://www.foxnews.com/printer_friendly_story/0,3566,539363,00.html> (describing a 34-page report in which Navi Pillay "said the Gaza blockade amounts to collective punishment of civilians, which is prohibited under the Geneva Conventions on the conduct of warfare and occupation). Agreeing that the blockade is "collective punishment" is the U.N Office for the Coordination of Humanitarian Aid. Statement of John Holmes, USG for Humanitarian affairs and Relief Coordinator on the 'Free Gaza' Flotilla Crisis, 2 June 2010, <<http://www.ochaopt.org>>.

rights and humanitarian law obligations and in particular the prohibition of collective punishment.”¹⁸⁸ The U.N. Human Rights Council has also repeatedly called upon Israel to reduce the harsh restrictions caused by its blockade.¹⁸⁹ The Goldstone Report characterized the blockade as a form of collective punishment.¹⁹⁰

v. Israeli blockade of the Gaza Strip is unlawful because Israel remains the occupying power in Gaza

Israel continues to occupy the Gaza Strip and as a result, any imposition of a naval blockade of the territory of the Gaza Strip is a legal nullity: a State cannot, by definition, blockade the borders of territory it occupies. Where a State occupies a given territory, that State exercises power the territory including its borders, imports, exports, airspace and territorial sea. The argument for continued occupation is that “Israel has not lost or relinquished its diverse core ingredients of effective control”¹⁹¹ including continued control over the land borders and airspace of the Gaza Strip.

¹⁸⁸ Human Rights Council, Human Rights Situation in Palestine and Other Occupied Arab Territories, 14 March 2008, UNGA A/HRC/7/76, at 16 ¶61. This report by High Commissioner Arbour (previously a member of the Canadian Supreme Court) referred to the condemnation of collective punishment in Article 33 of the Fourth 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (“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.” *Id.*, at 9 ¶ 28. *See also* European Parliament Resolution of June 17, 2010 (“whereas according to previous statements by UN organs, the blockade on the Gaza Strip represents collective punishment in contravention of international humanitarian law”); Human Rights Council, *Human Rights in Palestine and Other Occupied Arab Territories*, at 369-70, ¶1325, A/HRC/12/48, Sept. 15, 2009 (because “the conditions resulting from the deliberate actions of the Israeli armed forces and the declared policies of the Israeli Government...cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip[,] [t]he Mission.

Israel argues that it no longer “occupies” Gaza, because it withdrew its military forces and settlers from the territory in 2005 and because Hamas now controls the government and access to information in Gaza. Israel still, however, exercises control over Gaza’s airspace, sea space, and land borders, and over its electricity, water, sewage and telecommunications networks, and population registry.

¹⁸⁹ *See, e.g., Sixth Special Session of Human Rights Council Concludes with Call on Israel to End Siege Imposed on Occupied Gaza Strip*, UN Press Release, Jan. 24, 2008 (describing a resolution adopted 30-1 with 15 abstentions that called upon Israel to “lift immediately the siege it had imposed on the occupied Gaza Strip, restore continued supply of fuel, food and medicine and reopen the border crossings”).

¹⁹⁰ Human Rights Council, Report of the United Nations Fact Finding Mission on the Gaza Conflict (Goldstone Report), ¶ 74, U.N. Doc. A/HRC/12/48 (Sept. 15, 2009), at

<http://www2.ohchr.org/english/bodies/hrcouncil/.../UNFFMGC_Report.pdf. >

¹⁹¹ *Ajuri et al. v. IDF Commander*, 3 September 2002, HCJ 7015/02, 56(6) PD 352, 369 as cited in Yoram Dinstein, *The International Law of Belligerent Occupation* (Cambridge, CUP, 2009) 279.

There are a number of other reasons which show that Israel continue to occupy the Gaza Strip. Israel continues to control the entry of workers from Gaza to Israel, the entry and exit of goods between the Gaza Strip, the West Bank, Israel and abroad, the monetary regime, tax and customs arrangements, and post and telecommunications.

Furthermore, Israel's Supreme Court in *Jaber al Bassouini Ahmed et al v Prime Minister and Minister of Defense* confirmed that Israel is obliged to supply fuel and electricity to the Gaza Strip.¹⁹² Only an occupier bears the responsibility of supplying commodities such as fuel and electricity.

One other important evidence of Israel's continued occupation of the Gaza Strip is that "[d]espite the disengagement, Israel still believes it is free (on unilateral basis) to send back its armed forces into the area whenever such a move is deemed vital to its security." Although Israel removed its *permanent* military presence, Israeli forces retain the ability and "right" to enter the Gaza Strip at will."

In conclusion, the literature is that the withdrawal of permanent military installations from the Gaza Strip is to be seen as a change in degree but not of kind and that the "facts on the ground...leave no room for questioning the status of Israel in the Gaza Strip: it remains the Occupying Power."¹⁹³ It follows that Israel blockade is illegal and any interdiction based on such blockade is unlawful.

E. The enforcement of the naval blockade was in violation of international law

i. Vessels transporting humanitarian aid cannot be attacked under international law

According to the San Remo Manual, when a blockade is in place, the belligerent state is required to allow humanitarian aid to be delivered to those in the area being blockaded,¹⁹⁴ and that belligerents may not attack ships loaded with medical supplies and humanitarian aid.¹⁹⁵

¹⁹² HCJ 9132/07 (27 January 2008)

¹⁹³ M. Mari, "The Israeli Disengagement from the Gaza Strip: an end of the occupation?", 8 Yearbook of International Humanitarian Law (2005) p. 356, 366-367

¹⁹⁴ See *supra* note 144 p. 103-04.

¹⁹⁵ *Id.*, art. 47(ii) lists "vessels engaged in humanitarian missions, including vessels carrying supplies indispensable to the survival of the civilian population, and vessels engaged in relief actions and rescue operations" as being exempt from attack.

Given that vessels carrying humanitarian aid are exempt from attack, the passengers on board the *Mavi Marmara* were within their rights to resist the Israeli attempts to stop, seize and search the ship.

The actions taken by Israel against the *Mavi Marmara* and the killing and wounding of many of its passengers were unreasonable because the vessel carried civilians and humanitarian aid and did not pose any legitimate security threat to Israel. The Rules in the SAN REMO MANUAL¹⁹⁶ allow blockades as a military tactic in certain circumstances, but Article 47(c)(ii) does not permit attacks on civilians or on vessels carrying humanitarian goods.

ii. Israeli military used excessive force against the *Mavi Marmara*

Even if Israel were justified in establishing a limited blockade to restrict rocket-related materials from being brought into Gaza, the military force the Israeli Defense Force applied to intercept the *Mavi Marmara* exceeded what was appropriate and necessary. "[I]n the arrest of ships, international law...requires that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances."¹⁹⁷ Using force must be viewed as a "measure of last resort."¹⁹⁸

Any military operation against the neutral vessel must be limited by the "basic rules in paragraphs 38-46" of the SAN REMO MANUAL,¹⁹⁹ which require the attacking state to "take all feasible precautions in the choice of methods and means in order to avoid or minimize collateral casualties or damage."²⁰⁰ Furthermore:

(d) an attack shall not be launched if it may be expected to cause collateral casualties or damage which would be excessive in relation to the concrete and direct military advantage anticipated from the attack as a whole; an

¹⁹⁶ See *supra* note 144.

¹⁹⁷ *The M/V Saiga Case (Saint Vincent and the Grenadines v. Guinea*, International Tribunal for the Law of the Sea, July 1, 1999, ¶ 155.

¹⁹⁸ Douglas Guilfoyle, *Shipping Interdiction and the Law of the Sea* 282 (Cambridge University Press, 2009) p.271.

¹⁹⁹ See *supra* note 144, art. 68.

²⁰⁰ *Id.* art. 46.

attack shall be cancelled or suspended as soon as it becomes apparent that the collateral casualties or damage would be excessive.²⁰¹

The final phrase in this provision is particularly important, because, as explained in Section V.B above, the Israeli forces had the capacity to change its tactics when it realized as the operation unfolded that civilian casualties would be inevitable unless it adopted a different approach to deter the ship from landing at Gaza. When the Israeli forces understood the resistance it faced, and before it had managed to place any soldiers on board, it must have recognized that the risk of civilian casualties had increased significantly from the original plan. As a result, the attack should have been suspended until a better strategy could be devised.

In the *M/V Saiga Case*, a Guinean fast-moving patrol boat attacked (with live, large-caliber rounds), boarded, and seized a slow-moving²⁰² oil tanker, "fully laden and...low in the water at the time,"²⁰³ alleged to be violating Guinean customs law. Guinea argued that the "public interest" was at stake, and that a "state of necessity" justified its actions. The International Tribunal for the Law of the Sea did not agree with Guinea's interpretation of public interest and found that a state of necessity did not exist, explaining the "state of necessity" defense can be asserted only if "the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril."²⁰⁴

Israel would argue that a state of necessity had been created by the missiles fired by Hamas in Gaza against Israeli communities, but they would have a hard time establishing imminency. The *Mavi Marmara* was travelling at a speed of eight knots (about nine miles per hour).²⁰⁵ The ships were intercepted 84 miles from the Gaza coast, and 64 miles outside of the blockade area.²⁰⁶ Israel thus had at least five hours until the *Mavi Marmara* reached the blockade area and seven hours until it reached the Gaza coast. The Israeli Defense Force had time to develop a strategy to engage the vessel without loss of life.

²⁰¹ *Id.*

²⁰² The *Saiga*'s maximum speed was 10 knots. See *supra* note 201, p. 157.

²⁰³ *Id.*

²⁰⁴ *Id.* ¶133 (emphasis added).

²⁰⁵ Eiland Video Report, < <http://idfspokesperson.com/2010/07/15/videos-timeline-of-flotilla-incident-as-presented-by-eiland-team-of-experts-english-version-13-july-2010/>>

²⁰⁶ *Id.*

Even in a case where a state of necessity exists, the Tribunal in the *Saiga Case* stated that "the normal practice used to stop a ship at sea is first to give an auditory or visual signal to stop... [and] [w]here this does not succeed, a variety of actions may be taken, including the firing of shots across the bows of the ship. It is only after the appropriate actions fail that the pursuing vessel may, as a last resort, use force."²⁰⁷ The Tribunal criticized the Guineans not only for firing at the *Saiga*, but also for using firearms once on board the vessels, saying "the Guinean officers appeared to have attached little or no importance to the safety of the ship and the persons on board."²⁰⁸

iii. Israel had an obligation to use non-lethal modes of interdiction against a passenger vessel

The Israeli forces had the choice of using methods to engage the vessel without causing the loss of life. At various points during the operation, it could and should have reassessed its strategy and adopted a different approach. Its military operation must, therefore, be viewed as disproportionate and in violation of international law.

Israel argues that the military operation against the Mavi Marmara was conducted to protect the people of Israel, but attacking a ship carrying humanitarian aid and civilians on the prospect that it may contain contraband is not sufficient related to that goal, especially given the fact that nonlethal options were available. As Professor Michael Byers has explained, "[t]o say that this blockade would be jeopardized by the flotilla and that sometime down the road weapons might come into Gaza as a result, and thereby pose a threat to Israel, is to stretch the definition of self defence way further than anyone ever countenanced."²⁰⁹

Applying the principles of reasonableness, proportionality, and necessity to evaluate the actions of the Israeli Defense Force on May 31, 2010 leads to the unmistakable conclusion that the Israeli military operation violated governing principles of international law. The decision to send "a handful of commandos to seize the ship -- a decision approved by Prime Minister Netanyahu and his inner circle of ministers" not only "shows hubris, poor

²⁰⁷See *supra* note 201 p .156.

²⁰⁸ *Id.*, p. 158.

²⁰⁹ Quoted in Patrick Martin, *Was Seizing the Flotilla Legal?*, The Globe and Mail, 1 June 2010, <<http://www.theglobeandmail.com/news/world/africa-mideast/who-was-behind-the-seized-flotilla/article1587638/>>

intelligence work, and determined inability to learn from experience,”²¹⁰ but also demonstrates the unreasonableness of the Israeli interception of the Mavi Marmara. It is not reasonable to think “that arrival of Israeli soldiers would convince the crew and passengers to submit.”²¹¹ The use of naval commandos, “an elite unit, trained for daring operations,”²¹² was inappropriate in a situation requiring personnel who had “training in crowd control and self-restraint.”²¹³

Israel could have stopped the vessels from reaching Gaza without landing commandoes onto the vessel. Israel did not fire a shot across the bow of the Mavi Marmara, the normal way of making it clear that force would be used to stop a vessel.²¹⁴ Other Israel should have considered using included maneuvering a vessel in front of the Mavi Marmara to block its passage and force a change in direction. General Eiland, in his report prepared for the Israel Defense Force, has indicated that a ship was available that could have directed powerful streams of water at the activists, but acknowledged that this approach was not used.²¹⁵ Another option would have been “disabling fire aimed at the rudders or sternpost” as used in the military intercept operations during the First Gulf War.²¹⁶ The decision to use live ammunition was also improper, since other nonlethal options were clearly available.²¹⁷ Upon meeting initial resistance, the IDF forces were obliged to reassess their strategy to save lives, rather than to persist with their original plan.²¹⁸

An incident during the blockade employed during the First Gulf War provides an example of how a vessel seeking to penetrate a blockade can be stopped without bloodshed. In December 1990, the Iraqi merchant vessel *Ibn Khaldun* traveling through the Arabian Sea carrying some 250 passengers as well as medicines and food supplies on a "peace mission" was intercepted

²¹⁰ Gershom Gorenberg, *A Brief History of the Gaza Folly*, The American Prospect, June 1, 2010, http://prospect.org/cs/articles?article=a_brief_history_of_the_gaza_folly.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Professor Guilfoyle has said that the rule “that warning shots shall be used in cases other than self-defence, is universally accepted.”, see *supra* note 202

²¹⁵ *Supra* note 209

²¹⁶ Jane Gilliland Dalton, *The Influence of Law on Seapower in Desert Shield / Desert Storm*, 41 Naval Law Review 27, 33 (1993) p. 58

²¹⁷ The commandos were armed with paintball guns and percussion grenades as well as firearms.

²¹⁸ Yaakov Katz, IDF Probe: Army Didn't Have 'Plan B', Jerusalem Post, July 12, 2010

<<http://www.jpost.com/Israel/Article.aspx?id=181182>>

by two U.S. destroyers and an Australian vessel. The captain of the *Ibn Khaldun* ignored requests to stop, and so the Navy sent a boarding party by helicopter, which persuaded the captain to stop the ship, and then additional navy personnel arrived by boat. The ship's crew and its passengers made a human chain to obstruct the passage of the boarding party, who numbered about 20, and sought to grab the weapons of the Navy personnel, but the boarding party was able to control the crowd and the boat with the use of smoke and noise grenades, and by firing warning shots in the air. No injuries occurred, and this incident was the only time during the First Gulf War intercept operation that a boarding team fired weapons during a boarding. After inspectors located cargo which violated sanctions, the vessel was escorted by U.S. and Australian ships to Muscat, Oman.²¹⁹

Military officers have a duty to suspend operations when it becomes clear that the damage to civilians is not justified by the military advantage being sought, or when alternative methods of achieving the goal with less damage to civilians are available. According to the video timeline created by General Eiland, when the Israeli commandos first attempted to board the Mavi Marmara in rubber boats, they were met with resistance and were unable to board from the sides of the ship.²²⁰ According to press reports, General Eiland stated that the decision to continue to attempt to board the boat was a mistake.²²¹ Upon meeting resistance, the Israeli forces should have regrouped and formulated a new plan to stop the boats.²²² Proceeding to land on a boat whose occupants were prepared to resist is what ultimately led to unnecessary bloodshed.

This moment was not the only time when the IDF should have regrouped to formulate a new strategy. The helicopters attempted to clear the roof with live fire, but some passengers remained on the deck and resisted against the attempt to board the ship. Given the fact that the Mavi Marmara and the rest of the convoy were still quite a distance away from the blockade

²¹⁹ See *supra* note 220 at 60-61 (citing U.S. Central Command First Weekly Briefing, FED. NEWS SERVICE, Dec. 26, 1990, available at LEXIS Nexis Library, FEDNEW File (LtCol Pepin); Guy Gugliotta, *U.S. Sailors, Crew Scuffle on Iraqi Ship*, WASHINGTON POST, Dec. 27, 1990, at A20; *Severing Saddam's Lifeline*, ALL HANDS, at 13 (Special Ed., No. 892)

²²⁰ See <<http://idfspokesperson.com/2010/06/01/photos-of-the-mavi-marmaras-equipment-and-weapons-1-jun-2010/>>

²²¹ See <<http://www.jpost.com/Israel/Article.aspx?id=181182>>

²²² Article 46(d) of the San Remo Rules says explicitly that "an attack shall be cancelled or suspended as soon as it becomes apparent that the collateral casualties or damage would be excessive." See *supra* note 144.

zone (64 miles) and were travelling slowly, the IDF had time to formulate an alternate strategy.

Instead, Israeli soldiers descended into a group of resisting passengers with make-shift weapons. The use of lethal force in this situation was excessive because other options were available. According to Professor Douglas Guilfoyle, "[e]nforcement action must be both necessary and proportionate. Going aboard a civilian vessel with the intention of using lethal force against civilians would clearly be disproportionate and unlawful."²²³

iv. All military operations must be limited by the principle of proportionality

The principle of proportionality requires belligerents to use the most discriminating weapon, tactic, or strategy available to accomplish their goals, in order to keep damage to civilians to the lowest possible level, even if it increases the costs to the belligerent and the losses it experiences. The duty to pay compensation to injured or killed civilians, discussed in the Section V below, is linked to this principle, because belligerents must be held financially responsible if they have "elected to reduce its own exposure and contain its own injuries by shifting the danger and consequent injury onto others."²²⁴ French President Nicolas Sarkozy has condemned "the disproportionate use of force" by the Israeli Defense Force in their military operation against the Mavi Marmara.²²⁵

v. Naval blockades and State practice

State practice provides important standards to be followed by States in enforcing blockades especially under sensitive circumstances. For example the Cuban Missile Crisis has been viewed by most commentators as a carefully calibrated and proportionate use of force appropriate for the situation. Interdiction was accomplished by firing shots across the bow of

²²³ Douglas Guilfoyle, Gaza Fleet Raid Raises Questions over Legality of Israel's Blockade, The Times (London), June 1, 2010, <<http://business.timesonline.co.uk/tol/business/law/article7142055.ece>>.

²²⁴ W. Michael Riesman, The Lessons of Qanna, 22 *Yale Journal of International Law* 381, 382 n. 1(1997). Also supporting and elaborating on this position is Yaël Ronen, Avoid or Compensate? Liability for Incidental Injury to Civilians Inflicted During Armed Conflict, <http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=yael_ronen>; Lea Brilmayer & Geoffrey Chepiga, *Ownership or Use? Civilian Property Interests in International Humanitarian Law*, 49 *HARVARD INTERNATIONAL LAW JOURNAL* 413, 416 (2008); Bonnie Docherty, *Individual Property and Unlawful Destruction: An Expanded Compensation Model for Civilian Losses During Armed Conflict*, 49 *HARVARD INTERNATIONAL LAW JOURNAL* 105 (2009).

²²⁵ *France's Sarkozy Wants Probe into Gaza Flotilla Incident*, AGENCE FRANCE PRESSE, May 31, 2010.

the ships, searching the ships sailing towards Cuba and allowing them to pass after such searches. The Cuban Quarantine was effective in deterring the “offending conduct” and in limiting the “flow of targeted trade into and out of the target state, and controlled escalation of the crisis,” and it demonstrated that blockades can be “effective without the use of actual force.”²²⁶

Another example is provided by UN approved “Military Intercept” Operations. Operating within the framework of comprehensive economic sanctions, the Security Council authorized member states to use force,²²⁷ including through the establishment of these intercept operations.²²⁸ The resolution enacted prior to the First Gulf War called upon:

“those Member States co-operating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations and to insure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990)...”²²⁹

Resolution 661 (1990) banned the transfer of “any commodities or products, including weapons or any other military equipment, whether or not originating in their territories, but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq or Kuwait.”²³⁰ This provision was carefully crafted to conform to the requirements of the Fourth Geneva Convention.²³¹ Although the prohibition is broadly worded,²³² the naval operations they authorized were “limited and less intrusive” compared to earlier blockades.²³³ The military intercept operation

²²⁶ Richard Zeigler, *Ubi Sumus? Quo Vadimus?: Charting the Course of Maritime Interception Operations*, 43 *Naval Law Review* 1, 15 (1996).

²²⁷ Lois E. Fielding, *Maritime Interception: Centerpiece of Economic Sanctions in the New World Order*, 53 *Louisiana Law Review* 1191, 1194 (1993); at 1217-18.

²²⁸ Zeigler, *supra* note 30, at 31.

²²⁹ U.N. Security Council Resolution 665, ¶1 (1990).

²³⁰ U.N. Security Council Resolution 661, ¶3(c) (1990).

²³¹ See *supra* note 33, at 66.

²³² Fielding, *supra* note 220 at 1217-18.

²³³ *Id.* at 1218.

inspected all cargo vessels in the Gulf bound for or departing from Iraq through Iraqi ports and in the Red Sea for cargo entering Iraq through the port of Aqaba, Jordan.

During 1990 and 1991, “multinational forces intercepted over 17,800 vessels, boarding approximately 7,400 and diverting 410 of them.”²³⁴ Similar to US practice in the Cuban Quarantine, shots would be fired, where needed, across the bow before the ship would stop. The interception policy used during the Iraq naval operations was viewed as effective and uncomplicated, as “[c]ontrols were built into the process to allow the minimum possible application of force needed.”²³⁵

The multinational forces carrying out this military intercept operation “made it very clear from the outset of the interception operations that only the ‘minimum force necessary’ would be used.”²³⁶ If force were required, it began “with warning shots across the bow,” and if necessary escalated “to disabling fire aimed at the rudders or sternpost.”²³⁷ This approach, with “disabling shots” as the *final military option* (emphasis added) is designed to ensure that the ship can be intercepted “if at all possible without risk to human lives.”²³⁸

These recent examples of State practice and United Nations authorizations help to establish the current principles governing naval blockades. Notice is required, as discussed below, and all blockades are governed by the requirements of proportionality, necessity,²³⁹ and reasonableness. Dr. Stephen C. Neff, of the University of Edinburgh School of Law, has explained that “[a]ccording to the principle of necessity, blockades would only be permissible under certain restricted circumstances (*i.e.* when necessity was actually present), it would not be an automatic right”²⁴⁰ The principle of proportionality, he further stated, “would imply that only certain types of trade could be stopped (*i.e.*, trade in goods that furthered the aggression). . . . [and] would furthermore imply that the self-defending state would only be

²³⁴ J. Astley III & Michael N. Schmitt, *The Law of the Sea and Naval Operations*, 42 *Air Force Law Review* 119, 139 (1997) at 146 n. 110

²³⁵ Fielding, see *supra* note 231, at 1218.

²³⁶ Dalton, *supra* note 220, at 58.

²³⁷ *Id.*

²³⁸ Rob McLaughlin, *United Nations Mandated Naval Interdiction Operations in the Territorial Sea?*, 51 *International & Comparative Law Quarterly* 249, 261 (2002).

²³⁹ Fielding, *supra* note 231, at 1203 (stating that the principles of necessity, humanity, and proportionality are part of the law of armed conflict).

²⁴⁰ Neff, *supra* note 158, at 19.

entitled to divert neutral ships away from the blockaded area, not to capture and confiscate them.”²⁴¹ The principles of proportionality and necessity are also central to the rules found in the San Remo Manual on International Law Applicable to Armed Conflicts at Sea discussed below.²⁴²

The San Remo Manual identifies situations where blockades would be legally impermissible, specifically when “(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.”²⁴³ As “the [San Remo Manual] suggests a balancing test weighing the means and methods of warfare against potential collateral damage,” belligerents must consider “potential damage beyond that expected” and should also “continue to monitor for collateral damage and to cease that activity as soon as it is apparent that the balance has shifted.”²⁴⁴ In addition to these requirements, the San Remo Manual makes it clear that belligerents employing naval blockades must also adhere to the principle of proportionality, and exercise restraint by taking precautions in enforcement of the blockade.²⁴⁵

²⁴¹ *Id.*

²⁴² See *supra* note 144 and see *supra* note 146

The SAN REMO MANUAL permits blockades as a "method of warfare," but Article 94 requires that they be formally declared, providing “the commencement, duration, location, and extent of the blockade.” Article 98 says merchant ships "breaching a blockade may be captured" and those "which, after prior warning, clearly resist capture may be attacked." Article 102 says blockades are prohibited if their “sole purpose” is to “starv[e] the civilian population or deny[] it other objects essential for its survival” and if "the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade." Article 67(a) permits attacks on neutral-flag ships if they “are believed on reasonable grounds to be carrying contraband or breaching a blockade, and after prior warning they intentionally and clearly refuse to stop, or intentionally and clearly resist visit, search or capture.” See also Article 146 (same). San Remo Article 103 requires blockading party to permit “food and other objects essential for its survival” to pass through. San Remo Articles 39, 40, 41, 42, and 46 require protection of civilians and proportionality. Article 47(c)(ii) says that “vessels engaged in humanitarian missions, including vessels carrying supplies indispensable to the survival of the civilian population, and vessels engaged in relief actions and rescue operations” are “exempt from attack.”

²⁴³ See *supra* note 144

²⁴⁴ Tucker, see *supra* note 146, at 177.

²⁴⁵ See SAN REMO COMMENTARY, *supra* note 144, at 179 (stating that Article 102(b) “reflects the impact of the rules of proportionality and precautions in attack on blockade”).

According to the San Remo Manual, when a blockade is in place, the belligerent state is required to allow humanitarian aid to be delivered to those in the area being blockaded,²⁴⁶ and belligerents may not attack ships loaded with medical supplies and humanitarian aid.²⁴⁷ Given that vessels carrying humanitarian aid are exempt from attack, the passengers on board the Mavi Marmara were within their rights to resist the Israeli attempts to stop, divert or seize the ship.

F. The legal implications of the Israeli attack

i. The disproportionate nature of the attack

Israel's claim that it was entitled to interdict the vessels in the humanitarian aid convoy rests on its argument that it was acting in self-defence to enforce a legitimately-established blockade. The actions taken by Israel against the Mavi Marmara and the killing and wounding of many of its passengers were unreasonable because they did not pose any legitimate security threat to Israel.²⁴⁸ The Rules in the San Remo Manual²⁴⁹ allow blockades as a military tactic in certain circumstances, but Article 47(c)(ii) does not permit attacks on civilians or on vessels carrying humanitarian goods. The Israeli forces had the choice of using methods to engage the vessel without causing loss of life. At various points during the operation, it could and should have reassessed its strategy and adopted a different approach. Its military operation must, therefore, be viewed as disproportionate and in violation of international law.

ii. Excessive use of force and misconduct

Applying the principles of reasonableness, proportionality, and necessity to evaluate the actions of the Israeli forces on 31 May 2010 leads to the conclusion that the Israeli military

²⁴⁶ SAN REMO MANUAL, *supra* note 144, arts. 103-04. But these provisions also provide some support for Israel's position that the belligerent state can control the way in which the aid is disbursed and can search the shipment for contraband. Israel thus argues that it was within its rights to order the Convoy to travel to Ashdod, and to board the ships after they refused.

²⁴⁷ *Id.*, art. 47(c-ii) lists "vessels engaged in humanitarian missions, including vessels carrying supplies indispensable to the survival of the civilian population, and vessels engaged in relief actions and rescue operations" as being exempt from attack.

²⁴⁸ The Mavi Marmara was located well outside Israel's 12-mile territorial sea when Israel's military operation against it began on May 31, 2010. Israel has not yet declared an exclusive economic zone (EEZ) but is apparently contemplating doing so. Neither Turkey nor Israel has ratified the 1982 UN Law of the Sea Convention, but most parts of the Convention are thought to reflect binding customary international law.

²⁴⁹ See *supra* note 144.

operation violated governing principles of international law. The decision to send “a handful of Israeli soldiers to seize the ship -- a decision approved by Prime Minister Netanyahu and his inner circle of ministers” not only “shows hubris, poor intelligence work, and determined inability to learn from experience,” but also demonstrates the unreasonableness of the Israeli interception of the Mavi Marmara.²⁵⁰ It is not reasonable to think that “arrival of Israeli soldiers would convince the crew and passengers to submit.” The use of Shayetet 13, “an elite unit, trained for daring operations,” was inappropriate in a situation requiring personnel who had “training in crowd control and self-restraint.”

The Israeli soldiers were armed with a range of lethal force, including machine guns and grenades approached a passenger vessel with over 600 civilians under the cover of darkness clearly with the intent of a covert operation the goal of which was the creation of intimidation and fear, which they succeeded in generating.

Israel could have stopped the vessels from reaching Gaza without landing commandoes onto the vessel. Israel did not fire a shot across the bow of the Mavi Marmara, the normal way of making it clear that force would be used to stop a vessel.²⁵¹ Other methods Israel should have considered using included maneuvering a vessel in front of the Mavi Marmara to block its passage and force a change in direction. General Giora Eiland, in his report prepared for the Israeli Defence Forces, has indicated that a ship was available that could have directed powerful streams of water at the activists, but acknowledged that this approach was not used.²⁵² Another option would have been “disabling fire aimed at the rudders or sternpost” as used in the military intercept operations during the First Gulf War. It is not clear why this option was not acted upon.

The decision to use live ammunition was clearly irresponsible, since other non-lethal options were available.²⁵³ Upon meeting initial resistance, the IDF forces should have reassessed their strategy to save lives, rather than to persist with their original plan.²⁵⁴ The question which

²⁵⁰ See *supra* note 214

²⁵¹ Professor Guilfoyle has said that the rule “that warning shots shall be used in cases other than self-defence, is universally accepted.” see *supra* note 202.

²⁵² See *supra* note 209

²⁵³ The commandos were armed with paintball guns and percussion grenades as well as firearms.

²⁵⁴ Yaakov Katz, *IDF Probe: Army Didn't Have 'Plan B'*, JERUSALEM POST, July 12, 2010

<<http://www.jpost.com/Israel/Article.aspx?id=181182>>.

must be asked is why these highly trained military Israeli soldiers continued to spread fear among civilians by firing at them from the Zodiacs, before boarding the vessel, when the fearful and disoriented resistance of the civilians was obvious.

In his testimony before the Turkel Commission, Defence Minister Barak recounts the decision to stop the convoy was taken by himself and six other Ministers of the inner cabinet after deliberating the option to allow it to pass or interdict it on the high seas despite the “high probability that violent friction” would occur.²⁵⁵ The likelihood of violence and the negative media exposure for Israel were discussed at great length. Alternative measures were also discussed. Defence Minister Barak recounts that during high level meetings, questions were asked on how the forces would react to different forms of resistance such as “protest” resistance or “terror” resistance. During the Ministerial meeting, a prescient question describing in eerie detail the events that would actually transpire on the deck of the Mavi Marmara, was posed to Minister Barak as “could a situation be created that you will be in the minority and out of weakness, because of crowding on the deck, you will find yourselves in the position that you will have to open fire ? ” and” What happens if 30 of the rioters will block your way to the bridge, and it will not be possible to get there easily.”²⁵⁶ Minister Barak emphatically admits that the decision to stop the convoy was taken after “prolonged deliberation” and that “one had to stop the convoy, with all the attendant risks and developments that were clearly presented by the chief of staff and other.”²⁵⁷

More than deliberating, the Israeli forces actually conducted an exercise at sea as part of the preparation for interdicting the aid convoy, similar to a war exercise. There is no question that the Israeli forces had studied carefully every aspect of the interdiction and knew that they probably would meet resistance. They chose the path of violence and were fully prepared for its consequences.

When the Israeli forces attacked the Mavi Marmara and other ships in the aid convoy, the civilians on board had the right to defend themselves. The Israeli approach to the Mavi Marmara before daybreak and the presence of Zodiacs, frigates, submarines and helicopters

²⁵⁵ See *supra* note 186

²⁵⁶ *Id.*

²⁵⁷ *Id.*

created a reasonable apprehension of danger by the passengers and entitled them to exercise their right of self-defence. Specifically, as the Israeli soldiers descended from the first helicopter fully aware of the agitated crowd, the actions of the passengers must be viewed within their proper context. The Israeli forces approached with guns, grenades, paintball guns and laser-guided weapons against passengers, who therefore had to employ whatever objects came to hand. Upon meeting resistance, the Israeli forces should have developed a new plan to stop the boats.²⁵⁸

iii. Passengers' right of self-defence

The unlawfulness of the Israel's blockade renders the high seas interdiction of the humanitarian aid convoy also unlawful. As a general principle of law, an unlawful attack gives rise to a right to self-defence. When the Israeli forces unlawfully attacked the Mavi Marmara and other ships in the convoy, the civilians on board had the right to defend themselves.

The disproportionate use of force by Israel continued and increased once aboard the Mavi Marmara. The incontestable evidence provided by the location of the bullet wounds of the nine casualties as well as the injuries sustained by dozens of other passengers show "execution style killing" as well as indiscriminate shooting. The 19-year old Furkan Doğan was shot in the back of head as well as in his back, nose, left leg and left ankle all from less than 50 cm range. Cevdet Kılıçlar, who was trying to take a photograph of the helicopter, was shot sniper-style from a distance right in the centre of his forehead, in manner which suggests a trained shooter fired at him. Cengiz Akyüz was shot four times in the back of his head, the right side of his face, the back and his left leg.

G. Additional violations of international law by Israel

i. Targeting of civilians

The April 1996 Text of Ceasefire Understanding Israel accepted during the Lebanese conflict, includes the provision that "Israel and those cooperating with it will not fire any kind of

²⁵⁸ Article 46(d) of the San Remo Rules says explicitly that "an attack shall be cancelled or suspended as soon as it becomes apparent that the collateral casualties or damage would be excessive." See *supra* note 144.

weapon at civilians or civilian targets in Lebanon."²⁵⁹ This principle is codified in Articles 51(5)(b) and 57(2)(b) of the First Additional Protocol (1977) to the 1949 Geneva Conventions²⁶⁰, which prohibit attacks that are expected to cause civilian casualties that "would be excessive in relation to the concrete and direct military advantage anticipated." The Israeli Supreme Court has recognized "the duty to do everything possible to minimize collateral damage to the civilian population during the attacks on 'combatants' " ²⁶¹ and has also ruled that, pursuant to the principle of proportionality, even civilians taking a direct part in hostilities may not be physically attacked if less harmful means could be employed against them, such as arrest, interrogation, and trial.²⁶² This conclusion was based on the decision of the European Court of Human Rights in *McCann v. United Kingdom*, where the court decided that the United Kingdom had deprived three IRA terrorists in Northern Ireland of their right to life under Article 2 of the European Convention on Human Rights by using lethal force without taking steps that "would have avoided the deprivation of life of the suspects without putting the lives of others at risk." ²⁶³

ii. Mistreatment of passenger victims

Many human rights violations were committed by Israeli soldiers during the attack against the Mavi Marmara and the other vessels of the convoy.

The Israeli soldiers shot nine unarmed civilians on board, violating their right to life. The right to life is enshrined in the Universal Declaration of Human Rights and also in the International Covenant on Civil and Political Rights (ICCPR) to which Israel has been a party since 1991. The General Comment (No. 6) by the Human Rights Committee underscores that States Parties to ICCPR should "take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces."

Israeli soldiers also mistreated civilian passengers through physical violence by kicking and beating them. Passengers were forced to sit or kneel in the same position for hours. When

²⁵⁹ See *supra* note 228 Riesman

²⁶⁰ Protocol Additional (No.1) to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3.

²⁶¹ Public Committee Against Torture in Israel v. Government of Israel, Supreme Court of Israel Sitting as the High Court of Justice, HCJ 769/02 (Dec. 13, 2006), p. 26.

²⁶² *Id.*, p. 40.

²⁶³ *McCann v. United Kingdom*, 21 E.H.R.R. 97, 148 p. 235 (1995).

they attempted to stand up, they were beaten down with batons. One passenger was made to kneel with two metal bars under his knees and left near the door where every passing soldier would kick or spit at him, pour water on him or step on his toes. A plastic bag had been put on his head after he started screaming. Passengers were kicked, slapped, pinched and elbowed by the soldiers. Handcuffs were intentionally made tight so that the hands of some passengers swelled up and turned purple; one passenger suffered from prolonged nerve damage; one passenger lost feeling in four fingers. One passenger was beaten and dragged off for refusing to be fingerprinted. Although many passengers suffered from injuries, Israeli soldiers did not allow the ship doctor to treat the wounded.

Such unlawful conduct constitutes clear violations of the prohibition of torture and ill-treatment under Article 7 of the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) to which Israel has been a party since 1991, and also a breach of Article 3 of the European Convention on Human Rights (ECHR).

Human rights violations by the Israeli officials continued during the 10-hour journey to the Port of Ashdod and while in captivity in Israel. Israeli doctors treated one victim's injured leg without sedating him.²⁶⁴ Many of those hospitalized passengers reported maltreatment from the soldiers. Again, such conduct constitutes a violation of the prohibition of torture and the right to health under CAT, ICCPR and the European Convention.

Some passengers were forced to strip naked and searched multiple times. The temperature was kept excessively cold like "a cold storage". One woman journalist was forced to remove all her clothes and the soldiers forcibly inserted a metal detector between her legs. She stated to our Commission that she had never been subjected to such degrading treatment in her life. Another passenger reported that she was touched inappropriately after she was bound and handcuffed by Israeli commandos. Such practices amount to torture, degrading or inhuman treatment under ICCPR, CAT and the European Convention on Human Rights.

The passengers were not allowed to fulfil their most basic needs. They were not permitted to use the restrooms for hours and as a result elderly people and a pregnant woman wetted

²⁶⁴ For the testimony of Abdülhamit Ateş, see Annex 5 (Section 1/xi)

themselves and soiled their clothes.²⁶⁵ When finally passengers were allowed to use the restrooms in the ship only two were made available for 600 passengers. The passengers were given insufficient water and food. As such, Israeli soldiers acted in breach of the prohibition of torture, degrading and inhuman treatment according to ICCPR, CAT and the European Convention on Human Rights.

One woman passenger of Israeli citizenship was brought to court in a small metal box inside a police car, in which she was held for eight hours with her hands and legs shackled. Again, this treatment would amount to torture and degrading treatment under ICCPR, CAT and the European Convention on Human Rights.

Passengers' money, credit cards, camera, laptops, mobile phones were confiscated and not returned. This is a clear violation the right to property under article 1 of the First Protocol to the European Convention of Human Rights and article 17 of the Universal Declaration of Human Rights.

Israeli soldiers forced the passengers to fill out forms in Hebrew without translation. Soldiers explained that the forms were admissions that the participants had entered Israel without permission. Passengers were required to sign Hebrew-only statements which most did not understand, saying they regretted attacking the State of Israel. The people who refused were beaten and threatened with prosecution. Such conduct is a violation of the right to liberty and security of persons under Article 9 of ICCPR and Article 5 of the European Convention on Human Rights. Again, beatings and physical violence would amount to torture and ill treatment under ICCPR, CAR and the European Court of Human Rights.

Passengers were interrogated without the presence of their lawyers. They were denied the right to legal aid. They were also denied access to consular authorities. Passengers were not allowed to use the telephone unless they spoke English, as a result which many could not use it. They were subject to unlawful deportation instead of repatriation. These are clear examples of violations of the right to liberty and security of persons under Article 9 of ICCPR and Article 5 of the European Convention on Human Rights.

²⁶⁵ For the testimony of Anne de Jong see Annex 5 (Section 1/xii)

Member of the Knesset, Haneen Zoabi was subjected to racist and sexist remarks. Some Westerners noticed a clear distinction in the treatment of “white” and “brown” passengers. Most western women were not handcuffed. Such discrimination is a breach of the ban on discrimination according to Article 2 of ICCPR and article 14 of the European Convention on Human Rights.

iii. Entitlement to compensation

It is a central principle of international law that when a State violates its international obligations, it has a duty to make reparations for the wrongs committed. This principle has been codified by the International Law Commission in its Draft Articles on the Responsibility of States for Internationally Wrongful Acts²⁶⁶.

Article 31 of the Draft Articles reads as follows:

“Reparation:

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.”

Article 36 *Compensation* further states that:

- “1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”

The Permanent Court of International Justice (PCIJ) in the *Factory at Chorzów Case* stated that “reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been

²⁶⁶ UNGA A/CN.4/L.602/Rev. 1 (26 July 2001).

committed.”²⁶⁷ When direct restitution or restoration of the prior conditions is impossible (as when individuals are killed or wounded) compensation becomes the appropriate remedy.

The ICJ recognized in the *Gabcikovo Case* that “[i]t is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it.”²⁶⁸ This rule was later reaffirmed by the International Tribunal for the Law of the Sea in its first full opinion, *The M/V Saiga Case*.²⁶⁹ When addressing the question of damages, the Tribunal quoted from the venerable *Factory at Chorzów Case*²⁷⁰ for the proposition that every wrong requires a remedy:

It is a well-established rule of international law that a State which suffers damage as a result of an internationally wrongful act by another State is entitled to obtain reparation for the damage suffered from the State which committed the wrongful act and that “reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed” (*Factory at Chorzów*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47).²⁷¹

In this framework the Tribunal awarded \$2,123,357 to Saint Vincent and the Grenadines for damages resulting from the detention of the *Saiga*, the damage to the vessel, and the injury to the crewmembers.²⁷²

In the *Rainbow Warrior* case, mediated by the U.N. Secretary-General in 1986, France paid New Zealand the sum of \$7,000,000 “for all the damage it has suffered” which also

²⁶⁷ *Factory at Chorzów*, (*Germany v. Poland*), 1928 P.C.I.J., Series A, No. 17, at 47-48 (Sept. 13).

²⁶⁸ *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, 1997 I.C.J. 7, 80 ¶ 152 (Sept. 25). See also *Genocide Convention (Bosnia v. Serbia)*, 2007 I.C.J. ¶460; *Construction of a Wall*, Advisory Opinion, 2004 I.C.J. 136, 198; *Democratic Republic of the Congo v. Uganda*, 2005 I.C.J. 168, 257.

²⁶⁹ *M/V Saiga*, *supra* note 201, p. 170.

²⁷⁰ *Factory at Chorzów*, *supra* note 302.

²⁷¹ See *supra* note 201, p. 170.

²⁷² *Id.*, p. 175.

included the “moral damage” as well as compensation.²⁷³ France paid a further 2.3 million French francs to the widow, children, and parents of Fernando Pereira, and US\$8.1 million to Greenpeace.²⁷⁴

In view of the above, it has become an accepted practice by the international community that providing compensation to civilian victims of combat is appropriate and necessary, and that such payments serve the goal of ensuring proportionality by forcing military forces to internalize the real costs of failing to properly assess the impact of a military operation on civilians. Israel should, therefore, be required to pay compensation and issue a formal apology for those killed and wounded during the IDF’s military operation against the Mavi Marmara on May 31, 2010.

²⁷³ 74 Int’l L. Rep. 241, 274.

²⁷⁴ Mark W. Janis & John E. Noyes, *International Law* 280 (3d ed. 2006) (citing Philip Shabecoff, *France Must Pay Greenpeace \$8 Million in Sinking of Ship*, N.Y. TIMES, Oct. 3, 1987, at A2).

III. CONCLUSION

A. First phase of the attack

The Israeli attack on the humanitarian aid convoy resulted in the killing of nine civilians in international waters.

The humanitarian aid convoy was a peaceful mission of some six hundred civilians representing different faiths from different countries. Their aim was to provide much-needed aid to the people of Gaza.

To correctly evaluate the legal situation of the events that transpired on 31 May 2010 in international waters, it is essential to describe fully the physical and psychological setting just prior to the Israeli attack on the convoy.

Focusing first on the Mavi Marmara, the passengers were all civilians. The facts show that the ship had no arms. On the other hand, the Israeli forces were made of very well trained special units and they were fully armed with the latest weaponry. As testified to by General Ashkenazy at the Turkel Commission, the forces had carefully planned and prepared the attack, including an exercise at sea on a ship similar to the Mavi Marmara.

Beginning at 0400 hours the Israeli attack began with psychological intimidation using all the panoply of warfare on a civilian convoy. The choice of hour, in the darkness, to stage an attack was purposeful intending to intimidate and instill fear and to avoid negative media exposure. The excessive military force used included Black Hawk helicopters, warships, submarines, zodiac boats, highly trained units armed with machine guns, grenades, which attacked the convoy during the early hours, before daylight, without any warning. Also, by jamming the ship's satellite communication the safety of life at seas of 600 passengers was jeopardized.

Israel cannot provoke a volatile situation, where it is foreseeable that resistance is likely to occur and later rely on it as a legal justification to kill and injure civilians. The conduct of the Israeli soldiers was excessive, brutal and pre-meditated, not aimed at de-escalating the heightened atmosphere of fear, panic and resistance. Based on their training and experience,

the Israeli soldiers should have abided by different and higher standards of conduct than those they applied to the civilians on board the Mavi Marmara. The Israeli forces cannot impute their own unlawful conduct upon the passengers who were justifiably and genuinely fearful and panicked at the attack.

B. Second phase of the attack

According to eyewitness accounts, the first two killings of passengers took place on the upper deck by shots fired from helicopters before the first soldier had descended. There was melee and confusion on deck followed intensified live fire by the Israelis against the passengers. From this point the facts show that the Israeli soldiers go on a shooting spree indiscriminate and targeted at the same time. Visualize shows how laser beams used on precision rifles was employed. The medical reports prove that some of the passengers who were killed were shot either from close range or from above. There is no evidence to show that these people who were killed posed a threat justifying an act of murder. For example, Cevdet Kılıçlar was taking a photo when he was shot point blank in the forehead. Furthermore, there is no evidence that any of the victims killed had any weapons on them.

C. Third phase of the attack

Once the Israeli forces took over the vessel, instead of exercising caution and care, they continued to brutalize, terrorize by physical and psychological abuse of all the passengers and not simply those who arguably had physically resisted. Onboard passengers were beaten, kicked, elbowed punched, deprived of food and water, hand-cuffed, left to exposed to sun for hours, denied toilet access and made subject to verbal abuse. This amounted to group punishment. There is no other legal justification for this mistreatment that amount to torture other than to punish and set an example.

After ten hours of sailing under these deplorable and inhumane conditions, the agony of 600 passengers continued in Israel in the port of Ashdod. Most of the passengers were kept handcuffed, stripped and searched; women were subjected to sexually humiliating treatment by male Israeli officials. There is no legal or moral justification to strip a female journalist multiple times and place a detector between her legs. This is completely unacceptable.

Witnesses report countless incidents of mistreatment. All passengers were forced to sign documents in Hebrew that apparently contained incriminatory statements. They were not allowed access to legal assistance to consular officials, they were not provided with proper and timely medical care, adequate food, they were placed in restricted spaces with extreme temperatures, one woman was put in a small metal box. The purpose of this treatment could only be to punish the passengers. Israel cannot justify this unlawful treatment of passengers on grounds of security or safety or any other legally acceptable reasons.

D. Interference with evidence

The Israelis confiscated all property belonging to the passengers, including journalists on board. Aside from an unlawful taking of personal property, the Israelis also deliberately destroyed, tampered with or spoiled potential evidence important for shedding light on the events of 31 May 2010.

The bodies of the killed were completely washed, the gunshot residues were removed and there was no accompanying medical and autopsy reports with the repatriated bodies. The Mavi Marmara itself, when returned after being held for 66 days in Ashdod, had been scrubbed down thoroughly, blood stains completely washed off, bullet holes painted over; ship records, Captain's log, computer hardware, ship documents seized, CCTV cameras smashed, all photographic footage seized and presumably destroyed or withheld.

E. Israel's violation of human rights including the right to life and fundamental freedoms.

The facts speak loudly of the flagrant multiple violations of human rights of the 600 passengers. Nine lives lost and nine violations of the inviolable right to life. Most suffered from multiple shots at close range.

Israel's bad faith and intent to punish the 600 passengers by use of physical and psychological abuse which fits the definition of torture, cruel, inhumane and degrading treatment under the ICCPR and CAT and European Convention on Human Rights. Israel cannot legally justify the manner in which it collectively treated the people. Assuming a need to maintain control over the ship during the 10-hour journey to Ashdod what the Israeli forces did went beyond the pale of acceptable and reasonable conduct. Beating, kicking, insulting, making people soil

themselves, leaving in the hot sun without food or water has no other purpose but the punish everyone regardless of whether they had caused any threat or disorder. Even then this conduct was excessive. The Turkish doctor who gave first aid treatment to the Israeli soldiers was himself beaten, handcuffed and mistreated. He was not allowed to render care to other injured persons. As a medical care provider Dr. Hasan Hüseyin Uysal should have been afforded protected status no matter what. Here again Israel violated basic human rights principles under international law. The vindictive intent behind Israeli actions towards the passengers of the humanitarian aid convoy is further demonstrated in how the injured were treated or in fact denied medical care. The seriously injured were left unattended for many hours exacerbating their health condition.

Why civilians would be made to strip naked and be searched other than to degrade and humiliate them. There is no possible justification and so again another case of human rights violation and of human dignity by Israel.

A fundamental tenet of human rights is the right to due process that attaches once a person is taken under custody. Under Article 10 of ICCPR all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person. The due process rights of the passengers were also systematically violated in numerous ways. They were deprived of their liberty and security without being afforded access to legal assistance. They were made to incriminate themselves by signing document in Hebrew accepting guilty of illegal entry into Israel when they had been brought by force. This violates the prohibition against being compelled to testify against oneself or to confess guilt under Article 14 of ICCPR.

F. Israel violated the law of freedom of the high seas

The starting point for a legal analysis of the Israeli attack on the convoy is overriding rule of freedom of the high seas and its component, the rule of exclusivity of the flag State. The 1958 High Seas Convention and UNCLOS, both almost identical in their language, codify what widely recognized to be the customary international rules of the freedom of the high seas.

State practice over the years, has shown a consistent rejection against expansion of the limited exceptions to the rule of freedom of the high seas. The United States, who was and continued under the threat of terror attacks from the sea, was careful to maintain the integrity of international law under the PSI system, which is based on the consent of the flag State.

The right of self-defense, as a lawful ground to stop, visit or seize a vessel on the high seas finds scant support under customary international law. Article 51 of the UN Charter is the principal governing source of international law for self-defense. A State must show that it was under an imminent threat or actual armed attack. The ICJ has reaffirmed the requirement that the attack be armed, thereby diminishing arguments seeking anticipatory self-defense as a reason to interdict vessel on the high seas.

Israel who is claiming a significant exception to the customary international and codified right of freedom of navigation of the humanitarian aid convoy bears the burden of proving it. Moreover, its burden of proof is a heavy one given the importance of the right of freedom of the high seas.

G. The Israeli naval blockade of Gaza is unlawful

Israel's naval blockade against the Gaza Strip, as it existed on May 31, 2010, violated international law principles governing blockades, because this smothering blockade was much more limiting than what could be justified by Israel's security needs. Furthermore, the blockade failed to meet the technical requirements of notice specifying the commencement, duration, location and extent of the blockade and periods within which neutral State vessels may leave the blockaded coastline. In practice, Israel has maintained some form of naval blockade off the coast of Gaza since 2007. And while Israel tries to disguise these naval blockades with different names such as "combat zone", "zone of hostility" or "maritime enclosure", the purpose and effect has been essentially the same: to exclude vessels from Gaza. By their own admission to the Turkel Commission they realized that the blockades were legally questionable and tried to remedy the defectiveness with a "new" blockade with a new name. But all have been in fact a continuation of the same defective and unlawful blockade, violating the international law against indefinite naval blockades.

In regard to the 2009 “military enclosure” because Israel had not given proper notice to others about which items were prohibited and which were permitted it failed the notification requirement as laid down in San Remo Manual. Israel’s action on July 6, 2010 permitting many products now to enter Gaza and publishing a specific list of those that are prohibited can be seen as an acknowledgment that its previous policies were not consistent with international law obligations.

More important and fatal to the Israeli claim of a legal blockade is its *disproportionate impact* on the civilian population documented by various UN agencies and the international community at large. The UN Security Council, the OCHA, the World Food Programme, the ICRC, the UN High Commissioner for Human Rights, the World Bank, the UNHCR and the UNDP have all described the humanitarian situation in Gaza as a result of the blockade as *dire, unacceptable* and *unsustainable*. The serious humanitarian crisis in Gaza because of the blockade compelled the UNSC to adopt Resolution 1860. States have also condemned the impact of the blockade on the civilian population in Gaza. There is an overwhelming public view that the blockade cannot be continued and must be lifted. In other words, it is an unlawful blockade. And in as much as Israel attempts to distinguish the land blockade from the naval in reality and practice they are integrated and thus one and the same.

Even in the case of a lawful blockade, under Article 47 of the San Remo Manual vessels engaged in humanitarian missions, including vessels carrying supplies, are exempt from attack. The Mavi Marmara and the other ships of the convoy were all transporting humanitarian aid vital for the of the civilian population. Based solely on this ground the conduct of Israel is *de jure* unlawful.

The use of lethal force by the Israeli military forces against the passengers on the Mavi Marmara was not justified by any legitimate need to enforce the naval blockade. First and foremost, the Mavi Marmara was carrying six hundred civilian passengers. This should alert Israel to tailor its strategy accordingly. Whereas, Israel prepared for a combat operation and refused to deviate from this strategy when it became apparent they would encounter civilian resistance. This tragic truth is that civilian casualty could have been avoided if Israel had sought alternative non-violent plan of action. The Israeli forces had a number of options that it could have used to stopped the vessel – shooting across its bow, using high-powered water

houses, maneuvering in front of the vessel to stop it, and disabling its rudder or sternpost – and it had sufficient time to reassess its strategy and develop other options. During the critical hours between 1200-0430 no request was made to even visit the ship or seek some neutral port or alternative to diffuse the situation. Israel only pursued aggression, intimidation and provocation, and not peaceful means. Its failure to utilize these other options makes its use of lethal force, excessive and disproportionate and a violation of international law.

H. Right to compensation

It has now become accepted practice by the international community that providing compensation to civilian victims of combat is appropriate and necessary, and that such payments serve the goal of ensuring proportionality by forcing military forces to internalize the real costs of failing to properly assess the impact of a military operation on civilians. Israel should, therefore, be required to pay compensation to those killed and wounded during the IDF's military operation against the Mavi Marmara on May 31, 2010.

This case is a critical litmus test for the international community in upholding the rule of law. No State should be allowed to act above the law. Impunity must give way to accountability. Israel must acknowledge its responsibility and accordingly express public apology and provide compensation for all damages and losses resulting from its unlawful attack.

LIST OF ANNEXES

Annex 1: Autopsy Reports of the Passengers Killed (9) in the Humanitarian Aid Convoy to Gaza

List of passengers killed

1. Ali Haydar Bengi
2. Cengiz Akyüz
3. Cengiz Songür
4. Cevdet Kılıçlar
5. Çetin Topçuoğlu
6. Fahri Yıldız
7. Furkan Doğan
8. İbrahim Bilgen
9. Necdet Yıldırım

Annex 2: Treatment Reports and Photos of Passengers Wounded on the Humanitarian Aid Convoy Raid

Names of passengers treated in Atatürk Education and Research Hospital

1. Kenan Akçil
2. Almahdi Abdulhameed Alharati
3. Abdülhamit Ateş
4. İmdat Avli
5. Adem Bakıcı
6. Mustafa Batırhan
7. Erkan Bayfidan
8. Ahmet Aydan Bekar
9. Çelebi Bozan
10. Osman Çalık
11. Sadreddin Furkan
12. Revaha Gümrükçü
13. Muharrem Güneş
14. Fatih Kavakdan
15. Suat Koşmaz
16. Osman Kurç
17. Ekrem Küçükköse
18. Murat Taşgın
19. Canip Tunç
20. İsmail Yeşildal
21. Mehmet Yıldırım
22. Muhyettin Yıldırım
23. Mehmet Ali Zeybek
24. Uğur Süleyman Söylemez

Annex 3: Port Authority Records, ISPS Certificates Navigation Routes and Expert Report on Non-Violent Ways of Stopping Vessels

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2. M/ S Mavi Marmara Antalya Port Authority Records
3. M/V Defne-Y İstanbul Port Authority Records
4. M/V Gazze İskenderun Port Authority Records
5. M/S Mavi Marmara Ship Certificates
6. Statements of Compliance of Port Facilities
7. Positions of the Ships According to the Time of Travel
8. List of Passengers from M/Y Challenger-1 joining to M/S Mavi Marmara
9. Official correspondance between Turkish and Israeli port auhtorities regarding the destination of the ships.
10. Official correspondance among relevant Turkish institutions on the security measures in the departure ports of the ships.
11. Expert report on non-violent ways of stopping the vessels navigating in the seas

Annex 4: Customs Records of Passengers and Crew on M/S Mavi Marmara, M/V Gazze and M/V Defne-Y

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2. Border Entry-Exit Lists of Foreign Nationals on M/S Mavi Marmara (193)
3. Border Entry-Exit Lists of Turkish Nationals on M/S Mavi Marmara (353)
4. Border Entry-Exit Lists of Crew of M/V Defne-Y (13)
5. Border Entry-Exit Lists of Passengers on M/V Defne-Y (7)
6. Border Entry-Exit Lists of Passenger on M/V Gazze (5)
7. Border Entry-Exit Lists of Crew of M/V Gazze (13)
8. Border Entry-Exit Lists of Crew of M/S Mavi Marmara (29)
9. Border Entry-Exit Lists of Killed (9)
10. Border Entry-Exit Lists of Wounded (24)

Annex 5: Testimonies of the Crew and Passengers of the Humanitarian Aid Convoy to Gaza

Section 1. Depositions Obtained from the Turkish National Inquiry Commission

- i. Mahmut Tural (Crew / First Captain)
- ii. Gökhan Kökkıran (Crew / Second Captain)
- iii. Ekrem Çetin (Crew / Chief Engineer)
- iv. Cihat Gökdemir (Passenger)
- v. Ümit Sönmez (Passenger)
- vi. Hüseyin Oruç (Passenger)
- vii. Çiğdem Topçuoğlu (Passenger)
- viii. Gülden Sönmez (Passenger)

- ix. Elif Akkuş (Journalist)
- x. Hasan Hüseyin Uysal (Passenger / Doctor)
- xi. Abdülhamit Ateş (Passenger / Wounded)
- xii. Anne de Jong (Passenger)
- xiii. Mehmet Ali Zeyrek (Passenger)

Section 2. Turkish National Inquiry Commission's Investigation Paper on M/S Mavi Marmara (Only in Turkish)

Section 3. Depositions obtained from the Office of the Istanbul Chief Prosecutor

Turkish Nationals

- i. Murat Taşğın
- ii. Erol Çıtır
- iii. Cihat Gökdemir
- iv. Gülden Sönmez
- v. Ümit Sönmez
- vi. Hasan Hüseyin Uysal
- vii. Erdiñç Tekir
- viii. Fahrettin Seyyar
- ix. Çiğdem Topçuoğlu
- x. Mustafa Öztürk
- xi. Murat Hüseyin Akinan
- xii. Ahmet Rauf Öçal
- xiii. Mahmut Coşkun
- xiv. Şenay Aydın
- xv. Mahmut Tural

Foreign Nationals

- xvi. Kenneth O'Keefe
- xvii. Jasmin Redjepi
- xviii. Iara Lee
- xix. Laura Arau Crusellas
- xx. Aikatepinh Aikaterini Kitiah Kitidi
- xxi. Manuel Espinar Tapial
- xxii. Kypiakoe Kyriakos Xatzheteqanoy Chatzistefanou
- xxiii. Nicola Lesley Encmarch
- xxiv. Ahsan Shamruk

Annex 6: Inspection of Mavi Marmara by the Turkish National Commission of Inquiry Iskenderun / Hatay, 18 August 2010

İskenderun Chief Prosecutor's Crime Scene Investigation Report on M/S Mavi Marmara, M/V Gazze and M/V Defne-Y*

Photos taken by the Turkish National Inquiry Commission during the inspection of Mavi Marmara, İskenderun Port,

1. Bullet Marks
2. Handcuffs
3. Paint signs
4. The Bridge
5. General View
6. The Commission on Mavi Marmara

Annex 7: DVD of Video Footages from the Israeli Raid on the Humanitarian Aid Convoy to Gaza.

Index of Video Footages

Clip 1: Israeli attack begins after morning prayer / IDF Forces in zodiacs attacking the M/S Mavi Marmara / Utilization of sound, smoke and stun grenades

Clip 2: Several IDF Zodiacs filled with Israeli soldiers sailing close to the M/S Mavi Marmara

Clip 3: IDF Soldiers boarding the ship through helicopters / footage of first injured passengers / zodiacs and helicopters attacking at the same time

Clip 4: An Israeli soldier kicking a passenger / Soldier using a long rifle

Clip 5: Soldiers firing on civilians and firing while injured are being treated by the passengers.

Clip 6: Israeli soldiers equipped with pistols and long rifles against civilians.

Clip 7: Israeli soldier boarding the ship / Passengers carrying injured victims.

Clip 8: Signs of vast amount of blood in the stairs heading to the upper deck.

Clip 9: Footage of laser beams streamed from the air and weapons of Israeli forces.

Clip 10: Passengers carrying an injured victim to the lower deck.

Clip 11: A booklet claimed from IDF forces showing the prominent people in the different ships of the Aid Convoy.

Clip 12: Passengers treating the wounded victims.

Clip 13: Video Footage of Mr. Çetin Topçuoğlu (in blue gym suit), a victim who was later shot by the IDF forces.

Clip 14: Passengers trying to treat a victim shot by the IDF forces / an injured and frightened passenger.

Clip 15: Footage of Cengiz Kılıçlar, the Journalist who was shot from his forehead and died on the spot.

Clip 16: Israeli Zodiacs following the M/S Mavi Marmara in the high seas.

Clip 17: Footage of four dead passengers in M/S Mavi Marmara

Clip 18: Wounded victims lying around in the passenger seating halls.

Clip 19: One year old baby of the Chief Engineer of M/S Mavi Marmara

Clip 20: Passengers with plastic handcuffs being transferred to the detention center in Ashdod port.

Clip 21: Footage from the Press Room in M/S Mavi Marmara during the Israeli raid on the vessel / Journalists frightened.

Clip 22: Israeli forces warning the M/S Mavi Marmara to change its route while the vessel was in international waters / Injured passengers being handcuffed.

Clips 23 and 24: IHH Humanitarian Aid Foundation Officials, describing the peaceful nature of their aid mission to Gaza.

Clip 25: Footage of first wounded passengers.

Clip 26: Accounts of wounded passengers regarding the brutal treatment of Israeli military during the attack on the Aid Convoy.

Clip 27: Account of a wounded journalist and a Greek activists regarding Israeli excessive force and inhumane treatment.