and information may be required cannot be properly assessed until the relevant reports are in the hands of the Panel.

27. Then follow the two substantive tasks with which the Panel has been entrusted. In light of the information so gathered, the Panel will examine and identify the facts, circumstances and context of the incident. The Panel is accordingly required to consider the facts of what happened on 31 May, the surrounding background to those events, and the broader general state of affairs.

28. Following the task set out in the previous paragraph, the Panel will consider and recommend ways of avoiding similar incidents in the future. This task is likely to require some degree of creativity on the part of the Panel since this element invites a consideration of international policy issues. The Panel hopes to develop an analytical framework within which the issues can be addressed.

29. The final task of the Panel is to prepare a report including both its findings and its recommendations. That report will be submitted to the Secretary-General. The report of the Panel will be designated unclassified. The Panel may attach confidential annexes to its report.

30. The Panel is under an obligation to conduct its work in a prompt, impartial, credible and transparent manner, in conformity with international standards.

The Panel's Methods of Work

31. The Panel has arrived at some conclusions about its functions and methods of work that will guide its approach to its task. The Panel is not a court. Courts adjudicate on disputes and in criminal cases adjudicate on criminal liability. The Panel is not empowered to adjudicate. Neither does the Panel have the necessary

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powers or the required capacity to conduct criminal investigations or to compel people to give evidence. It is a review inquiry.

32. What the Panel can do is:

- receive and review reports of national investigations into the incident;
- request such clarifications and information as it may require from relevant national authorities;
- examine and identify the facts, circumstances and context of the incident; and
- make findings and recommendations.

33. There are important parameters within which the Panel must work and these parameters need to be understood clearly from the outset in order to avoid misunderstandings later. The Panel cannot receive unsolicited information from persons and organisations who may wish to supply it. Nor can the Panel approach individuals and organisations directly.

34. Any clarifications or information from Israel or Turkey that the Panel considers necessary to complete its inquiry will be sought through Points of Contact designated by those two States. Those Points of Contact have now been designated and formally notified to the Inquiry as follows:

Israel: Ambassador Yossi Gal, Director-General of the Ministry of Foreign Affairs of the State of Israel

Turkey: Ambassador Mithat Rende, Director General for Multilateral Economic Affairs at the Ministry of Foreign Affairs

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307810 Date: 05/03/2013

35. Where the Panel considers it necessary to obtain information from other affected States, it may request such information through appropriate diplomatic channels. Such diplomatic channels are understood to mean the Permanent Missions of such States to the United Nations in New York.

36. Such requests for information are the only means available to the Panel to receive information beyond the reports of national investigations. The Panel's requests will specify the questions or issues on which information or clarification is required. This may include a request for a meeting with the Point of Contact.

[37. In that case, the Point of Contact will determine if other members of his or her national authorities (civil servants) should attend the meeting in order to provide the Panel with the information or clarifications that have been requested. The Point of Contact will advise the Panel in advance of the names of those members of its national authorities who will attend the meeting and the specific questions or issues that they will address regarding the requested information or clarifications. The information provided by the persons who attend any meeting must be directed to the questions or issues raised in the Panel's request, and will afterwards be attached to the country file presented to the Panel. It should be noted that it is within the competence of the Panel to decide whether to go ahead with the meeting. (To be adjusted as necessary to reflect further discussions on 2 and 3 September as to who may accompany the Point of Contact to meetings.)]

38. It needs to be appreciated that the Panel's method is the diplomatic method of obtaining information - not the adversarial method, or the inquisitorial method or independent fact-finding of the type that other United Nations panels have carried out. This Panel is not empowered to use any of those methods. The Secretary-General has described the establishment of this Panel in its particular circumstances as

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"unprecedented". Literally that means there is no precedent for it. Thus, analogies to other United Nations panels established with a different frame of reference are not apt. This Panel is unique and its methods are similarly unique.

39. The method for obtaining information does not restrict the findings and recommendations the Panel may decide to make. The Panel can and will examine and identify the facts, circumstances and context of the incident. It can and will recommend ways of avoiding such incidents in the future. It can and will report its findings and recommendations to the Secretary-General. Upon the nature of those findings and recommendations, it is futile to speculate at this stage. Suffice it to say the level of international concern that has been expressed concerning the incident under review has been high. The Panel has the means available to it to respond to that concern and carry out a review that will give the Secretary-General some material that will allow him and the international community as a whole to address the issues raised.

40. The Panel has discussed, but at this stage taken no decisions, as to whether it is authorized or whether it is necessary for Members of the Panel to visit Israel and Turkey in the process of its work. It was considered that the benefit of such visits may become clearer once the Panel has had the opportunity to receive and review interim and final reports of national investigations into the incident.

Staffing and Administrative Support

41. The United Nations will provide Secretariat services to the Panel and will arrange for the provision of necessary administrative, logistic and security support,

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including transportation and accommodation. The Archives and Records Management System will provide records-management support to the panel.

42. In addition, it will be necessary for each Panel member to have an aide. These aides will be paid by the United Nations and accountable to it for their work with the Panel. The Panel sees itself very much as a team and the arrangements that have been made in this regard should facilitate both collegiality and communication. The details of the aides are as follows:

Sir Geoffrey Palmer:	Ms. Elana Geddis
President Alvary Uribe Velez:	Mr. Ivan Duque Marquez
Mr. Joseph Ciechanover Itzhar:	tbc
Mr Suleyman Ozdem Sanberk:	Mr. Can Dizdar

The Panel's Intended Programme of Work

43. The Panel held its second meeting on 2 and 3 September, in New York, to [discuss the interim reports of national investigations received from Israel and Turkey and] determine its programme of work.

[Review of Interim Reports of National Investigations Received from Turkey and Israel – to be inserted if such interim reports are received, and to reflect discussions on this point at 2 & 3 September meeting]

Programme of Work

[to be inserted to reflect discussions on Programme of Work at 2 & 3 September meeting]

Conclusion

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307810 Date: 05/03/2013

StateDept004505

44. The Panel has had two meetings for a total of four days. It has met in New York on 10 and 11 August and again in New York on 2 and 3 September. It has conducted its proceedings in a positive and collegial atmosphere. The Panel feels keenly the responsibilities that weigh upon it. Within the Panel there are two members whose appointments have been made on the proposal of the two States most closely connected with the incident. The structure of the Panel ensures that those States will not be at arm's length from the Panel's work. The structure may also have the advantage of ensuring that each State has a full understanding of the points of view of the other.

45. The points at issue between the States will become easier to identify and hopefully easier to resolve in such a process than in a third-party inquiry process. Furthermore, this element of the process may further help to soothe relations between two important States in the Middle East, an area of the world beset by a series of difficult issues.

46. The Panel will make every effort to reach consensus in relation to its findings and recommendations. When the best efforts to achieve consensus have been exhausted and consensus has not been achieved, the Chair and the Vice-Chair will agree on the particular procedural issues, finding or recommendation in issue. Such a procedure ensures that the Panel will have the means to accomplish its tasks fully and not become rendered incapable of making progress.

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307810 Date: 05/03/2013

StateDept004506

Simonoff, Mark A (USUN) RELEASED IN FULL

From: Pope, William P (USUN)
Sent: Thursday, September 30, 2010 12:12 PM
To: Simonoff, Mark A (USUN)
Subject: FW: Law of the Sea Language vis a vis Gaza Flotilla

Categories: Working

William P. Pope
Senior Advisor for Europe
U.S. Mission to the United Nations
212-415-4079
popewp2@state.gov

From: Anderson, William H (USUN)
Sent: Thursday, September 30, 2010 11:46 AM
To: Anderson, William H (USUN)
Subject: Law of the Sea Language vis a vis Gaza Flotilla

To All:

Annual Law of the Sea Resoution

The Turks are apparently trying to insert language into the General Assembly's annual Law of the Sea resolution that criticizes Israel for its raid on the Gaza Flotilla. The Turks are trying to pull language from the SC Presidential Statement. USUN Legal commented that we (US) will object to this initiative saying that the Law of the Sea Resolution is supposed to be general and not mention any countries by name.

Thought you might find this useful.

Regards,

ANDO

CDR Bill "ANDO" Anderson
Commander, USN
Military-Political Advisor
U.S. Mission to the United Nations

Email: AndersonWH@state.gov
PH#: 212-415-4111
FAX: 212-415-4415

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

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UNITED STATES MISSION TO THE UNITED NATIONS

140 East 45th Street
NEW YORK, N.Y. 10017-3505

September 30, 20010

UNCLASSIFIED

INFORMATION MEMORANDUM FOR THE PERMANENT REPRESENTATIVE

From: LEGAL – Mark A. Simonoff

Through: EXEC – Ambassador Anderson

Subject: Sixth Committee: Administration of Justice

As I noted this morning, Turkey is proposing a flotilla paragraph for the annual UN General Assembly Oceans and Law of the Sea resolution. The paragraph provides as follows:

> "Expresses its deep regrets for the loss of life and injuries resulting from the use of force during the Israeli military operation in international waters against the convoy sailing to Gaza and in this context condemns those acts which resulted in the loss of 9 civilians and many wounded as expressed by the Security Council Presidential Statement (S/PRST/2010/9) of 1 June 2010;"

As of 4:30 today, Turkey had circulated the text in writing, but had not yet discussed it at the informal consultations. The Brazilian Permanent Representative, who is coordinator of the informal consultations, plans to have the paragraph discussed at about 5:30 this afternoon.

I talked to my Turkish counterpart and urged him to withdraw the paragraph, but he plans to go forward with it. He asked whether the US would be prepared to accept some reference to the flotilla incident, and I said "no." I plan to take the floor for the US and oppose the paragraph as inappropriate for the oceans resolution. The EU and Australia plan to do the same. I have been coordinating with my Israeli counterpart.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

For your additional background:

Every year, the UNGA adopts an omnibus resolution on oceans and law of the sea. The resolution covers a vast range of oceans issues, including piracy, the environment, scientific issues, capacity-building, Law of the Sea Convention institutions, freedom of navigation and other ocean-related issues. The practice has been not to include any language on bilateral or country-specific issues in the resolution (other than piracy off the coast of Somalia).

There are two rounds of informal consultations, chaired by Brazil. The first round, where delegations make proposals for new paragraphs, is taking place this week. The second round will be in mid November. The worst case this week is that the text will remain in brackets and will be considered further at the second round of informal consultations in mid November.

The US delegation is composed of two Oceans, Environment and Science officers from OES, who are very experienced and capable, and who have been coordinating closely with me.

Turkey has also been pressing for text on the flotilla elsewhere in New York. Turkey has tried to add language to the UNRWA Finance Working Group Report; negotiations over this technical report are ongoing with Turkey as chair of the Working Group. During its Council Presidency Turkey also attempted to build support for a Security Council press statement on the interim report of the SYG panel of inquiry during the September 17 Middle East consultations; but after U.S. efforts demurred.

Drafted: Legal: Mark Simonoff
Cleared: POL: E Germain
POL: B Masilko

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307778 Date: 05/03/2013

RELEASED IN FULL

NON-RESPONSIVE PORTIONS REDACTED

ISRAEL

UNITED STATES MISSION TO THE UNITED NATIONS

September 27, 2010

BRIEFING MEMORANDUM FOR THE PERMANENT REPRESENTATIVE

SENSITIVE BUT UNCLASSIFIED

FROM: POL – Bill Grant
THROUGH: EXEC – Ambassador Anderson
SUBJECT: Meeting with Israeli Foreign Minister Avigdor Lieberman, Wednesday, September 29, 4:00 p.m, Regency hotel (Park & 61st)

Background

NR

Lieberman will want to address efforts to minimize diplomatic fallout on reports to the Human Rights Council (HRC) by the independent experts committee assessing domestic Israeli and Palestinian investigations on the HRC Fact-Finding Mission (FFM) on the Gaza flotilla incident. We expect HRC resolutions on the flotilla to be voted on Thursday/Friday in Geneva.

Talking Points

SENSITIVE BUT UNCLASSIFIED

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307778 Date: 05/03/2013

NR

Gaza Flotilla: Lieberman's prickly views on Turkey and complicated relations with Ankara precede the flotilla incident --- in January 2010, his deputy, Daniel Ayalon, caused a major outcry in both the Turkish and Israeli press with a humiliating dressing-down of Turkey's Ambassador to Israel during a meeting. We continue to emphasize the primacy of the SYG panel of inquiry for follow-up to the May 31 Gaza flotilla incident. We persuaded Turkey not to propose a Security Council press statement or press elements after the issuance of the panel's interim report to the SYG on September 15. We understand Turkey is not satiated by the SYG panel and continues to demand compensation and an apology from Israel. The FFM's report on the Gaza flotilla incident was blistering, including a strikingly harsh tone toward Israel. The Turkish draft HRC resolution on follow-up to the Fact-Finding Mission (attachment B) makes no mention of the SYG panel and instead promotes a General Assembly debate on the flotilla incident. Israel has asked for our help in keeping the HRC flotilla inquiry contained to Geneva and out of New York. Meanwhile, Israel's independent civilian commission into the episode, the Turkel Commission, is reportedly nearing completion. According to public reports, the Turkel Commission has taken public as well as closed testimony from senior Israeli officials including

Prime Minister Netanyahu and Defense Minister Barak. The Turkel Commission has requested that the (Turkish) Captain of the Mavi Marmara testify as well.

NR

- The draft Turkish resolution in Geneva on follow-up to the Fact-Finding Mission on the Gaza flotilla incident could extend discussion of the legality of Israel's actions on May 31.
- The FFM's language, tone, and conclusions were unbalanced.
- We continue to hope that Israel and Turkey will move beyond the recent strains in their historically strong bilateral relationship and urge you to do what you can to move ahead.
- We continue to regard the SYG's panel as the primary method for the international community to review the flotilla incident, and we continue to await the outcome of the Turkel commission.

NR

Attachments:

B) Draft Turkish Flotilla HRC resolution

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Drafted: POL: BMasilko

Cleared: POL: JFasoli ok
USUN/W: WBass ok
POL: EGermain ok

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NON-RESPONSIVE PORTIONS REDACTED

Talking Points for Ambassador Brooke D. Anderson,
U.S. Alternate Representative
For Special Political Affairs,
At Security Council Consultations on
The Middle East
September 17, 2010

- Thank you, Mister President, and thank you, Special Coordinator Serry, for your briefing.

[redacted]

NR

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

NR

- **CONTINGENCY LANGUAGE IN THE EVENT THE ESTABLISHMENT OF THE FLOTILLA INVESTIGATION PANEL IS RAISED:** We take note of the report of the HRC's flotilla fact-finding mission and will review it in due course. But we again welcome the establishment of the Secretary-General's panel regarding the flotilla incident, which has the support of both Israel and Turkey. We reiterate that this panel is not a substitute for national investigations. We expect that the work of the Secretary-General's panel will be the primary method for the international community to review the incident.

NR

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- Thank you, Mr. President.

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Drafted: POL: BMasilko, 4-4190

Cleared: POL: EGermain ok

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NON-RESPONSIVE PORTIONS REDACTED

UNITED STATES MISSION TO THE UNITED NATIONS

140 East 45th Street
NEW YORK, N.Y. 10017-3505

September 16, 2010

BRIEFING MEMORANDUM FOR THE PERMANENT REPRESENTATIVE

SENSITIVE BUT UNCLASSIFIED

FROM: POL – Bill Grant
THROUGH: EXEC – Ambassador Anderson
SUBJECT: Security Council Briefing/Consultations on the Middle East, September 17, 2010

BACKGROUND:

Special Coordinator Serry will brief the Council on events in the Middle East since the August 15 briefing by Assistant Secretary-General Fernandez Taranco, followed by closed consultations.

We expect a positive briefing from the Secretariat. On September 15 the SYG released a factual statement to the press on the interim report of the Gaza flotilla panel of inquiry (attachment A). The U.S. draft remarks contain contingency guidance on the panel of inquiry, should we choose to use it (attachment B). USUN proposed changes to DC's draft are shown as track changes. The Human Rights Council report of its fact-finding mission on the flotilla is unlikely to be released before tomorrow's consultations.

NR

Turkey, as Council president, will speak last. We are not clear to what extent Turkey will use the meeting to highlight the Gaza flotilla panel of inquiry interim report. Other Council members, most notably Mexico, have consistently called for follow-up briefings to the Council on the panel's work.

Attachment:
A) Gaza flotilla panel of inquiry: SYG September 15 Press Statement
B) Draft U.S. talking points

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307758 Date: 05/03/2013

RELEASED IN FULL

The Secretary-General's Panel of Inquiry
on the 31 May 2010 Flotilla Incident

PROGRESS REPORT TO THE SECRETARY-GENERAL

SEPTEMBER 2010

Sir Geoffrey Palmer, Chair

President Alvaro Uribe, Vice-Chair

Mr. Joseph Ciechanover Itzhar

Mr. Süleyman Özdem Sanberk

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307758 Date: 05/03/2013

Introduction

1. This document provides a progress report to the Secretary-General, Ban Ki-moon, from the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident. Upon establishing the Panel, the Secretary-General requested a progress report by 15 September 2010.

2. The Panel was established by the Secretary-General on 2 August 2010. The Secretary-General appointed Sir Geoffrey Palmer as the Chair of the Panel and President Alvaro Uribe as the Vice-Chair. Israel identified, and the Secretary-General appointed, Mr. Joseph Ciechanover as the member from Israel. Turkey identified, and the Secretary-General appointed, Mr. Süleyman Özden Sanberk as the member from Turkey.

3. This report outlines the Panel's decisions at its first meetings and sets out the Panel's agreed approach to its task.

The Panel's First Meeting

4. On 10 August 2010, the Panel convened in New York. It met for two full days on 10 and 11 August. During that time the Panel met with the Secretary-General. He referred to the "unprecedented and critical" nature of the task facing the Panel. He made reference to the methods of work that are discussed later in this report. He encouraged the Panel to pay close attention to both aspects of its remit: first, to examine and identify the facts, circumstances and context of the Flotilla incident; second, to consider and recommend ways of avoiding similar incidents in the future. He stressed the importance of the Panel's main task to review the reports of national investigations into the incident.

5. The Secretary-General stressed the need for the Panel to work as one team. It would be supported by the United Nations Secretariat. He sought a first progress report from the Panel by 15 September 2010. The Secretary-General expressed the hope that the Panel would impact positively on the relationship between Israel and Turkey and assist with the overall situation in the Middle East. He counted on the leadership and commitment of the Panel members and he wanted to achieve a way forward.

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The Panel's Approach to its Task

Summary of the Panel's Tasks

6. The Secretary-General has asked the Panel to focus and organize its work around four elements. The first requirement is to receive and review interim and final reports of national investigations into the incident that occurred on 31 May 2010.

7. The dates by which these reports become available to the Panel will be a material consideration in determining the precise timetable for the Panel's work. The Panel will strive to submit its final report to the Secretary-General within six months from the first meeting of the Panel, taking into account the progress of the national investigations. Any adjustment to that timetable will be in the hands of the Secretary-General, depending on the progress of the Panel's work.

8. The second requirement of the Panel's work will be to request such clarifications and information as it may require from relevant national authorities. What clarifications and information may be required cannot be properly assessed until the relevant reports are in the hands of the Panel.

9. Then follow the two substantive tasks with which the Panel has been entrusted. In light of the information so gathered, the Panel will examine and identify the facts, circumstances and context of the incident. The Panel is accordingly required to consider the facts of what happened on 31 May and the surrounding background to those events.

10. Following the task set out in the previous paragraph, the Panel will consider and recommend ways of avoiding similar incidents in the future. This task is likely to require some degree of creativity on the part of the Panel since this element invites a consideration of international policy issues. The Panel hopes to develop an analytical framework within which the issues can be addressed.

11. The final task of the Panel is to prepare a report including both its findings and its recommendations. That report will be submitted to the Secretary-General. The report of the Panel will be designated unclassified. The Panel may attach confidential annexes to its report.

12. The Panel is under an obligation to conduct its work in a prompt, impartial, credible and transparent manner, in conformity with international standards.

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The Panel's Methods of Work

13. The Panel has arrived at some conclusions about its functions and methods of work that will guide its approach to its task. The Panel is not a court. Courts adjudicate on disputes and in criminal cases adjudicate on criminal liability. The Panel is not empowered to adjudicate. Neither does the Panel have the necessary powers or the required capacity to conduct criminal investigations or to compel people to give evidence.

14. The Panel will:

- receive and review reports of national investigations into the incident from Israel and Turkey;
- where it considers that it requires further information, clarifications or meetings from Israel or Turkey, make such request to the points of contact designated by those States;
- where it considers it necessary to obtain information from other affected States, it may request such information through appropriate diplomatic channels;
- in the light of the information so gathered, examine and identify the facts, circumstances and context of the incident and make findings and recommendations.

15. There are important parameters within which the Panel must work and these parameters need to be understood clearly from the outset in order to avoid misunderstandings later. The Panel cannot receive unsolicited information from persons and organisations who may wish to supply it. Nor can the Panel approach individuals and organisations except through the Points of Contact.

16. Any clarifications or information from Israel or Turkey that the Panel considers necessary to complete its inquiry will be sought through Points of Contact designated by those two States. This may include a request for a meeting with the Point of Contact. Those Points of Contact have now been designated and formally notified to the Inquiry as follows:

Israel: Ambassador Yossi Gal, Director-General of the Ministry of Foreign Affairs of the State of Israel

Turkey: Ambassador Mithat Rende, Director General for Multilateral Economic Affairs at the Ministry of Foreign Affairs of Turkey

17. Where the Panel considers it necessary to obtain information from other affected States, it may request such information through appropriate diplomatic channels. Such diplomatic channels are understood to mean the Permanent Missions of such States to the United Nations in New York.

18. Such requests for information are the only means available to the Panel to receive information beyond the reports of national investigations. The Panel's requests will specify the questions or issues on which information or clarification is required.

Meetings with Points of Contact

19. The Panel discussed its approach to meetings with the Point of Contact. The Panel will not meet with Non-Governmental Organisations or other individuals. Any meetings will be according to the following procedure:

a. The Panel will receive both countries' (Turkey and Israel) interim and final reports through the Points of Contact.

b. Once the Panel has reviewed both interim and final reports it may request further information or clarifications from the Point of Contact.

c. The Point of Contact will receive the questions and clarifications and may:

i) Provide written or oral answers and clarifications; or

ii) Suggest a meeting with a Civil Servant who can provide answers and clarifications to the specific questions in the Panel's request. When making such a suggestion the Point of Contact will indicate the name of the Civil Servant and the specific question that he or she will address. In this instance, the four members of the Panel will unanimously decide whether or not to authorize the meeting with the Civil Servant.

d. All written and oral answers and clarifications provided by the Point of Contact or Civil Servants will constitute part of each country's interim and final reports.

20. It needs to be appreciated that the Panel's method is the diplomatic method of obtaining information - not the adversarial method, or the inquisitorial method or independent fact-finding of the type that other United Nations panels have carried out. This Panel is unique and its methods are similarly unique.

21. The method for obtaining information does not restrict the findings and recommendations the Panel may decide to make. The Panel can and will examine and identify the facts, circumstances and context of the incident. It can and will recommend ways of avoiding such incidents in the future. It can and will report its findings and recommendations to the Secretary-General. Upon the nature of those findings and recommendations, it is futile to speculate at this stage. Suffice it to say the level of international concern that has been expressed concerning the incident under review has been high. The Panel has the means available to it to respond to that concern.

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22. The Panel has discussed, but at this stage taken no decisions, as to whether it is authorized or whether it is necessary for Members of the Panel to visit Israel and Turkey in the process of its work. It was considered that the benefit of such visits may become clearer once the Panel has had the opportunity to receive and review interim and final reports of national investigations into the incident.

Staffing and Administrative Support

23. The United Nations Secretariat is providing secretariat services to the Panel and arranged for the provision of necessary administrative, logistic and security support, including transportation and accommodation. The Archives and Records Management System is providing records-management support to the Panel.

24. In addition, it is necessary for each Panel member to have an aide. These aides will be paid by the United Nations and accountable to it for their work with the Panel. The Panel sees itself very much as a team and the arrangements that have been made in this regard should facilitate both collegiality and communication. The details of the aides are as follows:

Sir Geoffrey Palmer:	Ms. Elana Geddis
President Alvaro Uribe Velez:	Mr. Ivan Duque Marquez
Mr. Joseph Ciechanover Itzhar:	Mr. Arthur Lenk
Mr Süleyman Özdem Sanberk:	Mr. Can Dizdar

The Panel's Intended Programme of Work

25. The Panel held its second meeting on 2 and 3 September, in New York.

Interim Report of National Investigation Received from Turkey

26. The Panel received an interim report, with annexes and related material, from Turkey on the progress with respect to its national investigation on 1 September. The Panel appreciates that the Government of Turkey has submitted its report. Members of the Panel will individually study the report and the material it contains, and the Israeli report once it has been submitted. The Panel agreed to reconvene from 1 to 3 December to discuss and review the interim reports, at which time it expects to have also received a report from Israel.

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Conclusion

27. The Panel has had two meetings for a total of four days. It has met in New York on 10 and 11 August and again in New York on 2 and 3 September. It has conducted its proceedings in a positive and collegial atmosphere. The Panel feels keenly the responsibilities that weigh upon it. Within the Panel there are two members whose appointments have been made on the proposal of the two States most closely connected with the incident. The structure has the advantage of ensuring that each State has a full understanding of the points of view of the other.

28. The points at issue between the States will become easier to identify and hopefully easier to resolve in such a process than in a third-party inquiry process. The Panel will make every effort to reach consensus in relation to procedural issues, its findings and recommendations. When the best efforts to achieve consensus have been exhausted and consensus has not been achieved, the Chair and the Vice-Chair will agree on the particular procedural issues, finding or recommendation in issue. Such a procedure ensures that the Panel will have the means to accomplish its tasks fully and not become rendered incapable of making progress.

United Nations Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017

TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

REFERENCE:

8 September 2010

RELEASED IN FULL

Excellency,

I am writing to you on behalf of the Panel of Inquiry on the 31 May 2010 Flotilla Incident. The Panel has met on two occasions, on 10-11 August and 2-3 September. You had requested that the Panel submit a progress report to you by 15 September. This report has now been completed and is attached. The work of the Panel is going well and has continued in a constructive tone. The Panel agreed to reconvene from 1 to 3 December to discuss and review the interim reports submitted by the parties.

Please accept, Excellency, the assurances of my highest consideration.

Geoffrey Palmer
Chair of the Panel of Inquiry
on the 31 May 201 Flotilla Incident

His Excellency
Mr. BAN Ki-moon
Secretary-General
New York

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

NON-RESPONSIVE PORTIONS REDACTED

Madam President,

In its June 1 statement on the Gaza flotilla incident, this Council expressed support for the proximity talks, "urged the parties to act with restraint, avoiding any unilateral or provocative actions," and called on "all international partners to promote an atmosphere of cooperation between the parties and throughout the region." We urge the international community to shun unilateral action and confrontation and instead undertake conciliatory steps that promote cooperation between the parties. We call on all parties to act responsibly to meet the recovery needs of the people of Gaza and to rebuild Gaza's civilian private sector, which will be the engine of Gaza's recovery.

In this context, Israel, like any other nation, should be allowed to undertake an investigation into events that involve its national security. Israel is capable of conducting a serious and credible investigation and the structure and terms of reference of the independent public commission on the Gaza flotilla can meet the standard of a prompt, impartial, credible, and transparent investigation. We will prejudge neither the process nor its outcome, and we will await the conduct and findings of the investigation before drawing further conclusions.

NR

Thank you, Madam President.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

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NON-RESPONSIVE PORTIONS REDACTED

Text: PALESTINE
2d: ISRAEL
MIDDLE EAST

UNSC Middle East Consultations
Talking Points
June 15, 2010

Thank you, Mr. President, and thank you, Special Coordinator Serry, for your briefing.

NR

On June 1, the President of the Council issued a statement in reaction to the incident involving the convoy sailing to Gaza, expressing on behalf of all Council members our deep regret at the loss of life and injuries, and our condolences to the families. The Council condemned those acts which resulted in these casualties, and called for a prompt, impartial, credible and transparent investigation conforming to international standards.

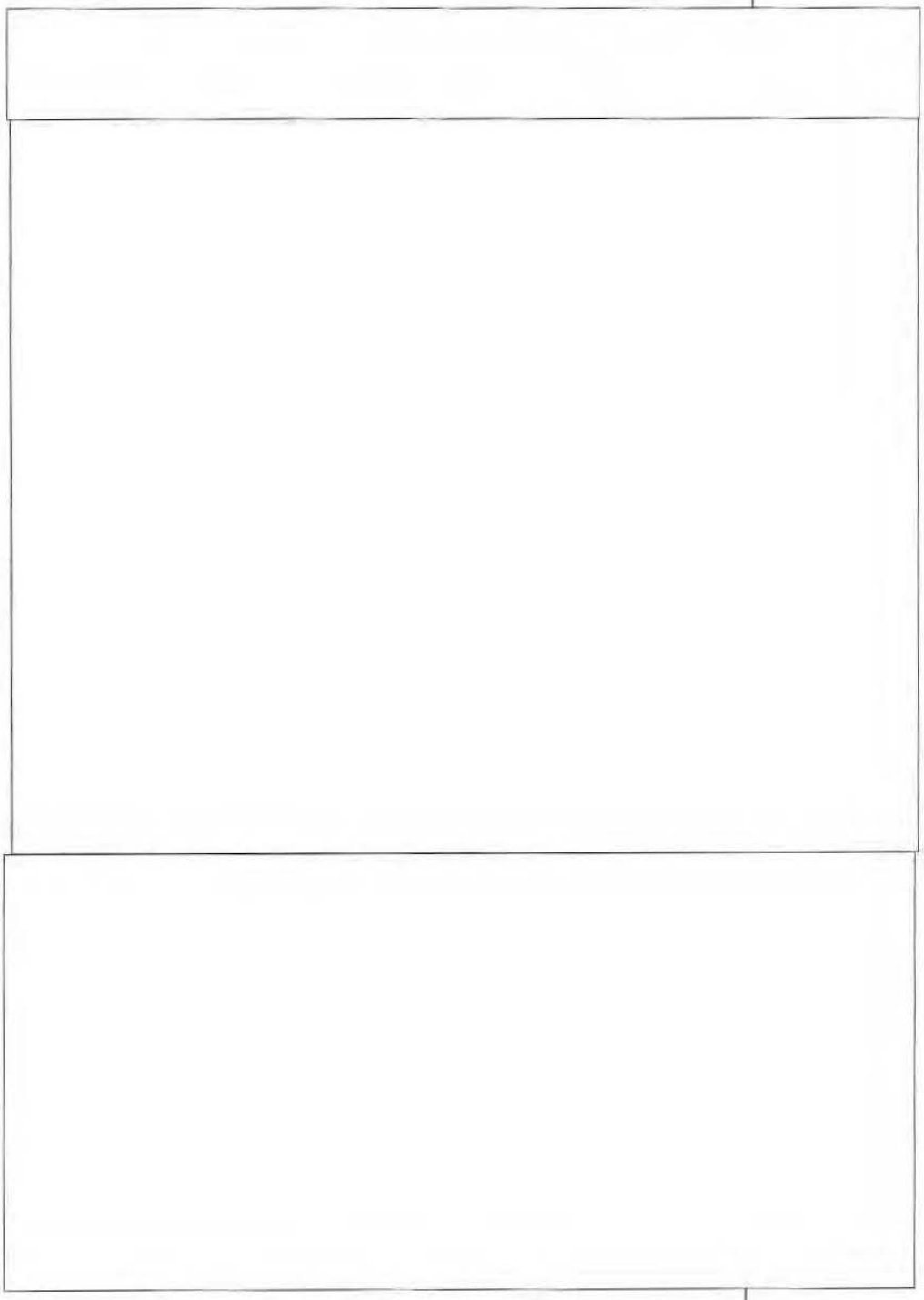
The Government of Israel took an important step forward on June 14 in approving an independent public commission to investigate the circumstances of the recent tragic events on board the flotilla headed for Gaza.

We believe that Israel, like any other nation, should be allowed to undertake an investigation into events that involve its national security. Israel has a military justice system that meets international standards and is capable of conducting a serious and credible investigation, and the structure and terms of reference of Israel's independent public commission can meet the standard of a prompt, impartial, credible, and transparent investigation. But we will not prejudge the process or its outcome, and will await the conduct and findings of the investigation before drawing further conclusions.

While Israel should be afforded the time to complete its process, we expect Israel's commission and military investigation will be carried out promptly. We also expect that, upon completion, its findings will be presented publicly and will be presented to the international community.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

NR



NR

Thank you Mr. President.

RELEASED IN FULL

NON-RESPONSIVE PORTIONS REDACTED

ISRAEL
PALESTINE ✓

UNITED STATES MISSION TO THE UNITED NATIONS

140 East 45th Street
NEW YORK, N.Y. 10017-3505

January 18, 2011

BRIEFING MEMORANDUM FOR THE PERMANENT REPRESENTATIVE

SENSITIVE BUT UNCLASSIFIED

FROM: POL – Bill Grant
THROUGH: EXEC – Ambassador DiCarlo
SUBJECT: Security Council Open Debate on the Middle East, January 19, 2011

BACKGROUND:

Under Secretary-General Pascoe will brief the Council on events in the Middle East since December 14, followed by an open debate.

NR

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

NR

The U.S. draft statement for the open debate is still being finalized in Washington. We've removed points on the Gaza flotilla incident, as Israel's report will not be submitted to the UN this week.

(Low side)

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Drafted: POL: BMasilko

RELEASED IN FULL

Simonoff, Mark A (USUN)

From: Anderson, Brooke D (USUN)
Sent: Saturday, November 13, 2010 6:44 AM
To: Simonoff, Mark A (USUN)
Subject: Re: Weekly Report: Legal Section

NON-RESPONSIVE PORTIONS REDACTED

Great !!!

From: Simonoff, Mark A (USUN)
To: Anderson, Brooke D (USUN)
Sent: Sat Nov 13 00:16:09 2010
Subject: Re: Weekly Report: Legal Section

Yes

From: Anderson, Brooke D (USUN)
To: Simonoff, Mark A (USUN)
Sent: Fri Nov 12 21:46:12 2010
Subject: Re: Weekly Report: Legal Section

U got flotilla language out of law of the sea??

From: Simonoff, Mark A (USUN)
To: Singh, Priya (USUN); DiCarlo, Rosemary A (USUN); Anderson, Brooke D (USUN); Ahmed, Salman (USUN); Harris, Grant T
Sent: Fri Nov 12 20:37:56 2010
Subject: Weekly Report: Legal Section

Weekly Report: Legal Section

Following are highlights of the work of the Legal Section on matters which we have the lead on.

NR

Sixth Committee

Disabilities Convention

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

[redacted]

International Criminal Court UN General Assembly Resolution

[redacted]

Oceans and Law of the Sea Resolution

We remained united with the EU, Canada, Australia, Israel and others in our opposition to the flotilla paragraph in the annual oceans and law of the sea resolution. While Turkey did not affirmatively withdraw the paragraph, it took a rather low profile on the issue and did not put up much of a fight. (I consulted separately with Turkey and Israel throughout the negotiations. Everyone seemed eager to avoid an open confrontation on the issue.) Because there was no consensus on this flotilla paragraph, it was deleted from the text of the resolution.

CTED Mandate Renewal Resolution

[redacted]

Mark A. Simonoff
Acting Legal Adviser
U.S. Mission to the United Nations
799 United Nations Plaza
New York, NY 10017
(212)415-4220

SBU
This email is UNCLASSIFIED.

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centerforconstitutionalrights
on the front lines for social justice

February 16, 2011

Ms. Peggy Kerry
NGO Liaison
United States Mission to the United Nations
799 United Nations Plaza
New York, N.Y. 10017

Re: **Meeting Request: Ahmet Doğan, Father of Furkan Doğan, U.S. citizen killed on the *Mavi Marmara* on May 31, 2010**

Dear Ms Kerry:

I write on behalf of Ahmet Doğan, the father of Furkan Doğan, the U.S. citizen killed aboard the *Mavi Marmara* on May 31, 2010. Mr. Doğan will be travelling to the United States next week for the purpose of meeting with U.S. government officials to discuss his son's killing and actions that the United States has taken or can take to assist in seeking justice and accountability for his son's death. **Mr. Doğan will be in New York on February 24th and would like to meet with you or representatives from your Office to discuss his son's killing and the U.S. response to it.** I note that efforts to secure a meeting for Mr. Doğan with representatives of the United States Embassy in Ankara, Turkey have been unavailing, prompting him to make this trip to the United States. See Enclosure A.

As you may be aware, 19-year old Furkan Doğan was among the sixteen United States citizens who were part of the flotilla, including five who were on the Challenger I, a U.S.-registered vessel. At the time of his death, Furkan Doğan was only a U.S. citizen, (and not a dual citizen with Turkish citizenship) having previously renounced his Turkish citizenship Furkan Doğan was shot five times, including twice in the head, once in the back, in the left leg and foot. All of the entry wounds were to the back of his body, except the shot to his face, which was delivered at point-blank range. See Enclosure B. An English-translation of the autopsy report for Furkan Doğan is attached. See Enclosure C.

In addition, United States citizens were beaten, and their property, which includes video and photographic evidence, was seized and appropriated by Israel and has not been returned. The U.S. passengers have urged the State Department to assist in securing the return of their property and safeguarding evidence for a criminal investigation. See Enclosure D. The evidence which was seized by the Israeli government and remains in its possession includes the video-camera Furkhan Doğan was holding at the time that the Israeli commandos rappelled onto the *Mavi Marmara.*

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

666 broadway, 7 fl, new york, ny 10012
t 212 614 6464 f 212 614 6499 www.CCRjustice.org

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

I appreciate your urgent attention to this matter and look forward to your prompt response. Please feel free to contact me at 212-614-6445 or kgallagher@ccrjustice.org if you have any questions or need any additional information.

Sincerely,

Katherine Gallagher

Katherine Gallagher
Senior Staff Attorney

Encl. A. Letters exchanged between the Elmadağ Law Office and the Embassy of the United States – Ankara

B. Excerpt from the United Nations Human Rights Council Report Fact-Finding Mission on the Flotilla Attack, September 27, 2010, A/HRC/15/21

C. Autopsy Report for Furkan Doğan

D. Letter from U.S. passengers, including Ahmet Doğan to Secretary of State Clinton, October 6, 2010

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UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

Enclosure A

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

elmadağhukuk
avukatlık danışmanlık

THE UNITED STATES OF AMERICA EMBASSY, ANKARA-TURKEY

Douglas A. SILLIMAN

To: Deputy Chief of Mission

Atatürk Bulvarı 110
Kavaklıdere, 06100 Ankara - Türkiye
ozbagd@state.gov

No: HUKMEK-01-10-28

Subject: Formal request for information about the USA citizen FURKAN DOGAN whom he was killed on 31 May 2010 by the Israeli attack on Freedom Gaza Flotilla while it was in the international waters.

Date: 7.09.2010

Dear Sir **DEPUTY CHIEF OF MISSION**

At the outset allow us to introduce ourselves. We, Elmadag Law Office, are the Legal Representatives of each victim of the 31 May Gaza Flotilla Incident who hold Turkish Citizenship. Our role is to pursue the rights of the each victim in accordance with remedies available under international law, inter alia United Nations, International Court of Justice and International Criminal Court, and exhaust every possible international legal remedy.

On the day of May 31 when the aforementioned attack has occurred, 9 civilians were killed with gunfire. Among them one of the deceased people was Furkan Dogan, having Turkish origin and holding the USA citizenship. His dead body was sent to Turkey after the attack. His autopsy report

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info@elmadaghukuk.com

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

prepared by the Forensic Medicine Institute and his family took his body and buried in the city of Kayseri.

Elmadag Law Office is the representatives of his Family for the fact that they were victim and complainant since their son was shot.

Based on the foregoing;

On behalf of the Dogan Family, we respectfully request from the authority of the United States Government to act the legal and diplomatic remedies for Furkan Dogan's death, we therefore request the US Embassy in Ankara to inform us about the aforesaid situation further and have a meeting.

Sincerely,

Att. RAMAZAN ARITÜRK

EK – I: **30.07.2010 Tarihli, Kayseri 8. Noterliğinden 28678 Yevmiye No'lu**

StateDept004541

Vekâletname - Vekil: Ahmet Doğan

EK – II: 17.06.2010 Tarihli, Furkan Doğan'a ait Otopsi Raporu - Adli Tıp Kurumu Başkanlığı

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

Embassy of the United States of America

Ankara, Ekim 7, 2010

Sayın Avukat Ramazan Arıtürk,

İstanbul Dünya Ticaret Merkezi

A-1 Blk. N: 61 Yeşilköy,

İstanbul

Sayın Arıtürk,

Amerikan Büyükelçiliği Maslahatgüzarı Douglas A. Silliman'a göndermiş olduğunuz 1-10-2010 tarihli yazınıza cevaben Maslahatgüzar adına bu mektubu yazmaktayım.

Göndermiş olduğunuz yazı tarafımıza ulaşmıştır.

Saygılarımla,

Richard Appleton

Başkonsolos

Amerikan Büyükelçiliği

Ankara

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

Embassy of the United States of America

Ankara, September 7, 2010

Dear Att. Ramazan Arıtürk,

Istanbul World Trade Centre

A-1 Block No:61 Yesilkoy,

Istanbul

Dear ARITURK,

I am writing on behalf of the United States Charge d'Affaires Douglas A. Silliman in response to letter he received dated 1/10/210.

We have received your letter.

Regards,

Richard Appleton

Consul General

Embassy of the United States

Ankara

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

elmadağhukuk
avukatlık danışmanlık

EMBASSY OF THE UNITED STATE, ANKARA-TURKEY

Douglas A. SILLIMAN

Deputy Chief of Mission

Atatürk Bulvarı 110
Kavaklıdere, 06100 Ankara - Türkiye
ozbagd@state.gov

HUKMEK-01-10-39

Reiteration for Formal request for information about the USA citizen FURKAN DOGAN whom he was killed on 31 May 2010 by the Israeli attack on Freedom Gaza Flotilla while it was in the international waters.

29.11.2010

Dear Sir **DEPUTY CHIEF OF MISSION**

We, Elmadag Law Office, are the Legal Representatives of each victim of the 31 May Gaza Flotilla Incident who hold Turkish Citizenship.

On the day of 31 May 2010 one of the deceased of the consequence of the aforementioned attack was Furkan Dogan. The legal team of our office will go to the USA on the point of legal process for Furkan Dogan's case.

It was asked for formal request on the date of 01.10.2010 to have appointment with you on behalf of victim and complaint Dogan Family for further information about Furkan Dogan. (no: HUKMEK-01-10-28). We have received your letters indicating that you received our request letter. Respectfully, We would like to renew our aforementioned request dated 01.10.2010 for meeting with you before we visit the USA.

Sincerely,

Av. Ramazan ARITÜRK

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UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

Enclosure B

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

United Nations A/HRC/15/21

General Assembly

Distr.: General
27 September 2010

Original: English

Human Rights Council
Fifteenth session
Agenda item 1
Organizational and procedural matters

Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance*

Summary

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

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

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

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

The fact-finding mission concluded that a series of violations of international law, including international humanitarian and human rights law, were committed by the Israeli forces during the interception of the flotilla and during the detention of passengers in Israel prior to deportation.

* Late submission.

GE.10-16486

Please recycle

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

StateDept004547

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

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

Preparation and planning on the Mavi Marmara

99. The full realization that the Israelis were serious about commandeering the flotilla spread through the passengers on the *Mavi Marmara* during the course of 30 May. There is clear evidence that some people on board the *Mavi Marmara*, including senior IHH leaders, were prepared actively to defend the ship against any boarding attempt. Video evidence shows a meeting of about 50 to 100 passengers on the ship on 30 May at which the IHH President and a number of other prominent passengers spoke with some bravado about preventing an Israeli takeover of the ship. The pressure of the water hoses was seen being tested on the decks the day before the interception.

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

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

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

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

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

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

Preparation and planning on the Gazze I and Defne Y

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

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

1. Factual description and findings

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

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

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

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

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

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

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

(b) Events on board the M.V. Mavi Marmara[67]

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

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

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

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

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

[67] For the purposes of this report, the following terms are used to describe the various decks of the *Mavi Marmara*: top deck – the roof of the ship where the satellite tower and funnel are located, bridge deck – the deck below the top deck which gives access to the bridge, bow deck – lowest open deck with access to the front of the ship. live television broadcasts were made from an open deck area at the back of the bridge deck.

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

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UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307546 Date: 05/03/2013

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

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

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

(iii) Deaths of 9 passengers and wounding of at least 50 other passengers

117. During the operation to secure control of the top deck, the Israeli forces landed soldiers from three helicopters over a 15-minute period.[71] The Israeli forces used paintballs, plastic bullets and live ammunition, fired by soldiers from the helicopter above and soldiers who had landed on the top deck. The use of live ammunition during this period resulted in fatal injuries to four passengers,[72] and injuries to at least 19 others, 14 with gunshot wounds. Escape points to the bridge deck from the top deck were narrow and restricted and as such it was very difficult for passengers in this area to avoid being hit by live rounds. At

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

[70] In his testimony to the Turkel Committee, held in Israel on 11 August 2010, Chief of General Staff Ashkenazi refers to one soldier being "shot in his abdomen by one of the activists" and that "in the course of the battle, five soldiers [were] wounded by stabbings, blows and shooting". However, at the urgent debate of the Human Rights Council held during its fourteenth session, on 1 June 2010, the Permanent Representative of Israel stated that passengers "shot two Israeli soldiers". In contrast, in the State's response at the habeas corpus hearing, held on 2 June 2010 (petition HCJ 4913/10 before the Supreme Court in Jerusalem, sitting as the High Court of Justice; unofficial translation), no specific reference was made to any Israeli soldiers being shot.

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

[72] Fahri Yaldiz, Furkan Doğan, İbrahim Bilgen and Ali Haydar Bengi.

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

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

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

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

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

> I saw two soldiers on top of the roof standing there holding their guns down at something on the roof that I couldn't see. There were two guys hidden underneath a walkway of the ship to the right hand side and I was screaming at them not to move. The two passengers were below the soldiers. They could not see the soldiers and the soldiers could not see them while they were hidden under the walkway. Then the guys moved out, making themselves visible as they tried to run towards the metal door. One man made it to open the door and got inside. The other man must have been shot. I think he was shot in the head from the way he looked, he wasn't moving at all. He was 20 or 30 metres away from me. When the second man got shot, the first man opened the door and using it as a shield tried to reach out for the second man. He managed to reach him and was pulling him by his right arm. I couldn't see any blood, but he wasn't moving at all.

[73] Cevdet Kiliçlar, Cengiz Songür, Cengiz Akyüz and Çetin Topçuoğlu.

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122. A group of up to 20 passengers, some holding sticks and rods and wearing gas masks, were located on or around the stairwell inside the ship. One passenger standing just inside the door was shot through the broken porthole in the door by a soldier standing a few metres away on the bridge deck outside.

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

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

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

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

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

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

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

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

[75] As stated by COGS Ashkenazi in his testimony to the Turkel Committee on 11 August 2010.

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Table - Deaths of flotilla participants

Deaths occurring on the top deck (roof)

Furkan Doğan

Furkan Doğan, a 19-year-old with dual Turkish and United States citizenship, was on the central area of the top deck filming with a small video camera when he was first hit with live fire. It appears that he was lying on the deck in a conscious, or semi-conscious, state for some time. In total Furkan received five bullet wounds, to the face, head, back thorax, left leg and foot. All of the entry wounds were on the back of his body, except for the face wound which entered to the right of his nose. According to forensic analysis, tattooing around the wound in his face indicates that the shot was delivered at point blank range. Furthermore, the trajectory of the wound, from bottom to top, together with a vital abrasion to the left shoulder that could be consistent with the bullet exit point, is compatible with the shot being received while he was lying on the ground on his back. The other wounds were not the result of firing in contact, near contact or close range, but it is not otherwise possible to determine the exact firing range. The wounds to the leg and foot were most likely received in a standing position.

Ibrahim Bilgen

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

Fahri Yaldiz

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

Ali Heyder Bengi

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

Deaths occurring on the bridge deck, portside

Cevdet Kiliçlar

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

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the pathology reports, he received a single bullet to his forehead between the eyes. The bullet followed a horizontal trajectory which crossed the middle of the brain from front to back. He would have died instantly.

Cengiz Akyüz and Cengiz Songür

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

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

Çetin Topçuoğlu

Çetin Topçuoğlu, a 54-year-old Turkish citizen from Adana had been involved in helping to bring injured passengers inside the ship to be treated. He was also shot close to the door on the bridge deck. He did not die instantly and his wife, who was also on board the ship, was with him when he died. He was shot by three bullets. One bullet entered from the top the soft tissues of the right side of the back of the head, exited from the neck and then re-entered into the thorax. Another bullet entered the left buttock and lodged in the right pelvis. The third entered the right groin and exited from the lower back. There are indications that the victim may have been in a crouching or bending position when this wound was sustained.

Deaths and seriously wounded occurring in unknown locations

Necdet Yildirim

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

Wounding of Uğur Suleyman Söylemez (in a coma)

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

(v) Treatment of injured on the Mavi Marmara

129. Whilst the Israeli operation was still under way, efforts were made to tend to wounded passengers inside the ship by other passengers, amongst whom were around 5 doctors, nurses and others with medical training, including an ophthalmologist and orthopaedic specialist. Prior to the attack, the doctors had met and agreed to use the ship's small medical room, but there was no anticipated or preparation for the nature of injuries that transpired. The limited medicines and lack of appropriate equipment made it very difficult to properly treat wounded persons, particularly those who had received live fire injuries and required immediate surgery. By the end of the Israeli operation more than thirty persons were being treated inside the cabins, primarily in the lower deck in makeshift surgery areas, twenty of whom were in a critical condition.

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

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

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

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

(vi) Search and initial detention of Mavi Marmara passengers

133. All other passengers on the *Mavi Marmara* were taken one by one from the cabin areas and onto the external deck areas and were searched. The vast majority of passengers, including the ship's captain and crew, were then handcuffed with plastic handcuffs and forced to kneel on the various decks for some hours. Some women, elderly men and persons from Western countries were not handcuffed, or were temporarily handcuffed and then uncuffed after a relatively short period of time and were then permitted to sit on the benches. Most of those kneeling were drenched by water from the blades of the helicopter and were thus also in wet clothing throughout this period and were very cold. Other passengers exposed on open decks received serious sun-burn to their skin as a result of many hours exposure: medical reports show that at least 13 passengers received first-degree burns as a consequence. During the course of the 12-hour journey to the port of Ashdod in Israel, the passengers were brought inside the ship and allowed to sit on the available seating.

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

[76] According to the testimony of COGS Ashkenazi to the Turkel Committee on 11 August 2010, field surgeries were performed on14 passengers on board the ship.

[77] Also according to the above testimony, 31 wounded passengers and 7 wounded Israeli soldiers were airlifted from the ship utilizing "approximately 40 helicopter evacuations" and all wounded had been evacuated by 1230 hours.

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

135. The manner in which plastic handcuffs were attached to the wrists of passengers caused severe pain and discomfort. There was widespread misuse of the handcuffs by the Israeli soldiers who tightened the plastic handcuffs to an extent that caused pain, swelling, a loss of blood circulation in the hands and the loss of sensitivity in their hands and fingers. Most passengers who requested that the handcuffs be loosened were ignored or it resulted in the handcuffs being further tightened. A number of passengers are still experiencing medical problems related to the handcuffing three months later and forensic reports confirm that at least 54 passengers had received injuries, transversal abrasions and bruises, as a result of handcuffing on board the *Mavi Mamara*.

(c) *Events aboard the Challenger 1*

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

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

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

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

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

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

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Enclosure C

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Republic of Turkey
MINISTRY OF JUSTICE
Forensic Medicine Authority

17 June 2010

NUMBER: B0.3.1.ATK.0.11.00.01-101.02-38269/1596
SUBJECT: AUTOPSY REPORT

Name Surname	: FURKAN DOĞAN
Date of Birth	: 20 October 1991
Gender	: Male
Republic of Turkey ID No	: 600 280 161 48
Matriculation Record	: Of USA nationality
Residence	: -
Date of Finding Dead	: 31 May 2010
Place of Finding Dead	: Mavi Marmara Ship
Autopsy Requested by	: Bakırköy Public Prosecution Office
Date/Number	: 02 June 2010 -66833
Autopsy Held At	: Forensic Medicine Authority Morgue Specialization Office
Autopsy Date and Time	: 03 June 2010 – 03.40
Public Prosecutor	: A. Cemil Talaslıoğlu
Doctors under Oath	: Dr. M. Özbay, Dr. İ. Üzün, Dr. G. Şirin, Dr. M. Akgül
Observer	: Lawyer Okan Kadir Bektaşoğlu (Bar Association Registry No: 38727)

EXTERNAL EXAMINATION

It has been seen that the naked body wrapped up in a sheet and taken out of the brown wooden coffin on which there is a label numbered 3/0584, has been washed up, that it had a white plastic label with some notes in Hebrew and a paper label with yellow color reading "DVI ISRAEL POLICE – Dental Examination" on its left hand wrist, with red color reading "DVI ISRAEL POLICE - Fingerprinted", with green color reading "DVI ISRAEL POLICE – Sampled for DNA", and with white color reading "DVI ISRAEL POLICE – External Examination", and with blue color reading "DVI ISRAEL POLICE – Photographed" on his right hand wrist, and a plastic label reading "584" on him and that it had a plastic label reading "584" on its right ankle.

In the examination held under scopy, a double fragment fracture of the left cruris and metallic parts with a diameter of 0.1-0.3 mm at that site, a metallic part of 0.1x0.3 under the skin to the left of

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thorax, and an oval metallic object with a diameter of 1.5-2 cm at the level of his left ankle were observed.

In the circumcised male body with a fair complexion, brown eyes, short brown hair, brown-red moustache-beard, at the age 18-20, with a height of 1.71 cm, a weight of 64 kg; it has been observed that rigor mortis has passed, that livor mortis have been formed at locations of the back of body not subject to compression, and that ridding has started at the lower quadrants of the abdomen in the form of yellow green color change.

It has been observed that

1- There were a firearm bullet entrance wound with a diameter of 0.7 cm, with abrasion ring around and with flesh wound of 0.6x0.5 cm to the frontal lower section, a flesh wound of 0.6x0.5 cm to the front lower section of the same, and oval powder impresses distributed at a longitudinal axis of 7 cm under the right eye,

2- There was a firearm bullet exit wound to the left frontal back in the form of + at dimensions 3x2.5 cm at a distance of 1 cm to the midline,

3- There was a firearm bullet exit hole having a diameter of 1 cm in the form of tear 1.5 behind the left ear, and a flesh wound of 0.5 cm near the auricle, on the same line,

4- There was a firearm bullet entrance wound on the right occipital, with a diameter of 0.8 cm with abrasion ring but without shot residues around, 7 cm posterior to the ear,

5- There was a firearm bullet entrance wound with a diameter of 0.8 cm with abrasion ring but without shot residues around, at the paravertebral region aligned at 4^{th}-5^{th} rib level on the median line of the back,

6- There was a firearm bullet exit wound on the right arm 1/3 lower external lateral plane, firearm bullet exit wound, to the left of the chest, in line with the frontal armpit line and the 5^{th} rib, and 4x1 cm bruise with a flesh wound under that,

7- On the left foot, 5th finger distal interior, there was a flesh wound of 2x1 due to passing of the firearm bullet, and at the bottom of the 4^{th} finger to the bottom external side, in the form of a split of 0.6 cm, a firearm bullet entrance wound without shot residues,

2- There was a firearm bullet exit wound in the form of star-like laceration with a diameter of 0.7 cm, 2 cm posterior to the origin of the 4^{th} finger of the left foot base,

9- In left cruris lateral, 1/3 median, there was a firearm bullet entrance wound having a diameter of 0.7 cm, with abrasion ring but without shot residues around,

Within the left eye internal side, there were bruises on the upper and lower eyelids, there was a purple colored bruise at left cruris 1/3 medium frontal side and internal side with a diameter of 6 cm, also at left cruris distal to the internal side, upper section of internal malleol, there was a purple colored bruise with a diameter of 5 cm, and a flesh wound of 05x0.3 cm in the middle of the same, and also in that region a foreign body that might be a bullet was found under the skin through palpation, and that a

purple colored bruise of 6x4 cm on the medial left shoulder posterior side with a flesh wound of 1 cm in diameter at one end.

Anal examination showed no macroscopic pathologic characteristic apart from postmortem dilatation.

Both hands were determined to involve black-pink-red ink stains on the palmar side.

INTERNAL EXAMINATION

THE HEAD WAS OPENED: The scalp was removed. The regions under the firearm entries under the scalp was found to have hemorrhage. Both temporal muscle groups have hemorrhage, and an entry defect of the firearm bullet without soot, 2 cm below the lambdoid sutura to the right occipital right side in the calvaria, and a linear fracture line going 3 cm leftward and upward from that point, a firearm bullet exit defect with external impresses on the outer lamina with a dimension of 2.5x3cm at a distance of 1 cm to the coronal sutura in frontal left medium, that one of the fracture lines originating from that point goes 2 cm to the back and comes to an end, that the second goes to the front, that a fracture line generated by the entry defect of the firearm bullet no 1 and coming from the firearm bullet exit wound described in the right frontal bone comes to an end at the point of intersection of such fracture line were observed. It was observed that there was a 2x1 cm firearm bullet exit defect on the posterior left temporal bone, and a multiple fragmented fracture on the squamous bone thre, that the broken bone parts showed an elevation of 2-3 mm.

The skull was opened using the fracture lines, the brain and cerebellum were removed, weighed as 1493 gr. There are widespread subarachnoidal hemorrhage on the cerebellum surfaces and intense tissue destruction in the base of skull and left hemisphere, and intense tissue destruction was observed along the firearm bullet trajectory in their sections. Widespread fracture lines were observed in the entire base of skull, with multiple fragmented fractures in the left medial cranial cavity and the frontal cranial cavity.

In examination of the orbita, nose and mouth cavities, no macroscopic pathologic characteristics were observed apart from blood smear.

THE CHEST WAS OPENED: Sternal valve was removed. Both lungs were found free. 600 cc blood was emptied from the left chest cavity. No free liquid or blood was detected in the right chest cavity. Pericardial fluid of usual amount and appearance was found in the pericardial cavity.

The heart was resected, weighed as 285 gr. Anatomic pathology was not monitored. Coronary arteries were found open. Left ventricle wall thickness was measured 1,3 cm, right ventricle wall thickness as 0,3 cm, aorta valve periphery as 6,8 cm, mitral valve periphery as 9 cml, pulmonary valve periphery as 6.3 cm, tricuspid valve periphery as 11.7 cm. No macroscopic pathologic characteristics were observed on the heart valve, cavity and wall tissues and myocardium sections thereof.

The lungs were resected, the right lung was weighed as 285 gr, and the left lung 295 gr. There was a hole due to the passing of the firearm bullet on the lower lobe upper posterior left lung and between upper-lower lobes to the front, and intense intra-tissue bleeding along the trajectory, but no

macroscopic pathologic characteristics were observed in the other areas of the left lung and the right lung.

Macroscopic pathologic characteristics were not observed in mediastinal structures.

A fracture was found due to the passing of a firearm bullet from the left 5th rib frontal axillary line and left 4th rib paravertebral line. In the examination held during the scopy, the tiny part of metal observed near the left of thorax close to the exit wound could not be found in spite of all searches.

In examination of the neck organs, hyoid bone, thyroid cartilage and neck vertebrae were found intact.

No macroscopic pathologic characteristics were observed in the trachea and esophagus.

THE ABDOMEN WAS OPENED: No free fluid or blood was observed in the abdominal cavity.

100 cc semi digested food content was found in the stomach.

The large and small intestines showed no macroscopic pathologic characteristics.

The liver was resected; weighed as 1157 gr. Its surfaces were smooth and no macroscopic pathologic characteristic was observed apart from the pale appearance at its sections.

The spleen was weighed 162 gr.Its surface and sections showed no macroscopic pathologic characteristics.

The right kidney was weighed 141 gr, left kidney 135 gr. There are fetal lobulation on the surfaces of both kidneys, and their sections showed no macroscopic pathologic characteristics.

The pelvis wall and soft tissue showed no macroscopic pathologic characteristic.

The bladder was found full.

When the left kruris was dissected, widespread hematoma and tibia as well as multiple fractures on the fibule covering 1/3 under cruris were found. The tiny metal fragments detected during in the left cruris could not be found despite all searches. During the external examination, when an incision was made to the bruise site described in the left cruris distal in the external examination, one bullet with rifling marks with deformed jacket, which is partially lost, from within the muscular tissue behind the internal malleol.

The following were found out:

That the firearm bullet entering from the spot described in no 1 in the external examination broke the frontal bone and entered the skull, passed through the brain tissue in its course right to left and front to the back, broke the occipital bone, and left the body from the spot described in no 3 in the external examination,

That the firearm bullet entering from the spot described in no 4 in the external examination broke the occipital bone and entered the skull, passed through the brain tissue in its course right to left and downward, broke the frontal bone, and left the body,

That the firearm bullet entering from the spot described in no 5 in the external examination entered the thoracic cavity in its course left to right, slightly downward, and back to the front, broke the 4th rib from below the paravertebral line, entered the left lung from the lower lobe posterior superior and

exited at the front from the interlobar region, broke the 5th rib from the left frontal axillary line, and left the body,

That the firearm bullet entering at the place described in no 7 in the external examination left the body passing through soft tissue from the spot described in no 8 in the external examination, without any bone fracture,

That the firearm bullet entering at the spot described in no 9 in the external examination caused multiple fractures in the tibia and fibula in its course inward and downward, and remained within the soft tissue at inner malleol upper section.

On examination of the firearm bullet entrance wounds, no subcutaneous shot residue was detected.

Blood sample, nail sample and bone sample were taken with FTA to be kept to do DNA profiling when necessary.

Skin samples from the skin around the entrance wounds were sent to Physics Specialization Office to seek shot residues (nitrite-nitrate)

2 blue colored, plastic bags stated to involve clothes were sent to Physics Specialization Office for examination.

Biopsy was made from the heart, lung, liver, kidney, cerebellum, peduncle and the brain for histopathological examination when necessary.

Samples of blood, urine, fat tissue, as well as the stomach and intestines along with its contents were taken for systematic toxicological analysis and seeking alcohol, soporific-narcotic, and skin wipe samples were taken to seek explosive products; and were sent to Chemistry Specialization Office.

One bullet obtained was sent to Physics Specialization Office for definition and determination of the type of the shooting weapon.

In the letter by Physics Specialization Office dated 10 June 2010; it was specified that the persons were cleaned (washed) to whom the skin and subcutaneous tissue parts of 4 boxes 38272 (1599), 2 boxes 38303 (1601), 2 boxes 38249 (1593), 6 boxes 38269 (1598), 5 boxes 38266 (1597), 4 boxes 38254 (1594), 1 box 38259 (1595), 1 box 38304 (1600), 5 boxes 38263 (1596) belong to, and thus that they were returned to the Morgue Specialization Office without examination,

In the report dated 16 June 2010 and numbered 6150 by the Physics Specialization Office; the following sent for examination,

1- On the coat with a hood in gray color outside and beige color inside;

A- One with a diameter of 0.6 cm on the back side right upper side area (12 cm below the shoulder seam, 14 cm to the right arm body seam),

B- One with a size of 2x2 cm in "T" shape at the front side left edge medium area (10 cm below the armpit joint, 26 cm to zipper edge),

2- On the sweat pants with the expression "ADIDAS" on the black colored left pocket;

One with a diameter of 0.6 cm on the back side left leg lower edge external area (22 cm to the lowest part of the trousers, 1.5 cm to the external side seam),

3- Black colored "ADİDAS" brand shoes;
One with a diameter of 0.6 cm to the upper left end of the external side on the left shoe,

4- It has been recorded in relation with the holes on the coat with hood gray outside and beige inside, the sweat pants with the expression "ADIDAS" on the black colored left pocket, and the black colored shoes with "ADIDAS" brand; and around the holes,
A- In the physical examination held visually and using a magnifying glass; burn, searing and powder soot WERE NOT OBSERVED,
B- In the chemical examination held using improved grease indicator, powder residues WERE NOT DETECTED,
5- A deformed bullet with broken jacket, having a diameter of 9 mm pertained to cartridges produced for weapons having a diameter of 9x19 mm,
Consequently in the examination;
1- It has been recorded in relation with the holes on the coat with hood gray outside and beige inside, the sweat pants with the expression "ADIDAS" on the black colored left pocket, and the black colored shoes with "ADIDAS" brand; and around the holes,
2- According to the physical and chemical findings obtained, the shots causing entrance holes on the clothes;
A- were not fired at ranges IN CONTACT, NEAR CONTACT or CLOSE-RANGE, B- However, according to the actual findings, there is no way to determine the actual firing range,
3- One (1) bullet having a diameter of 9 x 19 mm, have been fired from automatic or semi-automatic gun with corresponding diameter and type,
In the report by Chemistry Specialization Office dated 15 June 2010 and numbered 02/10-38269/2781; the substances of the sought systematic were not found out as a result of the systematic toxicological analysis held on the internal organs, stomach and the fat tissue, there was trimethobenzamide in the internal organs, no Ethanol and methanol methanol was found in the blood, soporific-anesthetic substances of the sought systematic were not found out, 168.8 ng/mL trimethobenzamide was found, soporific-anesthetic substances of the sought systematic were not found in the urine, Trimethobenzamide was found, explosive substances of the sought systemic (2-Amino-6-Nitrotoluene; 2,6-DNT; TNB; HMX; 4-Amino-2,6-Dinitrotoluene, RDX; Nitrobenzene, 1,2-DNB; 2,4-DNT) were not detected in the skin wipe.

RESULT

The following opinions were reached:
In view of the information and findings given above, obtained with the autopsy and examinations held by the Morgue Specialization Office of the Forensic Medicine Authority on 03 June 2010 over the

body of FURKAN DOĞAN, born in 1991, son of Ahmet, reported to have died in the incident that occurred onboard Mavi Marmara Ship on 31 May 2010;

1. In the report by Chemistry Specialization Office; the substances of the sought systematic were not found out as a result of the systematic toxicological analysis held on the internal organs, stomach and the fat tissue, there was trimethobenzamide in the internal organs, no Ethanol and methanol methanol was found in the blood, soporific-anesthetic substances of the sought systematic were not found out, 168.8 *ng/mL* trimethobenzamide was found, soporific-anesthetic substances of the sought systematic were not found in the urine, Trimethobenzamide was found, explosive substances of the sought systemic (2-Amino-6-Nitrotoluene; 2,6-DNT; TNB; HMX; 4-Amino-2,6-Dinitrotoluene, RDX; Nitrobenzene, 1,2-DNB; 2,4-DNT) were not detected in the skin wipe.

2. According to the report by Physics Specialization Office; since it was specified that the people to whom the skin and subcutaneous tissue samples belong to were cleaned (washed), no examination was held, upon the examination of the holes on the coat with a hood gray inside and beige outside, the sweat pants with the expression "ADIDAS" on the left pocket, and the black colored "ADIDAS" brand shoes, according to the physical and chemical findings obtained, the discharges causing the entrance holes on the clothes were not fired at ranges in contact, near contact or close-range, however it is not possible to determine the actual firing range, one (1) cartridge having a diameter of 9x19 mm was fired from an automatic or semi-automatic weapon with corresponding diameter and type,

3. The active ingredient of the antiemetic drug found in the blood (16.8 ng/mL Trimethobenzamide) was not at toxic levels, but it was at therapy level,

4. 5 (five) firearm bullets hit the body of the person, and the injuries caused by the bullets described in no 1, 4 and 5 in the external examination were individually lethal, and the others were not fatal,

5. According to the firearm bullet entrance wound, skin and subcutaneous findings, it was found out in the external examination that the discharges causing the wounds described in item 1 were close, that the discharge constituting the wound described in no 4 was a distant range one (at a range of 35-45 cm for short barrel weapons, and 75-100 cm for long-barrel weapons), that since the other discharges hit the sites with clothing, according to the report of the Physics Specialization Office; they were not fired in contact, near contact or close firing range, however, it is not possible to determine the actual firing range in view of the current findings; and that it is unknown whether the examined clothing is the top clothing of the person at the time of the incident,

6. From the body, 1 (one) bullet with deformed appearance, with a partially lost jacket, was obtained with rifling marks thereon,

7. The death of the person is due to a wound by a firearm bullet causing fractures of the skull, rib and limb bones entailing internal bleeding, cerebral hemorrhage, brain tissue destruction.

Spec. Dr. Mehmet Özbay Spec. Dr. İbrahim Üzün Dr. Gözde Şirin

Forensic Medicine Specialist
{Signature}

Forensic Medicine Specialist
{Signature}

Forensic Medicine Specialist
{ Signature}
Dr. Meral Akbul
Assistant

To: İstanbul Chief Public Prosecutor's Office

Assoc. Prof. Dr. C. Haluk İnce
Head of Forensic Medicine Institution
17 June 2010
{Seal and Signature}
Bakırköy Public Prosecutor
MA/ST
Note: The report was sent by UYAP system.

Enclosure D

October 6, 2010

The Honorable Hillary Clinton,
Secretary of State
United States Department of State
2201 C St NW
Washington, DC 20037

Dear Secretary Clinton,

We, Americans who were aboard the three passenger ships of the Gaza flotilla over four months ago and the father of the U.S. citizen killed on the Mavi Marmara, are appalled at the lack of any visible, active effort on the part of any agency in our government to conduct and release an independent investigation of the killing of one and assaults on other Americans by a foreign military force, the Israeli commandos. We are also angered by lack of any concerted effort by the State Department to secure our possessions. We appreciate the efforts of junior and mid-level officials, but without the full weight of the senior leadership of the State Department, the Israeli government will continue to ignore our concerns.

Although our own government has apparently done nothing, the September 27, 2010, report of the Fact Finding Mission to the Office of the United Nations High Commissioner for Human Rights (OHCHR) revealed there is clear evidence that U.S. citizen Furkan Dogan and four Turkish citizens were murdered, execution-style with gunshots to their heads, by Israeli commandos and four other unarmed passengers were killed with gunshots to other parts of their bodies.

The report reveals that Dogan was filming with a small video camera on the top deck of the Mavi Marmara when he was shot twice in the head, once in the back, in the left leg and foot, at point blank range while lying on the ground. The report says Furkan had apparently been "lying on the deck in a conscious or semi-conscious, state for some time" before being shot in the face. The forensic evidence of "tattooing around the wound in his face," according to the report indicates that the shot was "delivered at point blank range." The report describes the forensic evidence as showing "the trajectory of the wound, from bottom to top, together with a vital abrasion to the left shoulder that could be consistent with the bullet exit point, is compatible with the shot being received while he was lying on the ground on his back."

We want to know if the United States has investigated Furkan's death, and if so, what are the results.

Protecting Israeli actions, particularly the complete reliance on its reports on the acts of its own military at the expense of American citizens, is an absolute dereliction of the responsibilities of our government. The State Department has allied itself with Israel, ignoring its responsibilities to its own citizens. We have been abandoned by our own government, and we demand an investigation of why and how the Department of State and the American Embassy in Tel Aviv have totally failed in their responsibilities to us.

Finally, if the Israeli government insists that we pay for the eventual return of our property, we expect that the United States government will deduct the costs from the $3 billion given to it each year.

Signed:

Ann Wright

Ann Wright has been authorized to sign this letter on behalf of the following American citizens and the father of an American citizen

Ahmet Dogan, father of Furkan Dogan

Huwaida Arraf

Scott Hamann

Janet Koburn

Paul Larudee

Iara Lee

Fatima Mohammadi

Joe Meadors

Fiachra Ó Luain

Edward Peck

David Schmererhorn

Kathleen Sheetz

Gene St. Ong

Ann Wright

CC: Inspector General
US Department of State
United States Department of State
2201 C St NW
Washington, DC 20037

CC: Michelle Bernier-Toth
Director, Office of American Citizens Services and Crisis Management
United States Department of State
2201 C St NW
Washington, DC 20037

CC: Jake Walles,
Deputy Assistant Secretary
Bureau of Near Eastern Affairs
2201 C St NW
Washington, DC 20037

CC: Katherine Gallagher
Senior Staff Attorney
Center for Constitutional Rights
666 Broadway 7th floor
New York, NY
10012

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307525 Date: 05/03/2013

RELEASED IN FULL

بسم الله الرحمن الرحيم

Mission Permanente d'Observation
de l'Organisation de la Conference Islamique
auprès des Nations Unies

Permanent Observer Mission
of the Organization of the Islamic Conference
to the United Nations

البعثة المراقبة الدائمة لمنظمة المؤتمر الإسلامي لدى الأمم المتحدة

New York, 3 June 2010

Statement issued by the Organization of the Islamic Conference (OIC) Group at the Ambassadorial level on the recent illegal Israeli military aggression against the civilian convoy of humanitarian aid ships destined for the Gaza Strip

The OIC Group strongly condemns the illegal, brutal and provocative Israeli aggression carried out in international waters against the civilian convoy of ships that was carrying vital humanitarian aid to be delivered by hundreds of international peace and human rights activists to the occupied and besieged Gaza Strip. The OIC Group also condemns in the strongest possible terms the killing and injury of several civilians by the Israeli military forces that attacked the Turkish vessel in the humanitarian convoy. The OIC Group conveys its deepest condolences to the families of those killed in this military aggression and expresses its hopes for the early recovery of the wounded.

The OIC Group stresses that the Israeli military aggression on the civilian convoy of ships constitutes a flagrant violation of international law, including international humanitarian law and human rights law, and also constitutes an explicit act of piracy under the United Nations Convention on the Law of the Sea. The OIC Group also recalls in this regard General Assembly resolution 3314 (XXIX) of 1974 on the "Definition of Aggression". The international community must undertake all necessary measures to hold Israel accountable for the perpetration of this condemnable and illegal act. The OIC Group joins the UN Security Council's calls made in the Presidential Statement of 1 June 2010, and calls upon the United Nations Secretary-General to immediately initiate a full, impartial, transparent, independent and credible investigation in conformity with international standards into the Israeli military aggression and demands that the perpetrators of this crime to be brought to justice.

The OIC Group further deplores the Israeli seizure of the civilian peace and human rights activists, the ships and the humanitarian supplies in the civilian convoy that were intended for the Palestinian civilian population in the Gaza Strip that continues to suffer gravely under the inhumane blockade that has been illegally imposed by Israel, the occupying Power, for nearly three years, impoverishing the Palestinian population, devastating the Palestinian society and causing widespread trauma and despair. The OIC Group demands the immediate and unconditional release of all of these detained civilians as well as of the ships seized and calls for the delivery of all of the humanitarian aid and supplies to the Palestinian civilian population in the Gaza Strip, as intended by the organizers of the convoy. The OIC Group further demands that full compensation be made, in accordance with international standards, for the loss of lives

130 East 40th Street, 5th Floor, New York, NY 10016
Tel: (212) 883-0140 Fax: (212) 883-0143 e-mail: oic@un.int

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307525 Date: 05/03/2013

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307525 Date: 05/03/2013

and injury caused to civilians by this Israeli military aggression on the humanitarian convoy of ships as well as compensation for all material damages caused.

The OIC Group reiterates that the Israeli blockade of the Gaza Strip constitutes collective punishment on a massive scope and scale and is tantamount to a war crime against the Palestinian people. The OIC Group reiterates its firm and unwavering demand for an immediate end to this unlawful Israeli blockade of the Gaza Strip and the opening of all crossing points to allow for the freedom of movement of persons and goods into and out of the Gaza Strip and to allow for unfettered humanitarian access. The OIC Group appeals to the United Nations Secretary-General to exert all efforts to support the suffering Palestinian people in the Gaza Strip and calls for urgent action in this regard. Moreover, the OIC Group calls upon all humanitarian organizations, including the International Committee of the Red Cross and the Red Crescent to insist on access to the besieged civilian population in Gaza, in accordance with the provisions of international humanitarian law, and to expedite the provision of humanitarian aid, including food, medical, sanitation and fuel supplies, to meet the basic needs of the population.

The OIC Group stresses in this regard the urgency of the entry of all necessary humanitarian and civilian goods to the Gaza Strip as well as the entry of reconstruction materials to allow for the long and unjustly-delayed reconstruction of the homes, infrastructure, and institutions, including United Nations facilities that were destroyed by the Israeli occupying forces during the military aggression against the Gaza Strip from December 2008 to January 2009. In this regard, the OIC Group also reiterates its demand for accountability and justice for the war crimes and human rights violations perpetrated against the Palestinian civilian population during that Israeli military aggression, as called for by the General Assembly and the Human Rights Council in follow up of the report of the United Nations Fact-Finding Mission on the Gaza Conflict (Goldstone Report).

The OIC Group calls upon the international community, especially the Security Council, to uphold its responsibilities with regard to this serious matter in all its aspects. Urgent action must be taken to bring an end to such blatant Israeli impunity and disregard for all norms and standards of international law. Action must also be taken to bring a halt to all other illegal Israeli practices against the Palestinian civilian population in the Occupied Palestinian Territory, including East Jerusalem.

The OIC Group reaffirms the importance of continuing the strong coordination among the OIC, the Non-Aligned Movement (NAM) and the Arab Group and the need to continue the coordination and cooperation of these groups in order to ensure comprehensive follow-up of this serious and urgent matter, including to ensure the full implementation of the Security Council Presidential Statement of 1 June 2010, particularly the pursuit of an impartial, credible, transparent, and independent international investigation in accordance with international standards led by the United Nations Secretary-General.

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307525 Date: 05/03/2013

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307525 Date: 05/03/2013

The OIC Group reiterates its call for an end to the illegal Israeli occupation of the Palestinian Territory, including East Jerusalem, and all other Arab territories occupied since 1967 and for the realization by the Palestinian people of their inalienable right to self-determination in their independent State of Palestine, with Al-Quds Al-Shareef as its capital, and the achievement of a just, lasting and comprehensive peace, including a just solution for the plight of the Palestine refugees in accordance General Assembly resolution 194.

The OIC Group decides to remain seized of this matter.

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307525 Date: 05/03/2013

RELEASED IN FULL

PERMANENT MISSION OF THE SYRIAN ARAB REPUBLIC
TO THE UNITED NATIONS
820 Second Ave., 15th Floor, New York, N. Y. 10017
Tel: (212) 661-1313
Fax: (212) 983-4439

URGENT

UN-2010– 295

New York, 4 June 2010

I have the honor, in my capacity as Chair of the Organization of the Islamic Conference (OIC)Group in New York, to convey for your valuable consideration a statement that was endorsed on 3 June 2010 by the OIC Group at the Ambassadorial level on the recent illegal Israeli military aggression against the civilian convoy of humanitarian aid destined for the Gaza Strip.

Please Accept, Excellency, the assurances of my highest consideration.

Dr. Bashar Ja'afari
Ambassador
Permanent Representative

His Excellency
Mr. Claude Heller
President of the Security Council
United Nations

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

The President of the Security Council presents his compliments to the members of the Council and has the honour to transmit herewith, for their information, a copy of a letter dated 4 June 2010 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council, and its enclosure.

4 June 2010

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307518 Date: 05/03/2013

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CHAIR OF THE COORDINATING BUREAU OF THE NON-ALIGNED MOVEMENT

Member countries	
Afghanistan	Nigeria
Algeria	Oman
Angola	Pakistan
Antigua and Barbuda	Palestine
Bahamas	Panama
Bahrain	Papua New Guinea
Bangladesh	Peru
Barbados	Philippines
Belarus	Qatar
Belize	Rwanda
Benin	Saint Kitts and Nevis
Bhutan	Saint Lucia
Bolivia	Saint Vincent and the Grenadines
Botswana	Sao Tome and Principe
Brunei Darussalam	Saudi Arabia
Burkina Faso	Senegal
Burundi	Seychelles
Cambodia	Sierra Leone
Cameroon	Singapore
Cape Verde	Somalia
Central African Republic	South Africa
	Sri Lanka
Chad	Sudan
Chile	Suriname
Colombia	Swaziland
Comoros	Syrian Arab Republic
Congo	Thailand
Cote d'Ivoire	Timor Leste
Cuba	Togo
Democratic People's Republic of Korea	Trinidad and Tobago
	Tunisia
Democratic Republic of the Congo	Turkmenistan
	Uganda
Djibouti	United Arab Emirates
Dominica	United Republic of
Dominican Republic	Tanzania
Ecuador	Uzbekistan
Egypt	Vanuatu
Equatorial Guinea	Venezuela
Eritrea	Vietnam
Ethiopia	Yemen
Gabon	Zambia
Gambia	Zimbabwe
Ghana	
Grenada	**Observer Countries**
Guatemala	Argentina
Guinea Bissau	Armenia
Guinea	Azerbaijan
Guyana	Bosnia and Herzegovina
Haiti	Brazil
Honduras	Chile
India	Costa Rica
Indonesia	Croatia
Iran	El Salvador
Iraq	Kazakhstan
Jamaica	Kyrgyzstan
Jordan	Mexico
Kenya	Montenegro
Kuwait	Paraguay
Lao Peoples' Democratic Republic	Serbia
	Tajikistan
Lebanon	Ukraine
Lesotho	Uruguay
Liberia	
Libyan Arab Jamahiriya	**Observer Organizations**
	African Union
Madagascar	Afro-Asian People's Solidarity Organization
Malawi	
Malaysia	Commonwealth Secretariat
Maldives	
Mali	Kanak Socialist National Liberation Front
Mauritania	
Mauritius	League of Arab States
Mongolia	National Hostesses
Morocco	Movement for the independence of Puerto Rico
Mozambique	
Myanmar	
Namibia	Organization of the Islamic Conference
Nepal	
Nicaragua	South Centre
Niger	United Nations
	World Peace Council

NAM/219/2010

The Permanent Mission of the Arab Republic of Egypt to the United Nations, in its capacity as Chair of the Coordinating Bureau of the Non-Aligned Movement (NAM CoB), presents its compliments to the Permanent Missions of Member States to the United Nations, and has the pleasure to enclose herewith a Press Release issued by the Chair of the Coordinating Bureau of the Non-Aligned Movement on the Israeli military attack on the Civilian maritime convoy carrying humanitarian assistance to the Gaza Strip.

The Permanent Mission of the Arab Republic of Egypt, in its capacity as Chair of the Coordinating Bureau of the Non-Aligned Movement, avails itself of this opportunity to renew to the Permanent Missions of Member States to the United Nations the assurances of its highest consideration.

M.E.

PERMANENT MISSION OF THE A.R. OF EGYPT TO THE U.N.-NEW YORK

2 June, 2010

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

- Permanent Missions of Member States
United Nations
New York

PERMANENT MISSION OF THE ARAB REPUBLIC OF EGYPT TO THE UNITED NATIONS
304 East 44th St. New York, N.Y.,10017 Tel. No.(212) 503-0300 Fax No.(212) 503-0379
E.MAIL: nam.egypt@un.int Website: http://www.namegypt.org

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307518 Date: 05/03/2013

StateDept004577

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METHOD OF WORK
of the
Secretary General's Panel of Inquiry on the 31 May 2010 Flotilla Incident

1. The panel will receive and review copies of the national investigations into the incident from Israel and Turkey.

2. Where the panel considers that it requires further information, clarifications or meetings from Israel and/or Turkey, it will make such request to the points of contact designated by those States.

3. Where the panel considers it necessary to obtain information from other affected States, it may request such information through appropriate diplomatic channels.

4. The report and any recommendations it may contain are to be agreed by consensus. Where the members of the panel are unable to reach agreement ~~on any element of the report or its recommendations~~, the Chair and Vice-Chair will use their best efforts to try to secure consensus among the members of the panel ~~regarding that element.~~ Where, despite the best efforts of the Chair and Vice-Chair, it is not possible to achieve consensus among the members of the panel on a particular element or recommendation of the report, the Chair and Vice-Chair will agree on any such element or recommendation in the report.

5. The UN Secretariat will provide secretariat services to the panel and will arrange for the provision of necessary administrative, logistic and security support, including transportation and accommodation.

6. The Archives and Records Management Section will provide records-management support to the panel.

7. The report of the panel shall be designated unclassified. The panel may attach confidential annexes to its report.

8. The panel shall take the necessary steps to ensure that all documents and materials provided to it on the understanding of confidentiality are marked "third party confidential" and that all necessary measures are taken to safeguard their confidentiality.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

UN CONFIDENTIAL

TERMS OF REFERENCE of the The Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident

Establishment of panel

1. In the light of the Statement of the President of the Security Council dated 1 June 2010 (S/PRST/2010/9), the Secretary-General has established a panel of inquiry on the incident that occurred on 31 May 2010 off the coast of Israel.

Tasks

2 The panel:

(a) will receive and review interim and final reports of national investigations into the incident;

(b) may request such clarifications and information as it may require from relevant national authorities.

3. In the light of the information so gathered, the panel will:

(a) examine and identify the facts, circumstances and context of the incident; and

(b) consider and suggest ways of avoiding similar incidents in the future.

4. The panel will prepare a report and submit it to the Secretary-General.

Composition of the panel

5. The panel, to be appointed by the Secretary General, will be composed of a Chair, a Vice-Chair and one member each from Israel and Turkey, with recognized and relevant expertise.

Time Frame

6. The panel will hold its first meeting on 10 August 2010 at United Nations Headquarters in New York. It will hold such further meetings as required in order to submit a preliminary report by 10 November 2010. After that, it will submit periodic reports until the completion of its work when it will submit its final report to the Secretary General.

Location

7. The panel will be based at United Nations Headquarters in New York.

Secretariat

8. The UN Secretariat will provide secretariat services for the panel.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004579

RELEASED IN PART B6

Simonoff, Mark A (USUN)

From: Ried, Curtis R (USUN)
Sent: Wednesday, October 26, 2011 7:44 PM
To: DiCarlo, Rosemary A (USUN); Grant, William K (USUN); Finerty, Tressa R (USUN); Simonoff, Mark A (USUN); Horak, Gail R (USUN); Ahmed, Salman (USUN)
Subject: Turkey re GA resolution on flotilla

Classification: UNCLASSIFIED

During his speech at the Middle East debate on Monday, Apakan told the Council that Turkey would use "all available platforms to refer the matter of Israel's blockade of Gaza to the ICJ." I recently had dinner with [redacted] B6 [redacted] and he said that the Turkish government had wanted to wait for the Palestinians to resolve their membership issue before pursuing action in the GA, but they were now tired of waiting. He said we should expect to see a GA resolution on the flotilla/blockade in November that would refer the matter to the ICJ.

Curtis R. Ried
Political Adviser
U.S. Mission to the United Nations
Office 212-415-4346 Fax 212-415-4415

This email is UNCLASSIFIED.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Simonoff, Mark A (USUN)

From: Banos, Mariano H
Sent: Thursday, September 30, 2010 10:35 AM
To: Baumert, Kevin A; Simonoff, Mark A (USUN); Martin, Julie B
Cc: Aswad, Evelyn M; Guarin, Marc F; Pompian, Shawn M; Dolan, JoAnn; Jacobson, Linda
Subject: Re: Flotilla

Categories: Working

Hi Mark,

Are you referring to the HRC flotilla report? We've seen the report, which was presented at the HRC last week, and issued an intervention which called it "unbalanced." [redacted] B5

[redacted]

From: Baumert, Kevin A
To: Simonoff, Mark A (USUN)
Cc: Aswad, Evelyn M; Banos, Mariano H; Guarin, Marc F; Pompian, Shawn M; Dolan, JoAnn
Sent: Thu Sep 30 10:26:28 2010
Subject: RE: Flotilla

Mark – looping in some others here. I would expect L/HRR, in particular, to have access to our TPs on this. [redacted]

Evelyn, Mariano – anything for USUN's use?

Thanks,
Kevin

From: Simonoff, Mark A (USUN)
Sent: Thursday, September 30, 2010 10:15 AM
To: Baumert, Kevin A
Subject: Flotilla

Kevin,

Do you have some talkers/analysis on the legality of Israel's "blockade"? We're getting queries up here re whether disagree with the recent report (which I have not seen yet!) characterizing the blockade as illegal.

Thanks!

Mark

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Mark A. Simonoff
Acting Legal Adviser
U.S. Mission to the United Nations
799 United Nations Plaza
New York, NY 10017

(212)415-4220

SBU
This email is UNCLASSIFIED.

RELEASED IN PART B5

Simonoff, Mark A (USUN)

From: Schaaf, Kenli A (OES)
Sent: Thursday, September 30, 2010 10:28 AM
To: Kim, Elizabeth AB (OES); Simonoff, Mark A (USUN)
Subject: Re: Israel (update)

Categories: Working

We just heard from Secretariat that proposal will come up right after mid-morning coffee break.

We shared this info with UK and Israel (we met Ady this AM, she met with coordinator).

CAN will not/not make statement b/c of reasons you suggest.

Thanks,
K n E

From: Schaaf, Kenli A (OES)
To: Kim, Elizabeth AB (OES); Simonoff, Mark A (USUN)
Sent: Thu Sep 30 10:14:59 2010
Subject: Re: Israel

Btw, vladi (secretariat) just told me he's not sure how this will go down. (I.e. Not sure on timing).

UK just told me EU will unanimously oppose this (not the right place,etc).
UK hoping they can turn this off still, such that Turkey not even table.

AUS will make similar statement opposing. Can will not/not make statement.

Turkey is here this AM, so perhaps he is thinking he will?? (Eu talking to turkey now)

[redacted] B5

All for now, will keep posted.

K n E

From: Kim, Elizabeth AB (OES)
To: Simonoff, Mark A (USUN); Schaaf, Kenli A (OES)
Sent: Thu Sep 30 10:06:20 2010
Subject: Re: Israel

She is talking to coordinator now. I just happened to be standing in line next to them all when she was introduced. I will introduce myself when she is done

[redacted]

From: Simonoff, Mark A (USUN)
To: Schaaf, Kenli A (OES); Kim, Elizabeth AB (OES)
Sent: Thu Sep 30 09:51:04 2010
Subject: Israel

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Ady is heading over now to informal consultations to confer with you and to talk to the facilitator.

As today is a Jewish holiday, Israel cannot speak into the microphone.

Israel has asked that, when you make the flotilla intervention, you state that Israel cannot be present and cannot speak because of the religious holiday. Our front office has OK'd your doing this. So please do that.

B5

Mark

Mark A. Simonoff
Acting Legal Adviser
U.S. Mission to the United Nations
799 United Nations Plaza
New York, NY 10017
(212)415-4220

SBU
This email is UNCLASSIFIED.

Simonoff, Mark A (USUN) RELEASED IN PART B5,B6

From: Kim, Elizabeth AB (OES)
Sent: Wednesday, September 29, 2010 5:46 PM
To: Simonoff, Mark A (USUN); Schaaf, Kenli A (OES)
Subject: Re: Please advise-- Re: LOS mtg today

Categories: Working

No, Turkey has not yet tabled.

----- Original Message -----
From: Simonoff, Mark A (USUN)
To: Schaaf, Kenli A (OES)
Cc: Kim, Elizabeth AB (OES)
Sent: Wed Sep 29 17:45:27 2010
Subject: RE: Please advise-- Re: LOS mtg today

Israel just called.

Was told that Turkey tabled the resolution.

Was told that the US did not speak.

Please advise on the latest...

Mark

SBU
This email is UNCLASSIFIED

-----Original Message-----
From: Schaaf, Kenli A (OES)
Sent: Wednesday, September 29, 2010 5:19 PM
To: Simonoff, Mark A (USUN)
Cc: Kim, Elizabeth AB (OES)
Subject: Re: Please advise-- Re: LOS mtg today

Yes, we think it could come up this afternoon (that's our best guess), or 1st thing tomorrow AM [redacted] B5

Thanks,
K n E

----- Original Message -----
From: Simonoff, Mark A (USUN)
To: Schaaf, Kenli A (OES)
Cc: Kim, Elizabeth AB (OES)
Sent: Wed Sep 29 17:09:42 2010

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Subject: RE: Please advise-- Re: LOS mtg today

Think you'll get to that para this afternoon. [redacted] B5

[redacted]

SBU
This email is UNCLASSIFIED-----Original Message-----
From: Schaaf, Kenli A (OES)
Sent: Wednesday, September 29, 2010 5:08 PM
To: Simonoff, Mark A (USUN)
Cc: Kim, Elizabeth AB (OES)
Subject: Re: Please advise-- Re: LOS mtg today

[redacted]

We'll keep you posted.

Thanks,
K n E

----- Original Message -----
From: Simonoff, Mark A (USUN)
To: Schaaf, Kenli A (OES)
Cc: Kim, Elizabeth AB (OES)
Sent: Wed Sep 29 16:35:03 2010
Subject: RE: Please advise-- Re: LOS mtg today

Thanks!

For my information:

[redacted]

Mark

SBU
This email is UNCLASSIFIED

-----Original Message-----
From: Schaaf, Kenli A (OES)
Sent: Wednesday, September 29, 2010 3:58 PM
To: Masilko, Barbara J (USUN); Kim, Elizabeth AB (OES); Grant, William K (USUN); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Baumert, Kevin A
Subject: Re: Please advise-- Re: LOS mtg today

Thanks, Barbara (and Mark).

B5

We'll keep you posted. It hasn't come up yet, but prob will this afternoon.

Thanks,
K n E

---- Original Message ----
From: Masilko, Barbara J (USUN)
To: Schaaf, Kenli A (OES); Kim, Elizabeth AB (OES); Grant, William K (USUN); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Baumert, Kevin A
Sent: Wed Sep 29 15:51:33 2010
Subject: RE: Please advise-- Re: LOS mtg today

Ghost writing for Mark Simonoff -

Our sense is that we should:

-----Original Message-----
From: Schaaf, Kenli A (OES)
Sent: Wednesday, September 29, 2010 3:28 PM
To: Kim, Elizabeth AB (OES); Grant, William K (USUN); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Masilko, Barbara J (USUN); Baumert, Kevin A
Subject: Please advise-- Re: LOS mtg today

All,

Secretariat just distributed text:

76bis
"Expresses its deep regrets for the loss of life and injuries resulting from the use of force during the Israeli military operation in international waters against the convoy sailing to Gaza and in this context condemns those acts which resulted in the loss of 9 civilians and many wounded as expressed by the Security Council Presidential Statement (S/PRST/2010/9) of 1 June 2010;"

It prob will come up very soon.

Thanks,
K n E

----- Original Message -----
From: Kim, Elizabeth AB (OES)
To: Grant, William K (USUN); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Masilko, Barbara J (USUN); Baumert, Kevin A; Schaaf, Kenli A (OES)
Sent: Wed Sep 29 15:00:49 2010
Subject: RE: LOS mtg today

B5

Thanks,
Elizabeth

-----Original Message-----
From: Grant, William K (USUN)
Sent: Wednesday, September 29, 2010 2:28 PM
To: Kim, Elizabeth AB (OES); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Masilko, Barbara J (USUN)
Subject: RE: LOS mtg today

Mark or Jim or Elizabeth: know anything about this?

Barbara trying to get info from her sources

This email is UNCLASSIFIED

Bill Grant
Political Minister-Counselor, U.S. Mission to the United Nations office 212-415-4363 (x44363)

-----Original Message-----
From: Masud.Husain@international.gc.ca [mailto:Masud.Husain@international.gc.ca]
Sent: Wednesday, September 29, 2010 2:15 PM
To: Grant, William K (USUN)
Subject: RE: LOS mtg today

Bill

We have heard that Turkey may introduce flotilla language in negotiations on the Law of the Sea resolution today. Have you heard this? What are you guys going to do?

Can you give me a shout

Cheers Masud

Masud Husain
Minister-Counsellor/Ministre-conseiller
Mission permanente du Canada

Permanent Mission of Canada
Tél: [redacted]
Cell: [redacted]

B6

This email is UNCLASSIFIED

Simonoff, Mark A (USUN) RELEASED IN PART B5,B6

From: Schaaf, Kenli A (OES)
Sent: Wednesday, September 29, 2010 6:52 PM
To: Masilko, Barbara J (USUN); Kim, Elizabeth AB (OES); Simonoff, Mark A (USUN)
Cc: Baumert, Kevin A; Germain, Ellen J (USUN); Grant, William K (USUN)
Subject: Re: tomrrow's LOS session

Categories: Working

It resumes at 10am. We will keep you posted, and like Eliz said, we hope to have a heads-up on when it will come up. As soon as we know, we will share with you.

Thanks for your helpful rxns today.

Best,
K n E

---- Original Message ----
From: Masilko, Barbara J (USUN)
To: Kim, Elizabeth AB (OES); Simonoff, Mark A (USUN); Schaaf, Kenli A (OES)
Cc: Baumert, Kevin A; Germain, Ellen J (USUN); Grant, William K (USUN)
Sent: Wed Sep 29 18:39:14 2010
Subject: tomrrow's LOS session

Thanks, what time does the session resume tomorrow?

This email is UNCLASSIFIED

-----Original Message-----
From: Kim, Elizabeth AB (OES)
Sent: Wednesday, September 29, 2010 6:36 PM
To: Masilko, Barbara J (USUN); Simonoff, Mark A (USUN); Schaaf, Kenli A (OES)
Cc: Baumert, Kevin A; Germain, Ellen J (USUN); Grant, William K (USUN)
Subject: Re: notes from LOS mgt?

No worries, not tonight. We are finished for the day. Not sure if it would be tomorrow or Friday but our guess would be tomorrow if at all.

---- Original Message -----
From: Masilko, Barbara J (USUN)
To: Kim, Elizabeth AB (OES); Simonoff, Mark A (USUN); Schaaf, Kenli A (OES)
Cc: Baumert, Kevin A; Germain, Ellen J (USUN); Grant, William K (USUN)
Sent: Wed Sep 29 18:30:04 2010
Subject: RE: notes from LOS mgt?

Does that mean tonight or sometime later this week?

This email is UNCLASSIFIED

-----Original Message-----
From: Kim, Elizabeth AB (OES)
Sent: Wednesday, September 29, 2010 6:29 PM
To: Simonoff, Mark A (USUN); Masilko, Barbara J (USUN); Schaaf, Kenli A (OES)

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Cc: Baumert, Kevin A; Germain, Ellen J (USUN)
Subject: Re: notes from LOS mgt?

Turkey's proposal has not yet been made. Coordinator does not know when it will come up. Turkey asked if he could bring it up "when the time is right" which we think means they are trying to do consultations first. The Secretariat will try to give us warning of at least 30 min before it comes up. We will take good notes.

---- Original Message ----
From: Simonoff, Mark A (USUN)
To: Masilko, Barbara J (USUN); Kim, Elizabeth AB (OES); Schaaf, Kenli A (OES)
Cc: Baumert, Kevin A; Germain, Ellen J (USUN)
Sent: Wed Sep 29 18:03:52 2010
Subject: RE: notes from LOS mgt?

Also send it in writing please.

SBU
This email is UNCLASSIFIED

----Original Message-----
From: Masilko, Barbara J (USUN)
Sent: Wednesday, September 29, 2010 6:03 PM
To: Kim, Elizabeth AB (OES); Schaaf, Kenli A (OES); Simonoff, Mark A (USUN)
Cc: Baumert, Kevin A; Germain, Ellen J (USUN)
Subject: notes from LOS mgt?

Mark is taking up the issue of getting additional guidance on this issue.

Can someone give me a brief on what happened today in the meeting (i.e. who spoke, what was said, etc) either this evening or tomorrow a.m. is fine - I'm at 212-415-4190

Thanks,

Barbara

This email is UNCLASSIFIED

-----Original Message-----
From: Kim, Elizabeth AB (OES)
Sent: Wednesday, September 29, 2010 4:56 PM
To: Masilko, Barbara J (USUN); Schaaf, Kenli A (OES); Grant, William K (USUN); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Baumert, Kevin A; Germain, Ellen J (USUN)
Subject: Re: Please advise-- Re: LOS mtg today

On the margin, Turkey asked for our opinion on their text (which has not yet been introduced). I told him we don't think this is the right place for this. He said he doesn't want to cause controversy, he tried to stick to earlier language, and is the ANY text to which we could agree?

Please advise.

---- Original Message ----
From: Masilko, Barbara J (USUN)

To: Schaaf, Kenli A (OES); Kim, Elizabeth AB (OES); Grant, William K (USUN); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Baumert, Kevin A; Germain, Ellen J (USUN)
Sent: Wed Sep 29 16:02:14 2010
Subject: RE: Please advise-- Re: LOS mtg today

Thanks, the UK legal advisor whom you all know (Doug Wilson) indicated the need for internal EU coordination on anything before they can make a statement — that won't happen until tomorrow a.m.

I've included Ellen Germain in this email chain in case anything evolves this afternoon.

I would appreciate good notes on anything Turkey may say during introduction of the text so we can use in sending back to Washington.

This email is UNCLASSIFIED

----Original Message----
From: Schaaf, Kenli A (OES)
Sent: Wednesday, September 29, 2010 3:58 PM
To: Masilko, Barbara J (USUN); Kim, Elizabeth AB (OES); Grant, William K (USUN); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Baumert, Kevin A
Subject: Re: Please advise-- Re: LOS mtg today

Thanks, Barbara (and Mark).

	B5

We'll keep you posted. It hasn't come up yet, but prob will this afternoon.

Thanks,
K n E

---- Original Message ----
From: Masilko, Barbara J (USUN)
To: Schaaf, Kenli A (OES); Kim, Elizabeth AB (OES); Grant, William K (USUN); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Baumert, Kevin A
Sent: Wed Sep 29 15:51:33 2010
Subject: RE: Please advise-- Re: LOS mtg today

Ghost writing for Mark Simonoff -

Our sense is that we should:

-----Original Message-----
From: Schaaf, Kenli A (OES)
Sent: Wednesday, September 29, 2010 3:28 PM
To: Kim, Elizabeth AB (OES); Grant, William K (USUN); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Masilko, Barbara J (USUN); Baumert, Kevin A
Subject: Please advise-- Re: LOS mtg today

All,

Secretariat just distributed text:

76bis
"Expresses its deep regrets for the loss of life and injuries resulting from the use of force during the Israeli military operation in international waters against the convoy sailing to Gaza and in this context condemns those acts which resulted in the loss of 9 civilians and many wounded as expressed by the Security Council Presidential Statement (S/PRST/2010/9) of 1 June 2010;"

B5

It prob will come up very soon.

Thanks,
K n E

----- Original Message -----
From: Kim, Elizabeth AB (OES)
To: Grant, William K (USUN); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Masilko, Barbara J (USUN); Baumert, Kevin A; Schaaf, Kenli A (OES)
Sent: Wed Sep 29 15:00:49 2010
Subject: RE: LOS mtg today

Thanks,
Elizabeth

-----Original Message-----
From: Grant, William K (USUN)
Sent: Wednesday, September 29, 2010 2:28 PM
To: Kim, Elizabeth AB (OES); Simonoff, Mark A (USUN); Donovan, James B (USUN)
Cc: Masilko, Barbara J (USUN)
Subject: RE: LOS mtg today

Mark or Jim or Elizabeth: know anything about this?

Barbara trying to get info from her sources

This email is UNCLASSIFIED

Bill Grant
Political Minister-Counselor, U.S. Mission to the United Nations office 212-415-4363 (x44363)

-----Original Message-----
From: Masud.Husain@international.gc.ca [mailto:Masud.Husain@international.gc.ca]
Sent: Wednesday, September 29, 2010 2:15 PM
To: Grant, William K (USUN)
Subject: RE: LOS mtg today

Bill

We have heard that Turkey may introduce flotilla language in negotiations on the Law of the Sea resolution today. Have you heard this? What are you guys going to do?

Can you give me a shout

Cheers Masud

Masud Husain
Minister-Counsellor/Ministre-conseiller
Mission permanente du Canada
Permanent Mission of Canada
Tél:
Cell

B6

This email is UNCLASSIFIED

CLASSIFICATION: CONFIDENTIAL
Sensitive

RELEASED IN PART
1.4(B),B1,1.4(D)

From: Anderson, Brooke D (USUN)
To: 'dshapiro@nss.eop.sgov.gov'
Subject: UN panel update. UN has given revised documents to Israelis.
Sent: 7/20/2010 8:04:42 PM

Update on UN Panel.

Israeli DPR told me that UN's Pascoe (DPA) and O'Brien (Legal) gave him a new draft Terms of Reference (TOR) and Method of Work (MOW) for the panel on the Gaza flotilla incident, reflecting conversations that the UN had with Turkey.

UN's message to Israel's DPR was:

[redacted]

B1
1.4(B)
1.4(D)

New TOR adds:

[redacted]

New MOW adds:

[redacted]

Israeli DPR told UN he would send it back to capital for review – [redacted]

CLASSIFICATION: CONFIDENTIAL
Sensitive

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Printed By: Anderson, Brooke D (USUN)
Page 1 of 2

Israeli DPR told me that the Israeli government meeting that was going to happen last Friday hasn't been held yet, but that there is likely to be a meeting tomorrow. He will wait for instructions. [redacted]

B1
1.4(B)
1.4(D)

Please advise if you have any thoughts or direction for me. I will be talking with Israeli DPR in the morning when he will share with me the reaction from Jerusalem.

Best,
Brooke

Sensitivity: Sensitive
Classification: CONFIDENTIAL
Classified by: Brooke Anderson, Chief of Staff, Exec, USUN
Reason: 1.4(b), (d)
Declassify On: 2035/07/20

Simonoff, Mark A (USUN) RELEASED IN PART TO CERTAIN PARTIES B5

From: Germain, Ellen J (USUN)
Sent: Thursday, February 17, 2011 7:24 PM
To: Sutphin, Paul R; Baily, Jess L; Naranjo, Brian R
Cc: Simonoff, Mark A (USUN)
Subject: FW: Request for a meeting: Ahmet Dogan, father of US citizen Furkan Dogan, killed in international waters in May 2010 aboard the Mavi Marmara
Attachments: Dogan Letter and Enclosures to UN Liaison Kerry.pdf

AttachmentsClassification: UNCLASSIFIED
Classification: UNCLASSIFIED

Paul, Jess, Brian,

The father of the Turkish-American citizen killed in the Gaza flotilla incident will be in NY and wants to meet with someone from USUN. His lawyer, in the attached letter, says that Embassy Ankara refused to meet with him (there's an exchange of letters with Embassy Ankara in the attached package). He also apparently wants to meet with someone from the Department.

[redacted] B5

Thanks very much,
Ellen

This email is UNCLASSIFIED.

From: Simonoff, Mark A (USUN)
Sent: Thursday, February 17, 2011 4:05 PM
To: Germain, Ellen J (USUN)
Subject: FW: Request for a meeting: Ahmet Dogan, father of US citizen Furkan Dogan, killed in international waters in May 2010 aboard the Mavi Marmara

Ellen,

Here is the flotilla related meeting request.

[redacted]

Many thanks.

Best regards,

Mark

Mark A. Simonoff
Acting Legal Adviser
U.S. Mission to the United Nations
799 United Nations Plaza
New York, NY 10017
(212)415-4220

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

SBU
This email is UNCLASSIFIED.

From: Kerry, Peggy
Sent: Thursday, February 17, 2011 8:20 AM
To: Simonoff, Mark A (USUN)
Subject: FW: Request for a meeting: Ahmet Dogan, father of US citizen Furkan Dogan, killed in international waters in May 2010 aboard the Mavi Marmara

[redacted] B5

Thanks,
Peggy

This email is UNCLASSIFIED.

From: Katherine Gallagher [mailto:KGallagher@ccrjustice.org]
Sent: Wednesday, February 16, 2011 6:38 PM
To: Kerry, Peggy
Subject: Request for a meeting: Ahmet Dogan, father of US citizen Furkan Dogan, killed in international waters in May 2010 aboard the Mavi Marmara

Dear Ms Kerry,

Please find attached a letter sent on behalf of Ahmet Dogan, the father of Furkan Dogan, the 19-year old U.S. citizen killed in May 2010 in international waters, requesting a meeting with you next week. **Mr. Dogan will be travelling to the United States next week for the purpose of meeting with U.S. officials to discuss his son's killing, and efforts to seek justice and accountability for Furkan's death. He is available to meet with you in New York on Thursday, February 24th.**

As I note in the attached letters, Mr. Dogan's efforts to secure a meeting with representatives of the U.S. Embassy in Ankara, Turkey were unsuccessful, which is why he is travelling to Washington, D.C. to meet with officials here. Mr. Dogan is also seeking meetings in Washington, D.C. at the State Department and Department of Justice.

Thank you for your assistance and I look forward to hearing from you.

Sincerely,

Katherine Gallagher

KATHERINE GALLAGHER | SENIOR STAFF ATTORNEY | 666 BROADWAY, 7TH FLOOR, NY, NY 10012 | T: 212-614-6455 | F: 212-614-6499|

THIS MESSAGE CONTAINS CONFIDENTIAL INFORMATION WHICH MAY BE LEGALLY PRIVILEGED AND WHICH IS INTENDED ONLY FOR THE USE OF THE ADDRESS(ES) NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS MESSAGE, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR COPYING OF THIS EMAIL IS PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE NOTIFY US BY TELEPHONE.

PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL

RELEASED IN PART B5

Simonoff, Mark A (USUN)

From: Baumert, Kevin A
Sent: Sunday, January 23, 2011 11:38 AM
To: Simonoff, Mark A (USUN)
Subject: Re: Flotilla

Mark -- [redacted] B5

[redacted]

Thx, Kevin

----- Original Message -----
From: Simonoff, Mark A (USUN)
Sent: Sunday, January 23, 2011 10:03 AM
To: Baumert, Kevin A
Subject: Flotilla

Hi Kevin,

Are you planning to analyze LOS aspects of Israel's report on flotilla, in particular blockade aspects?

Mark

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Simonoff, Mark A (USUN)

From: Balton, David A (OES)
Sent: Tuesday, November 30, 2010 10:19 AM
To: Cook, Nerissa J; Holt, Victoria K; Desjardins, Marc L
Cc: Kim, Elizabeth AB (OES); Clune, Daniel A; Simonoff, Mark A (USUN)
Subject: RE: UNGA Oceans Resolution

Categories: Working

Yes. I'll stop by your office at 4:15.

Elizabeth – please come as well.

From: Cook, Nerissa J
Sent: Tuesday, November 30, 2010 10:17 AM
To: Balton, David A (OES); Holt, Victoria K; Desjardins, Marc L
Cc: Kim, Elizabeth AB (OES); Clune, Daniel A; Simonoff, Mark A (USUN)
Subject: RE: UNGA Oceans Resolution

Dave: I have nonstop meetings until 4:15. Any possibility we could meet then? Nerissa

SBU

This email is UNCLASSIFIED

From: Balton, David A (OES)
Sent: Tuesday, November 30, 2010 9:32 AM
To: Holt, Victoria K; Cook, Nerissa J; Desjardins, Marc L
Cc: Kim, Elizabeth AB (OES); Clune, Daniel A; Simonoff, Mark A (USUN)
Subject: RE: UNGA Oceans Resolution

Tori, Nerissa and Marc – I'm available this afternoon to chat any time 2-4. I'd be happy to swing by the IO Front Office if that would make it easier.

The slightly longer version of what is happening is this:

Each year, the UNGA adopts a resolution on oceans and law of the sea. It's one of the longest UNGA resolutions every year. An informal negotiating group meets for two weeks each fall to hammer it out. OES sends two people typically; other agencies participate as well. The US has always voted for the resolution; indeed, we usually co-sponsor.

This year, Turkey proposed a paragraph using language from a recent Security Council resolution on the flotilla incident. The US and others pushed back, saying that even though we agreed to similar language in the SC, we did not believe it was appropriate to include in this UNGA resolution. Turkey withdrew the proposal.

But there is at least a possibility that, when the UNGA votes on the resolution next Monday, Turkey will reintroduce it then. OES is trying to clear an instruction cable to USUN. The draft cable says

[redacted] B5

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

B5

Dave

PS for Marc – it's nice to be back in touch with you.

From: Holt, Victoria K
Sent: Monday, November 29, 2010 10:42 PM
To: Balton, David A (OES); Cook, Nerissa J; Desjardins, Marc L
Cc: Kim, Elizabeth AB (OES); Clune, Daniel A
Subject: RE: UNGA Oceans Resolution

David,

Thanks for your message. I'm copying colleague DAS Nerissa Cook, who has more insight than I into OES issues, while I handle the Security Council and security issues. Let us know a bit more so we can work with you.

Also copying Marc Desjardins who will know more about the flotilla angle.

Tomorrow afternoon is better than the a.m.
Thanks
Tori

Victoria K. Holt
Deputy Assistant Secretary
Bureau of International Organization Affairs
US State Department
2201 C Street, NW
Washington, DC 20520-6319
tel: 202.647.9604 / fax: 202.736.4116

This email is UNCLASSIFIED

From: Balton, David A (OES)
Sent: Monday, November 29, 2010 3:32 PM
To: Holt, Victoria K
Cc: Kim, Elizabeth AB (OES); Clune, Daniel A
Subject: UNGA Oceans Resolution

Victoria,

Do you have a few minutes tomorrow (Tues) morning to chat about a UNGA resolution on oceans and law of the sea? As you may have heard, there is a small chance that Turkey will seek to amend the resolution on the floor of the UNGA next week to introduce language on the flotilla incident. At least OES, IO and NEA should come to agreement on how to handle that eventuality. I'd like to discuss this with you briefly.

Many thanks,

David Balton
DAS for Oceans and Fisheries
OES

RELEASED IN PART B5

Simonoff, Mark A (USUN)

From: Kim, Elizabeth AB (OES)
Sent: Monday, November 22, 2010 4:36 PM
To: Simonoff, Mark A (USUN)
Subject: RE: Flotilla in Oceans Resolution

Categories: Working

Thanks, Mark.

[redacted] B5

From: Simonoff, Mark A (USUN)
Sent: Friday, November 19, 2010 12:32 PM
To: Kim, Elizabeth AB (OES)
Cc: Masilko, Barbara J (USUN); Germain, Ellen J (USUN)
Subject: Flotilla in Oceans Resolution

Elizabeth,

I discussed flotilla with our front office. Here's USUN's view:

1. [redacted]
2. [redacted]

The following people should clear the contingency guidance (with the EOV).

IO/UNP: Ken Zurcher
USUN/W : Warren Bass
NEA/IPA: Paul Sutphin (office director)
SEMEP: Sahar Khoury-Kincannon

Please let me know if you have any questions.

Mark

Mark A. Simonoff
Acting Legal Adviser
U.S. Mission to the United Nations
799 United Nations Plaza
New York, NY 10017
(212)415-4220

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

SBU

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UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05307590 Date: 05/03/2013

RELEASED IN PART B5

Simonoff, Mark A (USUN)

From: Jacobson, Linda
Sent: Thursday, October 14, 2010 3:36 PM
To: Daley, John D; Kim, John J (Kimm); Johnson, Karen K; Joyce, Anne
Cc: Buchwald, Todd F; Simonoff, Mark A (USUN); Townley, Stephen G; Schwartz, Jonathan B; Perina, Alexandra H
Subject: RE: flotilla incident – Comoros-flagged vessel ?

Categories: Working

[redacted] B5

From: Daley, John D
Sent: Thursday, October 14, 2010 3:31 PM
To: Kim, John J (Kimm); Johnson, Karen K; Jacobson, Linda; Joyce, Anne
Cc: Buchwald, Todd F; Simonoff, Mark A (USUN); Townley, Stephen G; Schwartz, Jonathan B; Perina, Alexandra H
Subject: flotilla incident -- Comoros-flagged vessel ?

John/Karen -

The press is reporting today that lawyers for the families of those killed by Israeli forces in connection with the Flotilla incident this spring have sent a letter to the ICC Prosecutor urging him to take action. [redacted]

Thanks.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Simonoff, Mark A (USUN)

From: Schwartz, Jonathan B
Sent: Thursday, October 14, 2010 3:43 PM
To: Daley, John D; Kim, John J (Kimm); Johnson, Karen K; Jacobson, Linda; Joyce, Anne
Cc: Buchwald, Todd F; Simonoff, Mark A (USUN); Townley, Stephen G; Perina, Alexandra H; Gorove, Katherine M; Banos, Mariano H
Subject: RE: flotilla incident -- Comoros-flagged vessel ?

Categories: Working

B5

jon

From: Daley, John D
Sent: Thursday, October 14, 2010 3:31 PM
To: Kim, John J (Kimm); Johnson, Karen K; Jacobson, Linda; Joyce, Anne
Cc: Buchwald, Todd F; Simonoff, Mark A (USUN); Townley, Stephen G; Schwartz, Jonathan B; Perina, Alexandra H
Subject: flotilla incident -- Comoros-flagged vessel ?

John/Karen -

The press is reporting today that lawyers for the families of those killed by Israeli forces in connection with the Flotilla incident this spring have sent a letter to the ICC Prosecutor urging him to take action.

Thanks.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Simonoff, Mark A (USUN)

From: Anderson, Brooke D (USUN)
Sent: Tuesday, October 12, 2010 6:25 PM
To: Simonoff, Mark A (USUN)
Cc: Swiney, Gabriel; Germain, Ellen J (USUN); Masilko, Barbara J (USUN)
Subject: RE: Kuwait attack on Israel in Sixth Committee Rule of Law Debate

Categories: Working

B5

From: Simonoff, Mark A (USUN)
Sent: Tuesday, October 12, 2010 5:31 PM
To: Anderson, Brooke D (USUN)
Cc: Swiney, Gabriel; Germain, Ellen J (USUN); Masilko, Barbara J (USUN)
Subject: Kuwait attack on Israel in Sixth Committee Rule of Law Debate

Brooke,

During the Sixth Committee Rule of Law debate this afternoon, Kuwait just made an extensive statement critical of Israel, calling the attack on the Turkish flotilla illegal, calling for return of Golan Heights to Syria, among other things. Israel plans to exercise its right of reply.

Best regards,

Mark

Mark A. Simonoff
Acting Legal Adviser
U.S. Mission to the United Nations
799 United Nations Plaza
New York, NY 10017
(212)415-4220

SBU
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REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B6

Simonoff, Mark A (USUN)

From: Gorove, Katherine M
Sent: Friday, November 30, 2012 10:38 AM
To: Simonoff, Mark A (USUN); Hill, Steven (USUN); Schwartz, Jonathan B; Jacobson, Linda
Subject: Turkel Commission?

Hi all, [redacted] has been asked to meet next week with the Coordinator for the Israeli Public Commission to Examine the Maritime incident of 31 May 2010 (the Turkish flotilla), headed by Justice (ret.) Jacob Turkel. Apparently, members of the Commission are meeting with international law scholars to enhance the public profile of the report and provide more details about the report, its operative conclusion and suggested reforms. She would like to know if the USG has any visibility into their report? Do any of you know if someone is following the Commission closely? Ideally, she would like to speak informally with whoever knows the status/likely conclusions of the report or to receive some informal guidance from us. She needs to decide today if she will accept the meeting. B6

Thanks, Kate

From: Hoshea Gottlieb [redacted]
Sent: 11/20/2012 01:26 AM ZE2
To: [redacted]
Subject: Turkel Commission upcoming Report

Dear Professor [redacted],

I hope this note finds you well. My name is Hoshea Gottlieb and I serve as the Coordinator for the Israeli Public Commission to Examine the Maritime incident of 31 May 2010 (the Turkish flotilla), headed by Justice (ret.) Jacob Turkel.

The Commission was established in June 2010, and was asked to examine several issues, inter alia, the Gaza blockade and the IDF interdiction of the Turkish flotilla, as well as "whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, and as implemented with regard to the present incident [the Turkish flotilla], conform with the obligations of the State of Israel under the rules of international law".

In January 2011 the Commission tabled its First Report, considering the Gaza blockade and the IDF naval interdiction of the Turkish flotilla. That Report was largely adopted by the UN Review Panel, headed by Sir Geoffrey Palmer and by other international bodies.

Currently, the Commission is completing its Second Report concerning investigation of alleged LOAC\IHL violations. The Report will be published in Mid December or January. The Report first outlines the normative framework governing the issues according to the relevant bodies of international law. The Commission further conducted a comparative survey of the examination and investigation mechanisms of six other countries (USA, Canada, Australia, UK, Germany, and the Netherlands), the conclusions of which are presented in the report. The Report also details the relevant Israeli examination and investigation mechanisms, not only of the IDF, but also of other security branches, including the Israel Police, the Israeli General Security Agency (the Shin Bet) and the Israel Prison Service, as well as the different mechanisms to investigate allegations leveled at senior decision-makers. Finally, the Commission compares the Israeli practices and policies with the identified

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international legal principles as well as with the accepted approaches in the countries surveyed and, where necessary, recommended changes and amendments to the prevailing Israeli system.

The information in the Report was collected from government officials, Israeli human rights groups and Israeli academics, who both testified before the Commission and submitted written submissions. The Commission's work was further assisted at different stages by many international scholars, including the Commission's international observers: Lord David Trimble, Brigadier-General (Ret.) Kenneth Watkin and Professor Tim McCormack, as well as by Professors Mike Schmitt, Gaby Blum, and Claus Kreß. Professor Sean Watts, Captain (Navy) (Ret.) Holly McDougal, Professors Peter Rowe, Wolff Heintschel von Heinegg, and Terry Gill prepared the country reports.

Much work was invested in this Report and it aspires to be a meaningful and influential document that will make an impact both domestically and globally. In an effort to enhance the public profile of the report, I am planning to meet a few leading international scholars with an interest in accountability mechanisms, to provide more details about the report, its operative conclusion and suggested reforms.

I've consulted with [redacted] who holds very high regard for your work and your influence in the relevant international legal spheres. He suggested that I contact you in order to meet and brief you on the work we've done. B6

I plan to be in NYC during the week of 2 December (accept for one day that I would like to be in DC). I would be delighted to meet with you and present more details about the upcoming Report, if you have any interest and time in doing so. Should you be interested to schedule such a meeting, please contact me at this email address or if you prefer I can be reached at [redacted]

Best,

Hoshea Gottlieb,

Turkel Commission Coordinator

[redacted]

-----Original Message-----
From: [redacted]
Sent: Friday, November 30, 2012 7:36 AM
To: Koh, Harold Hongju; Perina, Alexandra H; Gorove, Katherine M
Subject: Turkel Comm

Harold, AP, Kate --

I am supposed to be meeting with someone from the Turkel Comm'n next week to discuss their forthcoming report. Does the USG have any visibility into this project and what they are producing? If so, it would be very helpful for me to speak to someone for some background on this, if that is possible.

Many thanks, and all the best,

[redacted]

B6

RELEASED IN PART B5

DeLaurentis, Jeffrey

From: McLeod, Mary E (USUN)
Sent: Thursday, June 03, 2010 8:02 PM
To: Germain, Ellen J (USUN)
Cc: DeLaurentis, Jeffrey
Subject: RE: TOR for UN investigation

Categories: Working

And yet more. [redacted] B5

From: McLeod, Mary E (USUN)
Sent: Thursday, June 03, 2010 7:41 PM

[redacted]

Terms of Reference

The Commission's tasks are:

[redacted]

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

B5

UN CONFIDENTIAL

TERMS OF REFERENCE
of the
The Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident

Establishment of panel

1. In the light of the Statement of the President of the Security Council dated 1 June 2010 (S/PRST/2010/9), the Secretary-General has established a panel of inquiry on the incident that occurred on 31 May 2010 in international waters, in which an Israeli military operation was conducted against a convoy sailing to Gaza and which resulted in the death of nine civilians.

Tasks

RELEASED IN PART B5

2 The panel:

(a) will receive and review interim and final reports of national investigations into the incident;

(b) may request such clarifications and information as it may require from relevant national authorities.

3. In the light of the information so gathered, the panel will:

(a) examine and identify the facts, circumstances and context of the incident; and

(b) consider and suggest ways of avoiding similar incidents in the future.

4. The panel will prepare a report including its findings, conclusions and recommendations and submit it to the Secretary-General.

Composition of the panel

5. The panel, to be appointed by the Secretary General, will be composed of a Chair, a Vice-Chair and one member each from Israel and Turkey, with recognized and relevant expertise.

Time Frame

6. The panel will hold its first meeting on 10 August 2010 at United Nations Headquarters in New York. It will hold such further meetings as required in order to submit a preliminary report within three months. The panel will submit its final report to the Secretary-General no later than three months after submission of the preliminary report. This timeline may be adjusted by the Secretary-General depending on the progress of the panel's work.

Location

7. The panel will be based at United Nations Headquarters in New York.

Secretariat

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

(4)

UN CONFIDENTIAL

8. The UN Secretariat will provide secretariat services for the panel.

Dated: XX XXXX 2010

Place: New York

Vijay Nambiar
Chef de Cabinet
Executive Office of the Secretary-General
United Nations

RELEASED IN PART
B5

B5

UN CONFIDENTIAL

(4)

METHOD OF WORK
of the
Secretary General's Panel of Inquiry on the 31 May 2010 Flotilla Incident

1. The panel will receive and review copies of the national investigations into the incident from Israel and Turkey.

2. Where the panel considers that it requires further information, clarifications or meetings from Israel and/or Turkey, it will make such request to the points of contact designated by those States.

3. Where the panel considers it necessary to obtain information from other affected States, it may request such information through appropriate diplomatic channels.

4. The panel will conduct its work in a prompt, impartial, credible and transparent manner, in conformity with international standards.

5. The report and any findings, conclusions and recommendations it may contain are to be agreed by consensus. Where the members of the panel are unable to reach agreement on any element of the report or its findings, conclusions *or* recommendations, the Chair and Vice-Chair will use their best efforts to try to secure consensus among the members of the panel regarding that element, finding, conclusion or recommendation. Where, despite the best efforts of the Chair and Vice-Chair, it is not possible to achieve consensus among the members of the panel on a particular element or finding, conclusion or recommendation, the Chair and Vice-Chair will agree on any such element, finding, conclusion or recommendation in the report.

5. The UN Secretariat will provide secretariat services to the panel and will arrange for the provision of necessary administrative, logistic and security support, including transportation and accommodation.

6. The Archives and Records Management Section will provide records-management support to the panel.

7. The report of the panel shall be designated unclassified. The panel may attach confidential annexes to its report.

8. The panel shall take the necessary steps to ensure that all documents and materials provided to it on the understanding of confidentiality are marked "third party confidential" and that all necessary measures are taken to safeguard their confidentiality.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

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2/1/2012

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B5

TERMS OF REFERENCE
of the
The Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident

Establishment of panel

1. In the light of the Statement of the President of the Security Council dated 1 June 2010 (S/PRST/2010/9), the Secretary-General has established a panel of inquiry on the incident that occurred on 31 May 2010 in international waters involving an Israeli military operation against a convoy sailing to Gaza during which nine civilians died.

Tasks

2 The panel:

(a) will receive and review interim and final reports of national investigations into the incident;

(b) may request such clarifications and information as it may require from relevant national authorities.

3. In the light of the information so gathered, the panel will:

(a) examine and identify the facts, circumstances and context of the incident; and

(b) consider and recommend ways of avoiding similar incidents in the future.

4. The panel will prepare a report including its findings and recommendations and submit it to the Secretary-General.

Composition of the panel

5. The panel, to be appointed by the Secretary General, will be composed of a Chair, a Vice-Chair and one member each from Israel and Turkey, with recognized and relevant expertise.

Time Frame

6. The panel will hold its first meeting on 10 August 2010 at United Nations Headquarters in New York. It will hold such further meetings as required in order to submit a progress report within three months. The panel will submit its final report to the Secretary-General no later than three months after submission of the progress report. This timeline may be adjusted by the Secretary-General depending on the progress of the panel's work.

Location

7. The panel will be based at United Nations Headquarters in New York.

Secretariat

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

8. The UN Secretariat will provide secretariat services for the panel.

Dated: XX XXXX 2010

Place: New York

Vijay Nambiar
Chef de Cabinet
Executive Office of the Secretary-General
United Nations

B5

7/27/10

UN CONFIDENTIAL

RELEASED IN PART B5

TERMS OF REFERENCE of the The Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident

Establishment of panel

1. In the light of the Statement of the President of the Security Council dated 1 June 2010 (S/PRST/2010/9), the Secretary-General has established a panel of inquiry on the incident that occurred on 31 May 2010 in international waters involving a convoy sailing to Gaza.

Tasks

2 The panel:

(a) will receive and review interim and final reports of national investigations into the incident;

(b) may request such clarifications and information as it may require from relevant national authorities.

3. In the light of the information so gathered, the panel will:

(a) examine and identify the facts, circumstances and context of the incident; and

(b) consider and recommend ways of avoiding similar incidents in the future.

4. The panel will prepare a report including its findings and recommendations and submit it to the Secretary-General.

Composition of the panel

5. The panel, to be appointed by the Secretary General, will be composed of a Chair, a Vice-Chair and one member each from Israel and Turkey, with recognized and relevant expertise.

Time Frame

6. The panel will hold its first meeting on 10 August 2010 at United Nations Headquarters in New York. It will hold such further meetings at United Nations Headquarters in New York as required. The panel will submit a progress report within three months and thereafter as necessary. The panel will strive to submit its final report to the Secretary-General within six months taking into account the progress of the national investigations. This timeline may be adjusted by the Secretary-General depending on the progress of the panel's work.

Location

7. The panel will be based at United Nations Headquarters in New York.

Secretariat

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004618

8. The UN Secretariat will provide secretariat services for the panel.

Dated: XX XXXX 2010

Place: New York

Vijay Nambiar
Chef de Cabinet
Executive Office of the Secretary-General
United Nations

UN CONFIDENTIAL

RELEASED IN PART
B5

METHOD OF WORK
of the
Secretary General's Panel of Inquiry on the 31 May 2010 Flotilla Incident

1. The panel will receive and review copies of the national investigations into the incident from Israel and Turkey.

2. Where the panel considers that it requires further information, clarifications or meetings from Israel and/or Turkey, it will make such request to the points of contact designated by those States.

3. Where the panel considers it necessary to obtain information from other affected States, it may request such information through appropriate diplomatic channels.

4. The panel will conduct its work in a prompt, impartial, credible and transparent manner, in conformity with international standards.

5. The panel is to operate by consensus and the findings of the report and any recommendations it may contain are to be agreed by consensus. Where the members of the panel are unable to reach agreement on a procedural issue or on any finding or recommendation, the Chair and Vice-Chair will use their best efforts to try to secure consensus among the members of the panel on that procedural issue, finding or recommendation. Where, despite the best efforts of the Chair and Vice-Chair, it is not possible to achieve consensus among the members of the panel on a particular procedural issue, finding or recommendation, the Chair and Vice-Chair will agree on that procedural issue, finding or recommendation.

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7. The Archives and Records Management Section will provide records-management support to the panel.

8. The report of the panel shall be designated unclassified. The panel may attach confidential annexes to its report.

9. The panel shall take the necessary steps to ensure that all documents and materials provided to it on the understanding of confidentiality are marked "third party confidential" and that all necessary measures are taken to safeguard their confidentiality.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Luther, Lorre M

From: Townley, Stephen G
Sent: Tuesday, July 13, 2010 8:38 AM
To: Buchwald, Todd F; Daley, John D; Schwartz, Jonathan B
Cc: Jacobson, Linda; Dolan, JoAnn
Subject: Malaysia ICJ/flotilla

Harold asked this morning whether we had heard the latest on the Malaysian effort in the UNGA. Does this have legs?
Many thanks, Stephen

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Luther, Lorre M

From: Zelinsky, Aaron
Sent: Thursday, April 07, 2011 11:51 AM
To: Koh, Harold Hongju; Schwartz, Jonathan B; Biniaz, Susan N; McLeod, Mary; Thessin, James H
Cc: Townley, Stephen G; Spector, Phillip M; Pozen, David
Subject: Mary Davis Report

The Davis Report on Cast Lead was cited by Goldstone in his Oped as the critical report which influenced his thinking:

"The final report by the U.N. committee of independent experts — chaired by former New York judge Mary McGowan Davis — that followed up on the recommendations of the Goldstone Report has found that "Israel has dedicated significant resources to investigate over 400 allegations of operational misconduct in Gaza" while "the de facto authorities (i.e., Hamas) have not conducted any investigations into the launching of rocket and mortar attacks against Israel."

Davis has said that Goldstone's oped has no influence on her report, which was submitted to the HRC last month.

The Davis Report favorably mentions the Turkel Commission Report on the flotilla (see paragraph 38-39), for showing that "Israel does have a mechanism for carrying out inquiries into decisions and policies adopted by high-level officials"

The full text of the Davis report is here:
http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24_AUV.pdf

Aaron

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REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004622

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NON-RESPONSIVE PORTIONS REDACTED

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Q: Flotillas of vessels sponsored by a variety of groups, including some like IHH with terrorist links, continue to try to break Israel's security blockade of Gaza. We all remember the tragic events with the Mavi Marmara last May. What is your assessment of the current efforts to break the blockade set for the anniversary of these events? What is the United States doing to prevent another tragedy?

A: We are closely monitoring the planned Mavi Marmara incident "anniversary flotilla." We currently understand that the next Gaza flotilla is being organized by several different groups, including IHH, the Gaza Freedom Flotilla, U.S. Ship to Gaza, and others. They could be organizing around 15 or more ships to sail from various ports on May 15 with plans to rendezvous in the Mediterranean and then arrive in Gaza around May 30.

We are currently reviewing our options to avoid another deadly confrontation like the one last May. We will be urging all flotilla participants to utilize existing mechanisms to deliver goods to Gaza, partner countries to take any necessary measures to ensure the safety of their citizens, and urging all parties to avoid violence at all costs.

As we have made clear in the past, mechanisms exist for the transfer of humanitarian assistance to Gaza. These non-provocative and non-confrontational mechanisms should be the ones used for the benefit of all those in Gaza. Direct delivery by sea is neither appropriate nor responsible, and certainly not effective, under the circumstances.

All cargo bound for Gaza, including those delivered by ship, need to be inspected to protect Israel's security from illegal arms smuggling to terrorist groups.

NR

Cleared By:
ISN/RA: JDaniel (ok)
ISN/RA: AStukalin (ok)
ISN/MNSA: MDavis (ok)
ISN/MNSA: SAdams (ok)
F: LHall (ok)
PM/PPA: JKnoch (ok)
PM/RSAT: NJakobsen (ok)
PM/PPA: PTyson (ok)
S/CT: MJacobson (ok)
H: JEpping (ok)
IO/UNP: KZurcher (ok)

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Approved: NEA A/S Feltman

Cleared: NEA/FO – RSchlicher

NEA/FO – JWalles

NEA/IPA – PSutphin

NEA/IPA – JBuzbee

D(S) – DSchrepel

D(N) – SCarl-Yoder

P – ECatalano

S/P – AMiller

H – JEpping

S/SEMEP – JReed/SKhouryKincannon/ASachar

RELEASED IN FULL

Luther, Lorre M

From: Townley, Stephen G
Sent: Tuesday, July 06, 2010 12:16 PM
To: Khan, Naveed J
Subject: RE: flotilla meeting next Thursday

Pls try to find time other than Friday as Jon is out Friday and he's key. Thanks, Stephen

From: Khan, Naveed J
Sent: Tuesday, July 06, 2010 12:07 PM
To: Townley, Stephen G
Subject: FW: flotilla meeting next Thursday

Shall I move this to Friday at 4:30?

From: Wright, Elizabeth B
Sent: Tuesday, July 06, 2010 8:35 AM
To: Khan, Naveed J; Townley, Stephen G; Jacobson, Linda; Dolan, JoAnn; Schwartz, Jonathan B; Banos, Mariano H; Gorove, Katherine M; Cleveland, Sarah H; Pomper, Stephen E; Perina, Alexandra H
Cc: Chabora, Paige E
Subject: RE: flotilla meeting next Thursday

I'll note it on Jonathan's Schedule.

From: Khan, Naveed J
Sent: Thursday, July 01, 2010 11:15 AM
To: Townley, Stephen G; Jacobson, Linda; Dolan, JoAnn; Schwartz, Jonathan B; Banos, Mariano H; Gorove, Katherine M; Cleveland, Sarah H; Wright, Elizabeth B; Pomper, Stephen E; Perina, Alexandra H
Cc: Chabora, Paige E
Subject: RE: flotilla meeting next Thursday

I have 4:00 pm available on Thursday, July 8th. Let me know if it is ok. Thank you.

Naveed

From: Townley, Stephen G
Sent: Thursday, July 01, 2010 11:11 AM
To: Jacobson, Linda; Dolan, JoAnn; Schwartz, Jonathan B; Banos, Mariano H; Gorove, Katherine M; Cleveland, Sarah H; Khan, Naveed J; Wright, Elizabeth B; Pomper, Stephen E; Perina, Alexandra H
Cc: Chabora, Paige E
Subject: flotilla meeting next Thursday

Naveed, could you please help us find an hour to meet with HHK next Thursday to discuss next steps? Thanks, Stephen

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004646

Luther, Lorre M RELEASED IN FULL

From: Townley, Stephen G
Sent: Tuesday, July 20, 2010 3:19 PM
To: Schwartz, Jonathan B; Dolan, JoAnn
Cc: Gorove, Katherine M
Subject: RE: flotilla-gram

So we can push back on this perhaps, but the Secretariat is actually asking if there's any way we could produce the paper tomorrow night. I think they are aware of the possible S trip Harold referenced this morning and are wondering if this could be produced before then. We can engage further to see about deadlines, but there is definitely interest in moving this forward soon. Thanks, Stephen

From: Schwartz, Jonathan B
Sent: Tuesday, July 20, 2010 2:58 PM
To: Townley, Stephen G; Dolan, JoAnn
Cc: Gorove, Katherine M
Subject: RE: flotilla-gram

Linda Jacobson did a draft on Friday and Kate is planning to jazz it up when she finishes her sanctions conference today; then L/PM and others might be asked to look at particular pieces. So we may have something for Harold to look at later this week. But it would be useful if you have any further insights into what the clients think Harold has promised.

From: Townley, Stephen G
Sent: Tuesday, July 20, 2010 2:16 PM
To: Schwartz, Jonathan B; Dolan, JoAnn
Subject: flotilla-gram

Jon and JoAnn, I think I may have overheard some discussion prior to the OPEC meeting of the flotilla paper. The Line has said that senior clients are quite interested (and aspirationally had noted in their system that they might get the paper today). So I just thought I would check on where this stood and whether there was anything I could do. Since neither D nor S is here this week, not sure it's urgent that it go up in the next few days, but maybe we could aim for by the end of the week so that it's ready when clients return next week? Thanks, Stephen

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004647

RELEASED IN FULL

Luther, Lorre M

From: Townley, Stephen G
Sent: Friday, July 23, 2010 4:00 PM
To: Schwartz, Jonathan B; Cleveland, Sarah H
Subject: Re: L Note Due to Executive Secretary Today

That would be great.

From: Schwartz, Jonathan B
To: Townley, Stephen G; Cleveland, Sarah H
Sent: Fri Jul 23 15:57:39 2010
Subject: RE: L Note Due to Executive Secretary Today

Stephen – I sent a message to Harold last night suggesting this be deferred but have not heard back. Should I call someone in S/S to explain the situation?

From: Townley, Stephen G
Sent: Friday, July 23, 2010 3:56 PM
To: Cleveland, Sarah H; Schwartz, Jonathan B
Subject: Fw: L Note Due to Executive Secretary Today
Importance: High

Sorry to ask, but do we know if Harold managed to get this postponed until next week?

From: Mills, Pamela G
To: Townley, Stephen G; Williams, Veronica
Cc: S_SpecialAssistants
Sent: Fri Jul 23 15:54:20 2010
Subject: L Note Due to Executive Secretary Today

Dear L Colleagues,

We have not been able to reach you on the phone today, and have not seen any response from you on the high side to the list of paper due. S staff is looking to receive the L note on the flotilla today.

Please call or e-mail the Line to advise us of the paper's status.

Best wishes,

Pamela

Pamela G. Mills
Executive Secretariat
ext. 7-8542

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5,NR

United States Department of State

Washington, D.C. 20520

SENSITIVE BUT UNCLASSIFIED

August 30, 2010

INFORMATION MEMO FOR THE SECRETARY

FROM: IO – Esther Brimmer
DRL – Michael Posner
L – Harold Hongju Koh

SUBJECT: United Nations Human Rights Council 15th Session Preview

The UN Human Rights Council (HRC) will hold its 15th regular session in Geneva from September 13 to October 1, 2010. As with previous sessions, we are lobbying select governments to obtain their views and support on our priorities (see Tab). Top U.S. priorities include:

NR

SENSITIVE BUT UNCLASSIFIED

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

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NR

(5) **Limitation of HRC action on Israel.** B5

NR

Attachment:

NR

Approved: IO/FO: EBrimmer
DRL/FO: MPosner
L/FO: HKoh

Drafted: IO/HR: GPatel, ext. 73902 and cell: (301) 509-9571

Cleared:
D(S): MAshraf (OK – provisional)
D(L): SCarlYoder (OK)
P: MCarpenter (OK)
S/P: CPowell (OK)
G: ERichardson (OK)
IO/FO: GAnderson
IO/FO: SNossel
IO/HR: JLapenn (OK)
IO/HR: MHonigstein (OK)
IO/MPR: LSpratt (OK)
DRL/MLGA: SChase (OK)
L/HRR: EAswad/EWoodhouse ← wants FO approval
L:RHarris (OK)
NEA/IPA: JDoutrich (OK)
AF/RSA: LDees (OK)
WHA/PPC: PReilly (OK)
S/GWI: SKotok (OK)
USUN/W: EBarks-Ruggles (OK)

RELEASED IN PART NR,B6

Luther, Lorre M

From: Townley, Stephen G
Sent: Monday, July 26, 2010 5:20 PM
To: Koh, Harold Hongju; Thessin, James H; Cleveland, Sarah H; Schwartz, Jonathan B; Harris, Robert K
Cc: Chabora, Paige E
Subject: July 23 Weekly Update
Attachments: Weekly Update July 23.docx

Attached and below please find last week's update. Thanks, Stephen

WEEKLY UPDATE – JULY 23

L/UNA

NR

Flotilla: We worked on a draft of your Note to S and participated in a conference call with [redacted] B6 [redacted] It's clear that although the Israelis have put together a thorough report for the SYG on the status of their investigations and that changes to some of their military practices are being made. At the same time, it sounds like there continues to be an internal battle on how many changes to make and whether to make public some of their changes to operational orders for security reasons; Posner pressed hard during the conference call that the Israelis needed to make as good of a public defense as possible and that the overall operational changes were critical elements. [redacted] said he would take our requests back to the IDF's Chief of Staff and thanked Posner for

NR

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

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RELEASED IN PART B5,NR

Luther, Lorre M

From: Aswad, Evelyn M
Sent: Wednesday, September 22, 2010 10:26 PM
To: Koh, Harold Hongju
Cc: Harris, Robert K; Cleveland, Sarah H; Townley, Stephen G; Banos, Mariano H
Subject: Night note re HRC Flotilla & Burn a Koran resolution

Harold –

Here is an update on HRC matters in case they get raised in the morning staff meeting:

1) **Flotilla** - We just received the HRC's Fact Finding Mission (FFM) report on the Flotilla on an extremely close hold basis. While the report did not make any recommendations, it was very unfavorable for Israel. In terms of its formal conclusions, the FFM determined that, because the Gaza blockade was unlawful, the interception of the flotilla was also unlawful, as well as any use of force resulting from the blockade. The FFM also determined that, even if the use of force had been legitimate, the force used by the Israelis was "unnecessary, disproportionate, excessive and inappropriate." Lethal force was employed in a "widespread and arbitrary manner." Based on the facts, the FFM concluded that the Israelis' use of force and post-boarding detention had violated the right to life, the right to liberty, the right to freedom from torture, the right to humane treatment in detention, the right to freedom of expression and the Fourth Geneva Convention. The report will almost certainly be taken up by a resolution at the HRC. B5

2) NR

3)

It's not a dull session.

Best,
EA

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Luther, Lorre M

From: Townley, Stephen G
Sent: Thursday, July 29, 2010 4:12 PM
To: Gorove, Katherine M
Cc: Schwartz, Jonathan B
Subject: RE: flotilla memo

[redacted] B5

From: Gorove, Katherine M
Sent: Thursday, July 29, 2010 3:47 PM
To: Townley, Stephen G
Cc: Schwartz, Jonathan B
Subject: RE: flotilla memo

[redacted]

From: Townley, Stephen G
Sent: Thursday, July 29, 2010 3:36 PM
To: Gorove, Katherine M
Cc: Schwartz, Jonathan B
Subject: RE: flotilla memo

[redacted]

From: Gorove, Katherine M
Sent: Thursday, July 29, 2010 1:51 PM
To: Townley, Stephen G
Subject: flotilla memo

Steve, [redacted]

Thanks, Kate

From: Schwartz, Jonathan B
Sent: Wednesday, July 28, 2010 8:01 PM
To: Koh, Harold Hongju
Cc: Cleveland, Sarah H; Townley, Stephen G; Gorove, Katherine M
Subject: LEGAL-#258419-v2-Flotilla_to_S_(2).docx

Harold – Kate has updated this draft note on the flotilla to reflect what she learned during recent briefings by the Israelis. [redacted]

Jon

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004659

RELEASED IN PART B5

Luther, Lorre M

From: Schwartz, Jonathan B
Sent: Friday, July 30, 2010 2:36 PM
To: Gorove, Katherine M; Townley, Stephen G
Subject: RE: Flotilla

[redacted] B5

-----Original Message-----
From: Gorove, Katherine M
Sent: Friday, July 30, 2010 2:25 PM
To: Townley, Stephen G; Schwartz, Jonathan B
Subject: RE: Flotilla

Yes, just got green light. They hope the Israelis and Turks will reach agt with the SYG in the "not hideously distant future", but no objection to Note moving forward today. [redacted]

[redacted]

-----Original Message-----
From: Townley, Stephen G
Sent: Friday, July 30, 2010 2:21 PM
To: Gorove, Katherine M
Subject: Flotilla

Have we heard further from USUN? Thanks, Stephen

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004660

RELEASED IN PART B5,NR

Luther, Lorre M

From: Townley, Stephen G
Sent: Friday, June 18, 2010 11:04 PM
To: Cleveland, Sarah H
Subject: Re: FW: Pascoe press remarks in SL

Not really. The PRST called for a prompt impartial credible and transparent investigation. We've supported an intl component, but we've also said that the Israeli mechanism with intl observers/participants could satisfy the PRST. [redacted] B5

[redacted]

From: Cleveland, Sarah H
To: Townley, Stephen G
Sent: Fri Jun 18 22:21:02 2010
Subject: Fw: FW: Pascoe press remarks in SL

Have we said anything re a UN role for the flotilla? See below.

From: Renzulli, Anthony F
To: Renzulli, Anthony F; Prosser, Sarah E; Coughlin, Shaun (S/WCI); Richelsoph, David N
Cc: Sweeney, Peter J; Cleveland, Sarah H; Woodhouse, Erik J; Rajpal, Sabeena
Sent: Fri Jun 18 18:52:20 2010
Subject: RE: FW: Pascoe press remarks in SL

Is there comparable guidance for Gaza flotilla?

From: Renzulli, Anthony F
Sent: Friday, June 18, 2010 6:47 PM
To: Prosser, Sarah E; Coughlin, Shaun (S/WCI); Richelsoph, David N
Cc: Sweeney, Peter J; Cleveland, Sarah H; Woodhouse, Erik J; Rajpal, Sabeena
Subject: RE: FW: Pascoe press remarks in SL

[redacted] NR

From: Prosser, Sarah E
Sent: Friday, June 18, 2010 4:28 PM
To: Renzulli, Anthony F; Coughlin, Shaun (S/WCI); Richelsoph, David N
Cc: Sweeney, Peter J; Cleveland, Sarah H; Woodhouse, Erik J; Rajpal, Sabeena
Subject: RE: FW: Pascoe press remarks in SL

My two cents: REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

- [redacted] NR

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05329907 Date: 05/21/2013

Page Denied

From: Pan, Michael (USUN)
Sent: Thursday, June 17, 2010 4:13 PM
To: Anderson, Brooke D (USUN); Pelofsky, Eric J; Finerty, Tressa R (USUN)
Subject: FW: Pascoe press remarks

Press Conference
Opening Remarks by B. Lynn Pascoe
United Nations Under-Secretary-General for Political Affairs
Colombo, 17 June 2010

NR

StateDept004663

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RELEASED IN PART B5

Luther, Lorre M

From: Townley, Stephen G
Sent: Friday, October 15, 2010 6:41 PM
To: Gorove, Katherine M; Buchwald, Todd F; Pomper, Stephen E; Daley, John D; Schwartz, Jonathan B
Subject: RE: ICC flotilla

[redacted] B5

From: Gorove, Katherine M
Sent: Friday, October 15, 2010 6:36 PM
To: Townley, Stephen G; Buchwald, Todd F; Pomper, Stephen E; Daley, John D; Schwartz, Jonathan B
Subject: Re: ICC flotilla

[redacted]

From: Townley, Stephen G
To: Buchwald, Todd F; Pomper, Stephen E; Gorove, Katherine M; Daley, John D; Schwartz, Jonathan B
Sent: Fri Oct 15 18:21:35 2010
Subject: RE: ICC flotilla

[redacted]

From: Buchwald, Todd F
Sent: Friday, October 15, 2010 5:41 PM
To: Pomper, Stephen E; Gorove, Katherine M; Daley, John D; Townley, Stephen G; Schwartz, Jonathan B
Subject: RE: ICC flotilla

[redacted]

From: Pomper, Stephen E
Sent: Friday, October 15, 2010 5:28 PM
To: Gorove, Katherine M; Buchwald, Todd F; Daley, John D; Townley, Stephen G; Schwartz, Jonathan B
Subject: Re: ICC flotilla

[redacted]

From: Gorove, Katherine M
To: Buchwald, Todd F; Daley, John D; Pomper, Stephen E; Townley, Stephen G; Schwartz, Jonathan B
Sent: Fri Oct 15 17:24:09 2010
Subject: ICC flotilla

Is this how we agreed to phrase it? Any further changes?

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05329916 Date: 05/21/2013

IF ASKED ONLY:

B5

StateDept004666

RELEASED IN PART B5

Luther, Lorre M

From: Townley, Stephen G
Sent: Monday, June 14, 2010 10:10 AM
To: Banos, Mariano H
Subject: RE: Israeli Flotilla Panel

Will do.

-----Original Message-----
From: Banos, Mariano H
Sent: Monday, June 14, 2010 10:07 AM
To: Townley, Stephen G
Subject: FW: Israeli Flotilla Panel

Steve,

I don't know if we still have a small L email group on Flotilla developments, but if we do, please keep me in the loop. [redacted] B5

Thanks,

Mariano

-----Original Message-----
From: Nossel, Suzanne F
Sent: Monday, June 14, 2010 9:58 AM
To: Cassayre, Mark J; Khanna, Melanie J; Donahoe, Eileen C; Ostermeier, Amy A; Cassidy, Joseph P; Fitzpatrick, Kathleen M; Banos, Mariano H
Subject: FW: Israeli Flotilla Panel

-----Original Message-----
From: Goldberger, Thomas H
Sent: Monday, June 14, 2010 8:53 AM
To: Nossel, Suzanne F; Connelly, Maura; Giauque, Jeffrey G; Knopf, Payton L
Subject: Re: Israeli Flotilla Panel

I'm at FSI, but apparently the WH put out the below yesterday

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

THE WHITE HOUSE
Office of the Press Secretary

FOR IMMEDIATE RELEASE

June 13, 2010

Statement by the Press Secretary on Israel's investigation into the flotilla incident

Today, the Government of Israel took an important step forward in proposing an independent public commission to investigate the circumstances of the recent tragic events on board the flotilla headed for Gaza. Through a presidential statement of the United Nations Security Council, the United States joined the international community in condemning those acts which

StateDept004667

led to nine fatalities and many injuries on board the flotilla, and supporting the completion of a prompt, impartial, credible, and transparent investigation.

We believe that Israel, like any other nation, should be allowed to undertake an investigation into events that involve its national security. Israel has a military justice system that meets international standards and is capable of conducting a serious and credible investigation, and the structure and terms of reference of Israel's proposed independent public commission can meet the standard of a prompt, impartial, credible, and transparent investigation. But we will not prejudge the process or its outcome, and will await the conduct and findings of the investigation before drawing further conclusions. While Israel should be afforded the time to complete its process, we expect Israel's commission and military investigation will be carried out promptly. We also expect that, upon completion, its findings will be presented publicly and will be presented to the international community.

###

----- Original Message -----
From: Nossel, Suzanne F
To: Goldberger, Thomas H; Connelly, Maura; Giauque, Jeffrey G; Knopf, Payton L
Sent: Sun Jun 13 22:36:27 2010
Subject: Israeli Flotilla Panel

Are there talkers/a background paper on that. [redacted] B5

[redacted]

Thanks

StateDept004668

RELEASED IN FULL

Luther, Lorre M

From: Townley, Stephen G
Sent: Monday, July 12, 2010 2:00 PM
To: Schwartz, Jonathan B; Jacobson, Linda; Dolan, JoAnn
Cc: Pomper, Stephen E; Banos, Mariano H; Baumert, Kevin A; Cleveland, Sarah H; Harris, Robert K
Subject: RE: LEGAL-#256164-v1-Flotilla_Outline.DOC

Also, has anyone reviewed what apparently came out today (http://www.nytimes.com/2010/07/13/world/middleeast/13flotilla.html?_r=1&hp)?

Thanks, Stephen

From: Townley, Stephen G
Sent: Monday, July 12, 2010 1:56 PM
To: Schwartz, Jonathan B; Jacobson, Linda; Dolan, JoAnn
Cc: Pomper, Stephen E; Banos, Mariano H; Baumert, Kevin A; Cleveland, Sarah H; Harris, Robert K
Subject: RE: LEGAL-#256164-v1-Flotilla_Outline.DOC

All, Have there been any further comments on this? I'd like to give a version of the paper to HHK overnight to think about before our meeting with him tomorrow. Thanks, Stephen

From: Schwartz, Jonathan B
Sent: Thursday, July 01, 2010 3:01 PM
To: Jacobson, Linda; Dolan, JoAnn
Cc: Pomper, Stephen E; Townley, Stephen G; Banos, Mariano H; Baumert, Kevin A; Cleveland, Sarah H; Harris, Robert K
Subject: LEGAL-#256164-v1-Flotilla_Outline.DOC

Linda/JoAnn – as I foolishly promised Steve Pomper, here is a quick strawman outline for the "10 pager" that Harold is thinking of preparing for S. If you'd like to take ownership of this, get something to Steve during his one window tomorrow to review, and elicit reactions from the broader group (including those who are out but will be back next week like Kate Gorove and Alexandra Perina), I'd be grateful. (I see that Steve Townley and Naveed are conspiring for a Thursday meeting with Harold, so that should probably be our target to revise this for discussion purposes.) Thanks. Jon.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004669

RELEASED IN FULL

Luther, Lorre M

From: Banos, Mariano H
Sent: Thursday, July 22, 2010 2:10 PM
To: Gorove, Katherine M; Dolan, JoAnn; Pomper, Stephen E; Perina, Alexandra H; Townley, Stephen G; Cleveland, Sarah H; Schwartz, Jonathan B; Jacobson, Linda
Subject: RE: LEGAL-#258297-v1-Flotilla_Note.docx
Attachments: LEGAL-#258297-v1-Flotilla_Note (3).docx

Some brief comments.

Mariano

From: Gorove, Katherine M
Sent: Thursday, July 22, 2010 12:54 PM
To: Dolan, JoAnn; Banos, Mariano H; Pomper, Stephen E; Perina, Alexandra H; Townley, Stephen G; Cleveland, Sarah H
Subject: RE: LEGAL-#258297-v1-Flotilla_Note.docx

Here is latest version, incorporating L/AN and my edits, for everyone's editing/comments.

Thanks, Kate

From: Dolan, JoAnn
Sent: Thursday, July 22, 2010 12:01 PM
To: Schwartz, Jonathan B; Gorove, Katherine M; Banos, Mariano H; Pomper, Stephen E; Perina, Alexandra H; Townley, Stephen G; Cleveland, Sarah H
Cc: Jacobson, Linda
Subject: RE: LEGAL-#258297-v1-Flotilla_Note.docx

A few comments/clarifications noted. This looks good to me.

From: Schwartz, Jonathan B
Sent: Wednesday, July 21, 2010 7:03 PM
To: Gorove, Katherine M; Dolan, JoAnn; Banos, Mariano H; Pomper, Stephen E; Perina, Alexandra H; Townley, Stephen G; Cleveland, Sarah H
Cc: Jacobson, Linda
Subject: LEGAL-#258297-v1-Flotilla_Note.docx

I understand from Stephen that "the line" is agitating for Harold's memo on the flotilla, though there may not be an objective reason for this and Harold may decide to let the Secretary first enjoy the wedding. But just in case, I have drawn on some helpful drafting by Linda and Kate to put together an initial strawman. It would be much appreciated if the relevant experts could offer comments tomorrow (Thursday) on the sections that pertain to them – Kate would be in the best position to collate them to generate a further draft for Harold's review in the event he wants to move something on Friday.

Thanks.

Jonl

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004670

RELEASED IN FULL

Luther, Lorre M

From:	Gorove, Katherine M
Sent:	Thursday, July 22, 2010 6:00 PM
To:	Perina, Alexandra H; Banos, Mariano H; Dolan, JoAnn; Pomper, Stephen E; Townley, Stephen G; Cleveland, Sarah H; Schwartz, Jonathan B; Jacobson, Linda; Sharon, Chelsea C
Cc:	Johnson, Clifton M
Subject:	RE: LEGAL-#258297-v1-Flotilla_Note.docx
Attachments:	LEGAL-#258297-v1-Flotilla_Note, revs. accpeted.docx; LEGAL-#258297-v1-Flotilla_Note (3) (2).docx

Jon, Attached is a clean version and a version with tracked changes, for you to review and forward to Harold for his review. A few others may chime in later. Thanks, Kate

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RELEASED IN PART B5,B6

Luther, Lorre M

From: Townley, Stephen G
Sent: Thursday, July 22, 2010 3:15 PM
To: Schwartz, Jonathan B
Subject: RE: [redacted] meeting B6

Seems quite reasonable. I suggest flagging this for him tonight when you send the draft and he can raise with Jake/Joe tomorrow morning. I think if he makes the suggestion, we can get this pushed back further.

From: Schwartz, Jonathan B
Sent: Thursday, July 22, 2010 3:09 PM
To: Townley, Stephen G
Subject: FW: [redacted] meeting

What do you think?

From: Gorove, Katherine M
Sent: Thursday, July 22, 2010 2:15 PM
To: Schwartz, Jonathan B
Subject: RE: [redacted] meeting

OK, I'll send you draft as it is at end of day. Here is DRAFT EMAIL FOR HAROLD from you.

[redacted] B5

From: Schwartz, Jonathan B
Sent: Thursday, July 22, 2010 1:23 PM
To: Gorove, Katherine M
Subject: RE: [redacted] meeting B6

Perhaps we could give Harold a draft tonight with a note on why he may want to wait and why there is no urgency?

From: Gorove, Katherine M
Sent: Thursday, July 22, 2010 12:57 PM
To: Schwartz, Jonathan B
Subject: [redacted] meeting

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[redacted] B5

From: Schwartz, Jonathan B
Sent: Thursday, July 22, 2010 12:51 PM
To: Gorove, Katherine M; Dolan, JoAnn; Perina, Alexandra H; Pomper, Stephen E; Cleveland, Sarah H; Townley, Stephen G; Banos, Mariano H
Subject: FW: Briefing with [redacted] - 7/26, 10:30 AM B6

FYI. [redacted] B5

[redacted]

From: Tsou, Leslie M
Sent: Thursday, July 22, 2010 12:46 PM
To: Schwartz, Jonathan B
Subject: FW: Briefing with [redacted] - 7/26, 10:30 AM

You can ask him about the [redacted] B5

From: Saltzman, Amy J
Sent: Thursday, July 22, 2010 12:45 PM
To: Fitzpatrick, Kathleen M; Harris, Robert K; Cassidy, Joseph P; Banos, Mariano H; Knopf, Payton L; Bass, Warren; Walles, Jacob; Enav, Cari R; Ostermeier, Amy A; Honigstein, Michael D; Doutrich, Jack T; Tsou, Leslie M; Sicade, Lynn M (DRL); Johnston-Gardner, Sarah R (DRL); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Ried, Curtis R (USUN); Schedlbauer, Amy W; Andris, Matthew R; Gorove, Katherine M; Morrison, Andrew L
Cc: Ifill, Donna G (DRL); Weaver, Patricia A
Subject: Briefing with [redacted] - 7/26, 10:30 AM B6

[redacted] will be at DOS to brief interested parties on Monday, July 26 at 10:30 AM. This is intended to be a working level meeting, but I understand that there may be broader interest in attending after today's briefing with [redacted] I have reserved the IO/FO conference room, 6323. If joining by phone, you may call [redacted] Please let me know if you plan to attend. B6

Thanks,
Amy

Amy Saltzman
Bureau for International Organizations (IO)
SaltzmanAJ@state.gov
(202) 647-9431

SBU
This email is UNCLASSIFIED.

RELEASED IN PART B5

Luther, Lorre M

From: Gorove, Katherine M
Sent: Wednesday, June 02, 2010 8:32 PM
To: Jacobson, Linda; Dolan, JoAnn; Townley, Stephen G; Thessin, James H; Pomper, Stephen E; Eichensehr, Kristen E; Cleveland, Sarah H; Baumert, Kevin A; Harris, Robert K; McLeod, Mary (USUN)
Subject: RE: new version of options paper
Attachments: LEGAL-#239056-v1-flotilla_investigation_options.doc

A few edits and comments on the old version of the investigations paper.

From: Jacobson, Linda
Sent: Wednesday, June 02, 2010 8:24 PM
To: Dolan, JoAnn; Townley, Stephen G; Thessin, James H; Pomper, Stephen E; Gorove, Katherine M; Eichensehr, Kristen E; Cleveland, Sarah H; Baumert, Kevin A; Harris, Robert K; McLeod, Mary (USUN)
Subject: new version of options paper

This is Jim's reordered paper, with Steve T's comments and includes info that JoAnn gave me on [redacted] B5 [redacted] JoAnn, could you please check the accuracy. I've also included another sentence on East Timor in the UN led investigation section. Steve, pls let me know whether you will now take this over. Thanks, Linda

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004674

Luther, Lorre M RELEASED IN PART B5

From: Dolan, JoAnn
Sent: Wednesday, June 02, 2010 8:35 PM
To: Jacobson, Linda; Townley, Stephen G; Thessin, James H; Pomper, Stephen E; Gorove, Katherine M; Eichensehr, Kristen E; Cleveland, Sarah H; Baumert, Kevin A; Harris, Robert K; McLeod, Mary (USUN)
Subject: RE: new version of options paper
Attachments: LEGAL-#239074-v1-Israeli_flotilla_investigations_options_paper.doc

One revision to [redacted] B5

From: Jacobson, Linda
Sent: Wednesday, June 02, 2010 8:24 PM
To: Dolan, JoAnn; Townley, Stephen G; Thessin, James H; Pomper, Stephen E; Gorove, Katherine M; Eichensehr, Kristen E; Cleveland, Sarah H; Baumert, Kevin A; Harris, Robert K; McLeod, Mary (USUN)
Subject: new version of options paper

This is Jim's reordered paper, with Steve T's comments and includes info that JoAnn gave me on [redacted] Steve, pls let me know whether you will now take this over. Thanks, Linda

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004675

Luther, Lorre M RELEASED IN PART B5,NR

From: Prosser, Sarah E
Sent: Tuesday, June 08, 2010 3:07 PM
To: Townley, Stephen G
Cc: Cleveland, Sarah H; Draemel, Sharla; Eichensehr, Kristen E
Subject: RE: Options Paper on Flotilla Investigation

In case the scope of "similar investigations" isn't limited to flotilla incidents, NR

Let me know if you are interested in further info.

Sarah

From: Townley, Stephen G
Sent: Thursday, June 03, 2010 9:42 AM
To: Mitchell, Mary T; Jacobson, Linda; Ramish, Timothy E; Prosser, Sarah E; Joyce, Anne
Cc: Eichensehr, Kristen E; Cleveland, Sarah H; Thessin, James H; McLeod, Mary (USUN); Buchwald, Todd F
Subject: FW: Options Paper on Flotilla Investigation

All, attached is an options paper we (by that I mean Linda!) prepared at Jake Sullivan's request on possible ways to B5

Do any of you have other ideas we could add? We have not shared this outside of L yet. Thanks, Stephen

From: Townley, Stephen G
Sent: Thursday, June 03, 2010 8:10 AM
To: Sullivan, Jacob J
Cc: Donoghue, Joan E; Eichensehr, Kristen E; Cleveland, Sarah H; Thessin, James H; Jacobson, Linda; Schwartz, Jonathan B; Harris, Robert K
Subject: Options Paper on Flotilla Investigation

Jake, Attached please find the latest draft of our paper on an investigation into the flotilla incident.

Thanks, Stephen

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

StateDept004676

RELEASED IN FULL

Statement by Ambassador Eileen Chamberlain Donahoe
Special Sitting of the Human Rights Council
on the Recent Incident in the Eastern Mediterranean
June 1, 2010

Thank you, Mr. President.

As we made clear yesterday at the Security Council, the United States government is deeply disturbed by the recent violence and regrets the tragic loss of life and injuries suffered among those involved in the May 31 incident aboard the Gaza-bound ships. We are working to ascertain the facts. We expect a credible and transparent investigation and strongly urge the Israeli government to investigate the incident fully.

The United States remains deeply concerned by the suffering of civilians in Gaza, and the deterioration of the situation there, including the humanitarian and human rights situation. We urge all parties to behave responsibly and uphold their international obligations. We continue to believe the situation in Gaza is unsustainable and is not in the interest of any of those concerned. As we have pointed out in the past, mechanisms are in place for the transfer of humanitarian assistance to Gaza. These non-provocative and non-confrontational mechanisms should be the ones used for the benefit of all those in Gaza. We will continue to engage the Israelis on a daily basis to expand the scope and type of goods allowed into Gaza to address the full range of the population's humanitarian and recovery needs.

We will continue to work closely with the Government of Israel and the Palestinian Authority, along with international NGOs and the UN, to provide adequate access for humanitarian goods, including reconstruction materials, through the border crossings, while bearing in mind the Government of Israel's legitimate security concerns.

Hamas' interference with international assistance shipments and the work of nongovernmental organizations complicates efforts in Gaza. Its continued arms smuggling and commitment to terrorism undermines security and prosperity for Palestinians and Israelis alike.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Ultimately, this incident underscores the need to move ahead quickly with negotiations that can lead to a comprehensive peace in the region. The only viable solution to the Israeli-Palestinian conflict is an agreement, negotiated between the parties, that ends the occupation that began in 1967 and fulfills the aspirations of both parties for independent homelands through two states for two peoples – Israel and an independent, contiguous, and viable state of Palestine, living side by side in peace and security. We call again on our international partners – both inside and outside this Council – to promote an atmosphere of cooperation between the parties and throughout the entire region.

Thank you, Mr. President.

Cleared:
DRL:KFitzpatrick+
IO:SNossel
L/HRR:EAswad+ (consolidated for L)
NSC:SBusby+
NSC:PKumar+
D:MAshraf+
D:LCue+
P:AWells+
G:JWecker
S/P:CPowell+
NEA:TGoldberger+
SEMEP:PKnopf(subs+)
USUN:JSammis
USUN/W:JSimon+

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05329817 Date: 05/22/2013

RELEASED IN FULL

United Nations S/PRST/2010/9

Security Council

Distr.: General
1 June 2010

Original: English

Statement by the President of the Security Council

At the 6326th meeting of the Security Council, held on 1 June 2010, in connection with the Council's consideration of the item entitled "The situation in the Middle East, including the Palestinian question", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council deeply regrets the loss of life and injuries resulting from the use of force during the Israeli military operation in international waters against the convoy sailing to Gaza. The Council, in this context, condemns those acts which resulted in the loss of at least ten civilians and many wounded, and expresses its condolences to their families.

"The Security Council requests the immediate release of the ships as well as the civilians held by Israel. The Council urges Israel to permit full consular access, to allow the countries concerned to retrieve their deceased and wounded immediately, and to ensure the delivery of humanitarian assistance from the convoy to its destination.

"The Security Council takes note of the statement of the UN Secretary-General on the need to have a full investigation into the matter and it calls for a prompt, impartial, credible and transparent investigation conforming to international standards.

"The Security Council stresses that the situation in Gaza is not sustainable. The Council re-emphasizes the importance of the full implementation of Resolutions 1850 and 1860. In that context, it reiterates its grave concern at the humanitarian situation in Gaza and stresses 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.

"The Security Council underscores that the only viable solution to Israeli-Palestinian conflict is an agreement negotiated between the parties and re-emphasizes that only a two-State solution, with an independent and viable Palestinian State living side by side in peace and security with Israel and its other neighbours, could bring peace to the region.

"The Security Council expresses support for the proximity talks and voices concern that this incident took place while the proximity talks are underway and urges the parties to act with restraint, avoiding any unilateral and provocative actions, and all international partners to promote an atmosphere of cooperation between the parties and throughout the region."

10-38279 (E) 010610

Please recycle

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05329817 Date: 05/22/2013

RELEASED IN FULL

HRC 14
Explanation of Vote: The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy

We regret having to call a vote and vote no on this resolution. It is our hope that, over time, this Council will be able to unite around balanced and appropriate responses to urgent situations that deserve our attention. We have engaged intently in discussions here in Geneva and in forums around the world in response to the events addressed in this resolution, and are deeply committed to working with partners to ensure a full and appropriate response to this incident and the circumstances that led to it.

As noted in our statement in this chamber yesterday, the United States is deeply disturbed by the recent violence and regrets the tragic loss of life and injuries suffered among those involved in the incident aboard the Gaza-bound ships. We condemn the acts that resulted in the loss of at least ten lives and many wounded, and we express our condolences to their families.

We call attention to the Security Council statement adopted on June 1. It is important to ensure a prompt, credible, impartial, and transparent investigation. Israel has a very strong interest in conducting such an investigation that meets international standards and exposes all the facts. There are, of course, a number of ways to ensure such an outcome.

The United States continues to be deeply concerned by the suffering of civilians in Gaza and the deteriorating humanitarian and human rights situation there. The situation in Gaza is unsustainable and unacceptable. In line with the Security Council statement adopted yesterday, we stress the need for sustained and regular flow of goods and provision and distribution of humanitarian access throughout Gaza, and we will continue our work towards this end while bearing in mind the Government of Israel's legitimate security concerns.

In the context of today's debate, it is important to once again stress that the only viable solution to the Israeli-Palestinian conflict is an agreement, negotiated between the parties, that ends the occupation that began in 1967 and fulfills the

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aspirations of both parties for independent homelands through two states for two peoples, Israel and an independent, contiguous, and viable state of Palestine, living side by side in peace and security.

Unfortunately, the resolution before us rushes to judgment on a set of facts that, as our debate over the last day makes clear, are only beginning to be discovered and understood. It creates an international mechanism before giving the responsible government an opportunity to investigate this incident itself and thereby risks further politicizing a sensitive and volatile situation. We understand the impetus to respond quickly to a troubling set of events. But we have an obligation to determine facts and make considered judgments on how to best address what is a complex and difficult situation.

For these reasons, we must vote against this resolution.

RELEASED IN FULL

The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy

Guided by the purposes and the principles of the United Nations Charter, as well as by the provisions of the Universal Declaration for Human Rights,

Taking into consideration the provisions of the Fourth Geneva Convention for the protection of civilian persons in times of war of 12 August 1949,

Emphasizing the importance of the safety and well-being of all civilians including humanitarian personnel,

Expressing grave concern also at the deepening humanitarian crisis in Occupied Gaza,

Emphasizing the need to ensure sustained and regular flow of goods and people into Occupied Gaza and welcoming the initiatives aimed at creating and opening humanitarian corridors and other mechanisms for the sustained delivery of humanitarian aid;

1. C*ondemns* in the strongest terms possible the outrageous attack by the Israeli forces against the humanitarian flotilla of ships which resulted in the killing and injuring of many innocent civilians from different countries;

2. *Deeply* deplores the loss of life of innocent civilians and expresses its deepest sympathy and condolences to the victims and their families;

3. *Requests* the ICRC to seek and provide information on the whereabouts status and condition of the detained and injured persons

4. *Demands* the Occupying Power Israel to immediately release all detained men and material and facilitate their safe return to their homelands.

5. *Calls* upon the Occupying power Israel to ensure the unimpeded provision of humanitarian assistance, including of food, fuel and medical treatment to the occupied Gaza strip;

6. *Welcomes* the statements of the Secretary General UN and the High Commissioner for Human Rights condemning the Israeli attacks and calls for the full accountability and credible independent inquiries into these attacks.

7. *Decides* to dispatch an independent international fact finding mission to investigate violations of international law resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance.

8. *Decides* to remain seized of this matter.

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The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy

Guided by the purposes and the principles of the United Nations Charter, as well as by the provisions of the Universal Declaration for Human Rights,

Taking into consideration the provisions of the Fourth Geneva Convention for the protection of civilian persons in times of war of 12 August 1949,

Emphasizing the importance of the safety and well-being of all civilians including humanitarian personnel,

Expressing grave concern also at the deepening humanitarian crisis in Occupied Gaza,

Emphasizing the need to ensure sustained and regular flow of goods and people into Occupied Gaza and welcoming the initiatives aimed at creating and opening humanitarian corridors and other mechanisms for the sustained delivery of humanitarian aid;

1. *Condemns* in the strongest terms possible the outrageous attack by the Israeli forces against the humanitarian flotilla of ships which resulted in the killing and injuring of many innocent civilians from different countries;

2. *Deeply* deplores the loss of life of innocent civilians and expresses its deepest sympathy and condolences to the victims and their families;

3. *Requests* the ICRC to seek and provide information on the whereabouts status and condition of the detained and injured persons

4. *Demands* the Occupying Power Israel to immediately release all detained men and material and facilitate their safe return to their homelands.

5. *Calls* upon the Occupying power Israel to ensure the unimpeded provision of humanitarian assistance, including of food, fuel and medical treatment to the occupied Gaza strip;

6. *Welcomes* the statements of the Secretary General UN and the High Commissioner for Human Rights condemning the Israeli attacks and calls for the full accountability and credible independent inquiries into these attacks.

7. *Decides* to dispatch an independent international fact finding mission to investigate violations of international law resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance.

8. *Decides* to remain seized of this matter.

RELEASED IN FULL

Luther, Lorre M

From: Perina, Alexandra H
Sent: Thursday, July 22, 2010 4:59 PM
To: Banos, Mariano H; Gorove, Katherine M; Dolan, JoAnn; Pomper, Stephen E; Townley, Stephen G; Cleveland, Sarah H; Schwartz, Jonathan B; Jacobson, Linda
Cc: Johnson, Clifton M
Subject: RE: LEGAL-#258297-v1-Flotilla_Note.docx
Attachments: LEGAL-#258297-v1-Flotilla_Note (3).docx

Comments/suggestions from me attached. Steve P may chime in later. I'm looping in Cliff given the points about complementarity.
A.

From: Banos, Mariano H
Sent: Thursday, July 22, 2010 2:10 PM
To: Gorove, Katherine M; Dolan, JoAnn; Pomper, Stephen E; Perina, Alexandra H; Townley, Stephen G; Cleveland, Sarah H; Schwartz, Jonathan B; Jacobson, Linda
Subject: RE: LEGAL-#258297-v1-Flotilla_Note.docx

Some brief comments.

Mariano

From: Gorove, Katherine M
Sent: Thursday, July 22, 2010 12:54 PM
To: Dolan, JoAnn; Banos, Mariano H; Pomper, Stephen E; Perina, Alexandra H; Townley, Stephen G; Cleveland, Sarah H
Subject: RE: LEGAL-#258297-v1-Flotilla_Note.docx

Here is latest version, incorporating L/AN and my edits, for everyone's editing/comments.

Thanks, Kate

From: Dolan, JoAnn
Sent: Thursday, July 22, 2010 12:01 PM
To: Schwartz, Jonathan B; Gorove, Katherine M; Banos, Mariano H; Pomper, Stephen E; Perina, Alexandra H; Townley, Stephen G; Cleveland, Sarah H
Cc: Jacobson, Linda
Subject: RE: LEGAL-#258297-v1-Flotilla_Note.docx

A few comments/clarifications noted. This looks good to me.

From: Schwartz, Jonathan B
Sent: Wednesday, July 21, 2010 7:03 PM
To: Gorove, Katherine M; Dolan, JoAnn; Banos, Mariano H; Pomper, Stephen E; Perina, Alexandra H; Townley, Stephen G; Cleveland, Sarah H
Cc: Jacobson, Linda
Subject: LEGAL-#258297-v1-Flotilla_Note.docx

I understand from Stephen that "the line" is agitating for Harold's memo on the flotilla, though there may not be an objective reason for this and Harold may decide to let the Secretary first enjoy the wedding. But just in case, I have drawn on some helpful drafting by Linda and Kate to put together an initial strawman. It would be much appreciated if the relevant experts could offer comments tomorrow (Thursday) on the sections that pertain to them – Kate would be in

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the best position to collate them to generate a further draft for Harold's review in the event he wants to move something on Friday.

Thanks.

Jonl

StateDept004686

Luther, Lorre M

RELEASED IN PART B5

From: Jacobson, Linda
Sent: Wednesday, June 02, 2010 4:05 PM
To: Guarin, Marc F; Baumert, Kevin A; Pomper, Stephen E; Townley, Stephen G; Dolan, JoAnn; Sullivan, David J
Subject: FW: Blockade email--draft
Attachments: Gaza doc rev.docx

See some comments.

From: Guarin, Marc F
Sent: Wednesday, June 02, 2010 3:57 PM
To: Baumert, Kevin A; Pomper, Stephen E; Townley, Stephen G; Jacobson, Linda; Dolan, JoAnn; Sullivan, David J
Subject: RE: Blockade email--draft

Sorry, have been in a Kazakhstan meeting all afternoon and just got to look this over. My edits are attached.

Marc

From: Baumert, Kevin A
Sent: Wednesday, 2 June, 2010 15:41
To: Pomper, Stephen E; Townley, Stephen G; Guarin, Marc F; Jacobson, Linda; Dolan, JoAnn; Sullivan, David J
Subject: FW: Blockade email--draft

Just a few non-substantive edits. Dave may have additional ones... This looks quite useful and concise.

From: Pomper, Stephen E
Sent: Wednesday, June 02, 2010 3:05 PM
To: Townley, Stephen G; Guarin, Marc F; Baumert, Kevin A; Jacobson, Linda; Dolan, JoAnn
Subject: RE: Blockade email--draft

Please work from this draft, which implements Stephen T's comments. I will be out until at least 6, so Stephen/Marc will be running the doc. Thanks, Steve

---

From: Townley, Stephen G
Sent: Wednesday, June 02, 2010 3:01 PM
To: Pomper, Stephen E; Guarin, Marc F; Baumert, Kevin A; Jacobson, Linda; Dolan, JoAnn
Subject: RE: Blockade email--draft

Just a quick plug to please send comments as soon as you can, as we'd like to ship this out to HHK too before launching.
Thanks, Stephen

From: Pomper, Stephen E
Sent: Wednesday, June 02, 2010 12:50 PM
To: Townley, Stephen G; Guarin, Marc F; Baumert, Kevin A; Jacobson, Linda; Dolan, JoAnn
Subject: Blockade email--draft

Folks—Here is a very rough draft email with some blank spots that is intended to help answer 7th floor questions on blockade issues. I unfortunately have to duck into something else but maybe Marc or Stephen could consolidate

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comments before this goes to Jim, Joan, and HK? [redacted] B5

[redacted]

[redacted] Sorry for the drive by, I will try to reengage at about 2. Steve

StateDept004688

Luther, Lorre M RELEASED IN PART B5

From: Guarin, Marc F
Sent: Wednesday, June 02, 2010 5:00 PM
To: Sullivan, David J; Baumert, Kevin A; Dolan, JoAnn; Pomper, Stephen E; Townley, Stephen G; Jacobson, Linda; Eichensehr, Kristen E
Subject: RE: Blockade email--draft
Attachments: Gaza doc rev [CONSOLIDATED].docx

Thanks for your patience... the attached version is both consolidated and cleaned up aesthetically (set the track changes view to "final" vice "final showing markup" if you want to see what it looks like clean), so I'd say it's pretty close to being ready for prime time. The one remaining issue is [redacted] B5

[redacted]

Marc

From: Guarin, Marc F
Sent: Wednesday, 2 June, 2010 16:31
To: Sullivan, David J; Baumert, Kevin A; Dolan, JoAnn; Pomper, Stephen E; Townley, Stephen G; Jacobson, Linda
Subject: RE: Blockade email--draft

All-

It looks like there are now two versions floating around (one that JoAnn and David edited, and one that Linda and I edited). To minimize confusion, I'm going to run a mail merge and then recirculate the combined version. Please don't make any additional mods until I've had a chance to consolidate.

Marc

From: Sullivan, David J
Sent: Wednesday, 2 June, 2010 16:28
To: Baumert, Kevin A; Dolan, JoAnn; Pomper, Stephen E; Townley, Stephen G; Guarin, Marc F; Jacobson, Linda
Subject: RE: Blockade email--draft

Just finished reading through this, and had already made a comment on that section [redacted]

[redacted]

From: Baumert, Kevin A
Sent: Wednesday, June 02, 2010 4:09 PM
To: Dolan, JoAnn; Pomper, Stephen E; Townley, Stephen G; Guarin, Marc F; Jacobson, Linda; Sullivan, David J
Subject: RE: Blockade email--draft

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B5

From: Dolan, JoAnn
Sent: Wednesday, June 02, 2010 3:59 PM
To: Baumert, Kevin A; Pomper, Stephen E; Townley, Stephen G; Guarin, Marc F; Jacobson, Linda; Sullivan, David J
Subject: RE: Blockade email--draft

I have added a few questions and comments.

From: Baumert, Kevin A
Sent: Wednesday, June 02, 2010 3:41 PM
To: Pomper, Stephen E; Townley, Stephen G; Guarin, Marc F; Jacobson, Linda; Dolan, JoAnn; Sullivan, David J
Subject: FW: Blockade email--draft

Just a few non-substantive edits. Dave may have additional ones... This looks quite useful and concise.

From: Pomper, Stephen E
Sent: Wednesday, June 02, 2010 3:05 PM
To: Townley, Stephen G; Guarin, Marc F; Baumert, Kevin A; Jacobson, Linda; Dolan, JoAnn
Subject: RE: Blockade email--draft

Please work from this draft, which implements Stephen T's comments. I will be out until at least 6, so Stephen/Marc will be running the doc. Thanks, Steve

---

From: Townley, Stephen G
Sent: Wednesday, June 02, 2010 3:01 PM
To: Pomper, Stephen E; Guarin, Marc F; Baumert, Kevin A; Jacobson, Linda; Dolan, JoAnn
Subject: RE: Blockade email--draft

Just a quick plug to please send comments as soon as you can, as we'd like to ship this out to HHK too before launching. Thanks, Stephen

---

From: Pomper, Stephen E
Sent: Wednesday, June 02, 2010 12:50 PM
To: Townley, Stephen G; Guarin, Marc F; Baumert, Kevin A; Jacobson, Linda; Dolan, JoAnn
Subject: Blockade email--draft

Folks—Here is a very rough draft email with some blank spots that is intended to help answer 7th floor questions on blockade issues. I unfortunately have to duck into something else but maybe Marc or Stephen could consolidate comments before this goes to Jim, Joan, and HK?

Sorry for the drive by, I will try to reengage at about 2. Steve

StateDept004690

RELEASED IN PART B5

Luther, Lorre M

From: Jacobson, Linda
Sent: Wednesday, June 02, 2010 4:17 PM
To: Baumert, Kevin A; Dolan, JoAnn; Pomper, Stephen E; Townley, Stephen G; Guarin, Marc F; Perina, Alexandra H; Aswad, Evelyn M; Banos, Mariano H; Gorove, Katherine M; Sullivan, David J; Mortlock, David JL; Gutherie, Peter A
Cc: Harris, Robert K
Subject: RE: PC on Flotilla Thursday evening

Suggest we also include L/LEI and L/EB on the issue of [redacted] B5

From: Baumert, Kevin A
Sent: Wednesday, June 02, 2010 4:14 PM
To: Dolan, JoAnn; Pomper, Stephen E; Townley, Stephen G; Guarin, Marc F; Perina, Alexandra H; Aswad, Evelyn M; Banos, Mariano H; Gorove, Katherine M; Sullivan, David J
Cc: Harris, Robert K; Jacobson, Linda
Subject: RE: PC on Flotilla Thursday evening

[redacted]

From: Dolan, JoAnn
Sent: Wednesday, June 02, 2010 3:41 PM
To: Pomper, Stephen E; Townley, Stephen G; Guarin, Marc F; Baumert, Kevin A; Perina, Alexandra H; Aswad, Evelyn M; Banos, Mariano H; Gorove, Katherine M; Sullivan, David J
Cc: Harris, Robert K; Jacobson, Linda
Subject: PC on Flotilla Thursday evening

Israel Desk has just called to alert us that NSC is scheduling a PC for Thursday evening to which S plans to attend. While agenda is still being worked out it apparently includes such items as:

[redacted]

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Luther, Lorre M

From: Townley, Stephen G
Sent: Thursday, June 10, 2010 8:28 PM
To: Schwartz, Jonathan B
Subject: short Gaza summary for HHK
Attachments: Gaza Update for HHK.docx

Jon, here is what I have come up with. Please let me know how it can be improved. Thanks, Stephen

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StateDept004692

RELEASED IN FULL

Luther, Lorre M

From: Schwartz, Jonathan B
Sent: Monday, August 02, 2010 2:37 PM
To: Jacobson, Linda; Dolan, JoAnn; Koh, Harold Hongju; Townley, Stephen G; Banos, Mariano H; Buchwald, Todd F; Cleveland, Sarah H
Subject: SYG Flotilla Panel announced

The message is ready to be sent with the following file or link attachments:

Shortcut to: http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=896#

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

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StateDept004693

RELEASED IN FULL

Luther, Lorre M

NON-RESPONSIVE PORTIONS REDACTED

From: Townley, Stephen G
Sent: Monday, July 12, 2010 6:50 PM
To: Koh, Harold Hongju
Cc: Cleveland, Sarah H
Subject: Update
Attachments: flotilla outline 2.doc

NR

Harold,

A couple of updates:

(1) Attached in preparation for a followup flotilla meeting tomorrow afternoon is a draft outline of the paper you had suggested.

(2)

(3)

(4) Attached

Thanks, Stephen

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StateDept004694

RELEASED IN FULL

Luther, Lorre M

NON-RESPONSIVE PORTIONS REDACTED

From: Townley, Stephen G
Sent: Friday, September 10, 2010 7:47 PM
To: McLeod, Mary (USUN)
Cc: Buchwald, Todd F
Subject: your next installment
Attachments: [redacted] NR
LEGAL-#263937-v1-CAHDI_Background_Paper__Gaza_and_Flotilla_Issues.doc

Mary, attached are some additional items for your CAHDI book:

[redacted]

b. A paper on Goldstone/flotilla

We also have coming over the weekend or Monday morning papers for [redacted]. I will also try to dig up press guidance, etc., on other items of possible interest.

Thanks, and sorry to inundate you with this!

Stephen

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Luther, Lorre M

RELEASED IN PART B5

From: Cleveland, Sarah H
Sent: Thursday, June 03, 2010 11:24 AM
To: Harris, Robert K; Gorove, Katherine M; Aswad, Evelyn M; Rajpal, Sabeena; Banos, Mariano H
Cc: Townley, Stephen G
Subject: FW: Options Paper on Flotilla Investigation
Attachments: Israel Investigation Options Paper v3.doc

Bob, Kate, et al –

Does this reflect the knowledge that Kate accumulated [redacted] last fall? B5

From: Townley, Stephen G
Sent: Thursday, June 03, 2010 9:42 AM
To: Mitchell, Mary T; Jacobson, Linda; Ramish, Timothy E; Prosser, Sarah E; Joyce, Anne
Cc: Eichensehr, Kristen E; Cleveland, Sarah H; Thessin, James H; McLeod, Mary (USUN); Buchwald, Todd F
Subject: FW: Options Paper on Flotilla Investigation

All, attached is an options paper we (by that I mean Linda!) prepared at Jake Sullivan's request on possible ways to [redacted] B5

[redacted] Do any of you have other ideas we could add? We have not shared this outside of L yet. Thanks, Stephen

From: Townley, Stephen G
Sent: Thursday, June 03, 2010 8:10 AM
To: Sullivan, Jacob J
Cc: Donoghue, Joan E; Eichensehr, Kristen E; Cleveland, Sarah H; Thessin, James H; Jacobson, Linda; Schwartz, Jonathan B; Harris, Robert K
Subject: Options Paper on Flotilla Investigation

Jake, Attached please find the latest draft of our paper on [redacted]

[redacted] Thanks, Stephen

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StateDept004696

RELEASED IN PART B5

Luther, Lorre M

From: Jacobson, Linda
Sent: Wednesday, June 02, 2010 2:35 PM
To: Dolan, JoAnn; Gutherie, Peter A; Mortlock, David JL
Cc: Townley, Stephen G
Subject: RE: CLEAR THIS VERSION ASAP: IHH PRESS GUIDANCE

[redacted] B5

From: Dolan, JoAnn
Sent: Wednesday, June 02, 2010 2:21 PM
To: Jacobson, Linda
Cc: Townley, Stephen G
Subject: FW: CLEAR THIS VERSION ASAP: IHH PRESS GUIDANCE

Should have included you both.

From: Dolan, JoAnn
Sent: Wednesday, June 02, 2010 2:19 PM
To: Gutherie, Peter A; Shore, Rhonda H; P-NEA Duty; Rana, Gautam A; Hatcher, J Nathaniel; Reasor, Lonni H; Vasquez, Edgar J; Cohen, Jared A
Cc: Mortlock, David JL
Subject: RE: CLEAR THIS VERSION ASAP: IHH PRESS GUIDANCE

I am okay with Peter's revision but thought Press offices might want to include in Background [redacted]

(attached herewith)
http://www.telegraph.co.uk/news/worldnews/middleeast/israel/7790919/Gaza-flotilla-the-Free-Gaza-Movement-and-the-IHH.html

From: Gutherie, Peter A
Sent: Wednesday, June 02, 2010 12:37 PM
To: Shore, Rhonda H; P-NEA Duty; Rana, Gautam A; Hatcher, J Nathaniel; Reasor, Lonni H; Vasquez, Edgar J; Cohen, Jared A
Cc: Mortlock, David JL; Dolan, JoAnn
Subject: RE: CLEAR THIS VERSION ASAP: IHH PRESS GUIDANCE

Edits attached. The questions are fairly similar, so I also think they (and the bullets) could be combined into one Q & A.

Copying David Mortlock on the 13224 reference and L/AN.

From: Shore, Rhonda H
Sent: Wednesday, June 02, 2010 11:41 AM
To: P-NEA Duty; Rana, Gautam A; Hatcher, J Nathaniel; Gutherie, Peter A; Reasor, Lonni H; Vasquez, Edgar J; Cohen, Jared A
Subject: CLEAR THIS VERSION ASAP: IHH PRESS GUIDANCE

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5,B6

Luther, Lorre M

From: Gallegos, Adriana M
Sent: Monday, June 07, 2010 12:19 PM
To: Thompson, Nicole A; NEA-Press-DL; Macray, Rosemary R; Prosser, Sarah E; Townley, Stephen G; Giauque, Ivna
Cc: Laine, Andrew J; Duckworth, Karl E
Subject: RE: Death of Farkun Dogan
Attachments: Amcit on Free Gaza Flotilla 06-04-10 (6).docx

Hi,

We answered question # 3 in red. As for the question about the investigation of his death we are sticking to our attached guidance which states that "We have made no decisions at this point on any U.S. Government actions."

Thanks,
Adriana

From: Thompson, Nicole A [mailto:ThompsonNA@state.gov]
Sent: Monday, June 07, 2010 10:00 AM
To: NEA-Press-DL; CAPRESSREQUESTS; Prosser, Sarah E; Townley, Stephen G
Cc: Laine, Andrew J; Duckworth, Karl E
Subject: FW: Death of Farkun Dogan

CA/NEA/L:

Questions below are from LaRouche's on-line media publication (yes, I know). This is one of three inquiries of this nature (focusing on autopsy and whether or not we've seen it) we've received. Can we have a couple of standard points for response to questions regarding the status of the autopsy? Most recent query on this subject is from Al Jazeera English.

[redacted] B5

-Nicole

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

From: Michele steinberg [mailto:[redacted]] B6
Sent: Friday, June 04, 2010 3:49 PM
To: Thompson, Nicole A
Subject: Death of Farkun Dogan

To: Ms. Thompson

Following up to our conversation Friday afternoon, here are my questions:

1. Can you tell me what is the cause of death of young American citizen Farkun Dogan, who was killed on the Mavi Marmara ship by Israelis?

2. Can you confirm that Farkun Dogan was shot five times as is being reported by the Christian Science Monitor, Anatolian News agency and others?

3. Who is preparing the "consular `Report of Death of an American Citizen Abroad" which your http://travel.state.gov website says is prepared in the death of an American abroad? Please specify if this Report is going to come from the American Embassy in Israel, or in Turkey, where the boy was buried. Reports of death are provided by U.S. embassies and consulates in the countries where local death certificates have been issued. The Consular Report of the Death of an American Citizen Abroad is provided to next of kin. It is not a public document.

4. How can my news service access the Report of Death of an American Citizen in the case of Farkun Dogan?

5. Will there be an American investigation of his death? If so, what agency (e.g., the FBI) would investigate his death?

6. Under the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Article 3, it is an international crime for any person to seize or exercise control over a ship by force, and also a crime to injure or kill any person in the process--would this Convention apply to the Israeli raids on the Mavi Marmara and the taking of other ships by the government on the high seas. If not, why would it not apply?

thank you.

The New Busy think 9 to 5 is a cute idea. Combine multiple calendars with Hotmail. Get busy.

RELEASED IN PART B6

CA / EUR / NEA / TURKEY / IS/PAL Press Guidance

June 7, 2010

U.S. Citizen Death on the Free Gaza Flotilla

Key Message

- **As Secretary Clinton mentioned last week, "Protecting the welfare of American citizens is a fundamental responsibility of our government and one that we take very seriously."**

- **Our Mission in Turkey is in contact with the family of deceased U.S.-Turkish dual national Furkan Dogan (Dough-un). Our Ambassador to Turkey, Jim Jeffrey, as well as the Consul General have spoken with Mr. Dogan's father and expressed our condolences and conveyed offers of consular assistance to the family.**

- **American Citizen Emily Henochowicz was released from the hospital over the weekend and is now back in the states.**

- **We are in contact with the Israeli government to obtain more information.**

- **We expect the Israeli government to conduct a prompt, impartial credible and transparent investigation into the incident on the Mavi Marmara that meets international standards. We are open to all possible methods to ensure a credible investigation, including international participation. We will continue to discuss these ideas with the Israelis and our international partners in the days ahead.**

- **As the Secretary said, while Israel has legitimate security needs, the situation in Gaza is unacceptable and unsustainable. This difficult situation requires careful, thoughtful responses from all concerned.**

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This is something that we are looking into with all our international partners.

Details of U.S. Citizen Death

- **Mr. Dogan's father identified his son's remains when they were repatriated to Turkey.**

- **The Turkish Ministry of Foreign Affairs confirmed his death and dual citizenship to our Embassy in Ankara.**

- **A funeral took place in Turkey on Friday, June 4. We will provide no further details out of respect for the family.**

If asked:

- **We have made no decisions at this point on any U.S. Government actions.**

Detained Amcit at a Demonstration

- **We have seen the reports about the release of a detained US citizen and are following up as necessary**.

Background for the Briefer Only:

On June 1, Mr. Dogan's family notified the Embassy in Ankara that Furkan was aboard the Mavi Marmara. This information was passed to Embassy Tel Aviv. Consular officials in Tel Aviv sought to locate Mr. Dogan at the morgue and among detainees at the Ella prison, all the while seeking assistance from the Israeli Foreign Ministry. Before Mr. Dogan could be located, the media reported his death on June 2.

Born in Troy, NY, Mr. Dogan was 19 years old at the time of his death.

Amcit Emily Henochowicz has been released from the hospital over the weekend of June 5-6. She is back in the states with her family.

B6

[redacted]

B6

[redacted]

Drafted by: CA/P: AGallegos and RMacray X7-2979

Cleared by:

NEA/PPD: E Pelton ok
CG Ankara: Rappleton (info)
CG Tel Aviv: AParker (info)
CA/OCS: MEHickey ok
CA/OCS/EUR: AMiller (ok)
CA/OCS/ACS/NESCA: V Lopatkiewicz (ok)
L/CA: KYouel-Page (ok)
PRM: SQuinn ok
DRL: J Lieberman ok
EUR: B Ellis ok
P: PAguilera ok
S/P: D Rand ok
D(S): G Rana ok
D(L): NShepherd ok
NSC: BBrink ok
Jerusalem RThomas ok
NSC MENA: PKumar ok

Luther, Lorre M RELEASED IN PART B5

From: Donoghue, Joan E
Sent: Wednesday, June 02, 2010 9:56 PM
To: Townley, Stephen G
Subject: RE: Gaza email

I thought it looked ready and sent it and cc'd HHK. Do I also need to send the one about the investigation options or is that going thru another channel?

From: Townley, Stephen G
Sent: Wednesday, June 02, 2010 9:32 PM
To: Donoghue, Joan E
Subject: FW: Gaza email

Joan, Also wanted to check whether it would make sense to shoot to Harold now for his situational awareness? Whether we should do so after you've gone through again?

Thanks, Stephen

From: Townley, Stephen G
Sent: Wednesday, June 02, 2010 9:01 PM
To: Donoghue, Joan E
Cc: Pomper, Stephen E; Cleveland, Sarah H; Eichensehr, Kristen E; Jacobson, Linda
Subject: Gaza email

Joan, Attached and pasted below for your review is one further iteration of the proposed email, reflecting comments from various offices. [redacted] B5

[redacted]

[redacted] Thanks, Stephen

Dear Jake--

[redacted]

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Page Denied

Page Denied

B5

I hope you find this helpful. Please let me know if you have any questions.

Regards,

Joan

RELEASED IN FULL

Luther, Lorre M

From: Schwartz, Jonathan B
Sent: Tuesday, June 08, 2010 2:03 PM
To: Rana, Gautam A
Cc: Donoghue, Joan E; Townley, Stephen G
Subject: LEGAL-#248783-v1-Israeli_Investigation_Proposal.DOC
Attachments: LEGAL-#248783-v1-Israeli_Investigation_Proposal.doc

Gautam -- this is a quick summary paper that I'll take to the meeting, along with a longer paper that Stephen can forward to you that is still being worked on by others here. Stephen may provide both to Jake Sullivan as well, who has expressed an interest.

Thanks.

Jon.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B6

Luther, Lorre M

From: Banos, Mariano H
Sent: Monday, July 26, 2010 9:57 AM
To: Banos, Mariano H; Gorove, Katherine M; Perina, Alexandra H; Cleveland, Sarah H; Townley, Stephen G; Schwartz, Jonathan B; Dolan, JoAnn; Harris, Robert K
Subject: RE: SBU -Final Composition of HRC Flotilla Fact-Finding Mission

Hello Flotilla Fans,

Any informal opinions on the folks mentioned below?
Karl T. Hudson-Phillips, QC (Trinidad and Tobago)
Sir Desmond de Silva, QC (United Kingdom)
Mary Shanthi Dairiam (Malaysia)

Mariano

From: Banos, Mariano H
Sent: Friday, July 23, 2010 10:26 AM
To: Gorove, Katherine M; Perina, Alexandra H; Cleveland, Sarah H; Townley, Stephen G; Schwartz, Jonathan B; Dolan, JoAnn; Harris, Robert K
Subject: FW: SBU -Final Composition of HRC Flotilla Fact-Finding Mission

FYI

From: Griffiths, Douglas M
Sent: Friday, July 23, 2010 6:41 AM
To: Bass, Warren; Fitzpatrick, Kathleen M; Geneva HRC; Donahoe, Eileen C; IO-HR-DL; Nossel, Suzanne F; DRL-MLGA-DL; King, Betty; Posner, Michael H; Graze, Deborah E; Anderson, Brooke D (USUN); Simon, Jennifer J; Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Ried, Curtis R (USUN); Schedlbauer, Amy W; Banos, Mariano H; Cassidy, Joseph P; Johnston-Gardner, Sarah R (DRL); Andris, Matthew R; Doutrich, Jack T; Holmstrom, Todd C; Walles, Jacob; 'Kumar, Prem G.'; 'Busby, Scott W.'
Subject: SBU -Final Composition of HRC Flotilla Fact-Finding Mission

Dear all,

Here's the final composition. Apparently an Austrian candidate dropped out this week upon the recommendation of the Austrian government. At the bottom I pasted the Wikipedia bio on the new member from Trinidad and Tobago.

Regards,

Doug

Dear Colleagues,

With reference to my earlier emails to you below, there has been some changes in the composition of the FFM on Flotilla. The announcement will be made early afternoon today with the final list of the members of the FFM as follows:

Karl T. Hudson-Phillips, QC (Trinidad and Tobago), served as a judge of the International Criminal Court from 2003 to 2007. He was Attorney General and Minister of Legal Affairs of Trinidad and Tobago between 1969 and 1973. He was appointed Queen's Counsel (QC) in 1971. He has now returned to private practice with Chambers in Trinidad and Tobago and Grenada, West Indies.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05330354 Date: 07/09/2013

Sir Desmond de Silva, QC (United Kingdom), is a lawyer with extensive experience in human rights, war crimes, terrorism, business crime, espionage trials and sports law. He served as Chief Prosecutor of the UN backed Special Court for Sierra Leone in 2005 at the level of an Under-Secretary General of the United Nations. He has been Queen's Counsel (QC) since 1984.

Mary Shanthi Dairiam (Malaysia) was a member of the Committee on the Elimination of Discrimination against Women from 2005 to 2008. Since 2007, she has been serving on the Gender Equality Task Force of the United Nations Development Programme. She is a founding member of the Board of Directors of the International Women's Rights Action Watch Asia Pacific.

Sincerely,

Kanita

Kanita Sapphaisal
Second Secretary
Permanent Mission of Thailand to the UN Office
and other International Organizations in Geneva
Tel
Fax

B6

Karl Terrence Hudson-Phillips, Q.C. (b. April 20, 1933) is a former Attorney General of Trinidad and Tobago and a former judge of the International Criminal Court. He was also Lead Counsel in the murder trial of Grenadian Prime Minister Maurice Bishop.

Hudson-Phillips read law at Selwyn College, University of Cambridge; after completing a Master's degree in Law in 1959 he was called to the bar at Gray's Inn, London. He returned to Trinidad and Tobago where he established a distinguished legal practice and was appointed a Queen's Counsel in 1970. He served as a Member of Parliament from 1966 to 1976. Between 1969 and 1973 he served as Attorney General and Minister of Legal Affairs. In this capacity he was associated with the dreaded "Public Order Act" which was proposed by the People's National Movement government in response to the Black Power riots and Army Mutiny of 1970. In 1973 he fell out of favour with then Prime Minister Eric Williams (for openly campaigning to replace Williams, who had spoken about retirement). This ended his political career in the PNM.

In 1974 Hudson-Phillips founded the National Land Tenants and Ratepayers Association of Trinidad and Tobago. In 1980 he founded the Organisation for National Reconstruction, a political party which contested the 1981 General Elections. Despite getting the second-highest vote tally in the election, the ONR failed to secure a single seat in Parliament. The ONR went on to form an accommodation with the National Alliance to contest the 1983 local government elections, and went on the merge with those parties to form the National Alliance for Reconstruction. Hudson-Phillips and Basdeo Panday, as the leaders of the two largest factions in what became the NAR decided to step aside and allow A.N.R. Robinson, leader of one of the smaller parties, to become party leader. The NAR contested the 1986 general elections and won 33 of the 36 seats in Parliament. However, Hudson-Phillips did not take an active role in the party after the election (allegedly due to disagreements with A.N.R. Robinson).

In addition to the Grenada murder trial, Hudson-Phillips has been involved in many high-profile cases throughout the Caribbean, as both Prosecutor and Defender. In 1999 he was elected President of the Law Association of Trinidad and Tobago.

In February 2003, Hudson-Phillips was elected to the first ever bench of International Criminal Court judges. As "dean of the judges", he chaired the first meetings of judges before the election of the Presidency.[1] He also contributed actively to the drafting of the Regulations of the Court. He resigned from the court for personal reasons on 14 March 2007.[1]

[edit] Publications

- Hudson-Phillips, K. 1968. *The Historical Development of the Settlement of Trade Disputes in Trinidad and Tobago*. I.L.O. Monograph.
- Hudson-Phillips, K. 1987. *A Case for Greater Public Participation in the Legislative Process*. Statute Law Review.
- Hudson-Phillips, K. 1997. *Law and Practice of Arbitration in Trinidad and Tobago*. International Commercial Arbitration Bulletin.

[edit] References

1. ^ a b International Criminal Court (19 March 2007). *Resignation of Judge Karl T. Hudson-Phillips*. Accessed 11 March 2009.

[edit] External links

- International Criminal Court Biography
- Curriculum Vitae, 2002

Retrieved from "http://en.wikipedia.org/wiki/Karl_Hudson-Phillips"

This email is UNCLASSIFIED.

RELEASED IN PART B5

Luther, Lorre M

From: Schwartz, Jonathan B
Sent: Thursday, July 22, 2010 7:27 PM
To: Koh, Harold Hongju
Cc: Cleveland, Sarah H; Townley, Stephen G
Subject: LEGAL-#258419-v1-Flotilla_to_S_(2).docx
Attachments: LEGAL-#258419-v1-Flotilla_to_S_(2).docx

Harold – The L "flotilla team" has developed the attached draft of a possible Note from you to S following up on our meeting with you. [redacted] B5

[redacted]

Sarah has not had time to review so I am sending her this updated version as well.

Jon

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

B5

RELEASED IN PART
B6

Luther, Lorre M

From: Schwartz, Jonathan B
Sent: Friday, July 23, 2010 4:06 PM
To: Mills, Pamela G
Cc: Townley, Stephen G; Cleveland, Sarah H
Subject: L's "Flotilla Note"

Pamela – Stephen asked me to follow-up on your inquiry about a proposed Note from Harold Koh to S on the flotilla incident (Stephen is on much-deserved leave). I am one of Harold's Deputies.

I would be happy to speak to others in S/S or on the Secretary's staff if that would help. Thank you.

Jonathan Schwartz

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

NON-RESPONSIVE PORTIONS REDACTED

EUR PRESS GUIDANCE
June 1, 2010

Secretary's Meeting with Turkish Foreign Minister Ahmet Davutoglu
Tuesday, June 1

Q: Provide an agenda of the Secretary's meeting with Turkish Foreign Minister Ahmet Davutoglu.

A:

- **The Secretary met with Turkish Foreign Minister Ahmet Davutoglu today here at the State Department. This meeting was an opportunity to discuss a number of issues of shared mutual interest,** [redacted] **They also discussed the Gaza flotilla.**

NR

[redacted]

IF Pressed on Flotilla:

- **The Secretary expressed our deep regret over the tragic loss of life and injuries suffered among those involved. She indicated we are working to ascertain the facts to understand fully what occurred and expressed our expectations, in line with the Security Council Presidential statement, that the Israeli government will promptly launch an impartial, credible and transparent investigation.**

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Drafted:
EUR Press Ben Ellis 7- 8602

Cleared:

EUR/FO: TKaidanow	-	
EUR/SE: BRiley	-	ok
S/WCI – SCoughlin	-	info by request
T: PWalker	-	ok
S/SANAC: AYu	-	ok
ISN/RA: MBedke	-	info
NEA/FO: ECatalano	-	ok
NEA/IR: EThibault	-	ok
VCI/NA: JEberhardt	-	ok
IO/PSC: HVonBehren	-	ok
USUN/W: EPelofsky	-	ok
L/NPV: NHighsmith	-	info
L/UNA: KGorove	-	info
NSC: BBrink	-	info
P: TAndrews	-	
D: AScanlon	-	
S/P: TAndrews	-	

RELEASED IN FULL

Luther, Lorre M

From: Pomper, Stephen E
Sent: Wednesday, June 02, 2010 8:23 PM
To: Townley, Stephen G
Subject: Gaza v3.docx
Attachments: Gaza v3.docx

Thanks for doing this, a few thoughts here.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Luther, Lorre M

From: Schwartz, Jonathan B
Sent: Friday, June 11, 2010 10:55 AM
To: Townley, Stephen G
Subject: Gaza Update for HHK.docx
Attachments: Gaza Update for HHK.docx

Here are some thoughts. Israeli press is reporting US has said 'yes' but I have no independent confirmation.

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Luther, Lorre M

RELEASED IN FULL

From: Jacobson, Linda
Sent: Thursday, June 03, 2010 7:56 AM
To: Townley, Stephen G; Thessin, James H; Donoghue, Joan E
Subject: Israel Investigation Options Paper v3.doc
Attachments: Israel Investigation Options Paper v3.doc

I've included some additional comments.

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RELEASED IN FULL

Luther, Lorre M

From: McLeod, Mary (USUN)
Sent: Friday, June 04, 2010 5:29 PM
To: Townley, Stephen G
Subject: Gaza flotilla investigation

Stephen—I sent you and Joan on the high side a cable that just went out reporting on a meeting between the SG and the P-5 concerning the investigation issue on Wednesday. I wasn't there so I read it with interest myself. Best, Mary

SBU
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RELEASED IN PART B5,NR

Luther, Lorre M

From: Aswad, Evelyn M
Sent: Friday, June 11, 2010 11:53 AM
To: Townley, Stephen G; Eichensehr, Kristen E
Cc: Harris, Robert K; Cleveland, Sarah H; Legal-HRR-DL
Subject: HHK's welcome home from L/HRR

- Summary of high profile matters at the current session of the Human Rights Council, which ends next Friday (June 18):

[redacted] NR

7. **FLOTILLA:** By a vote of 32-3(US)-9, the HRC passed in its first week of the session the Flotilla resolution, which establishes "an independent international fact finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance" and instructs that the members should report their investigative findings to the September session of the HRC. The President of the Human Rights Council is to appoint members of this fact-finding mission (FFM) upon recommendations from OHCHR. We delivered an EOV that regretted having to vote no, stressed the unbalanced nature of the resolution, referred to the SC PRST, and expressed that the United States is "deeply disturbed by the recent violence and regrets the tragic loss of life and injuries suffered among those involved in the incident aboard the Gaza-bound ships." [redacted] B5

[redacted] NR

- Other L/HRR Matters:

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NR

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05330630 Date: 07/09/2013

RELEASED IN PART NR,B6

Flotilla Incident of May 31, 2010
Issues for Discussion

[redacted] B6

I. International law standards concerning the legality of a naval blockade

1. General framework: (1) declaration including notice; (2) effectiveness; (3) impartial application (to vessels of all nations); (4) limited to ports and coasts belonging to or in the control of the enemy.

2. Relief supplies: Under what conditions must the blockading state permit passage to vessels carrying relief supplies for the civilian population?

Sub-issue 1: Under what conditions can the blockading state specify terms of search and alternate routes of passage (including to nearby ports and land routes)?

3. Military and dual-use goods: Must a state discontinue a blockade if the damage to the civilian population is excessive in relation to the concrete and direct military advantage anticipated from the blockade?

Sub-issue 1: What is the status of this rule under international law?

Sub-issue 2: What standards determine whether damage to a civilian population is excessive? Is international human rights law relevant to that determination?

Sub-issue 3: What constitutes a legitimate "military advantage" of a blockade?

4. Non-military goods: Under what conditions could a blockade, or interdiction of contraband regime, constitute an act of collective punishment? What international standards determine whether objects precluded by a blockade, or interdiction of contraband regime, are essential for the survival of a civilian population? Is human rights law relevant to these determinations?

5. Conflict classification: Do the same legal rights, obligations, and standards apply to a blockade in a non-international armed conflict?

II. International law standards concerning actions to enforce a lawful blockade

1. What rules regulate the use of force against a vessel that is breaking a blockade? How do principles of necessity and proportionality apply?

2. Where (e.g., whether in "international waters") can a blockading state exercise its right to visit, search, divert, and capture vessels that are intending to break a blockade?

III. What international legal standards, if any, determine the deference that international and foreign national authorities should give to national-level investigations (assuming those investigations are independent, credible and in accord with international standards)? Do principles involving exhaustion of domestic remedies, forum non conveniens, or international comity apply?

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RELEASED IN PART B5,NR

Luther, Lorre M

From: Dolan, JoAnn
Sent: Tuesday, June 01, 2010 11:50 AM
To: Townley, Stephen G
Cc: Highsmith, Newell L; Herr, Julie K
Subject: FW: URGENT PG CLEARANCE REQUESTED - S-Davutoglu meeting today
Attachments: 0601 S- Davutoglu Meeting.doc

This is only guidance I have seen so far [redacted] As far as I am aware [redacted] B5 NR

From: Ellis, Benjamin H
Sent: Tuesday, June 01, 2010 9:59 AM
To: Dolan, JoAnn; Knopf, Payton L; Schwartz, Jonathan B; Gorove, Katherine M; Vasquez, Edgar J; Sayles, Ambrose G; Taylor, Victoria J
Cc: Highsmith, Newell L; Herr, Julie K; Aswad, Evelyn M; Pomper, Stephen E; Perina, Alexandra H; Baumert, Kevin A
Subject: RE: URGENT PG CLEARANCE REQUESTED - S-Davutoglu meeting today

[redacted] B5

Ben Ellis
EUR Press
202 - 647 - 8602
Visit us Online
http://europe.state.gov

SBU
This email is UNCLASSIFIED.

From: Dolan, JoAnn
Sent: Tuesday, June 01, 2010 9:54 AM
To: Knopf, Payton L; Schwartz, Jonathan B; Gorove, Katherine M; Ellis, Benjamin H; Vasquez, Edgar J; Sayles, Ambrose G; Taylor, Victoria J
Cc: Highsmith, Newell L; Herr, Julie K; Aswad, Evelyn M; Pomper, Stephen E; Perina, Alexandra H; Baumert, Kevin A
Subject: RE: URGENT PG CLEARANCE REQUESTED - S-Davutoglu meeting today

Looping in drafter, subject to any verther comment from L/NPV

From: Knopf, Payton L
Sent: Tuesday, June 01, 2010 9:51 AM
To: Schwartz, Jonathan B; Dolan, JoAnn; Gorove, Katherine M
Cc: Highsmith, Newell L; Herr, Julie K; Aswad, Evelyn M; Pomper, Stephen E; Perina, Alexandra H; Baumert, Kevin A
Subject: RE: URGENT PG CLEARANCE REQUESTED - S-Davutoglu meeting today

Correct.

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From: Schwartz, Jonathan B
Sent: Tuesday, June 01, 2010 9:45 AM
To: Dolan, JoAnn; Gorove, Katherine M
Cc: Highsmith, Newell L; Herr, Julie K; Aswad, Evelyn M; Pomper, Stephen E; Perina, Alexandra H; Baumert, Kevin A; Knopf, Payton L
Subject: RE: URGENT PG CLEARANCE REQUESTED - S-Davutoglu meeting today

[redacted] B5

From: Dolan, JoAnn
Sent: Tuesday, June 01, 2010 9:43 AM
To: Gorove, Katherine M; Schwartz, Jonathan B
Cc: Highsmith, Newell L; Herr, Julie K; Aswad, Evelyn M; Pomper, Stephen E; Perina, Alexandra H; Baumert, Kevin A
Subject: FW: URGENT PG CLEARANCE REQUESTED - S-Davutoglu meeting today
Importance: High

Flotilla add seems fine but am copying for Jon's info along with flotilla team.

From: Gorove, Katherine M
Sent: Tuesday, June 01, 2010 9:37 AM
To: Highsmith, Newell L; Herr, Julie K; Dolan, JoAnn
Subject: Fw: URGENT CLEARANCE REQUESTED - S-Davutoglu meeting today
Importance: High

I defer to you guys on this

From: Ellis, Benjamin H
To: Taylor, Victoria J; Sayles, Ambrose G; Vasquez, Edgar J; Thibault, Erica; Baily, Jess L; Riley, Robert J; Hilton, Robert B; Walker, Peggy J; Yu, Alan K; Bedke, Michael L; Catalano, Elisa; Vasquez, Edgar J; P-NEA Duty; Eberhardt, Jeffrey L; Mull, Stephen D; Satela, Gilbert; Cooper, Kurtis A; Herzberg, John M; Von Behren, Heather W; Pelofsky, Eric J; Highsmith, Newell L; Gorove, Katherine M; 'Brink, Bridget A.' <Bridget_A._Brink@nsc.eop.gov>; Walkin, Karolina R; Fisher, Debora A; Flaherty, Erin C; Gray, Howard L
Cc: EUR-Press; EUR-SE-DAR-DL; NEA-Press-DL
Sent: Tue Jun 01 08:42:46 2010
Subject: FW: URGENT CLEARANCE REQUESTED - S-Davutoglu meeting today

Adding others per out of office messages.

Dear Colleagues,

Please clear the attached guidance on the S-Davutoglu meeting today by 9:30 AM. It is updated to reflect the flotilla incident from yesterday. Please reply all with changes.

Thank you!

Ben Ellis
EUR Press
202 - 647 - 8602
Visit us Online
http://europe.state.gov

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Luther, Lorre M

RELEASED IN PART B6,B6

From: Donoghue, Joan E
Sent: Wednesday, June 02, 2010 5:23 PM
To: Townley, Stephen G; Thessin, James H; Cleveland, Sarah H; Guarin, Marc F
Subject: Fw:

From: Joan Donoghue [redacted] B6
To: Donoghue, Joan E
Sent: Wed Jun 02 17:18:46 2010

Dear Jake--

This e-mail provides some additional background on the issues that the Secretary raised with Jim Thessin in today's morning meeting. In light of that discussion [redacted] B5

[redacted]

[redacted]

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Page Denied

Page Denied

B5

I hope you find this helpful. Please let me know if you have any questions.

Regards,

Jim

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05330937 Date: 06/12/2013

RELEASED IN FULL

NON-RESPONSIVE PORTIONS REDACTED

United States Department of State

Washington, D.C. 20520

SENSITIVE BUT UNCLASSIFIED

June 23, 2010

INFORMATION MEMO FOR THE SECRETARY

FROM: IO – Gerald C. Anderson, Acting
DRL – Michael H. Posner
L – Harold Hongju Koh

SUBJECT: Human Rights Council Fourteenth Session Summary

During the recent Fourteenth Session of the UN Human Rights Council (HRC), we made significant progress in promoting country-specific human rights initiatives while advancing U.S. priorities on thematic resolutions and minimizing isolation on issues ranging from enforced disappearances to cultural rights.

Highlights of U.S.-led efforts include:

NR

SENSITIVE BUT UNCLASSIFIED

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UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05330937 Date: 06/12/2013

Other highlights from the session include:

NR

The creation of a new international fact-finding mission on the Gaza Flotilla demonstrates the on-going challenges of anti-Israel bias in the HRC. We voted against the resolution and issued a statement outlining our concerns that the HRC was pre-judging the situation and that the resolution was one-sided. We will continue to follow the issue closely to seek to minimize the negative impact of the report, which is to be delivered at the September session.

NR

Drafted: IO/HR – PKruchoski x6-7038 after hours: 202-316-6664

Approved: IO – GAnderson, Acting
DRL – MPosner
L – HKoh

Cleared:
IO/FO: SNossel OK
DRL/FO: KFitzpatrick
L/FO: RHarris OK
IO/HR: AOstermeier OK
DRL/MLGA: JCassidy OK
L/HRR: EAswad OK
Geneva: EDonahoe OK
D(S): MAshraf OK
P: JRLittlejohn OK
S/P: CPowell OK
G: JWecker OK
SCA/RA: CBowser OK
S/SRAP: ETimberlake OK
AF/RSA: LDees OK
NEA/IPA: JGiauque OK
USUN/W: J Simon INFO

RELEASED IN FULL

Luther, Lorre M

From: Schwartz, Jonathan B
Sent: Monday, June 14, 2010 3:42 PM
To: McLeod, Mary (USUN); Townley, Stephen G; Donoghue, Joan E
Subject: RE: Israeli Government decision establishing Independent Public Committee

Thanks. Looks familiar for some reason. Israelis said commission will have subpoena power but for some reason they didn't want to say so.

From: McLeod, Mary (USUN)
Sent: Monday, June 14, 2010 3:38 PM
To: Schwartz, Jonathan B; Townley, Stephen G; Donoghue, Joan E
Subject: Fw: Israeli Government decision establishing Independent Public Committee

In case you haven't seen this yet.

From: Schedlbauer, Amy W
To: Masilko, Barbara J (USUN); Germain, Ellen J (USUN); McLeod, Mary (USUN); Wolff, Alex D (USUN); Bass, Warren; Barks-Ruggles, Erica J; Anderson, Brooke D (USUN); Cousens, Elizabeth (USUN); Delaurentis, Jeffrey A (USUN)
Cc: Clark, Linda R (USUN); Chang, Min (USUN)
Sent: Mon Jun 14 15:33:02 2010
Subject: Israeli Government decision establishing Independent Public Committee

Here's the decision, as received from the Israeli mission.

This email is UNCLASSIFIED.

Government Establishes Independent Public Committee
(Communicated by the Prime Minister's Office)

At the start of the 57th Government Meeting, the Prime Minister said:

"In consultation with Justice Minister Yaakov Neeman and Attorney General Yehuda Weinstein, I am, today, submitting to the Cabinet a draft decision on establishing a special, independent public commission to inquire into the events of 31.5.10.

Two main principles guided us in proposing the establishment of the commission. First is maintaining IDF soldiers' freedom of action and the credibility of the IDF investigation. According to the proposal, except for IDF Chief-of-Staff Lt.-Gen. Gaby Ashkenazi, IDF soldiers will not testify before the Commission. The IDF, via the team – chaired by Maj.-Gen. (ret.) Giora Eiland – that Chief-of-Staff Lt.-Gen. Ashkenazi has established will transfer to the Commission the summaries of its operational investigations.

The second principle that guided us is providing a credible and convincing response to the responsible countries in the international community about the events, especially in the context of

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International law. I am convinced that the Commission's uncovering of the facts will prove that the goals and actions of the State of Israel and the IDF were appropriate defensive actions in accordance with the highest international standards.

I estimate that the Cabinet's decision this morning to establish a special, independent public commission will make it clear to the entire world that the State of Israel acts according to law, transparently, and with full responsibility."

==========

The Minister of Justice and the Attorney-General presented the Government with a resolution regarding appointing an independent public committee, headed by Emeritus Supreme Court Judge, Yaakov Terkel, to examine the events at sea of May 31, 2010. After the Government discussed the resolution, it decided unanimously:

1. To appoint an independent public Commission, headed by former Supreme Court Justice, Jacob Turkel, to examine the aspects set out herein relating to the actions taken by the State of Israel to prevent vessels from reaching the coast of the Gaza Strip on 31 May 2010 (hereinafter: the Commission).

2. The composition of the Commission:

Members:

Justice (Ret.) Jacob Turkel, Chairperson
Shabtai Rosenne, Member
Amos Horev, Member

Two observers will be appointed to the Commission as detailed in paragraph 3:

3. In light of the exceptional circumstances of the incident, it was decided to appoint two foreign experts who will serve as observers that will take part in the hearings and deliberations of the Commission, although they will not have the right to vote in relation to the proceedings and conclusions of the Commission.

Lord David Trimble, Observer
Ken Watkin, Observer

4. The Commission will submit its conclusions on the question of whether the actions set out in paragraph 1 and their objectives, as well as additional matters involved therein, were in conformity with the rules of international law.

For this purpose, the Commission will address the following issues:

a) Examination of the security circumstances surrounding the imposition of the naval blockade on the Gaza Strip and the conformity of the naval blockade with the rules of international law.

b) The conformity of the actions taken by Israel to enforce the naval blockade in the incident of 31 May 2010 with the rules of international law.

c) Examination of the actions taken by the organizers of the flotilla and its participants, as well as their identity.

5. In addition, the Commission will examine the question of whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, and as implemented with regard to the present incident, conform with the obligations of the State of Israel under the rules of international law.

6.

a) The Commission may request any individual or entity, whether Israeli or foreign, to testify before it or to provide information to it by other means, on matters which the Commission believes to be relevant to its proceedings.

b) Every relevant governmental body will cooperate fully with the Commission and will make available to the Commission information and documents required by it for the purposes of performing its function, including through testimony before the Commission.
c) Notwithstanding the above in subsections (a) and (b), with regard to its examination of the military actions set out in paragraph 4(b) of this resolution, in respect of personnel of the military and other security forces the Commission will operate exclusively in the following manner: it will receive for its review the documents it requires and will also be able to request from the Head of the Military Investigative Team authorized by the IDF Chief of the General Staff to transfer for its review the summary findings of the operational investigations carried out following the incident.
If after reviewing the said summary findings of the operational investigations the Commission considers that there exists a need for more in-depth or broader investigations, it will be able to request from the Head of the Military Investigative Team authorized by the IDF Chief of General Staff to issue an order to do so, and to transfer for the review of the Commission the summary findings of the operational investigations to be gathered in this context.

d) However, notwithstanding the above in subsection (c), the Commission may request any information from the Prime Minister, the Minister of Defence, other Ministers and the IDF Chief-of-Staff, including through testimony before the Commission.

7. The Commission will establish its own schedule and method of work. Commission hearings will be public or closed, as will be determined by the Commission. However, the Commission will not hold a public hearing if such a hearing could endanger national security or the State's foreign relations, or if in the view of the Commission another legal reason exists to this effect.

8. The Commission Chairperson may determine that certain documents or certain information will not be made available to the Observers, if he/she believes that revealing such information to them is almost certain to cause substantial harm to national security or to the State's foreign relations.

9. The Commission may authorize qualified persons to gather material needed for the work of the Commission and to assist the Commission in its duties.

10. Upon completion of its work, the Commission will submit to the Government, by way of the Prime Minister, a report.

11. The Commission will publish its report soon after its submission to the Government. However, those sections of the report with regard to which the Commission is convinced, after hearing the opinion of the authorized bodies, that their publication could cause substantial harm to national

security, foreign relations, or the well-being or privacy of an individual, or to confidential operational methods of an authorized entity, will not be published.

12. Upon completion of its work, the Commission will deposit all of the minutes of its proceedings, as well as all of the material brought before it, in the State archive.

13. The Ministry of Finance will provide the Commission with a budget for employing assistance staff, the scope of which will be determined by the Commission, in accordance with its needs, as determined by the Commission. In addition, the Office of the Prime Minister will provide the Commission with all the means required by it to carry out its duties.

14. The Government takes note of the statement of the Attorney General that in light of the vital public interest in allowing the Commission to seek the truth, law enforcement agencies will not make use of testimonies given before the Commission or before those individuals tasked with collecting information for the Commission, as evidence in a legal proceeding.

מח' מידע ואינטרנט – אגף תקשורת
14 יוני 2010

RELEASED IN FULL

Luther, Lorre M

From: Harris, Robert K
Sent: Wednesday, June 23, 2010 5:01 PM
To: Kruchoski, Paul H
Cc: Aswad, Evelyn M; Townley, Stephen G
Subject: RE: IM to S on HRC 14
Attachments: IM to S HRC14 v4 (2).docx

Here are L's final edits. (For some reason the text we received had an extra textual fragment in the last sentence, which was deleted from the version you sent.)

You can initial on Harold's behalf. Thanks.

Bob

From: Kruchoski, Paul H
Sent: Wednesday, June 23, 2010 4:58 PM
To: Harris, Robert K
Subject: FW: IM to S on HRC 14

Bob,

Here's a digital copy of the text as it left IO.

Paul

This email is UNCLASSIFIED.

From: Sadoski, Nicholas A
Sent: Wednesday, June 23, 2010 1:25 PM
To: DRL Staff Assistants
Cc: Kruchoski, Paul H; IO Staff Assistants-DL
Subject: IM to S on HRC 14

DRL Staffers,

Could you have the attached cleared and signed by your office, then deliver to L for their approval. IO would like to clear and sign last and ultimately deliver to the Line.

Thanks for your help,

Nick

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RELEASED IN PART B5

Luther, Lorre M

From: Eichensehr, Kristen E
Sent: Wednesday, June 02, 2010 4:38 PM
To: Cleveland, Sarah H; Baumert, Kevin A
Cc: Townley, Stephen G; Harris, Robert K; Pomper, Stephen E
Subject: RE: law of sea and lex specialis
Attachments: Gaza doc rev.docx

A couple of edits and two questions in the attached. Thanks.

From: Cleveland, Sarah H
Sent: Wednesday, June 02, 2010 4:31 PM
To: Baumert, Kevin A
Cc: Townley, Stephen G; Eichensehr, Kristen E; Harris, Robert K; Pomper, Stephen E
Subject: FW: law of sea and lex specialis

Hi Kevin – I just sent Steve the uninformed question below, but as he is out, I was wondering whether you have thoughts on this? Thanks!

Sarah

From: Cleveland, Sarah H
Sent: Wednesday, June 02, 2010 4:25 PM
To: Pomper, Stephen E
Cc: Harris, Robert K
Subject: law of sea and lex specialis

Steve – regarding the following statement in the draft flotilla email:

B5

Sarah H. Cleveland
Counselor on International Law
Office of the Legal Adviser
Department of State
2201 C St. NW, Rm. 6421
Washington, D.C. 20520
ph: 202-647-9077
fax: 202-647-7096
email: clevelandsh@state.gov

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Luther, Lorre M

From: Baumert, Kevin A
Sent: Wednesday, June 02, 2010 5:00 PM
To: Cleveland, Sarah H
Cc: Townley, Stephen G; Eichensehr, Kristen E; Harris, Robert K; Pomper, Stephen E; Sullivan, David J
Subject: RE: law of sea and lex specialis

Hi Sarah – I've not been tracking what the various groups have been saying about the relevant law, [redacted] B5

[redacted]

Adding Dave Sullivan here, as he may have additional thoughts.
Thanks,
Kevin

From: Cleveland, Sarah H
Sent: Wednesday, June 02, 2010 4:31 PM
To: Baumert, Kevin A
Cc: Townley, Stephen G; Eichensehr, Kristen E; Harris, Robert K; Pomper, Stephen E
Subject: FW: law of sea and lex specialis

Hi Kevin -- I just sent Steve the uninformed question below, but as he is out, I was wondering whether you have thoughts on this? Thanks!

Sarah

From: Cleveland, Sarah H
Sent: Wednesday, June 02, 2010 4:25 PM
To: Pomper, Stephen E
Cc: Harris, Robert K
Subject: law of sea and lex specialis

Steve – regarding the following statement in the draft flotilla email:

[redacted]

1

B5

Sarah H. Cleveland
Counselor on International Law
Office of the Legal Adviser
Department of State
2201 C St. NW, Rm. 6421
Washington, D.C. 20520
ph: 202-647-9077
fax: 202-647-7096
email: clevelandsh@state.gov

RELEASED IN PART B5

Luther, Lorre M

From: Sullivan, Jacob J
Sent: Tuesday, June 08, 2010 6:12 PM
To: Schwartz, Jonathan B
Cc: Townley, Stephen G; Donoghue, Joan E
Subject: Re: Israel investigation

Thanks Jon. That makes good sense. I'll follow up with you tomorrow.

From: Schwartz, Jonathan B
To: Sullivan, Jacob J
Cc: Townley, Stephen G; Donoghue, Joan E
Sent: Tue Jun 08 17:32:46 2010
Subject: RE: Israel investigation

Jake – if of interest I could send a report of the meeting on the other system (just let me know what address to use).

[redacted] B5

Jon

From: Donoghue, Joan E
Sent: Tuesday, June 08, 2010 2:17 PM
To: Sullivan, Jacob J
Cc: Schwartz, Jonathan B; Townley, Stephen G
Subject: Israel investigation

Jake,

Will get you some thoughts on [redacted] shortly. In the meantime, here are some thoughts from L on the [redacted] B5
Jon Schwartz will be attending Tom Donilon's meeting this afternoon. We've shared this paper with Jim Steinberg, who will also be there.

Joan

[redacted]

[redacted]

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Page Denied

Page Denied

Luther, Lorre M

RELEASED IN FULL

From: McDonough, Patricia E
Sent: Wednesday, June 23, 2010 4:50 PM
To: Dolan, JoAnn; Townley, Stephen G
Cc: Johnson, Clifton M
Subject: Flotilla Q

JoAnn, Stephen -- Do you happen to have any details on Israel or Turkey inquiries into the Amcit flotilla death? DOJ just asked me whether we have any information on status of foreign investigations; I do not personally have information other than understanding that Israel had proposed an independent commission to examine the raid. If you have any non-public specifics that we can share with DOJ, please let me know...

Thanks,

Trish

Patricia E. McDonough
Attorney-Adviser
US Department of State
Office of the Assistant Legal Adviser, Law Enforcement and Intelligence (L/LEI)

Tel: 202-647-6194

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RELEASED IN PART B5

Luther, Lorre M

From: Donoghue, Joan E
Sent: Friday, June 04, 2010 8:10 PM
To: Sullivan, Jacob J; Townley, Stephen G; Johnson, Clifton M; McDonough, Patricia E; Crocker, Bathsheba N; Ashraf, Madeeha S
Subject: Criminal statutes -- flotilla

Dear Jake,
As you requested, this e-mail addresses the implications under U.S. criminal law of the death of one AMCIT and injuries sustained by another in connection with the Gaza flotilla and associated protests.

B5

[redacted]

[redacted]

[redacted]

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B5

Please let us know if we can provide additional information.

Joan

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05332075 Date: 06/12/2013

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Luther, Lorre M

From: Cleveland, Sarah H
Sent: Friday, June 04, 2010 4:06 PM
To: Townley, Stephen G
Cc: Donoghue, Joan E
Subject: flotilla civil claims
Attachments: Flotilla civil claims.docx

Attached is my attempt at this. We may want to run by L/DL and L/HRR. On to my next assignment....

S.

Sarah H. Cleveland
Counselor on International Law
Office of the Legal Adviser
Department of State
2201 C St. NW, Rm. 6421
Washington, D.C. 20520
ph: 202-647-9077
fax: 202-647-7096
email: clevelandsh@state.gov

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Luther, Lorre M

From: Cleveland, Sarah H
Sent: Wednesday, June 02, 2010 6:13 PM
To: Townley, Stephen G; Eichensehr, Kristen E; Donoghue, Joan E
Subject: flotilla email
Attachments: Gaza doc rev.docx

Here is my chop at it, which has not been revised in light of the conversation with Joan, but raises some of the same concerns.

S.

Sarah H. Cleveland
Counselor on International Law
Office of the Legal Adviser
Department of State
2201 C St. NW, Rm. 6421
Washington, D.C. 20520
ph: 202-647-9077
fax: 202-647-7096
email: clevelandsh@state.gov

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RELEASED IN FULL

Luther, Lorre M

From: Perina, Alexandra H
Sent: Friday, June 25, 2010 12:28 PM
To: Dolan, JoAnn; Cleveland, Sarah H; Townley, Stephen G; Donoghue, Joan E; Schwartz, Jonathan B; Pomper, Stephen E; Guarin, Marc F; Heinemann, Thomas B; Baumert, Kevin A; Harris, Robert K; Aswad, Evelyn M; Rajpal, Sabeena; Banos, Mariano H
Subject: RE: Gaza flotilla issues

All – In advance of the 1 pm meeting, attached is a good article by Yoram Dinstein on humanitarian assistance; the section on maritime blockades is excerpted below.
A.

http://ihl.ihlresearch.org/index.cfm?fuseaction=page.viewPage&pageID=808&nodeID=2

Maritime Blockade

Article 23(1) of Geneva Convention (IV) enunciates, "Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases."[21]

Although no explicit reference to blockade is made in article 23(1), there is no doubt that blockade constitutes the background of this clause.[22] The obligation created in it is extremely limited in scope. Apart from being subjected to various conditions spelt out in other paragraphs of article 23, free passage of consignments for all civilians is confined to medications, and other items (food and clothing) are circumscribed to certain segments of the population deemed singularly vulnerable.[23] There is plainly no requirement to allow the supply of food and clothing to the civilian population in general.[24]

Other provisions pertaining to blockades appear in article 59(3)-(4) of the Convention. Paragraph (3) states that "[A]ll Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection."[25] According to paragraph (4), "[A] Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power."[26] These stipulations must, of course, be read together with paragraphs (1) and (2) of article 59 quoted above, dealing with relief consignments to occupied territories. Paragraph (3) is viewed by the ICRC commentary as "the keystone of the whole system"; its thrust is that such consignments must be allowed to cross through a blockade, subject to verification and supervision.[27]

The prohibition-incorporated, as noted, in Protocol I-of starvation of civilians as a method of warfare does not by itself render blockade unlawful as a method of warfare, provided that such starvation is not the sole purpose of the blockade.[28] This follows from the language of article 49(3) of the Protocol: "The provisions of this Section [articles 48-67] apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air."[29]

As the ICRC commentary on the protocol explains the paragraph, "In general the delegates at the Diplomatic Conference were guided by a concern not to undertake a revision of the rules applicable to armed conflict at sea

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or in the air. This is why the words 'on land' were retained and a second sentence clearly indicating that the Protocol did not change international law applicable in such situations was added."[30]

Even those advocating the illegality of a blockade giving rise to starvation of civilians are forced to concede that their position collides head-on with the original intention of the diplomatic conference that the instrument it produced have no impact on the law of blockades.[31]

From: Dolan, JoAnn
Sent: Friday, June 25, 2010 8:50 AM
To: Khan, Naveed J; Cleveland, Sarah H; Townley, Stephen G; Donoghue, Joan E; Schwartz, Jonathan B; Pomper, Stephen E; Guarin, Marc F; Heinemann, Thomas B; Baumert, Kevin A; Harris, Robert K; Aswad, Evelyn M; Perina, Alexandra H; Rajpal, Sabeena; Banos, Mariano H
Subject: RE: Gaza flotilla issues

Was this meeting ever finalized?

From: Khan, Naveed J
Sent: Tuesday, June 22, 2010 9:54 AM
To: Cleveland, Sarah H; Townley, Stephen G; Donoghue, Joan E; Schwartz, Jonathan B; Pomper, Stephen E; Guarin, Marc F; Heinemann, Thomas B; Baumert, Kevin A; Harris, Robert K; Aswad, Evelyn M; Perina, Alexandra H; Rajpal, Sabeena; Banos, Mariano H; Dolan, JoAnn
Subject: RE: Gaza flotilla issues

Would Friday, June 25th at 1:00 pm be ok?

From: Cleveland, Sarah H
Sent: Tuesday, June 22, 2010 9:50 AM
To: Townley, Stephen G; Donoghue, Joan E; Schwartz, Jonathan B; Pomper, Stephen E; Guarin, Marc F; Heinemann, Thomas B; Baumert, Kevin A; Harris, Robert K; Aswad, Evelyn M; Perina, Alexandra H; Rajpal, Sabeena; Banos, Mariano H; Koh, Harold Hongju; Dolan, JoAnn
Cc: Khan, Naveed J
Subject: Gaza flotilla issues

Naveed –

Can you set up a meeting on Friday for those in this group who want to attend, to discuss the flotilla issue in light of yesterday's ACIL meeting? (Feel free to loop in others).

Thanks,

Sarah

RELEASED IN FULL

ADVISORY COMMITTEE ON INTERNATIONAL LAW
DEPARTMENT OF STATE

The George Washington University Law School
2000 H Street, NW, Washington DC
Michael K. Young Faculty Conference Center, 5th Floor

June 21, 2010

AGENDA

9:00 – 9:30	Check-in; coffee and light refreshments available
9:30 – 9:45	Welcome; introductory remarks • Dean Frederick M. Lawrence, The George Washington University Law School • Harold Hongju Koh, Legal Adviser, Department of State
9:45 – 10:45	ICC Review Conference and Ad Hoc Criminal Tribunals: Stock-Taking and Next Steps • Harold Hongju Koh, Legal Adviser, Department of State • Todd Buchwald, Assistant Legal Adviser for United Nations Affairs • Anne Joyce, Acting Assistant Legal Adviser, Office of European and Eurasian Affairs
10:45 – 11:00	Coffee Break
11:00 – 12:00	Detention, Targeting, Prosecution and the Law of War: Reactions to Koh ASIL Speech • Prof. Steven Ratner, University of Michigan Law School
12:00 – 12:45	Introduction of Joan E. Donoghue, U.S. Candidate for Election to the International Court of Justice
12:45 – 2:00	Lunch
2:00 – 2:45	International Responsibility of International Organizations: ILC Draft Articles • Kate Gorove, Attorney-Adviser, Office of United Nations Affairs • Prof. José Alvarez, New York University School of Law
2:45 – 3:15	International Law Commission: U.S. Topic • Prof. Lori Damrosch, Columbia University School of Law • Prof. Sean Murphy, The George Washington University Law School
3:15 – 3:30	Coffee Break
3:30 – 4:30	Nonproliferation: START, NPT Review Conference & Nuclear Security Summit • Newell Highsmith, Assistant Legal Adviser for Non-Proliferation & Verification
4:30 – 5:30	Current Topics in International Humanitarian Law: The Flotilla • Prof. Ryan Goodman, New York University School of Law
5:30 – 5:45	Other Matters & Closing Remarks

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RELEASED IN PART B5

Luther, Lorre M

From: McLeod, Mary (USUN)
Sent: Wednesday, June 02, 2010 4:35 PM
To: Mitchell, Mary T; Jacobson, Linda
Cc: Townley, Stephen G
Subject: RE: Flotilla investigation

Linda—There really wasn't any discussion about [redacted] during UNSC negotiations on Monday/Tuesday. [redacted] B5

[redacted] Best, Mary

SBU
This email is UNCLASSIFIED.

From: Mitchell, Mary T
Sent: Wednesday, June 02, 2010 4:14 PM
To: Jacobson, Linda; McLeod, Mary (USUN)
Cc: Townley, Stephen G
Subject: RE: Flotilla investigation

You're welcome, [redacted]

From: Jacobson, Linda
Sent: Wednesday, June 02, 2010 4:08 PM
To: Mitchell, Mary T; McLeod, Mary (USUN)
Cc: Townley, Stephen G
Subject: RE: Flotilla investigation

Thanks, very helpful.

From: Mitchell, Mary T
Sent: Wednesday, June 02, 2010 4:06 PM
To: Jacobson, Linda; McLeod, Mary (USUN)
Cc: Townley, Stephen G
Subject: RE: Flotilla investigation

HI Linda

[redacted]

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

B5

From: Jacobson, Linda
Sent: Wednesday, June 02, 2010 3:48 PM
To: Mitchell, Mary T; McLeod, Mary (USUN)
Cc: Townley, Stephen G
Subject: Flotilla investigation

Steve and I were just asked by Jim to pull some material together (due tonight) on "options"

Mary M – could you give me some background on

Mary McL – was there any discussion this week during the UNSCR negotiations about

Thanks for your help and sorry for the mad rush. Linda

RELEASED IN PART B5

Luther, Lorre M

From: Johnson, Clifton M
Sent: Thursday, June 03, 2010 2:33 PM
To: Townley, Stephen G; Cleveland, Sarah H
Cc: Harris, Robert K; Landsidle, Jennifer R
Subject: RE: flotilla

Stephen,
That helps. [redacted] B5

[redacted]

From: Townley, Stephen G
Sent: Thursday, June 03, 2010 1:57 PM
To: Johnson, Clifton M; Cleveland, Sarah H
Cc: Harris, Robert K; Landsidle, Jennifer R
Subject: RE: flotilla

[redacted]

Thanks, Stephen

From: Johnson, Clifton M
Sent: Thursday, June 03, 2010 1:55 PM
To: Cleveland, Sarah H
Cc: Harris, Robert K; Townley, Stephen G; Landsidle, Jennifer R
Subject: RE: flotilla

Sarah,
I'm not an expert on this, but my sense is that [redacted] B5

[redacted]

I may have missed something, but that's what I've found. Cliff

From: Cleveland, Sarah H
Sent: Thursday, June 03, 2010 11:59 AM

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

To: Johnson, Clifton M
Cc: Harris, Robert K; Townley, Stephen G
Subject: flotilla

Cliff –

The question came up today [redacted] B5

Thanks!

Sarah H. Cleveland
Counselor on International Law
Office of the Legal Adviser
Department of State
2201 C St. NW, Rm. 6421
Washington, D.C. 20520
ph: 202-647-9077
fax: 202-647-7096
email: clevelandsh@state.gov

RELEASED IN PART B6

Luther, Lorre M

From: Cleveland, Sarah H
Sent: Friday, June 25, 2010 2:54 PM
To: Aswad, Evelyn M; Dolan, JoAnn; Townley, Stephen G; Donoghue, Joan E; Schwartz, Jonathan B; Pomper, Stephen E; Guarin, Marc F; Heinemann, Thomas B; Baumert, Kevin A; Harris, Robert K; Rajpal, Sabeena; Banos, Mariano H; Perina, Alexandra H; Martin, Julie B
Subject: RE: Gaza flotilla issues
Attachments: flotilla[redacted]NoteonSurvivalCivilianPopulation.doc B6

And here is the short write up from[redacted]that I mentioned regarding the issue of "survival" from his ACIL presentation.

From: Aswad, Evelyn M
Sent: Friday, June 25, 2010 2:49 PM
To: Cleveland, Sarah H; Dolan, JoAnn; Townley, Stephen G; Donoghue, Joan E; Schwartz, Jonathan B; Pomper, Stephen E; Guarin, Marc F; Heinemann, Thomas B; Baumert, Kevin A; Harris, Robert K; Rajpal, Sabeena; Banos, Mariano H; Perina, Alexandra H; Martin, Julie B
Subject: RE: Gaza flotilla issues

Looping in Julie. EA

From: Cleveland, Sarah H
Sent: Friday, June 25, 2010 2:48 PM
To: Dolan, JoAnn; Townley, Stephen G; Donoghue, Joan E; Schwartz, Jonathan B; Pomper, Stephen E; Guarin, Marc F; Heinemann, Thomas B; Baumert, Kevin A; Harris, Robert K; Aswad, Evelyn M; Rajpal, Sabeena; Banos, Mariano H; Perina, Alexandra H
Subject: FW: Gaza flotilla issues

From[redacted] FYI.

From:[redacted]
Sent: Friday, June 25, 2010 2:44 PM
To: Cleveland, Sarah H
Subject: RE: Gaza flotilla issues

Thanks. Dinstein may be in a minority on the last paragraph below (non-application of Protocol I to blockades).

Here are a few counterpoints:

1. Article 49 states that the Protocol does apply to "sea warfare which may affect the civilian population, individual civilians or civilian objects on land." Hence it would cover a sea blockade that has an effect on the civilians on land.

2. Although the ICRC Commentary states that the Protocol might not otherwise change the law of naval blockades, soon thereafter the Commentary discusses how Article 70 applies to blockades. This is oddly in the Commentary on article 54, not on article 70 itself (p. 654)

3. The leading commentator on Protocol I, Michael Bothe states that despite some contrary evidence in the travaux, articles 54 and 70 of Protocol I apply to blockades and the control of contraband. Michael Bothe, Commentary in The Law of Naval Warfare: A collection of agreements and documents with commentaries 760, 764 (N. Ronzitti ed. 1988). See also Elmar Rauch, The Protocol Additional to the Geneva Conventions for the Protection of Victims of International Armed Conflicts and the United Nations Convention on the Law of the Sea: Repercussions on the law of naval warfare 93 (1984).

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

4. The leading treatise on Protocol I, Michael Bothe, Karl Partsch, and Waldemar Solf, NEW RULES FOR VICTIMS OF ARMED CONFLICTS 338 n. 10 (1982), states: "Relief, however, is covered by Section II of Part IV. Accordingly, it modifies the law relevant to blockade and contraband by extending the types of supplies which cannot be considered to be contraband and by enlarging the class of persons for whom relief is intended."

[redacted] B6

[redacted]

From: Cleveland, Sarah H [mailto:ClevelandSH@state.gov]
Sent: Friday, June 25, 2010 1:54 PM
To: [redacted]
Subject: FW: Gaza flotilla issues

[redacted]– In case it's helpful, attached is a good article by Yoram Dinstein on humanitarian assistance; the section on maritime blockades is excerpted below.

http://ihl.ihlresearch.org/index.cfm?fuseaction=page.viewPage&pageID=808&nodeID=2

Maritime Blockade

Article 23(1) of Geneva Convention (IV) enunciates, "Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases."[21]

Although no explicit reference to blockade is made in article 23(1), there is no doubt that blockade constitutes the background of this clause.[22] The obligation created in it is extremely limited in scope. Apart from being subjected to various conditions spelt out in other paragraphs of article 23, free passage of consignments for all civilians is confined to medications, and other items (food and clothing) are circumscribed to certain segments of the population deemed singularly vulnerable.[23] There is plainly no requirement to allow the supply of food and clothing to the civilian population in general.[24]

Other provisions pertaining to blockades appear in article 59(3)-(4) of the Convention. Paragraph (3) states that "[A]ll Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection."[25] According to paragraph (4), "[A] Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power."[26] These stipulations must, of course, be read together with paragraphs (1) and (2) of article 59 quoted above, dealing with relief consignments to occupied territories.

Paragraph (3) is viewed by the ICRC commentary as "the keystone of the whole system"; its thrust is that such consignments must be allowed to cross through a blockade, subject to verification and supervision.[27]

The prohibition-incorporated, as noted, in Protocol I-of starvation of civilians as a method of warfare does not by itself render blockade unlawful as a method of warfare, provided that such starvation is not the sole purpose of the blockade.[28] This follows from the language of article 49(3) of the Protocol: "The provisions of this Section [articles 48-67] apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air."[29]

As the ICRC commentary on the protocol explains the paragraph, "In general the delegates at the Diplomatic Conference were guided by a concern not to undertake a revision of the rules applicable to armed conflict at sea or in the air. This is why the words 'on land' were retained and a second sentence clearly indicating that the Protocol did not change international law applicable in such situations was added."[30]

Even those advocating the illegality of a blockade giving rise to starvation of civilians are forced to concede that their position collides head-on with the original intention of the diplomatic conference that the instrument it produced have no impact on the law of blockades.[31]

RELEASED IN PART B6

Luther, Lorre M

From: Perina, Alexandra H
Sent: Friday, June 25, 2010 3:39 PM
To: Aswad, Evelyn M; Cleveland, Sarah H; Dolan, JoAnn; Townley, Stephen G; Donoghue, Joan E; Schwartz, Jonathan B; Pomper, Stephen E; Guarin, Marc F; Heinemann, Thomas B; Baumert, Kevin A; Harris, Robert K; Rajpal, Sabeena; Banos, Mariano H; Martin, Julie B
Subject: RE: Gaza flotilla issues

Sarah – thanks for this.

[redacted] B5

A.

From: Aswad, Evelyn M
Sent: Friday, June 25, 2010 2:49 PM
To: Cleveland, Sarah H; Dolan, JoAnn; Townley, Stephen G; Donoghue, Joan E; Schwartz, Jonathan B; Pomper, Stephen E; Guarin, Marc F; Heinemann, Thomas B; Baumert, Kevin A; Harris, Robert K; Rajpal, Sabeena; Banos, Mariano H; Perina, Alexandra H; Martin, Julie B
Subject: RE: Gaza flotilla issues

Looping in Julie. EA

From: Cleveland, Sarah H
Sent: Friday, June 25, 2010 2:48 PM
To: Dolan, JoAnn; Townley, Stephen G; Donoghue, Joan E; Schwartz, Jonathan B; Pomper, Stephen E; Guarin, Marc F; Heinemann, Thomas B; Baumert, Kevin A; Harris, Robert K; Aswad, Evelyn M; Rajpal, Sabeena; Banos, Mariano H; Perina, Alexandra H
Subject: FW: Gaza flotilla issues

From [redacted] FYI. B6

From: [redacted]
Sent: Friday, June 25, 2010 2:44 PM
To: Cleveland, Sarah H
Subject: RE: Gaza flotilla issues

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Thanks. Dinstein may be in a minority on the last paragraph below (non-application of Protocol I to blockades).

Here are a few counterpoints:

1. Article 49 states that the Protocol does apply to "sea warfare which may affect the civilian population, individual civilians or civilian objects on land." Hence it would cover a sea blockade that has an effect on the civilians on land.

2. Although the ICRC Commentary states that the Protocol might not otherwise change the law of naval blockades, soon thereafter the Commentary discusses how Article 70 applies to blockades. This is oddly in the Commentary on article 54, not on article 70 itself (p. 654)

3. The leading commentator on Protocol I, Michael Bothe states that despite some contrary evidence in the travaux, articles 54 and 70 of Protocol I apply to blockades and the control of contraband. Michael Bothe, Commentary in The Law of Naval Warfare: A collection of agreements and documents with commentaries 760, 764 (N. Ronzitti ed. 1988). See also Elmar Rauch, The Protocol Additional to the Geneva Conventions for the Protection of Victims of International Armed Conflicts and the United Nations Convention on the Law of the Sea: Repercussions on the law of naval warfare 93 (1984).

4. The leading treatise on Protocol I, Michael Bothe, Karl Partsch, and Waldemar Solf, NEW RULES FOR VICTIMS OF ARMED CONFLICTS 338 n. 10 (1982), states: "Relief, however, is covered by Section II of Part IV. Accordingly, it modifies the law relevant to blockade and contraband by extending the types of supplies which cannot be considered to be contraband and by enlarging the class of persons for whom relief is intended."

[redacted] B6

[redacted]

From: Cleveland, Sarah H [mailto:ClevelandSH@state.gov]
Sent: Friday, June 25, 2010 1:54 PM
To: [redacted]
Subject: FW: Gaza flotilla issues

[redacted] In case it's helpful, attached is a good article by Yoram Dinstein on humanitarian assistance; the section on maritime blockades is excerpted below.

http://ihl.ihlresearch.org/index.cfm?fuseaction=page.viewPage&pageID=808&nodeID=2

Maritime Blockade

Article 23(1) of Geneva Convention (IV) enunciates, "Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases."[21]

Although no explicit reference to blockade is made in article 23(1), there is no doubt that blockade constitutes the background of this clause.[22] The obligation created in it is extremely limited in scope. Apart from being subjected to various conditions spelt out in other paragraphs of article 23, free passage of consignments for all civilians is confined to medications, and other items (food and clothing) are circumscribed to certain segments

of the population deemed singularly vulnerable.[23] There is plainly no requirement to allow the supply of food and clothing to the civilian population in general.[24]

Other provisions pertaining to blockades appear in article 59(3)-(4) of the Convention. Paragraph (3) states that "[A]ll Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection."[25] According to paragraph (4), "[A] Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power."[26] These stipulations must, of course, be read together with paragraphs (1) and (2) of article 59 quoted above, dealing with relief consignments to occupied territories. Paragraph (3) is viewed by the ICRC commentary as "the keystone of the whole system"; its thrust is that such consignments must be allowed to cross through a blockade, subject to verification and supervision.[27]

The prohibition-incorporated, as noted, in Protocol I-of starvation of civilians as a method of warfare does not by itself render blockade unlawful as a method of warfare, provided that such starvation is not the sole purpose of the blockade.[28] This follows from the language of article 49(3) of the Protocol: "The provisions of this Section [articles 48-67] apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air."[29]

As the ICRC commentary on the protocol explains the paragraph, "In general the delegates at the Diplomatic Conference were guided by a concern not to undertake a revision of the rules applicable to armed conflict at sea or in the air. This is why the words 'on land' were retained and a second sentence clearly indicating that the Protocol did not change international law applicable in such situations was added."[30]

Even those advocating the illegality of a blockade giving rise to starvation of civilians are forced to concede that their position collides head-on with the original intention of the diplomatic conference that the instrument it produced have no impact on the law of blockades.[31]

Luther, Lorre M

RELEASED IN PART B5,B6

From: Cleveland, Sarah H
Sent: Monday, June 07, 2010 11:34 AM
To: Townley, Stephen G
Subject: FW: Options Paper on Flotilla Investigation
Attachments: Israel Investigation Options Paper v3.doc

I will get back to Power and Posner on this. [redacted] B5

From: Koh, Harold Hongju
Sent: Monday, June 07, 2010 11:11 AM
To: Cleveland, Sarah H
Subject: Fw: Options Paper on Flotilla Investigation

Should you reply?
Harold Hongju Koh
The Legal Adviser
U.S. Department of State
Suite 6421
2201 C St. NW
Washington, DC 20520-6421
202 647 9598 office
202 262 8295 mobile
202 647 7096 fax

From: Power, Samantha J. [redacted] B6
To: Posner, Michael H; Koh, Harold Hongju
Cc: Busby, Scott W. [redacted] B6
Sent: Mon Jun 07 09:53:38 2010
Subject: FW: Options Paper on [redacted]

Do you know who there prepared this paper and what the status is?

From: Kumar, Prem G.
Sent: Thursday, June 03, 2010 9:00 AM
To: DL-NSC-Suite; DL-NSC-European Affairs; DL-NSC-Legal Advisor
Cc: DL-NSC-NENA; Ross, Dennis B.
Subject: FW: Options Paper on Flotilla Investigation

Please see attached State's discussion paper for [redacted] Thanks, Prem

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05330834 Date: 07/31/2013

RELEASED IN PART
1.4(B),B1,1.4(D)

Luther, Lorre M

From: Pomper, Stephen E
Sent: Tuesday, June 01, 2010 4:24 PM
To: 'DeRosa, Mary B.'; 'began@nsc.eop.gov'; 'brian_j._egan@nsc.eop.gov'
Cc: Schwartz, Jonathan B; Harris, Robert K; Townley, Stephen G; Donoghue, Joan E
Subject: FW: The Flotilla to Gaza Materials, including legal background
Attachments: FW: Remarks - Secretary of State Hillary Rodham Clinton And Romanian Foreign Minister Teodor Baconschi After Their Meeting

Mary and Brian—

As promised, here is some legal background we received via intermediaries that contains some legal analysis by the GOI. It isn't clear to us that this is finished product (or a formal GOI view) but it should give a sense of how their MFA lawyers are thinking about the issues that we discussed.

I am also attaching the Secretary's remarks from earlier this afternoon.

Please let us know if there are any issues here that you'd like to discuss further.

Thanks,

Steve

Classified by DAS, A/GIS, DoS on : 07-08-2013__ ~ Class: CONFIDENTIAL
~ Reason:□1.4(B), 1.4(D), B1 ~ Declassify on: 06/01/2030

1.4(B)
1.4(D)
B1

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

1.4(D)
B1

Page Denied

1.4(D)
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1.4(D)
B1

Page Denied

NR

- Flotilla Incident of May 31, 2010: Issues for Discussion, Prof. Ryan Goodman

In addition, the following documents are available online and will be available in hard copy at the meeting:

Terms of Reference for Israeli Commission of Inquiry
http://www.mfa.gov.il/MFA/Government/Communiques/2010/Cabinet_to_approve_independent_public_commission_13-Jun-2010.htm

Statement by the White House Press Secretary on Israel's investigation into the flotilla incident, June 13, 2010
http://www.whitehouse.gov/the-press-office/statement-press-secretary-israels-investigation-flotilla-incident

IDF Military Advocate General: Interception of the Gaza flotilla - Legal aspects
http://www.mag.idf.il/592-4071-en/patzar.aspx

ICRC News Release on Gaza Closure, June 14, 2010
http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/palestine-update-140610

Please do not hesitate to let me know if you have any questions about this material. I look forward to seeing you on Monday.

Sincerely,
David

David M. DeBartolo
Attorney-Adviser
Office of the Legal Adviser -- Claims and Investment Disputes (L/CID)
Department of State
Suite 203, South Building (SA-4)
2430 E Street NW, Washington, DC 20037-2800
Phone: 202-776-8323
Fax: 202-776-8389
Cell: 781-572-2217
debartolodm@state.gov

RELEASED IN FULL

Luther, Lorre M

NON-RESPONSIVE PORTIONS REDACTED

From: Schwartz, Jonathan B
Sent: Wednesday, June 30, 2010 3:42 PM
To: Pomper, Stephen E; Perina, Alexandra H; Gorove, Katherine M; Banos, Mariano H; Cleveland, Sarah H; Dolan, JoAnn; Jacobson, Linda; Townley, Stephen G
Subject: FW: Afternoon Brief 06/30/II (SBU Version)

Note first item.

From: OpsAlert
Sent: Wednesday, June 30, 2010 2:57 PM
Subject: Afternoon Brief 06/30/II (SBU Version)

SENSITIVE BUT UNCLASSIFIED

EXECUTIVE SECRETARIAT
Operations Center

Afternoon Brief

Wednesday, June 30, 2010
1500 EDT

ISRAEL TO EXPAND POWERS OF GAZA FLOTILLA INQUIRY

(SBU) The statement by Prime Minister Netanyahu followed panel head Jacob Tirkel's threats to resign if the government refused to grant it powers to subpoena witnesses and recommend sanctions, media report. The Office of Israel and Palestinian Affairs comments the government is likely to strengthen the panel to improve its reputation in the international community and approve the request during a July 5 security cabinet meeting.
(Ops/Israel and Palestinian Affairs Office telcon, BBC)

NR

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

NR

Drafted: SEHolmes Approved: DLBanks
Dist: State (all bureaus), NSS, OSD, NMCC, JCS, CIA, OSC, NCTC, DHS, DNI

SENSITIVE BUT UNCLASSIFIED

RELEASED IN FULL

Luther, Lorre M

From: Dolan, JoAnn
Sent: Tuesday, June 01, 2010 12:57 PM
To: Townley, Stephen G
Subject: FW: FOR IMMEDIATE CLEARANCE: Israel/Palestinians: UPDATE Raid on Free Gaza Flotilla
Attachments: 060110-Israel-Palestinians - UPDATE Raid on Free Gaza Flotilla (2).docx

From: Perina, Alexandra H
Sent: Tuesday, June 01, 2010 12:48 PM
To: Dolan, JoAnn; Pomper, Stephen E; Banos, Mariano H; Aswad, Evelyn M; Baumert, Kevin A
Cc: Schwartz, Jonathan B; Schwartz, Jonathan B; Jacobson, Linda; Bischoff, James L; Youel Page, Kathryn
Subject: RE: FOR IMMEDIATE CLEARANCE: Israel/Palestinians: UPDATE Raid on Free Gaza Flotilla

A few comments attached.

From: Dolan, JoAnn
Sent: Tuesday, June 01, 2010 12:45 PM
To: Dolan, JoAnn; Perina, Alexandra H; Pomper, Stephen E; Banos, Mariano H; Aswad, Evelyn M; Baumert, Kevin A
Cc: Schwartz, Jonathan B; Schwartz, Jonathan B; Jacobson, Linda; Bischoff, James L; Youel Page, Kathryn
Subject: RE: FOR IMMEDIATE CLEARANCE: Israel/Palestinians: UPDATE Raid on Free Gaza Flotilla

Attached integrates comments I have seen from L/CA, Linda and Jonathan. Any others would be useful to include in this version.

From: Dolan, JoAnn
Sent: Tuesday, June 01, 2010 12:25 PM
To: Dolan, JoAnn; Perina, Alexandra H; Pomper, Stephen E; Banos, Mariano H; Aswad, Evelyn M; Baumert, Kevin A
Cc: Schwartz, Jonathan B; Schwartz, Jonathan B; Jacobson, Linda; Bischoff, James L; Youel Page, Kathryn
Subject: RE: FOR IMMEDIATE CLEARANCE: Israel/Palestinians: UPDATE Raid on Free Gaza Flotilla

Sorry. Please use this version to integrate comments. Just in from L/CA.

From: Dolan, JoAnn
Sent: Tuesday, June 01, 2010 12:23 PM
To: Perina, Alexandra H; Pomper, Stephen E; Banos, Mariano H; Aswad, Evelyn M; Baumert, Kevin A
Cc: Schwartz, Jonathan B; Schwartz, Jonathan B; Jacobson, Linda; Bischoff, James L; Youel Page, Kathryn
Subject: FW: FOR IMMEDIATE CLEARANCE: Israel/Palestinians: UPDATE Raid on Free Gaza Flotilla
Importance: High

For others to review as well. There is language in here that we changed in the draft EOV last evening but I am not sure which of those changes were finally accepted. Pending circulation of revised version of EOV, could Mariano or Evelyn advise. I am happy to coordinated comments on this. L/CA is also forwarding their comments to me.

From: Jacobson, Linda
Sent: Tuesday, June 01, 2010 12:01 PM
To: Dolan, JoAnn
Subject: Fw: FOR IMMEDIATE CLEARANCE: Israel/Palestinians: UPDATE Raid on Free Gaza Flotilla
Importance: High

Others are sending in changes.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

From: Sayles, Ambrose G
To: Holmstrom, Todd C; Goldberger, Thomas H; Bernier-Toth, Michelle; Glauque, Ivna; Glauque, Jeffrey G; Jacobson, Linda; Schwartz, Jonathan B; Wills, Regina M; Lieberman, Jessica D (DRL); Ellis, Benjamin H; Waller, Robert P; Catalano, Elisa; Rana, Gautam A; Rand, Dafna H; Reynolds, Arlissa M; Hoyer, Kurt J; Harutunian, Ruben; Morrison, Andrew L; Cooper, Kurtis A; Bass, Warren; Kornblau, Mark (USUN); 'Michael_A._Hammer@nsc.eop.gov' <Michael_A._Hammer@nsc.eop.gov>; 'Chang, Benjamin' <Benjamin_Chang@nsc.eop.gov>; 'Hensman, Chris D.' <Chris_D._Hensman@nss.eop.gov>; Pelton, Erin; Ratney, Michael A
Sent: Tue Jun 01 11:39:29 2010
Subject: FOR IMMEDIATE CLEARANCE: Israel/Palestinians: UPDATE Raid on Free Gaza Flotilla

HI Everyone –

Please clear the attached UPDATED press guidance re: Free Gaza Flotilla. Please note that this updates yesterday's press guidance and all updated sections are highlighted in yellow. Your clearance is appreciated by **12:15pm latest**. This will need to get to PA ASAP for use by the Secretary and senior officials.

Thank you,

Ambrose

<<060110-Israel-Palestinians - UPDATE Raid on Free Gaza Flotilla.docx>>

Ambrose Sayles | Press Officer | Bureau of Near Eastern Affairs | U.S. Department of State

2201 C St, NW Rm 2234, Washington, DC 20520 | ☎: 202.647.4184 | ✉: saylesag@state.gov

RELEASED IN PART B6

Luther, Lorre M

From: Cleveland, Sarah H
Sent: Friday, June 04, 2010 6:07 PM
To: Townley, Stephen G
Subject: FW: [redacted] B5

Here you go!

From: Donoghue, Joan E
Sent: Friday, June 04, 2010 5:09 PM
To: Sullivan, Jacob J
Cc: Crocker, Bathsheba N; Cleveland, Sarah H; Harris, Robert K; Schwartz, Jonathan B
Subject: [redacted]

Dear Jake –

We'll get you something on [redacted]

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

B5

Please let us know if you would like additional details.

Joan

Luther, Lorre M RELEASED IN PART B5,B6

From: Donoghue, Joan E
Sent: Saturday, June 05, 2010 3:38 PM
To: Townley, Stephen G
Cc: McLeod, Mary (USUN)
Subject: Fw: Flotilla discussion

Stephen,
From talking to Jake, I have a little additional color. [redacted] B5
[redacted] Cd you please see whether people in L know or cd check files? Even partial info this weekend is good as things are moving quickly. My clues follow.

[redacted]

I can give you some more flavor this evening as you and others are rushing out of the pool to escape either thunder or pompar's gordon lightfoot playlist.
(For mary -- last reference is to pool party chez nous for ashley's farewell, but unlike lemp's farewell to you, I am not aware that anyone plans to hula.)
Joan

Thanks,
Joan

From: Egan, Brian J. [redacted] B6
To: Donoghue, Joan E; Pomper, Stephen E
Cc: DeRosa, Mary B. [redacted] B6
Sent: Sat Jun 05 11:55:15 2010
Subject: Flotilla discussion

Joan and Steve,

Apologies for the last-minute switch regarding today's conversation.

[redacted]

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

B5

Any views/insights that you all might be able to offer on these issues would be welcome (and sorry again for not being able to connect you today).

Thanks, Brian

RELEASED IN PART B5

NEA Press Guidance
June 1, 2010

B5

Israel/Palestinians: UPDATE Raid on Free Gaza Flotilla

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

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Background:

Text of PRST:

SECURITY COUNCIL PRESIDENTIAL STATEMENT ON THE RECENT INCIDENT IN THE EASTERN MEDITERRANEAN

The Security Council deeply regrets the loss of life and injuries resulting from the use of force during the Israeli military operation in international waters against the convoy sailing to Gaza. The Council, in this context, condemns those acts which resulted in the loss of at least ten civilians and many wounded, and expresses its condolences to their families.

The Security Council requests the immediate release of the ships as well as the civilians held by Israel. The Council urges Israel to permit full consular access, to allow the countries concerned to retrieve their deceased and wounded immediately, and to ensure the delivery of humanitarian assistance from the convoy to its destination.

The Security Council takes note of the statement of the UN Secretary-General on the need to have a full investigation into the matter and it calls for a prompt, impartial, credible and transparent investigation conforming to international standards.

The Security Council stresses that the situation in Gaza is not sustainable. The Council re-emphasizes the importance of the full implementation of Resolutions 1850 and 1860. In that context, it reiterates its grave concern at the humanitarian situation in Gaza and stresses 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.

The Security Council underscores that the only viable solution to Israeli-Palestinian conflict is an agreement negotiated between the parties and re-emphasizes that only a two-State solution, with an independent and viable Palestinian State living side by side in peace and security with Israel and its other neighbours, could bring peace to the region.

The Security Council expresses support for the proximity talks and voices concern that this incident took place while the proximity talks are underway and urges the parties to act with restraint, avoiding any unilateral and provocative actions, and all international partners to promote an atmosphere of cooperation between the parties and throughout the region.

Drafted by: NEA/PPD: A Sayles, 74184

Approved by: D(S): J Steinberg
NEA/FO: J Feltman
NEA/FO: M Connelly
SEMEP: D Hale
L/FO: J Schwartz

Cleared by: NEA/IPA: T Holmstrom
NEA/PPD: M Ratney
CA/OCS/ACS: M Bernier-Toth
CA/OCS/ACS/NESCA: VLopatkiewicz
CA/P: RMacray
L/CA: KYouelPage
L/AN: L Jacobson
PRM: R Wills
DRL: J Lieberman
EUR: B Ellis
P: R Waller
S/P: D Rand
D(S): G Rana
CG Jerusalem: A Reynolds
Emb Tel Aviv: R Harutunian
IO/UNP: A Morrison
IO/PAO: K Cooper
USUN/W: W Bass
USUN/NY: M Kornblau
NSC: M Hammer

RELEASED IN PART B6

Luther, Lorre M

From: Youel Page, Kathryn
Sent: Friday, June 04, 2010 11:39 AM
To: Macray, Rosemary R
Cc: Townley, Stephen G; Dickey, Gordon J; McDonough, Patricia E
Subject: FW: gaza amcit guidance
Attachments: Amcit on Free Gaza Flotilla 06-04-10.docx

B6

Rosemary, thanks, this looks fine from L/CA's perspective. I assume we have a PAW for [redacted] I'm looping in others in L who have been following this in case they have comments . regards, Katy

From: Macray, Rosemary R
Sent: Friday, June 04, 2010 11:28 AM
To: Youel Page, Kathryn; Gallegos, Adriana M; Echard, John E Jr
Cc: Dickey, Gordon J
Subject: RE: gaza amcit guidance

Yes, I had been waiting for input from EUR, but here's what we have now. Thanks!

Rosemary Macray
Media Unit Chief
Office of Policy Coordination and Public Affairs (CA/P)
U.S. Department of State
(202) 647-1488

From: Youel Page, Kathryn
Sent: Friday, June 04, 2010 10:52 AM
To: Gallegos, Adriana M; Macray, Rosemary R; Echard, John E Jr
Cc: Dickey, Gordon J
Subject: gaza amcit guidance

I'm not sure if CA is doing guidance on this today, but if so could you please send to Gordon and me for clearance? thanks, Katy

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Luther, Lorre M

From: Baumert, Kevin A
Sent: Tuesday, June 01, 2010 5:15 PM
To: Guarin, Marc F; Perina, Alexandra H; Pomper, Stephen E
Cc: Townley, Stephen G; Sullivan, David J
Subject: FW: Gaza flotilla memo
Attachments: Gaza Flotilla Clash (legal memo).docx

B5

Some additional edits/comments.

Thanks
Kevin

From: Perina, Alexandra H
Sent: Tuesday, June 01, 2010 4:37 PM
To: Guarin, Marc F; Baumert, Kevin A
Cc: Townley, Stephen G; Pomper, Stephen E
Subject: RE: Gaza flotilla memo

A few edits from me attached.

From: Guarin, Marc F
Sent: Tuesday, June 01, 2010 1:04 PM
To: Baumert, Kevin A; Perina, Alexandra H
Cc: Townley, Stephen G; Pomper, Stephen E
Subject: Gaza flotilla memo

Kevin/AP-

Attached is my first stab at a legal memo on the Gaza flotilla incident (largely cobbled together from existing e-mail strings). Obviously it still needs some work... please feel free to add, modify, correct, and improve as you see fit.

I have to run in with Steve to see Joan now.

Marc

M. F. GUARIN
CDR JAGC USN
Attorney Adviser
U.S. Department of State (L/PM)
(202) 647-7563

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Luther, Lorre M RELEASED IN PART B6

From: McLeod, Mary (USUN)
Sent: Monday, June 07, 2010 12:48 PM
To: Schwartz, Jonathan B; Harris, Robert K; Gorove, Katherine M; Townley, Stephen G; Jacobson, Linda; Dolan, JoAnn
Subject: FW: Haaretz: Israel to appoint state panel to investigate Gaza Flotilla

This email is UNCLASSIFIED.

From: Pelton, Erin
Sent: Monday, June 07, 2010 12:44 PM
To: Gaza Flotilla Monitoring Group
Subject: Haaretz: Israel to appoint state panel to investigate Gaza Flotilla

HAARETZ.com

Israel to appoint state panel to investigate Gaza flotilla raid

Senior government source says committee to comprise top justices, as well as two international observers.

By Barak Ravid Tags: Israel news Gaza flotilla

Prime Minister Benjamin Netanyahu was expected to announce on Monday or Tuesday the creation of a state panel of inquiry to investigate the Israel Navy's deadly raid of a humanitarian aid flotilla bound for the Gaza Strip last week.

A senior source in Jerusalem said the panel would comprise top justices experienced in matters of international and marine law. Two international justices -- at least one of them American - would be invited to participate as observers, said the source.

In addition to investigating the circumstances surrounding the Israel Navy's seizure of the Turkish-flagged Mavi Marmara, the committee will also be charged with looking into the legality of Israel's closure of the Gaza Strip and its naval blockade.

Netanyahu's forum of top seven ministers decided to create the internal investigative panel on Monday, after days of deliberation. An official announcement on the matter was awaiting approval from the attorney general, to ensure that there were no conflicts of interest among the potential members of the committee.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

The forum of seven ruled in its decision that the panel would not be allowed to interrogate soldiers or officers who took part in the commando raid, which left nine Turkish activists dead and several people wounded. It was not yet clear whether senior Israel Defense Forces officials – including IDF Chief of Staff Gabi Ashkenazi and Israel Navy Commader Eliezer "Chiney" Marom.

The ministers' decision comes on the heels of a United Nations proposal to establish an international committee comprising representatives of Israel, the U.S. and Turkey to investigate the incident.

Despite growing international pressure, Netanyahu had balked at the proposal, claiming Israel has the right to investigate itself.

Erin Pelton | Deputy Spokesperson for Foreign Media | Bureau of Near Eastern Affairs | US Department of State
t: (202) 647-4148 | bb: [redacted] | Email: PeltonE@state.gov

B6

B5

RELEASED IN PART
B5

Luther, Lorre M

From: Johnson, Clifton M
Sent: Friday, June 04, 2010 4:06 PM
To: Harris, Robert K
Cc: Heinemann, Thomas B; McDonough, Patricia E; Townley, Stephen G
Subject: FW: Initial draft: Gaza

Bob,
I've added my edits on top of Stephen's (some of which I tweaked, but you decide how to handle). Once you've reviewed/commented, it is ready for Joan.

Best, Cliff

From: Townley, Stephen G
Sent: Friday, June 04, 2010 3:16 PM
To: McDonough, Patricia E; Harris, Robert K; Heinemann, Thomas B; Johnson, Clifton M
Subject: RE: Initial draft: Gaza

A few reactions for consideration. Thanks, Stephen

From: McDonough, Patricia E
Sent: Friday, June 04, 2010 2:44 PM
To: Harris, Robert K; Heinemann, Thomas B; Townley, Stephen G; Johnson, Clifton M
Subject: Initial draft: Gaza

Cliff suggested I forward to you for your input. (He's at a meeting and will return at about 3:30 to finalize it).

Trish

Patricia E. McDonough
Attorney-Adviser
US Department of State
Office of the Legal Adviser (L/LEI)
2201 C Street NW
Washington, DC 20520
Telephone (202) 647-6194

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Luther, Lorre M

From: Cleveland, Sarah H
Sent: Tuesday, June 08, 2010 12:29 PM
To: Townley, Stephen G; Donoghue, Joan E
Subject: FW: Israel -Flotilla and beyond

Importance: High

I already forwarded to Jon.

From: Posner, Michael H
Sent: Tuesday, June 08, 2010 12:05 PM
To: 'Power, Samantha J.'; Feltman, Jeffrey D
Cc: 'Busby, Scott W.'; Graze, Deborah E; Koh, Harold Hongju
Subject: FW: Israel -Flotilla and beyond
Importance: High

Samantha and Jeff

B5

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

B5

[redacted]

Luther, Lorre M RELEASED IN PART B5,B6

From: Cleveland, Sarah H
Sent: Wednesday, June 02, 2010 11:59 PM
To: Koh, Harold Hongju; Donoghue, Joan E; Townley, Stephen G; Eichensehr, Kristen E; Thessin, James H
Subject: Fw: Israel Investigation Options Paper
Attachments: Israel Investigation Options Paper v2.doc

From: Sarah Cleveland [redacted] B6
To: Cleveland, Sarah H
Sent: Wed Jun 02 23:57:15 2010
Subject: Israel Investigation Options Paper

I made one slight edit. [redacted] B5

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Luther, Lorre M RELEASED IN PART B3 DOD-CP,B5,B6

From: Donoghue, Joan E
Sent: Friday, June 04, 2010 9:22 PM
To: Harris, Robert K
Cc: Townley, Stephen G
Subject: Fw: Meeting on Issues Related to the Flotilla Investigation

Hi bh. For this call tomorrow at 930, any thoughts or papers that I should review, [redacted] Thanks B5

From: DeRosa, Mary B. [redacted] B6
To: [redacted]@dodgc.osd.mil <[redacted]@dodgc.osd.mil>; Donoghue, Joan E; ([redacted]@js.pentagon.mil) <B3 DOD-CP [redacted]@js.pentagon.mil) >
Sent: Fri Jun 04 20:51:29 2010
Subject: Fw: Meeting on Issues Related to the Flotilla Investigation

[redacted] it is tomorrow AM at 9:30. B5

From: Zimmerman, Thomas S.
To: 'KhanNJ@state.gov' <KhanNJ@state.gov>; 'WrightEB@state.gov' <WrightEB@state.gov>; [redacted] B3 DOD-CP [redacted]@js.pentagon.mil)' [redacted]@js.pentagon.mil>; [redacted]@sd.mil' <[redacted]@sd.mil>; 'ses-o@state.gov' <ses-o@state.gov>; Hawkins, Stacey T.; Dirksen, Ward F.; Kahan, Alexandra L.; Ross, Dennis B.; Blinken, Antony J.; McDonough, Denis R.; Alhassani, Mehdi K.; Rhodes, Benjamin J.; Govashiri, Ferial; Chang, Cindy; Shapiro, Daniel B.; Childress, Latesha D.; Kumar, Prem G.; DeRosa, Mary B.
Cc: DL-OVP-National Security; DL-NSS-LEGAL; DL-NSC-NENA
Sent: Fri Jun 04 20:42:06 2010
Subject: Meeting on Issues Related to the Flotilla Investigation

Good evening - [redacted] Mr. Donilon will host a meeting on issues related to the Flotilla Investigation, **tomorrow (6/5) 9:30am**, in the Situation Room. SVTC and Call-ins are welcome. Please confirm participation as shown below. Thanks. B5

For Questions, please contact Mary DeRosa

Requested participants:
Joan Donoghue +1
Jeh Johnson +1
Jim Crawford +1
Tony Blinken
Dennis Ross
Dennis McDonough
Ben Rhodes
Dan Shapiro
Prem Kumar
Mary Derosa

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Luther, Lorre M RELEASED IN PART B3 DOD-CP,B5,B6

From: Donoghue, Joan E
Sent: Friday, June 04, 2010 9:20 PM
To: Townley, Stephen G
Subject: Fw: Meeting on Issues Related to the Flotilla Investigation

Fyi, mary dr says it is about [redacted] I told ops that I wd join by phone and I alerted mary mcl and suggested that she try to get added. B5
I have left message for pomper asking for him as plus one.

From: Beekman, Philip M
To: Donoghue, Joan E
Sent: Fri Jun 04 21:04:48 2010
Subject: FW: Meeting on Issues Related to the Flotilla Investigation

As per your request.

Regards,

Philip Beekman
Senior Watch Officer
Operations Center
Department of State
202-647-1512

From: Zimmerman, Thomas S. [mailto:[redacted] B6
Sent: Friday, June 04, 2010 8:53 PM
To: Khan, Naveed J; Wright, Elizabeth B; [redacted]@js.pentagon.mil; [redacted]@sd.mil; SES-O; Hawkins, Stacey T.; Dirksen, Ward F.; Kahan, Alexandra L.; Ross, Dennis B.; Blinken, Antony J.; McDonough, Denis R.; Alhassani, Mehdi K.; Rhodes, Benjamin J.; Govashiri, Ferial; Chang, Cindy; Shapiro, Daniel B.; Childress, Latesha D.; Kumar, Prem G.; DeRosa, Mary B.; Barks-Ruggles, Erica J; Harris, Grant T; Rangarajan, Taara A; Pelofsky, Eric J; Johnson, Calista; Hanley, Monica R; Sullivan, Jacob J B3 DOD-CP
Cc: DL-OVP-National Security; DL-NSS-LEGAL; DL-NSC-NENA; DL-NSC-Suite
Subject: RE: Meeting on Issues Related to the Flotilla Investigation

Hello Again – Erica Barks-Ruggles and Jake Sullivan are also welcome to attend.

Additionally, the meeting will be non-secure. Many Thanks.

From: Zimmerman, Thomas S.
Sent: Friday, June 04, 2010 8:42 PM
To: 'KhanNJ@state.gov'; 'WrightEB@state.gov'; [redacted]@js.pentagon.mil)'; [redacted]@sd.mil'; 'ses-o@state.gov'; Hawkins, Stacey T.; Dirksen, Ward F.; Kahan, Alexandra L.; Ross, Dennis B.; Blinken, Antony J.; McDonough, Denis R.; Alhassani, Mehdi K.; Rhodes, Benjamin J.; Govashiri, Ferial; Chang, Cindy; Shapiro, Daniel B.; Childress, Latesha D.; Kumar, Prem G.; DeRosa, Mary B.
Cc: DL-OVP-National Security; DL-NSS-LEGAL; DL-NSC-NENA
Subject: Meeting on Issues Related to the Flotilla Investigation

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Good evening - [redacted] Mr. Donilon will host a meeting on issues related to the Flotilla investigation, **tomorrow (6/5) 9:30am**, in the Situation Room. SVTC and Call-ins are welcome. Please confirm participation as shown below. Thanks. B5

For Questions, please contact Mary DeRosa

Requested participants:
Joan Donoghue +1
Jeh Johnson +1
Jim Crawford +1
Tony Blinken
Dennis Ross
Dennis McDonough
Ben Rhodes
Dan Shapiro
Prem Kumar
Mary Derosa

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05332039 Date: 07/31/2013

RELEASED IN FULL

Law, Rosemary C

From: Johnston-Gardner, Sarah R (DRL)
Sent: Friday, June 17, 2011 9:21 AM
To: Bass, Warren; Eilts, Colin C; Doutrich, Jack T; Prem G. Kumar; 'Powell, Catherine'; Hickey, Matthew B; Schrank, Alexander D; Reisser, Wesley J; Martin, Julie B; Razzouk, Kelly L; Gorove, Katherine M; Kolb, Natalie; Khoury-Kincannon, Sahar (Algiers); Quinn, Shannon D
Subject: HRC Flotilla final resolution and vote count
Attachments: Document.pdf

Hi,

The HRC resolution on the flotilla issue is attached, it was adopted by 36 yes-8 abstain-1 no (U.S.). The 8 abstainers were: Cameroon, Hungary, Poland, Moldova, Korea, Slovakia, Ukraine, and Zambia. Gabon did not vote; Libya is suspended.

It appears the EU has succeeded in improving the text: 1)the recommendation for the UNSYG to consider the HRC FFM report on the flotilla issue has been altered - there is now a reference to the UNSYG panel and the expectation for them to finish their work soon and a call on the HC to refer her reports and the HRC FFM to the UNSYG (so not tasking the UNSYG directly). 2) There is a call for HC Pillay to submit a "concluding report" on the matter in the 20th session.

Thanks,
Sarah

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL) Office of Multilateral and Global Affairs (MLGA)
202-647-0293

This email is UNCLASSIFIED

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05331017 Date: 08/01/2013
RELEASED IN FULL

[illegible] the report [illegible] Fact-Finding Mission [illegible]

The [illegible] Council,

Guided by the purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights,

Considering that the promotion of respect for the obligations arising from the Charter and the other instruments and rules of international law is among the basic purposes and principles of the United Nations,

Taking into consideration the relevant provisions of international humanitarian and human rights law,

Emphasizing the importance of the safety and well-being of all civilians, including humanitarian personnel,

Recalling Human Rights Council resolution 14/1 of 2 June 2010, in which the Council decided to dispatch an independent international fact-finding mission to investigate violations of human rights law and international humanitarian law resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance,

Recalling also Human Rights Council resolution 15/1 of 29 September 2010 and 16/20 of 25 March 2011, in which the Council endorsed the conclusions contained in the report of the independent international fact-finding mission, called upon all concerned parties to ensure the immediate implementation of the conclusions contained in the report of the fact-finding mission and requested the United Nations High Commissioner for Human Rights to report on the status of implementation of those conclusions,

Welcoming the establishment by the Secretary-General of a panel of inquiry and recalling that its work has not been completed,

1. *Takes note* of the report of the United Nations High Commissioner for Human Rights;

2. *Regrets* the non-cooperation of the occupying Power, Israel, with the independent international fact-finding mission on the Gaza flotilla incident;

3. *Calls upon* concerned parties to ensure the immediate implementation of the conclusions contained in the report of the fact-finding mission;

~~4. *Requests* the Secretary-General to take into consideration the conclusions contained in the report of the fact-finding mission, as well as the follow-up reports of the High Commissioner;~~

4rev. *Takes note* that the Panel of Inquiry established by the Secretary General is expected to complete its work soon;

4bis. *Requests* the High Commissioner to bring to the attention of the Secretary-General the conclusions contained in the report of the fact-finding mission, as well as the follow-up reports;

5rev. *Requests* the High Commissioner to submit a **concluding** report on the status of the implementation of paragraph 3 above to the Human Rights Council at its twentieth session;

6. *Decides* to follow up the implementation of the present resolution at its twentieth session.

16 June 2011 Final Version

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05331017 Date: 08/01/2013

StateDept004798

Law, Rosemary C

RELEASED IN FULL

From: Schwartz, Jonathan B
Sent: Wednesday, August 11, 2010 8:54 AM
To: Gorove, Katherine M
Subject: Emailing: ciechanover-tapped-for-un-flotilla-probe-1

Apparently you have to be over 75 to receive Israeli appointments to these commissions.

The message is ready to be sent with the following file or link attachments:

Shortcut to: http://www.haaretz.com/print-edition/news/ciechanover-tapped-for-un-flotilla-probe-1.306624?

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Law, Rosemary C

From: Townley, Stephen G
Sent: Friday, July 30, 2010 2:21 PM
To: Gorove, Katherine M
Subject: Flotilla

Have we heard further from USUN? Thanks, Stephen

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Law, Rosemary C

From: Townley, Stephen G
Sent: Friday, July 30, 2010 3:17 PM
To: Gorove, Katherine M
Subject: flotilla

Can you send me the final, either on the low or high side? Thanks! Stephen

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Law, Rosemary C

From: Jacobson, Linda
Sent: Friday, July 09, 2010 2:15 PM
To: Gorove, Katherine M
Subject: FW: LEGAL-#256164-v1-Flotilla_Outline.doc
Attachments: LEGAL-#256164-v1-Flotilla_Outline.doc

Kate, this is the latest version.

RELEASED IN FULL

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B6

Law, Rosemary C

From: Zurcher, Kenneth M
Sent: Friday, October 14, 2011 12:06 PM
To: Doutrich, Jack T; Bitar, Maher B; Rangaswamy, Roopa; Gregonis, Meghan E; Hutchison, Stephanie J; Matthews, Theresa J; Mokhtarzada, Homeyra N; Bass, Warren; Tess, Caroline; Ried, Curtis R; Horak, Gail R; Reisser, Wesley J; Jacobson, Linda; Gorove, Katherine M; Levinson, Jesse S
Cc: Zurcher, Kenneth M
Subject: Clearance: Cousens Palmer Flotilla.docx
Attachments: 111014 Cousens Palmer Flotilla.docx

Good afternoon,

Attached please find a Q&A for Elizabeth Cousens's confirmation regarding the findings of the Palmer commission. [redacted] B5

Given the need for input- I would ask for **substantive comments by COB today**, so that I might finalize it for clearance on Monday.

Much appreciated,
Ken

SBU
This email is UNCLASSIFIED.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Law, Rosemary C

From: Banos, Mariano H
Sent: Thursday, April 21, 2011 12:23 PM
To: Jacobson, Linda
Cc: Gorove, Katherine M
Subject: Flotilla Investigations

Linda,

I've put together some points below. I am most familiar with the HRC piece. Kate may have edits or further info on the UN piece and you may know more about the Israeli piece. [redacted] B5

[redacted]

Hope that helps,

Mariano

United Nations' Commission of Inquiry (the Palmer Commission)

- [redacted] B5
-

Israeli Flotilla Investigation:

- Israel released the first of two parts of the Turkel Commission report on its investigation, Israel's independent internal investigation into the Flotilla incident which included two international observers. The report absolves the IDF of any wrongdoing and places the blame for violence and the deaths of the nine civilians on the Turkish non-governmental organization, IHH, which was one of the flotilla's main sponsors.

- Publically, we welcomed the Israeli completion of the report and their submission of it to the Palmer Commission. The second part of the Turkel Commission's investigations is scheduled to be released in the early summer, it will examine the Israeli legal system response to allegations of violations of the law of armed conflict and crimes against humanity, and judge whether it comports with international law.

Turkish Response and Investigation

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

- Turkey immediately criticized the Turkel Commission report on the Flotilla and continues to pursue the issue both in New York with the Palmer Commission and at the HRC in Geneva. The Turkel Commission findings contrasted sharply with those of the Turkish National Commission, which released its final report in February. The Flotilla incident has become the central point of contention in Israel and Turkey's strained relationship.

- The Turkish view the HRC, which they strongly support, as completely separate from the Palmer Commission. The USG position is that that Palmer Commission is the primary investigation process for the international community, giving it the opportunity to fully review the circumstances surrounding the incident.

Human Rights Council Investigations:

- The United States was opposed to Resolution 14/1, which handed this Fact-Finding Mission a flawed mandate—something the Mission itself acknowledged in its report. Israel did not cooperate with the Mission.

- The Mission's Report essentially drew the opposite conclusions than the subsequent Israeli report, including that a humanitarian crisis exists in Gaza, that the blockade is unlawful, that Israeli actions in response to Hamas rocket fire may constitute collective punishment, that the conduct of the Israeli military is disproportionate and "totally unnecessary," and that several violations of international law had been committed, including torture and willful killing.

- We have also opposed subsequent "flotilla resolutions" at the HRC which have endorsed the conclusions of the report and called for the High Commissioner to report on their implementation at the next HRC. To Turkish annoyance, we have consistently repeated that we do not believe further HRC action is warranted, and that the Palmer Commission is the primary process for the international community to review this incident.

RELEASED IN PART B5

Law, Rosemary C

From: Gorove, Katherine M
Sent: Friday, December 10, 2010 6:31 PM
To: Schwartz, Jonathan B
Subject: flotilla terms of ref.
Attachments: Doc.docx

B5

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REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Law, Rosemary C RELEASED IN PART B5,B6

From: Banos, Mariano H
Sent: Thursday, September 23, 2010 4:55 PM
To: Jacobson, Linda; Gorove, Katherine M; Perina, Alexandra H; Martin, Julie B
Subject: FW: Draft FFM Resolution
Attachments: REV_1_(2)[1].doc

FYI

From: Andris, Matthew R
Sent: Thursday, September 23, 2010 4:37 PM
To: Nossel, Suzanne F; Hale, David M; Bass, Warren; Walles, Jacob; Lapenn, Jessica; Sutphin, Paul R; Rudman, Mara; Khoury-Kincannon, Sahar; Rudman, Mara (Jerusalem); Khoury-Kincannon, Sahar; Doutrich, Jack T; Anderson, Brooke D (USUN); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Banos, Mariano H; Cassidy, Joseph P
Cc: Honigstein, Michael D; Johnston-Gardner, Sarah R (DRL); Bame, David J; [redacted] B6
[redacted] Waters, John R; Goldberger, Thomas H; Feltman, Jeffrey D; [redacted] Donahoe, Eileen C; Khanna, Melanie J; Cassayre, Mark J; Le Mon, Christopher J; P-IO Duty; Katz, Jonathan D
Subject: Draft FFM Resolution

All:

[redacted] B5

Best,

Matthew R. Andris

Bureau of International Organization Affairs
Office of Human Rights
(202) 647-5892 - office
[redacted] B6
andrismr@state.gov

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART
1.4(B),B1,B5,1.4(D),B6

Law, Rosemary C

From: Schwartz, Jonathan B
Sent: Tuesday, June 08, 2010 11:27 AM
To: Gorove, Katherine M
Subject: FW: Flotilla to Gaza Materials
Attachments: LEGAL-#196110-v11-Israel__best_practices__IHL__non-paper.doc; LEGAL-#195490-v2-Commission_of_Inquiry_draft.docx

I think you already have these – related to Posner trip.

From: Dolan, JoAnn
Sent: Wednesday, June 02, 2010 10:46 AM
To: Schwartz, Jonathan B
Cc: Jacobson, Linda
Subject: FW: Flotilla to Gaza Materials

B5

From: Harris, Robert K
Sent: Wednesday, June 02, 2010 8:48 AM
To: Dolan, JoAnn; Aswad, Evelyn M; Banos, Mariano H; Pomper, Stephen E; Perina, Alexandra H; Townley, Stephen G
Cc: Jacobson, Linda; Gorove, Katherine M
Subject: RE: Flotilla to Gaza Materials

From: Dolan, JoAnn
Sent: Wednesday, June 02, 2010 8:39 AM
To: Aswad, Evelyn M; Harris, Robert K; Banos, Mariano H; Pomper, Stephen E; Perina, Alexandra H; Townley, Stephen G
Cc: Jacobson, Linda
Subject: FW: Flotilla to Gaza Materials

From: Schwartz, Jonathan B
Sent: Wednesday, June 02, 2010 2:26 AM
To: Dolan, JoAnn
Cc: Jacobson, Linda
Subject: Fw: Flotilla to Gaza Materials

Thanks.

Jon

Classified by DAS, A/GIS, DoS on : 11/09/2012 ~ Class: CONFIDENTIAL ~ Reason:□1.4(B), 1.4(D), B1 ~ Declassify on: 06/02/2030

REVIEW AUTHORITY: Sharon Ahmad Senior Reviewer

From: [redacted] B6
To: Schwartz, Jonathan B
Sent: Tue Jun 01 23:46:21 2010
Subject: RE: Flotilla to Gaza Materials

Jon,

It would be very good to speak to you. Not sure what time I will be back in Israel on Thursday morning. Do you have an Israeli cell no I can reach you on?

I attach a summary of the State's response to a HCJ petition on the flotilla.

Best, [redacted]

[Schwartz, Jonathan B [mailto:SchwartzJB@state.gov **:From**
Wednesday, June 02, 2010 12:40 AM **:Sent**
Taub Daniel **:To**
Re: Flotilla to Gaza Materials **:Subject**

Thanks [redacted] I am en route to Israel and may have time Thursday morning if convenient. (I will be staying in Jerusalem and am not planning to join Mitchell for that morning's activities.)

Regards,

Jon

From: [redacted]
To: kohh@state.gov <kohh@state.gov>; Schwartz, Jonathan B
Sent: Tue Jun 01 15:39:15 2010
Subject: Flotilla to Gaza Materials

Harold, many thanks for your time and insights today. Following our conversation here is some initial background material about the flotilla incident, which I hope will be useful to you. I will make sure you are copied on significant material as it becomes available.

Jon, Hope all is well with you. Copying this to you at Harold's suggestion. Hope to speak soon.

Best, [redacted]

VIDEOS

1. IDF Spokesperson video:
The Israel Navy warns flotilla that the Gaza region is closed to maritime traffic, and invites the ships to enter Ashdod port to transfer humanitarian aid.
http://www.youtube.com/watch?v=P6jDlQr59Sk

2. . IDF Spokesperson 2nd video taken from helicopter

http://www.youtube.com/watch?v=bU12KW-XyZE

and one more by the IDF Navy

http://www.youtube.com/watch?v=yphfyN0dqI8&NR=1

3. Hamas is behind human rights violations clips:

http://www.youtube.com/watch?v=bSI3koQ1Oh4

4. Channel 10 clips with 2 main points:

1. The flotilla mob attacks soldiers and try to take weapon from one of them while stabbing him with a knife.
2. 10 hours before the takeover they are calling Kaybahr ya yahud which basically means kill the Jews.

Click here to download the video: https://www.yousendit.com/download/dXFVWGJJYXIIcWRFQlE9PQ
Another video with the stabbing
http://www.nrg.co.il/online/1/ART2/114/294.html?hp=1&loc=2&tmp=2454
5. MFA CLIPS
http://www.youtube.com/watch?v=5wlWcNXzstI

Media coverage:

http://www.justjournalism.com/media-analysis/view/peace-activists-or-violent-attackers-how-the-media-narrative-on-flotilla-incident-is-shaping-up

Regarding claims of Israel violating Laws of the sea click here

http://blog.camera.org/archives/2010/05/ny_times_flotilla_coverage_mis.html

and legal update by MFA

[redacted] B1 1.4(B) 1.4(D)

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05331087 Date: 07/31/2013

[redacted] B1 1.4(B) 1.4(D)

****
This footnote confirms that this email message has been scanned by
PineApp Mail-SeCure for the presence of malicious code, vandals & computer viruses.
****

RELEASED IN PART B5

Law, Rosemary C

From: Pomper, Stephen E
Sent: Wednesday, June 02, 2010 9:05 PM
To: Guarin, Marc F; Harris, Robert K; Baumert, Kevin A; Gorove, Katherine M
Subject: FW: Gaza email
Attachments: Gaza v4.docx

From: Townley, Stephen G
Sent: Wednesday, June 02, 2010 9:01 PM
To: Donoghue, Joan E
Cc: Pomper, Stephen E; Cleveland, Sarah H; Eichensehr, Kristen E; Jacobson, Linda
Subject: Gaza email

Joan, Attached and pasted below for your review is one further iteration of the proposed email, reflecting comments from various offices. The key difference is that based on discussion with Steve and Linda [redacted] B5

[redacted] Thanks, Stephen

Dear Jake--

[redacted]

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Page Denied

Page Denied

B5

I hope you find this helpful. Please let me know if you have any questions.

Regards,

Joan

Law, Rosemary C

RELEASED IN PART B5,B6

From: Banos, Mariano H
Sent: Thursday, September 23, 2010 1:57 PM
To: Jacobson, Linda; Gorove, Katherine M; Perina, Alexandra H
Subject: FW: Reclear HRC 15 FFM Statement
Attachments: HRC 15 Flotilla Intervention.docx

Please let me know if you have any comments by 4pm.

From: Andris, Matthew R
Sent: Thursday, September 23, 2010 1:45 PM
To: Khanna, Melanie J; Doutrich, Jack T; Khoury-Kincannon, Sahar; Gregonis, Meghan E; Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Bass, Warren; Masiiko, Barbara J (USUN)
Subject: Reclear HRC 15 FFM Statement

All,

Due to the fact that [redacted] Please reclear by **COB today.** B5

Matthew R. Andris

Bureau of International Organization Affairs
Office of Human Rights
(202) 647-5892 - office
[redacted] - cell
andrismr@state.gov B6

This email is UNCLASSIFIED.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Law, Rosemary C

From: Schwartz, Jonathan B
Sent: Tuesday, October 26, 2010 4:36 PM
To: Gorove, Katherine M
Subject: FW: Research on [redacted] B5
Attachments: Israel Flotilla.pdf

Here's some general background on [redacted] I was unaware of this summer intern research project, though I am listed as an addressee!

From: Grosh, Lisa J.
Sent: Tuesday, October 26, 2010 4:11 PM
To: Schwartz, Jonathan B
Cc: Kovar, Jeffrey D
Subject: Research on [redacted]

Here is a paper that one of our interns prepared this summer that includes some discussion of [redacted]

Lisa

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Law, Rosemary C

RELEASED IN FULL

From: Baumert, Kevin A
Sent: Thursday, June 10, 2010 11:11 AM
To: Banos, Mariano H; Forbes, Carlton E; Gorove, Katherine M
Subject: RE: gaza -- State Parties to LOS Convention
Attachments: Gaza - HRC EOV remarks.docx

This will at least save you half the trouble...

From: Banos, Mariano H
Sent: Thursday, June 10, 2010 11:10 AM
To: Baumert, Kevin A; Forbes, Carlton E; Gorove, Katherine M
Subject: RE: gaza -- State Parties to LOS Convention

Yes. Carlton, can you please copy this into a document and link it to our interactive?

Thanks,

Mariano

From: Baumert, Kevin A
Sent: Thursday, June 10, 2010 11:07 AM
To: Banos, Mariano H; Forbes, Carlton E; Gorove, Katherine M
Subject: RE: gaza -- State Parties to LOS Convention

This is it, right?
http://geneva.usmission.gov/2010/06/02/hrc-resolution/

If so, I'm set...no more assistance needed.
Thx, Kevin

From: Banos, Mariano H
Sent: Thursday, June 10, 2010 10:00 AM
To: Forbes, Carlton E; Gorove, Katherine M; Baumert, Kevin A
Subject: FW: gaza -- State Parties to LOS Convention

Carlton,

I can't seem to find the final HRC EOV delivered on the Flotilla rez. Can you send it to this group and add it to the interactive doc (it's prob on the mission website).

Thanks,

M

From: Baumert, Kevin A
Sent: Thursday, June 10, 2010 9:47 AM
To: Banos, Mariano H; Gorove, Katherine M
Subject: RE: gaza -- State Parties to LOS Convention

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Yes, I have Wolff's remarks...but don't seem to have a final copy of the HRC EOV. If you can provide, that would be great...
Thanks!
Kevin

From: Banos, Mariano H
Sent: Thursday, June 10, 2010 8:05 AM
To: Baumert, Kevin A; Gorove, Katherine M
Subject: RE: gaza -- State Parties to LOS Convention

Wolff's statements and our intervention at the HRC are the only thing I can think of. I think you have the former, I'll find you the latter. This is moving fast, though, so you may need to come up with updated points.

Mariano

From: Baumert, Kevin A
Sent: Thursday, June 10, 2010 6:55 AM
To: Gorove, Katherine M; Aswad, Evelyn M; Banos, Mariano H
Subject: gaza -- State Parties to LOS Convention

Next week I'll be at the UN in NY for "SPLOS" -- mtg of States Parties to the Law of the Sea Convention. It is entirely possible, if not likely, that Turkey or others will raise the Gaza flotilla issue and try to make a big stink of it (as they've done at IMO and elsewhere)...in which case USDEL may need to respond.

Do we have a set of approved TPs or guidance for what to say/do when then comes up in UN or other fora? I have a sense of what they might be, but I don't think I've seen anything...

Thanks,
Kevin

RELEASED IN FULL

http://geneva.usmission.gov/2010/06/02/hrc-resolution/

Statement by the Delegation of the United States of America
Delivered by Ambassador Eileen Chamberlain Donahoe Human Rights Council
14th Session, Geneva, June 2, 2010
EOV: The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy

We regret having to call a vote and vote no on this resolution. It is our hope that, over time, this Council will be able to unite around balanced and appropriate responses to urgent situations that deserve our attention. We have engaged intently in discussions here in Geneva and in forums around the world in response to the events addressed in this resolution, and are deeply committed to working with partners to ensure a full and appropriate response to this incident and the circumstances that led to it.

As noted in our statement in this chamber yesterday, the United States is deeply disturbed by the recent violence and regrets the tragic loss of life and injuries suffered among those involved in the incident aboard the Gaza-bound ships. We condemn the acts that resulted in the loss of at least ten lives and many wounded, and we express our condolences to their families.

We call attention to the Security Council statement adopted on June 1. It is important to ensure a prompt, credible, impartial, and transparent investigation. Israel has a very strong interest in conducting such an investigation that meets international standards and exposes all the facts. There are, of course, a number of ways to ensure such an outcome.

The United States continues to be deeply concerned by the suffering of civilians in Gaza and the deteriorating humanitarian and human rights situation there. The situation in Gaza is unsustainable and unacceptable. In line with the Security Council statement adopted yesterday, we stress the need for sustained and regular flow of goods and provision and distribution of humanitarian access throughout Gaza, and we will continue our work towards this end while bearing in mind the Government of Israel's legitimate security concerns.

In the context of today's debate, it is important to once again stress that the only viable solution to the Israeli-Palestinian conflict is an agreement, negotiated between the parties, that ends the occupation that began in 1967 and fulfills the aspirations of both parties for independent homelands through two states for two peoples, Israel and an independent, contiguous, and viable state of Palestine, living side by side in peace and security.

Unfortunately, the resolution before us rushes to judgment on a set of facts that, as our debate over the last day makes clear, are only beginning to be discovered and understood. It creates an international mechanism before giving the responsible government an opportunity to investigate this incident itself and thereby risks further politicizing a sensitive and volatile situation. We understand the impetus to respond quickly to a troubling set of events. But we have an obligation to determine facts and make considered judgments on how to best address what is a complex and difficult situation.

For these reasons, we must vote against this resolution.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Law, Rosemary C

From: Buchwald, Todd F
Sent: Friday, October 15, 2010 1:55 PM
To: McLeod, Mary; Gorove, Katherine M; Daley, John D
Subject: RE: Gaza flotilla and the ICC
Attachments: RE: flotilla incident -- Comoros-flagged vessel ?; RE: flotilla incident -- Comoros-flagged vessel ?

From: McLeod, Mary
Sent: Friday, October 15, 2010 1:49 PM
To: Buchwald, Todd F; Gorove, Katherine M; Daley, John D
Subject: Gaza flotilla and the ICC

I understand some emails were floating around on this yesterday. Would you mind forwarding them, just for my information, I don't intend to meddle. I maintain a perverse interest in the flotilla, after my twelve hours in captivity at the UN working on the PRST.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Law, Rosemary C

From: Martin, Julie B
Sent: Thursday, May 26, 2011 11:20 PM
To: Eilts, Colin C; Masilko, Barbara J (USUN); Bass, Warren; Sachar, Alon (NEA/IPA); Reisser, Wesley J; Johnston-Gardner, Sarah R (DRL); Doutrich, Jack T; Gregonis, Meghan E; Khoury-Kincannon, Sahar (Algiers); Hickey, Matthew B; Carey, Laura N (DRL); Gorove, Katherine M; Ingber, Rebecca M; Ried, Curtis R; Richardson, Eric N; Baer, Daniel B; Cassidy, Joseph P; Prem G. Kumar; Zurcher, Kenneth M
Cc: Sicade, Lynn M (DRL); Galindo, David R
Subject: RE: HRC Item 7 and flotilla USG statements - clearance request COB Thursday, May 26
Attachments: 05-25-11 HRC Item 7 and flotilla statements.docx

One additional change for L/HRR, with which I clear.

From: Eilts, Colin C
Sent: Thursday, May 26, 2011 6:57 PM
To: Masilko, Barbara J (USUN); Bass, Warren; Sachar, Alon (NEA/IPA); Reisser, Wesley J; Johnston-Gardner, Sarah R (DRL); Doutrich, Jack T; Gregonis, Meghan E; Khoury-Kincannon, Sahar; Hickey, Matthew B; Carey, Laura N (DRL); Martin, Julie B; Gorove, Katherine M; Ingber, Rebecca M; Ried, Curtis R (USUN); Richardson, Eric N; Baer, Daniel B; Cassidy, Joseph P; 'Prem_G._Kumar@nss.eop.gov'; Zurcher, Kenneth M
Cc: Sicade, Lynn M (DRL); Galindo, David R
Subject: RE: HRC Item 7 and flotilla USG statements - clearance request COB Thursday, May 26

Clear with IPA's edits.

SBU
This email is UNCLASSIFIED.

From: Masilko, Barbara J (USUN)
Sent: Wednesday, May 25, 2011 3:14 PM
To: Bass, Warren; Sachar, Alon (NEA/IPA); Reisser, Wesley J; Johnston-Gardner, Sarah R (DRL); Doutrich, Jack T; Eilts, Colin C; Gregonis, Meghan E; Khoury-Kincannon, Sahar; Hickey, Matthew B; Carey, Laura N (DRL); Martin, Julie B; Gorove, Katherine M; Ingber, Rebecca M; Ried, Curtis R (USUN); Richardson, Eric N; Baer, Daniel B; Cassidy, Joseph P; 'Prem_G._Kumar@nss.eop.gov'; Zurcher, Kenneth M
Cc: Sicade, Lynn M (DRL); Galindo, David R
Subject: RE: HRC Item 7 and flotilla USG statements - clearance request COB Thursday, May 26

I added a few changes on top of Warren's edits to the flotilla interactive remarks.

I did not edit the flotilla EOV, because I would really like to see the Turkish resolution before commenting.

SBU
This email is UNCLASSIFIED.

From: Bass, Warren
Sent: Wednesday, May 25, 2011 12:52 PM
To: Sachar, Alon (NEA/IPA); Reisser, Wesley J; Johnston-Gardner, Sarah R (DRL); Doutrich, Jack T; Eilts, Colin C;

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Gregonis, Meghan E; Khoury-Kincannon, Sahar; Hickey, Matthew B; Carey, Laura N (DRL); Martin, Julie B; Gorove, Katherine M; Ingber, Rebecca M; Masilko, Barbara J (USUN); Ried, Curtis R (USUN); Richardson, Eric N; Baer, Daniel B; Cassidy, Joseph P; 'Prem_G._Kumar@nss.eop.gov'; Zurcher, Kenneth M
Cc: Sicade, Lynn M (DRL); Galindo, David R
Subject: RE: HRC Item 7 and flotilla USG statements - clearance request COB Thursday, May 26

D'oh! With attachment this time.

From: Sachar, Alon (NEA/IPA)
Sent: Wednesday, May 25, 2011 12:50 PM
To: Bass, Warren; Reisser, Wesley J; Johnston-Gardner, Sarah R (DRL); Doutrich, Jack T; Eilts, Colin C; Gregonis, Meghan E; Khoury-Kincannon, Sahar; Hickey, Matthew B; Carey, Laura N (DRL); Martin, Julie B; Gorove, Katherine M; Ingber, Rebecca M; Masilko, Barbara J (USUN); Ried, Curtis R (USUN); Richardson, Eric N; Baer, Daniel B; Cassidy, Joseph P; 'Prem_G._Kumar@nss.eop.gov'; Zurcher, Kenneth M
Cc: Sicade, Lynn M (DRL); Galindo, David R
Subject: Re: HRC Item 7 and flotilla USG statements - clearance request COB Thursday, May 26

+ julia reed

From: Bass, Warren
Sent: Wednesday, May 25, 2011 12:43 PM
To: Reisser, Wesley J; Johnston-Gardner, Sarah R (DRL); Doutrich, Jack T; Eilts, Colin C; Gregonis, Meghan E; Sachar, Alon (NEA/IPA); Khoury-Kincannon, Sahar; Hickey, Matthew B; Carey, Laura N (DRL); Martin, Julie B; Gorove, Katherine M; Ingber, Rebecca M; Masilko, Barbara J (USUN); Ried, Curtis R (USUN); Richardson, Eric N; Baer, Daniel B; Cassidy, Joseph P; 'Prem_G._Kumar@nss.eop.gov' <Prem_G._Kumar@nss.eop.gov>; Zurcher, Kenneth M
Cc: Sicade, Lynn M (DRL); Galindo, David R
Subject: RE: HRC Item 7 and flotilla USG statements - clearance request COB Thursday, May 26

A few initial suggestions from USUN/W too.
Warren

From: Reisser, Wesley J
Sent: Wednesday, May 25, 2011 11:59 AM
To: Johnston-Gardner, Sarah R (DRL); Doutrich, Jack T; Eilts, Colin C; Gregonis, Meghan E; Sachar, Alon (NEA/IPA); Khoury-Kincannon, Sahar; Bass, Warren; Hickey, Matthew B; Carey, Laura N (DRL); Martin, Julie B; Gorove, Katherine M; Ingber, Rebecca M; Masilko, Barbara J (USUN); Ried, Curtis R (USUN); Richardson, Eric N; Baer, Daniel B; Cassidy, Joseph P; 'Prem_G._Kumar@nss.eop.gov'; Zurcher, Kenneth M
Cc: Sicade, Lynn M (DRL); Galindo, David R
Subject: RE: HRC Item 7 and flotilla USG statements - clearance request COB Thursday, May 26

Some initial edits from IO attached. Adding Ken Zurcher for the Flotilla language as well.

SBU
This email is UNCLASSIFIED.

From: Johnston-Gardner, Sarah R (DRL)
Sent: Wednesday, May 25, 2011 11:19 AM
To: Reisser, Wesley J; Doutrich, Jack T; Eilts, Colin C; Gregonis, Meghan E; Sachar, Alon (NEA/IPA); Khoury-Kincannon, Sahar; Bass, Warren; Hickey, Matthew B; Carey, Laura N (DRL); Martin, Julie B; Gorove, Katherine M; Ingber, Rebecca M; Masilko, Barbara J (USUN); Ried, Curtis R (USUN); Richardson, Eric N; Baer, Daniel B; Cassidy, Joseph P; 'Prem_G._Kumar@nss.eop.gov'

Cc: Slcade, Lynn M (DRL); Galindo, David R
Subject: HRC Item 7 and flotilla USG statements - clearance request COB Thursday, May 26

Hello all,

It's that time again! Attached please find the USG statements at the HRC on Item 7 and the High Commissioner's report on the flotilla issue. We have a confirmation from the Palestinian charge that they do not plan to run any resolutions, including Goldstone during this session. However, we have not heard whether the Turkish government will go forward with another follow-up resolution on flotilla or not. I've included a statement on a possible resolution for clearance so Geneva is prepared in the case that there is a resolution. Most of this language will look very familiar. On Item 7, I included some updated language from the POTUS statement.

Please provide your clearance no later than COB tomorrow, Thursday May 26.

Thank you,
Sarah

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL)
Office of Multilateral and Global Affairs (MLGA)
202-647-0293

This email is UNCLASSIFIED.

RELEASED IN FULL

NON-RESPONSIVE PORTIONS REDACTED

Law, Rosemary C

From: Daley, John D
Sent: Friday, July 30, 2010 4:14 PM
To: Johnson, Darin E; Gorove, Katherine M; Buchwald, Todd F
Cc: Legal-UNA-DL
Subject: RE: top 5

[redacted] NR

From: Johnson, Darin E
Sent: Friday, July 30, 2010 4:13 PM
To: Gorove, Katherine M; Buchwald, Todd F
Cc: Legal-UNA-DL
Subject: RE: top 5

[redacted]

DJ

From: Gorove, Katherine M
Sent: Friday, July 30, 2010 4:10 PM
To: Buchwald, Todd F
Cc: Legal-UNA-DL
Subject: top 5

Todd – here is top 5 for you to send forward.

Flotilla: Sending forward today the Note to S from you on the US and international responses over the coming months to the Gaza flotilla incident given their legal implications.

[redacted]

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Law, Rosemary C

From: Johnston-Gardner, Sarah R (DRL)
Sent: Wednesday, April 20, 2011 6:28 PM
To: Gorove, Katherine M
Subject: RE: Turkel, Turkish investig?

Hi there,
I don't think the USG has a copy of the Turkish one, I've asked for it. I haven't written up one on Turkel but I've read most of it. Haven't been as in to it as we will be on the second part. But we do have a great intern here who just read it too in prep for the next flotilla and can write up something tomorrow for you. I did do a summary of the HRC flotilla report, would that be helpful? I think Mariano is looking for something too, are you both assigned the same task? If there is something specific you're looking for let me know. I think Jan in Emb. Tel Aviv is attending the sessions and wrote a good cable recently on the IDF testimony last week. My understanding is that once Turkel II is done (no idea when that will be according the GOI which I believe because Turkel is very independent) than the Palmer will finish, but I've never been able to get a straight answer on this from USUN. If you do, let me know!

I did find a super short item on Turkel which I sent to Posner back in January:
(U) Israel's Turkel Commission Report on Flotilla Incident Released: Part 1 of the Turkel Commission's report was released yesterday. It examined three issues: 1) the legality of the naval blockade imposed on Gaza, 2) the legality of the actions carried out by the IDF in order to enforce the blockade in accordance with international law, 3)the actions of the flotilla organizers and participants. They clear the IDF of wrong doing during the May 31 flotilla incident and conclude that the blockade of Gaza is legal. They found that some IHH flotilla organizers planned on provoking a violent exchange with the IDF and did not carry humanitarian supplies. We expect the second part, which will analyze Israel's investigation system to follow in February. In NY, the UNSYG appointed "Palmer panel" will now review Israel's report and release their interim report in February. Mission Geneva reports that Turkey has already told High Commissioner Pillay that the report is a disappointment, which implies that HRC March follow-up action can be expected.– SJohnston-Gardner

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL)
Office of Multilateral and Global Affairs (MLGA)
202-647-0293

This email is UNCLASSIFIED.

From: Gorove, Katherine M
Sent: Wednesday, April 20, 2011 5:18 PM
To: Johnston-Gardner, Sarah R (DRL)
Subject: Turkel, Turkish investig?

Did you ever do summaries of these investigations. If so, would love to see them. I have to write a short summary for Harold and may crib from yours. Any news on when the Palmer Commission is expected to issue a report?

This email is UNCLASSIFIED.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Law, Rosemary C

From: Banos, Mariano H
Sent: Monday, August 09, 2010 3:17 PM
To: Forbes, Carlton E
Cc: Gorove, Katherine M
Subject: Rice Statement

Carlton,

Can you add this to the Flotilla doc if it's not there?

http://usun.state.gov/briefing/statements/2010/145549.htm

Thanks,

Mariano

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Law, Rosemary C

From: Schwartz, Jonathan B
Sent: Tuesday, August 10, 2010 2:19 PM
To: Gorove, Katherine M
Subject: RE: Fwd: PRESS RELEASE - Gaza flotilla: International Independent Fact-finding Mission opens in Geneva

[redacted] B5

From: Gorove, Katherine M
Sent: Tuesday, August 10, 2010 1:47 PM
To: Schwartz, Jonathan B
Subject: FW: Fwd: PRESS RELEASE - Gaza flotilla: International Independent Fact-finding Mission opens in Geneva

From: Banos, Mariano H
Sent: Tuesday, August 10, 2010 1:45 PM
To: Gorove, Katherine M; Perina, Alexandra H; Dolan, JoAnn; Jacobson, Linda
Subject: FW: Fwd: PRESS RELEASE - Gaza flotilla: International Independent Fact-finding Mission opens in Geneva

FYI

From: Khanna, Melanie J
Sent: Tuesday, August 10, 2010 1:23 PM
To: Donahoe, Eileen C; King, Betty; IO-HR-DL; Cassidy, Joseph P; Banos, Mariano H; Simon, Jennifer J; Nossel, Suzanne F
Subject: Fw: Fwd: PRESS RELEASE - Gaza flotilla: International Independent Fact-finding Mission opens in Geneva

This just in. [redacted]

From: Aharon Leshno Yaar <ronnyaar1@gmail.com>
To: Khanna, Melanie J
Sent: Tue Aug 10 13:03:02 2010
Subject: Fwd: PRESS RELEASE - Gaza flotilla: International Independent Fact-finding Mission opens in Geneva

Sent from my iPhone

Begin forwarded message:

From: "Hillel Neuer" <hneuer@unwatch.org>
Date: 10 טמוגוא 2010 18:54:34 GMT+02:00
To: <ambassador@geneva.mfa.gov.il>
Cc: "'Taub Daniel'" <danielt@mfa.gov.il>

Subject: PRESS RELEASE - Gaza flotilla: International Independent Fact-finding Mission opens in Geneva

FYI below —

Hillel

Press Release

10 August 2010

Gaza flotilla: International Independent Fact-finding Mission opens in Geneva

GENEVA – The international independent fact-finding mission of high-level experts appointed by the President of the Human Rights Council to inquire into the Gaza flotilla incident on 31 May 2010 held its inaugural meeting at the Palais Wilson in Geneva yesterday.

Further to an urgent debate held on 1 and 2 June the Human Rights Council decided to dispatch an independent fact-finding mission to determine whether any violation of international law, international humanitarian and human rights law had taken place.

The Mission of high-level experts is chaired by Judge K. Hudson-Phillips, former judge of the International Criminal Court in the Hague, and has two other eminent members. Sir Desmond de Silva, Queen's Counsel, was Chief Prosecutor of the Sierra Leone War Crimes Tribunal and Ms. Shanthi Dairiam, human rights expert of Malaysia and former member of the Committee on the Elimination of Discrimination against Women.

The Chairman indicated that in approaching the task the Mission had been given the authority to settle its own terms of reference taking into account the resolution of the Council. He indicated that the Mission interprets the resolution as requesting it to ascertain the facts surrounding the flotilla incident and then give an opinion as to whether there had been any violation of the law.

Hudson-Phillips emphasized that the Mission intended to approach its task in a totally unbiased manner, free from any assumptions or prejudgments.

The Chairman of the Mission noted that the Mission's principal task is to conduct an inquiry into

legal issues and possible violations of international humanitarian and human rights law. He hoped that the Mission would be permitted full access to all relevant persons and material in all of the countries concerned, so as to enable the Mission to ascertain the proper factual basis for its legal opinion.

To this end, the Mission intends to make contacts with all ambassadors of the countries involved in the coming days. It is its intention to travel to the region in order to interview persons and gather first-hand information as far as possible.

As requested by the Human Rights Council's resolution, the Mission will present its report at the next session of the Council in September.

(*) See the Resolution adopted by the Human Rights Council:
http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/RES.14.1_AEV.pdf

For further media information, please contact flotillaffin@ohchr.org

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PineApp Mail-SeCure for the presence of malicious code, vandals & computer viruses.
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RELEASED IN PART B5

Law, Rosemary C

From: Kim, John J (Kimm)
Sent: Friday, October 15, 2010 3:42 AM
To: Daley, John D; Johnson, Karen K; Jacobson, Linda; Joyce, Anne
Cc: Buchwald, Todd F; Simonoff, Mark A; Townley, Stephen G; Schwartz, Jonathan B; Perina, Alexandra H
Subject: RE: flotilla incident -- Comoros-flagged vessel ?

John - [redacted] B5

[redacted] Best, John

SBU
This email is UNCLASSIFIED.

From: Daley, John D
Sent: Thursday, October 14, 2010 9:31 PM
To: Kim, John J (Kimm); Johnson, Karen K; Jacobson, Linda; Joyce, Anne
Cc: Buchwald, Todd F; Simonoff, Mark A (USUN); Townley, Stephen G; Schwartz, Jonathan B; Perina, Alexandra H
Subject: flotilla incident -- Comoros-flagged vessel ?

John/Karen -

The press is reporting today that lawyers for the families of those killed by Israeli forces in connection with the Flotilla incident this spring have sent a letter to the ICC Prosecutor urging him to take action. [redacted]

Linda/Anne: do you know if there is any truth to the allegation that the ship was registered in Comoros? [redacted]

Thanks.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN PART B5

Law, Rosemary C

From: Powell, Catherine [Catherine_B_Powell@nss.eop.gov]
Sent: Wednesday, June 08, 2011 9:57 AM
To: Johnston-Gardner, Sarah R (DRL); Prem G. Kumar; Eilts, Colin C; Masilko, Barbara J (USUN); Bass, Warren; Sachar, Alon (NEA/IPA); Reisser, Wesley J; Doutrich, Jack T; Gregonis, Meghan E; Khoury-Kincannon, Sahar (Algiers); Hickey, Matthew B; Carey, Laura N (DRL); Gorove, Katherine M; Ingber, Rebecca M; Ried, Curtis R; Richardson, Eric N; Zurcher, Kenneth M; Gregonis, Meghan E; Cassidy, Joseph; Busby, Scott W; Sicade, Lynn M (DRL); Hickey, Matthew B; Baer, Lauren E; Haldeman, William E (P); Lapenn, Jessica
Subject: RE: HRC Flotilla resolution, USG vote and EOV
Attachments: US EOV on Flotilla HRC 17 resolution.docx

Just one small additional edit on top of Prem's. All clear for NSS.

Thanks.
Catherine

Catherine Powell
Director for Human Rights
Office of Multilateral Affairs and Human Rights National Security Council
(202) 456-9141 (general)
(202) 456-9146 (direct)
cpowell@nss.eop.gov (email)

-----Original Message-----
From: Johnston-Gardner, Sarah R (DRL) [mailto:JohnstonGardnerSR@state.gov]
Sent: Wednesday, June 08, 2011 9:22 AM
To: Kumar, Prem G.; Eilts, Colin C; Masilko, Barbara J (USUN); Bass, Warren; Sachar, Alon (NEA/IPA); Reisser, Wesley J; Doutrich, Jack T; Gregonis, Meghan E; Khoury-Kincannon, Sahar; Hickey, Matthew B; Carey, Laura N (DRL); Gorove, Katherine M; Ingber, Rebecca M; Ried, Curtis R (USUN); Richardson, Eric N; Zurcher, Kenneth M; Gregonis, Meghan E; Cassidy, Joseph; Powell, Catherine; Busby, Scott W; Sicade, Lynn M (DRL); Hickey, Matthew B; Baer, Lauren E; Haldeman, William E (P); Lapenn, Jessica
Subject: RE: HRC Flotilla resolution, USG vote and EOV

Thank you. Will include.

This email is UNCLASSIFIED

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL) Office of Multilateral and Global Affairs (MLGA)
202-647-0293

-----Original Message-----
From: Kumar, Prem G. [mailto:Prem_G._Kumar@nss.eop.gov]
Sent: Wednesday, June 08, 2011 9:16 AM
To: Johnston-Gardner, Sarah R (DRL); Eilts, Colin C; Masilko, Barbara J (USUN); Bass, Warren; Sachar, Alon (NEA/IPA); Reisser, Wesley J; Doutrich, Jack T; Gregonis, Meghan E; Khoury-Kincannon, Sahar; Hickey, Matthew B; Carey, Laura N (DRL); Gorove, Katherine M; Ingber, Rebecca M; Ried, Curtis R (USUN); Richardson, Eric N; Zurcher, Kenneth M; Gregonis, Meghan E;

Cassidy, Joseph; Powell, Catherine; Busby, Scott W; Sicade, Lynn M (DRL); Hickey, Matthew B; Baer, Lauren E; Haldeman, William E (P); Lapenn, Jessica
Subject: RE: HRC Flotilla resolution, USG vote and EOV

Sarah --

B5

Thanks, Prem

-----Original Message-----
From: Johnston-Gardner, Sarah R (DRL) [mailto:JohnstonGardnerSR@state.gov]
Sent: Wednesday, June 08, 2011 8:58 AM
To: Eilts, Colin C; Masilko, Barbara J (USUN); Bass, Warren; Sachar, Alon (NEA/IPA); Reisser, Wesley J; Doutrich, Jack T; Gregonis, Meghan E; Khoury-Kincannon, Sahar; Hickey, Matthew B; Carey, Laura N (DRL); Gorove, Katherine M; Ingber, Rebecca M; Ried, Curtis R (USUN); Richardson, Eric N; Kumar, Prem G.; Zurcher, Kenneth M; Gregonis, Meghan E; Kumar, Prem G.; Cassidy, Joseph; Powell, Catherine; Busby, Scott W; Sicade, Lynn M (DRL); Hickey, Matthew B; Baer, Lauren E; Haldeman, William E (P); Lapenn, Jessica
Subject: HRC Flotilla resolution, USG vote and EOV

Hi all,

We have just received the Turkish flotilla resolution for this session. It is very similar to previous resolutions in the HRC. It calls for continued debate at the 20th Session and encourages the UNSYG to take the HRC FFM report and the HC's reports into consideration.

Thank you,
Sarah

SBU
This email is UNCLASSIFIED

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL) Office of Multilateral and Global Affairs (MLGA)
202-647-0293

-----Original Message-----
From: Khanna, Melanie J
Sent: Wednesday, June 08, 2011 8:05 AM
To: IO-HR-DL; Nossel, Suzanne F; Martin, Julie B; Johnston-Gardner, Sarah R (DRL); Sicade, Lynn M (DRL); Busby, Scott W; 'Powell, Catherine'
Cc: Donahoe, Eileen C; Geneva HRC 17; Griffiths, Douglas M
Subject: draft flotilla reso

The Turks will table a flotilla resolution, and the draft they've shared with others so far is attached (apologies that it scanned upside down-easiest to read if you print). As you can see, there are hardly any changes as compared with the prior 2 resolutions on implementation of the FFM conclusions. The Turkish delegate told me this morning that they are including OP 4 about the SYG taking the FFM conclusions into consideration because it is "logical" to them that he should consider both the Geneva FFM and Palmer to the extent he is considering a

further response of some kind. They've also chosen the 20th session for the next follow up so as to give a substantial breathing period to see if the Israelis come towards them on apology and compensation issues. Turkish colleague said to me "of course we know you will vote no" and they expect us to be alone in doing so.

Melanie J. Khanna
Legal Adviser
U.S. Mission to the U.N. and
Other International Organizations
+41-22-749-4316
+41-22-749-4343 (Fax)

This email is UNCLASSIFIED

RELEASED IN PART B5

Law, Rosemary C

From: Schwartz, Jonathan B
Sent: Monday, June 14, 2010 3:57 PM
To: Gorove, Katherine M
Subject: RE: Israeli Government decision establishing Independent Public Committee

[redacted] B5

From: Gorove, Katherine M
Sent: Monday, June 14, 2010 3:55 PM
To: Schwartz, Jonathan B
Subject: RE: Israeli Government decision establishing Independent Public Committee

[redacted]

From: Schwartz, Jonathan B
Sent: Monday, June 14, 2010 3:42 PM
To: Harris, Robert K; Gorove, Katherine M; Jacobson, Linda; Dolan, JoAnn; Banos, Mariano H; Pomper, Stephen E; Perina, Alexandra H
Cc: Johnson, Clifton M
Subject: FW: Israeli Government decision establishing Independent Public Committee

From: McLeod, Mary (USUN)
Sent: Monday, June 14, 2010 3:38 PM
To: Schwartz, Jonathan B; Townley, Stephen G; Donoghue, Joan E
Subject: Fw: Israeli Government decision establishing Independent Public Committee

In case you haven't seen this yet.

From: Schedlbauer, Amy W
To: Masilko, Barbara J (USUN); Germain, Ellen J (USUN); McLeod, Mary (USUN); Wolff, Alex D (USUN); Bass, Warren; Barks-Ruggles, Erica J; Anderson, Brooke D (USUN); Cousens, Elizabeth (USUN); Delaurentis, Jeffrey A (USUN)
Cc: Clark, Linda R (USUN); Chang, Min (USUN)
Sent: Mon Jun 14 15:33:02 2010
Subject: Israeli Government decision establishing Independent Public Committee

Here's the decision, as received from the Israeli mission.

This email is UNCLASSIFIED.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Government Establishes Independent Public Committee
(Communicated by the Prime Minister's Office)

At the start of the 57th Government Meeting, the Prime Minister said:

"In consultation with Justice Minister Yaakov Neeman and Attorney General Yehuda Weinstein, I am, today, submitting to the Cabinet a draft decision on establishing a special, independent public commission to inquire into the events of 31.5.10.

Two main principles guided us in proposing the establishment of the commission. First is maintaining IDF soldiers' freedom of action and the credibility of the IDF investigation. According to the proposal, except for IDF Chief-of-Staff Lt.-Gen. Gaby Ashkenazi, IDF soldiers will not testify before the Commission. The IDF, via the team – chaired by Maj.-Gen. (ret.) Giora Eiland – that Chief-of-Staff Lt.-Gen. Ashkenazi has established will transfer to the Commission the summaries of its operational investigations.

The second principle that guided us is providing a credible and convincing response to the responsible countries in the international community about the events, especially in the context of international law. I am convinced that the Commission's uncovering of the facts will prove that the goals and actions of the State of Israel and the IDF were appropriate defensive actions in accordance with the highest international standards.

I estimate that the Cabinet's decision this morning to establish a special, independent public commission will make it clear to the entire world that the State of Israel acts according to law, transparently, and with full responsibility."

==========

The Minister of Justice and the Attorney-General presented the Government with a resolution regarding appointing an independent public committee, headed by Emeritus Supreme Court Judge, Yaakov Terkel, to examine the events at sea of May 31, 2010. After the Government discussed the resolution, it decided unanimously:

1. To appoint an independent public Commission, headed by former Supreme Court Justice, Jacob Turkel, to examine the aspects set out herein relating to the actions taken by the State of Israel to prevent vessels from reaching the coast of the Gaza Strip on 31 May 2010 (hereinafter: the Commission).

2. The composition of the Commission:

Members:

Justice (Ret.) Jacob Turkel, Chairperson
Shabtai Rosenne, Member
Amos Horev, Member

Two observers will be appointed to the Commission as detailed in paragraph 3:

3. In light of the exceptional circumstances of the incident, it was decided to appoint two foreign experts who will serve as observers that will take part in the hearings and deliberations of the Commission, although they will not have the right to vote in relation to the proceedings and conclusions of the Commission.

Lord David Trimble, Observer

Ken Watkin, Observer

4. The Commission will submit its conclusions on the question of whether the actions set out in paragraph 1 and their objectives, as well as additional matters involved therein, were in conformity with the rules of international law.

For this purpose, the Commission will address the following issues:

a) Examination of the security circumstances surrounding the imposition of the naval blockade on the Gaza Strip and the conformity of the naval blockade with the rules of international law.

b) The conformity of the actions taken by Israel to enforce the naval blockade in the incident of 31 May 2010 with the rules of international law.

c) Examination of the actions taken by the organizers of the flotilla and its participants, as well as their identity.

5. In addition, the Commission will examine the question of whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, and as implemented with regard to the present incident, conform with the obligations of the State of Israel under the rules of international law.

6.

a) The Commission may request any individual or entity, whether Israeli or foreign, to testify before it or to provide information to it by other means, on matters which the Commission believes to be relevant to its proceedings.

b) Every relevant governmental body will cooperate fully with the Commission and will make available to the Commission information and documents required by it for the purposes of performing its function, including through testimony before the Commission.
c) Notwithstanding the above in subsections (a) and (b), with regard to its examination of the military actions set out in paragraph 4(b) of this resolution, in respect of personnel of the military and other security forces the Commission will operate exclusively in the following manner: it will receive for its review the documents it requires and will also be able to request from the Head of the Military Investigative Team authorized by the IDF Chief of the General Staff to transfer for its review the summary findings of the operational investigations carried out following the incident.
If after reviewing the said summary findings of the operational investigations the Commission considers that there exists a need for more in-depth or broader investigations, it will be able to request from the Head of the Military Investigative Team authorized by the IDF Chief of General Staff to issue an order to do so, and to transfer for the review of the Commission the summary findings of the operational investigations to be gathered in this context.

d) However, notwithstanding the above in subsection (c), the Commission may request any information from the Prime Minister, the Minister of Defence, other Ministers and the IDF Chief-of-Staff, including through testimony before the Commission.

7. The Commission will establish its own schedule and method of work. Commission hearings will be public or closed, as will be determined by the Commission. However, the Commission will not hold a public hearing if such a hearing could endanger national security or the State's foreign relations, or if in the view of the Commission another legal reason exists to this effect.

8. The Commission Chairperson may determine that certain documents or certain information will not be made available to the Observers, if he/she believes that revealing such information to them is almost certain to cause substantial harm to national security or to the State's foreign relations.

9. The Commission may authorize qualified persons to gather material needed for the work of the Commission and to assist the Commission in its duties.

10. Upon completion of its work, the Commission will submit to the Government, by way of the Prime Minister, a report.

11. The Commission will publish its report soon after its submission to the Government. However, those sections of the report with regard to which the Commission is convinced, after hearing the opinion of the authorized bodies, that their publication could cause substantial harm to national security, foreign relations, or the well-being or privacy of an individual, or to confidential operational methods of an authorized entity, will not be published.

12. Upon completion of its work, the Commission will deposit all of the minutes of its proceedings, as well as all of the material brought before it, in the State archive.

13. The Ministry of Finance will provide the Commission with a budget for employing assistance staff, the scope of which will be determined by the Commission, in accordance with its needs, as determined by the Commission. In addition, the Office of the Prime Minister will provide the Commission with all the means required by it to carry out its duties.

14. The Government takes note of the statement of the Attorney General that in light of the vital public interest in allowing the Commission to seek the truth, law enforcement agencies will not make use of testimonies given before the Commission or before those individuals tasked with collecting information for the Commission, as evidence in a legal proceeding.

מח' מידע ואינטרנט – אגף תקשורת
14 יוני 2010

RELEASED IN PART B5

Law, Rosemary C

From: Heinemann, Thomas B
Sent: Tuesday, September 06, 2011 1:02 PM
To: Harris, Robert K
Cc: Gorove, Katherine M; Jacobson, Linda; Tampio, A Jesse; Kimball, Emily J
Subject: RE: Meeting request - Palestinian statehood resolution [SEC=IN-CONFIDENCE]

As a heads up for the L gang - [redacted] B5

This email is UNCLASSIFIED

-----Original Message-----
From: Harris, Robert K
Sent: Tuesday, September 06, 2011 12:27 PM
To: 'David.Dutton@dfat.gov.au'
Cc: Alli.Curtis@dfat.gov.au; Gorove, Katherine M; Heinemann, Thomas B; Jacobson, Linda; Tampio, A Jesse; Ben.Milton@dfat.gov.au; Terri.Black@dfat.gov.au; Kimball, Emily J; Santiago, Mirtha P; Hata, Marianne J
Subject: RE: Meeting request - Palestinian statehood resolution [SEC=IN-CONFIDENCE]

David,

Are you free this afternoon at 2 or 4 to discuss this? If yes, we can meet in room 6421. If those times are not convenient, if you would suggest a few times tomorrow, I'm sure we can work something out. For purposes of thinking through attendance on our side, are you also interested in discussing recent press reports regarding Turkey's possible interest in bringing an ICJ proceeding against Israel related to the May 2010 flotilla incident?

Best wishes,

Bob

SBU
This email is UNCLASSIFIED

-----Original Message-----
From: David.Dutton@dfat.gov.au [mailto:David.Dutton@dfat.gov.au]
Sent: Tuesday, September 06, 2011 10:08 AM
To: Harris, Robert K
Cc: Alli.Curtis@dfat.gov.au; Gorove, Katherine M; Heinemann, Thomas B; Jacobson, Linda; Tampio, A Jesse; Ben.Milton@dfat.gov.au; Terri.Black@dfat.gov.au
Subject: RE: Meeting request - Palestinian statehood resolution [SEC=IN-CONFIDENCE]

Thanks Bob,

I'm back in the office. That's tremendously helpful. There's a certain amount of excitement in Canberra on these issues and it will be great to talk through them with L.

cheers

David

"Harris, Robert K" <HarrisRK2@state.gov>
06/09/2011 09:55 AM

To <Alli.Curtis@dfat.gov.au>, "Gorove, Katherine M" <GOROVEKM@state.gov>, "Heinemann, Thomas B" <HeinemannTB@state.gov>, "Jacobson, Linda" <JacobsonL@state.gov>

cc <David.Dutton@dfat.gov.au>, "Tampio, A Jesse" <TampioAJ@state.gov>

Subject RE: Meeting request - Palestinian statehood resolution [SEC=IN-CONFIDENCE]

Dear Alli,

Thanks for your message. I'm reaching out to a few colleagues in L who are closer to this issue than I, and we will see when we can find a time to meet.

Best wishes,

Bob

This email is UNCLASSIFIED.

From: Alli.Curtis@dfat.gov.au [mailto:Alli.Curtis@dfat.gov.au]
Sent: Friday, September 02, 2011 3:51 PM
To: Harris, Robert K
Cc: David.Dutton@dfat.gov.au
Subject: Meeting request - Palestinian statehood resolution [SEC=IN-CONFIDENCE]
Importance: High

Dear Mr Harris,

I am writing on behalf of David Dutton, who is at conference today.

We have been tasked by Canberra to talk to State about US concerns that a resolution on Palestinian statehood would have real world consequences, including possible recourse to the ICJ against Israel.

We were hoping that you might be able to point us to the appropriate officer in State Legal to discuss this issue. We were hoping to meet with someone on Tuesday if at all possible.

Many thanks, Mr Harris.

Warm regards

Alli

Alli Curtis
Senior Research Officer (Political)
Embassy of Australia
1601 Massachusetts Avenue NW
Washington, DC 20036-2209

Tel: (202) 797-3370
Fax: (202) 797-3027
Cel: (202) 247-5014

alli.curtis@dfat.gov.au

RELEASED IN PART B5

Law, Rosemary C

From: Gorove, Katherine M
Sent: Friday, September 24, 2010 2:38 PM
To: Banos, Mariano H
Subject: RE: Revised flotilla res

[redacted] B5

-----Original Message-----
From: Banos, Mariano H
Sent: Friday, September 24, 2010 1:22 PM
To: Gorove, Katherine M
Subject: FW: Revised flotilla res

Is that true?

-----Original Message-----
From: Bass, Warren
Sent: Friday, September 24, 2010 1:21 PM
To: Doutrich, Jack T; Khanna, Melanie J; Andris, Matthew R; Nossel, Suzanne F; Hale, David M; Walles, Jacob; Lapenn, Jessica; Rudman, Mara; Khoury-Kincannon, Sahar; Rudman, Mara (Jerusalem); Khoury-Kincannon, Sahar; Anderson, Brooke D (USUN); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Banos, Mariano H; Cassidy, Joseph P
Cc: Honigstein, Michael D; Johnston-Gardner, Sarah R (DRL); Bame, David J; 'Scott_W._Busby@nss.eop.gov'; 'prem_g._kumar@nss.eop.gov'; Waters, John R; Goldberger, Thomas H; Feltman, Jeffrey D; 'Samantha_J._Power@nsc.eop.gov'; 'dshapiro@nsc.eop.gov'; Donahoe, Eileen C; Cassayre, Mark J; Le Mon, Christopher J; P-IO Duty; Katz, Jonathan D; Sutphin, Paul R; Tsou, Leslie M; Marchese, Gregory M; Rubinstein, Daniel H
Subject: Revised flotilla res

[redacted]

-----Original Message-----
From: Doutrich, Jack T
Sent: Friday, September 24, 2010 9:47 AM
To: Khanna, Melanie J; Andris, Matthew R; Nossel, Suzanne F; Hale, David M; Bass, Warren; Walles, Jacob; Lapenn, Jessica; Rudman, Mara; Khoury-Kincannon, Sahar; Rudman, Mara (Jerusalem); Khoury-Kincannon, Sahar; Anderson, Brooke D (USUN); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Banos, Mariano H; Cassidy, Joseph P
Cc: Honigstein, Michael D; Johnston-Gardner, Sarah R (DRL); Bame, David J; 'Scott_W._Busby@nss.eop.gov'; 'prem_g._kumar@nss.eop.gov'; Waters, John R; Goldberger, Thomas H; Feltman, Jeffrey D; 'Samantha_J._Power@nsc.eop.gov'; 'dshapiro@nsc.eop.gov'; Donahoe, Eileen C; Cassayre, Mark J; Le Mon, Christopher J; P-IO Duty; Katz, Jonathan D; Sutphin, Paul R; Tsou, Leslie M; Marchese, Gregory M; Rubinstein, Daniel H
Subject: RE: revised flotilla res

+ NEA/IPA Paul Sutphin & Leslie Tsou
+ ConGen Jrslm Daniel Rubinstein & Greg Marchese

This email is UNCLASSIFIED

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

-----Original Message-----

From: Khanna, Melanie J
Sent: Friday, September 24, 2010 9:42 AM
To: Andris, Matthew R; Nossel, Suzanne F; Hale, David M; Bass, Warren; Walles, Jacob; Lapenn, Jessica; Rudman, Mara; Khoury-Kincannon, Sahar; Rudman, Mara (Jerusalem); Khoury-Kincannon, Sahar; Doutrich, Jack T; Anderson, Brooke D (USUN); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Banos, Mariano H; Cassidy, Joseph P
Cc: Honigstein, Michael D; Johnston-Gardner, Sarah R (DRL); Bame, David J; 'Scott_W._Busby@nss.eop.gov'; 'prem_g._kumar@nss.eop.gov'; Waters, John R; Goldberger, Thomas H; Feltman, Jeffrey D; 'Samantha_J._Power@nsc.eop.gov'; 'dshapiro@nsc.eop.gov'; Donahoe, Eileen C; Khanna, Melanie J; Cassayre, Mark J; Le Mon, Christopher J; P-IO Duty; Katz, Jonathan D
Subject: revised flotilla res

Attached is the flotilla resolution as distributed to all delegations in Geneva today. It differs from the one we saw here last night in a number of respects, including in welcoming (vice noting) the FFM report, endorsing its conclusions, and calling for follow up during the March (vice June) HRC session. They also dropped the reference to the NY investigation.

The initial reaction from the Israelis here is that this is less good, but they are still relieved that it's not more inflammatory and that it doesn't create a new follow up body but rather calls for OHCHR to follow up. They've asked us to vote no and will approach London about voting no. They assess that if the UK votes no a number of eastern Europeans may follow.

Melanie J. Khanna
Legal Adviser
U.S. Mission to the U.N. and
Other International Organizations
+41-22-749-4316
+41-22-749-4343 (Fax)

-----Original Message-----
From: Horn, Urszula
Sent: Friday, September 24, 2010 2:09 PM
To: Khanna, Melanie J
Subject: FW:

As requested.

Best regards,

This email is UNCLASSIFIED

Urszula I. Horn
Office Management Specialist
Legal Affairs
U.S. Mission Geneva
Route de Pregny 11
1292 Chambésy
Tel:+41(0)22.749.4460
Cell: [redacted] B6

-----Original Message-----
From: Horn, Urszula [mailto:HornU@state.gov]
Sent: Friday, September 24, 2010 2:02 PM
To: Horn, Urszula

Subject:

Please open the attached document. This document was digitally sent to you using an HP Digital Sending device.

To view this document you need to use the Adobe Acrobat Reader. For more information on the HP MFP Digital Sending Software or a free copy of the Acrobat reader please visit:

http://www.hp.com/go/HP_Digital_Sender_Module.com

RELEASED IN PART B6

Law, Rosemary C

From: Cook, Akunna E (Baghdad)
Sent: Monday, October 18, 2010 1:58 PM
To: Cooper, Kurtis A; Gorove, Katherine M
Cc: Busby, Scott W
Subject: RE: Turkish Complaint at ICC on Gaza Flotilla Guidance

Kate/Scott:

B5

Akunna

From: Cooper, Kurtis A
Sent: Monday, October 18, 2010 1:53 PM
To: Cook, Akunna E
Subject: RE: Turkish Complaint at ICC on Gaza Flotilla Guidance

SBU
This email is UNCLASSIFIED.

From: Cook, Akunna E
Sent: Monday, October 18, 2010 1:52 PM
To: Cooper, Kurtis A
Subject: RE: Turkish Complaint at ICC on Gaza Flotilla Guidance

Looks like comments on the old version, did you send them the new version?

From: Cooper, Kurtis A
Sent: Monday, October 18, 2010 1:51 PM
To: Cook, Akunna E
Subject: FW: Turkish Complaint at ICC on Gaza Flotilla Guidance

See thread below. Thoughts?

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

SBU
This email is UNCLASSIFIED.

From: Busby, Scott W. [mailto:Scott_W._Busby@nss.eop.gov]
Sent: Monday, October 18, 2010 1:45 PM
To: Cooper, Kurtis A
Subject: FW: Turkish Complaint at ICC on Gaza Flotilla Guidance

Kurtis - [redacted] B5
[redacted] Thanks, Scott

From: Power, Samantha J.
Sent: Monday, October 18, 2010 1:20 PM
To: Kumar, Prem G.; Egan, Brian J.; Busby, Scott W.
Cc: #MULTILAT; #LEGAL
Subject: RE: Turkish Complaint at ICC on Gaza Flotilla Guidance

Agree.

From: Kumar, Prem G.
Sent: Monday, October 18, 2010 12:07 PM
To: Egan, Brian J.; Busby, Scott W.
Cc: #MULTILAT; #LEGAL
Subject: Re: Turkish Complaint at ICC on Gaza Flotilla Guidance

Wld support Brian's view.

From: Egan, Brian J.
To: Busby, Scott W.; Kumar, Prem G.
Cc: #MULTILAT; #LEGAL
Sent: Mon Oct 18 11:58:17 2010
Subject: RE: Turkish Complaint at ICC on Gaza Flotilla Guidance

Scott,

[redacted]

From: Busby, Scott W.
Sent: Monday, October 18, 2010 10:25 AM
To: Kumar, Prem G.; Egan, Brian J.
Cc: #MULTILAT
Subject: FW: Turkish Complaint at ICC on Gaza Flotilla Guidance

Are you both comfortable with this revised guidance per Steinberg?

From: Cooper, Kurtis A [mailto:CooperKA@state.gov]
Sent: Monday, October 18, 2010 10:11 AM
To: Busby, Scott W.
Subject: Turkish Complaint at ICC on Gaza Flotilla Guidance

Scott,

[redacted] B5

Kurtis

SBU
This email is UNCLASSIFIED.

RELEASED IN PART B5,B6

Law, Rosemary C

From: Busby, Scott W. [Scott_W._Busby@nss.eop.gov]
Sent: Thursday, March 17, 2011 11:50 AM
To: Ostermeier, Amy A; Bass, Warren; Reisser, Wesley J; Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN); Razzouk, Kelly L; Nemroff, Courtney R; Sutphin, Paul R (Erbil); Baily, Jess L; Prem G. Kumar; Nossel, Suzanne F
Cc: Sicade, Lynn M (DRL); Galindo, David R; Lapenn, Jessica
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

[redacted] B5

From: Ostermeier, Amy A [mailto:OstermeierAA@state.gov]
Sent: Thursday, March 17, 2011 11:08 AM
To: Bass, Warren; Reisser, Wesley J; Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN); Razzouk, Kelly L; Nemroff, Courtney R (USUN); Sutphin, Paul R; Baily, Jess L; Busby, Scott W.; Kumar, Prem G.; Nossel, Suzanne F
Cc: Sicade, Lynn M (DRL); Galindo, David R; Lapenn, Jessica
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

Adding Suzanne. [redacted]

AO

SBU
This email is UNCLASSIFIED.

From: Bass, Warren
Sent: Thursday, March 17, 2011 10:41 AM
To: Reisser, Wesley J; Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN); Razzouk, Kelly L; Nemroff, Courtney R (USUN); Sutphin, Paul R; Baily, Jess L; 'Busby, Scott W.'; 'Kumar, Prem G.'
Cc: Sicade, Lynn M (DRL); Galindo, David R; Lapenn, Jessica; Ostermeier, Amy A
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

+ NSC, others in NY, NEA, and EUR

[redacted]

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

B5

Warren

SBU
This email is UNCLASSIFIED.

From: Reisser, Wesley J
Sent: Thursday, March 17, 2011 10:25 AM
To: Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Bass, Warren; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN)
Cc: Sicade, Lynn M (DRL); Galindo, David R; Lapenn, Jessica; Ostermeier, Amy A
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

SBU
This email is UNCLASSIFIED.

From: Banos, Mariano H
Sent: Thursday, March 17, 2011 10:20 AM
To: Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Bass, Warren; Reisser, Wesley J; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN)
Cc: Sicade, Lynn M (DRL); Galindo, David R
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

SBU

This email is UNCLASSIFIED.

From: Johnston-Gardner, Sarah R (DRL)
Sent: Thursday, March 17, 2011 10:07 AM
To: Gregonis, Meghan E; Doutrich, Jack T; Ellts, Colin C; Bass, Warren; Reisser, Wesley J; Banos, Mariano H; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN)
Cc: Slcade, Lynn M (DRL); Galindo, David R
Subject: Urgent: Geneva seeking guidance on flotilla resolution
Importance: High

Mission Geneva has been invited to the informal today on the flotilla resolution. They are in need of guidance on [redacted] B5

[redacted] **Please send me your view** [redacted] **no later than 12pm today.**

[redacted]

B5

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL)
Office of Multilateral and Global Affairs (MLGA)
202-647-0293

From: Saeed Sarwar [mailto:saeedsarwar@gmail.com]
Sent: Thursday, March 17, 2011 8:31 AM
Subject: Informal consultations on "Follow-up to the report of the Independent International Fact Finding Mission on the incident of the humanitarian Flotilla"

Dear colleagues

The OIC Group has the pleasure to invite you **today 17 March 2011 at 1700 hours in Room 22** (Palais des Nations) for informal consultations on the draft resolution on "Follow-up to the report of the independent international Fact Finding Mission on the incident of the humanitarian Flotilla".

Best Regards

Muhammad Saeed Sarwar
Second Secretary
Permanent Mission of Pakistan to the UN
56 Rue de Moillebeau, Geneva

B6

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL)
Office of Multilateral and Global Affairs (MLGA)
202-647-0293

SBU
This email is UNCLASSIFIED.

Law, Rosemary C RELEASED IN PART B5,B6

From: Razzouk, Kelly L
Sent: Thursday, March 17, 2011 2:09 PM
To: Khanna, Melanie J; Ostermeier, Amy A; Bass, Warren; Reisser, Wesley J; Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN); Sutphin, Paul R (Erbil); Bally, Jess L; 'Busby, Scott W.'; Prem G. Kumar; Nossel, Suzanne F; Cassayre, Mark J; Lapenn, Jessica; Galindo, David R; Sicade, Lynn M (DRL)
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

A quick read out of the meeting:

The meeting was very short – 20 minutes. Pakistan chaired for the OIC. The EU said they were disappointed because the resolution lacked a reference to the UN Panel of Inquiry.

I used Sarah/Melanie's points -- commented on our well-known views on the report and the original resolution which we opposed, said we were not supportive of this resolution calling for further follow up --said we supported the NY process.

Turkey said the processes in NY and Geneva were distinct. Palestinian said that the NY report was not yet made public and therefore NY could not be referenced.

Turkey approached me afterwards to say that the EU told her that they will present a concrete proposal for language at the next informal to insert a reference to the UN Panel of Inquiry. Turkey believes this will satisfy the concerns of the EU and hoped that this will also satisfy our concerns to the point where we would not call a vote/vote no on the resolution-- I told her that I would discuss with Washington but, while we would view favorably a reference to the NY process, we still have fundamental concerns with this resolution calling for follow-up to a resolution and report we opposed. She asked if we will be providing any "concrete language proposals."

The next informal negotiation is Tuesday morning.

SBU
This email is UNCLASSIFIED.

From: Khanna, Melanie J
Sent: Thursday, March 17, 2011 4:36 PM
To: Razzouk, Kelly L; Ostermeier, Amy A; Bass, Warren; Reisser, Wesley J; Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN); Nemroff, Courtney R (USUN); Sutphin, Paul R; Bally, Jess L; 'Busby, Scott W.'; 'Kumar, Prem G.'; Nossel, Suzanne F; Cassayre, Mark J
Cc: Sicade, Lynn M (DRL); Galindo, David R; Lapenn, Jessica
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

B5

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

B5

Melanie J. Khanna
Legal Adviser
U.S. Mission to the U.N. and
Other International Organizations
+41-22-749-4316
+41-22-749-4343 (Fax)

From: Razzouk, Kelly L
Sent: Thursday, March 17, 2011 4:16 PM
To: Ostermeier, Amy A; Bass, Warren; Reisser, Wesley J; Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN); Nemroff, Courtney R (USUN); Sutphin, Paul R; Baily, Jess L; 'Busby, Scott W.'; 'Kumar, Prem G.'; Nossel, Suzanne F; Khanna, Melanie J; Cassayre, Mark J
Cc: Sicade, Lynn M (DRL); Galindo, David R; Lapenn, Jessica
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

+Melanie and Mark

SBU
This email is UNCLASSIFIED.

From: Ostermeier, Amy A
Sent: Thursday, March 17, 2011 4:08 PM
To: Bass, Warren; Reisser, Wesley J; Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN); Razzouk, Kelly L; Nemroff, Courtney R (USUN); Sutphin, Paul R; Baily, Jess L; 'Busby, Scott W.'; 'Kumar, Prem G.'; Nossel, Suzanne F
Cc: Sicade, Lynn M (DRL); Galindo, David R; Lapenn, Jessica
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

Adding Suzanne.

AO

SBU
This email is UNCLASSIFIED.

From: Bass, Warren
Sent: Thursday, March 17, 2011 10:41 AM
To: Reisser, Wesley J; Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN); Razzouk, Kelly L; Nemroff, Courtney R (USUN); Sutphin, Paul R; Baily, Jess L; 'Busby, Scott W.'; 'Kumar, Prem G.'
Cc: Sicade, Lynn M (DRL); Galindo, David R; Lapenn, Jessica; Ostermeier, Amy A
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

+ NSC, others in NY, NEA, and EUR

B5

Warren

SBU
This email is UNCLASSIFIED.

From: Reisser, Wesley J
Sent: Thursday, March 17, 2011 10:25 AM
To: Banos, Mariano H; Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Bass, Warren; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN)
Cc: Sicade, Lynn M (DRL); Galindo, David R; Lapenn, Jessica; Ostermeier, Amy A
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

SBU
This email is UNCLASSIFIED.

From: Banos, Mariano H
Sent: Thursday, March 17, 2011 10:20 AM
To: Johnston-Gardner, Sarah R (DRL); Gregonis, Meghan E; Doutrich, Jack T; Eilts, Colin C; Bass, Warren; Reisser, Wesley J; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN)
Cc: Sicade, Lynn M (DRL); Galindo, David R
Subject: RE: Urgent: Geneva seeking guidance on flotilla resolution

B5

SBU
This email is UNCLASSIFIED.

From: Johnston-Gardner, Sarah R (DRL)
Sent: Thursday, March 17, 2011 10:07 AM
To: Gregonis, Meghan E; Doutrich, Jack T; Ellts, Colin C; Bass, Warren; Reisser, Wesley J; Banos, Mariano H; Ingber, Rebecca M; Jacobson, Linda; Gorove, Katherine M; Masilko, Barbara J (USUN)
Cc: Slcade, Lynn M (DRL); Galindo, David R
Subject: Urgent: Geneva seeking guidance on flotilla resolution
Importance: High

Mission Geneva has been invited to the informal today on the flotilla resolution. They are in need of guidance on

Please send me your view no later than 12pm today.

B5

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL)
Office of Multilateral and Global Affairs (MLGA)
202-647-0293

From: Saeed Sarwar [mailto:saeedsarwar@gmail.com]
Sent: Thursday, March 17, 2011 8:31 AM
Subject: Informal consultations on "Follow-up to the report of the independent international Fact Finding Mission on the incident of the humanitarian Flotilla"

Dear colleagues

The OIC Group has the pleasure to invite you **today 17 March 2011 at 1700 hours in Room 22** (Palais des Nations) for informal consultations on the draft resolution on "Follow-up to the report of the independent international Fact Finding Mission on the incident of the humanitarian Flotilla".

Best Regards

Muhammad Saeed Sarwar
Second Secretary
Permanent Mission of Pakistan to the UN
56 Rue de Moillebeau, Geneva

B6

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL)
Office of Multilateral and Global Affairs (MLGA)
202-647-0293

SBU
This email is UNCLASSIFIED.

RELEASED IN PART B6

Law, Rosemary C

From: Zurcher, Kenneth M
Sent: Thursday, September 01, 2011 5:50 PM
To: Gorove, Katherine M
Subject: RE: URGENT: OOB Sherman Flotilla

They told us this morning that it would be published tomorrow -- the times scooped them, and published it this afternoon.

The NYT story (http://www.nytimes.com/2011/09/02/world/middleeast/02flotilla.html?_r=1&pagewanted=print)
The report (http://graphics8.nytimes.com/packages/pdf/world/Palmer-Committee-Final-report.pdf)

This email is UNCLASSIFIED.

From: Gorove, Katherine M
Sent: Thursday, September 01, 2011 5:48 PM
To: Zurcher, Kenneth M
Subject: RE: URGENT: OOB Sherman Flotilla

Has something come out today/tomorrow on this?

This email is UNCLASSIFIED.

From: Zurcher, Kenneth M
Sent: Thursday, September 01, 2011 5:46 PM
To: Doutrich, Jack T; Mokhtarzada, Homeyra N; Bass, Warren; Ried, Curtis R (USUN); Horak, Gail R (USUN); Finerty, Tressa R (USUN); Jacobson, Linda; Gorove, Katherine M; Swiney, Gabriel; Harrell, Peter E; P-IO Duty; Carl Yoder, Samantha A; Neville, Colleen C; Reisser, Wesley J; 'Joseph_P_Cassidy@nss.eop.gov'; Kumar, Prem G.; Aguirre, Sergio L.
Cc: Zurcher, Kenneth M
Subject: URGENT: OOB Sherman Flotilla

Good afternoon,

Attached please find a draft Q&A for Amb Sherman on the flotilla/Palmer panel for your review. [redacted] B5

would appreciate your comments/clearance as soon as possible.

Thanks

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Ken

This email is UNCLASSIFIED.

RELEASED IN PART B6

Law, Rosemary C

From: Zurcher, Kenneth M
Sent: Thursday, September 01, 2011 5:56 PM
To: Gorove, Katherine M
Subject: RE: URGENT: OOB Sherman Flotilla

I tried logic and reason to delay it, even before it was released, but was mocked and shamed.

This email is UNCLASSIFIED.

From: Gorove, Katherine M
Sent: Thursday, September 01, 2011 5:55 PM
To: Zurcher, Kenneth M
Subject: RE: URGENT: OOB Sherman Flotilla

What can you do, if due tomorrow!

This email is UNCLASSIFIED.

From: Zurcher, Kenneth M
Sent: Thursday, September 01, 2011 5:55 PM
To: Gorove, Katherine M
Subject: RE: URGENT: OOB Sherman Flotilla

I'll be honest – I just read the few page summary … I'd hoped for pictures, but no luck.

This email is UNCLASSIFIED.

From: Gorove, Katherine M
Sent: Thursday, September 01, 2011 5:54 PM
To: Zurcher, Kenneth M; Jacobson, Linda; Doutrich, Jack T; Mokhtarzada, Homeyra N; Bass, Warren; Ried, Curtis R (USUN); Horak, Gail R (USUN); Finerty, Tressa R (USUN); Swiney, Gabriel; Harrell, Peter E; P-IO Duty; Carl Yoder, Samantha A; Neville, Colleen C; Reisser, Wesley J; 'Joseph_P_Cassidy@nss.eop.gov'; 'Kumar, Prem G.'; 'Aguirre, Sergio L.'; Heinemann, Thomas B
Subject: RE: URGENT: OOB Sherman Flotilla

Given that the Report is 105 pages and no one has read it yet, that seems unrealistic.

This email is UNCLASSIFIED. REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

From: Zurcher, Kenneth M
Sent: Thursday, September 01, 2011 5:51 PM
To: Jacobson, Linda; Doutrich, Jack T; Mokhtarzada, Homeyra N; Bass, Warren; Ried, Curtis R (USUN); Horak, Gail R (USUN); Finerty, Tressa R (USUN); Gorove, Katherine M; Swiney, Gabriel; Harrell, Peter E; P-IO Duty; Carl Yoder, Samantha A; Neville, Colleen C; Reisser, Wesley J; 'Joseph_P_Cassidy@nss.eop.gov'; 'Kumar, Prem G.'; 'Aguirre, Sergio L.'; Heinemann, Thomas B
Subject: RE: URGENT: OOB Sherman Flotilla

The draft was posted on NYTimes today – [redacted] B5

This email is UNCLASSIFIED.

From: Jacobson, Linda
Sent: Thursday, September 01, 2011 5:49 PM
To: Zurcher, Kenneth M; Doutrich, Jack T; Mokhtarzada, Homeyra N; Bass, Warren; Ried, Curtis R (USUN); Horak, Gail R (USUN); Finerty, Tressa R (USUN); Gorove, Katherine M; Swiney, Gabriel; Harrell, Peter E; P-IO Duty; Carl Yoder, Samantha A; Neville, Colleen C; Reisser, Wesley J; 'Joseph_P_Cassidy@nss.eop.gov'; 'Kumar, Prem G.'; 'Aguirre, Sergio L.'; Heinemann, Thomas B
Subject: RE: URGENT: OOB Sherman Flotilla

+ Tom Heinemann who handles flotilla issues for L/AN. [redacted]

From: Zurcher, Kenneth M
Sent: Thursday, September 01, 2011 5:46 PM
To: Doutrich, Jack T; Mokhtarzada, Homeyra N; Bass, Warren; Ried, Curtis R (USUN); Horak, Gail R (USUN); Finerty, Tressa R (USUN); Jacobson, Linda; Gorove, Katherine M; Swiney, Gabriel; Harrell, Peter E; P-IO Duty; Carl Yoder, Samantha A; Neville, Colleen C; Reisser, Wesley J; 'Joseph_P_Cassidy@nss.eop.gov'; Kumar, Prem G.; Aguirre, Sergio L.
Cc: Zurcher, Kenneth M
Subject: URGENT: OOB Sherman Flotilla

Good afternoon,

Attached please find a draft Q&A for Amb Sherman on the flotilla/Palmer panel for your review. [redacted]

would appreciate your comments/clearance as soon as possible.

Thanks
Ken

This email is UNCLASSIFIED.

RELEASED IN PART B6

Law, Rosemary C

From: Townley, Stephen G
Sent: Thursday, June 03, 2010 9:49 AM
To: Aswad, Evelyn M; Dolan, JoAnn; Gorove, Katherine M; Pomper, Stephen E
Cc: Banos, Mariano H
Subject: RE: xlation of the Arab League Resolution
Attachments: Israel Investigation Options Paper v3.doc; Questions from the morning meeting regarding the blockade

Latest on investigations and blockade. Thanks, Stephen

From: Aswad, Evelyn M
Sent: Thursday, June 03, 2010 9:33 AM
To: Dolan, JoAnn; Gorove, Katherine M; Townley, Stephen G; Pomper, Stephen E
Cc: Banos, Mariano H
Subject: RE: xlation of the Arab League Resolution

Does anyone have the latest revised investigations paper and blockade paper? Could you forward? Thanks, EA

From: Dolan, JoAnn
Sent: Thursday, June 03, 2010 9:26 AM
To: Townley, Stephen G; Eichensehr, Kristen E; Daley, John D; Gorove, Katherine M; Aswad, Evelyn M; Banos, Mariano H
Cc: Harris, Robert K; Schwartz, Jonathan B; Jacobson, Linda
Subject: FW: xlation of the Arab League Resolution

From: Goldberger, Thomas H
Sent: Thursday, June 03, 2010 8:27 AM
To: Dolan, JoAnn; Jacobson, Linda
Cc: Glauque, Jeffrey G; Holmstrom, Todd C
Subject: FW: xlation of the Arab League Resolution

[redacted] Thanks. B5
Tom

From: Holmstrom, Todd C
Sent: Thursday, June 03, 2010 8:20 AM
To: Glauque, Jeffrey G
Cc: Goldberger, Thomas H
Subject: FW: xlation of the Arab League Resolution

Jeff, will you do this please?

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

From: Connelly, Maura
Sent: Thursday, June 03, 2010 7:21 AM
To: Goldberger, Thomas H; Holmstrom, Todd C
Cc: Lentz, Andrew N; Glauque, Jeffrey G
Subject: Fw: xlation of the Arab League Resolution

Good morning. [redacted]

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05331137 Date: 07/31/2013

[redacted] B5

Thanks.

From: Blome, Donald A
To: Scobey, Margaret; Tueller, Matthew H; Hale, David M; Shampaine, Nicole D; Rubinstein, Daniel H; Connelly, Maura
Cc: Sievers, Marc J; Waters, John R
Sent: Thu Jun 03 04:17:40 2010
Subject: FW: xlation of the Arab League Resolution

Final text with Embassy translation

This email is UNCLASSIFIED.

From: Najeeb, Usama M
Sent: Thursday, June 03, 2010 10:59 AM
To: Rosenstock, Matthew S; Watkins, Todd J; Blome, Donald A; Perry, Laura M
Subject: xlation of the Arab League Resolution

Enclosed is the Arabic original and unofficial English translation of the Arab League resolutions issued yesterday at the foreign ministers' meeting.

Thank You
Usama Najeeb

Law, Rosemary C

RELEASED IN PART B6

From: Mangiuca, Adrian (DRL)
Sent: Friday, April 22, 2011 3:25 PM
To: Gorove, Katherine M
Subject: Turkel Commission Memo
Attachments: Turkel Memo.docx

Dear Katherine,

I wrote this memo for Sarah's consideration yesterday, and she's told me to forward it to you for a review. I left most of the formatting intentionally incomplete.

Let me know how to proceed.

Best,

ADRIAN MANGIUCA
U.S. Department of State
Bureau of Democracy, Human Rights and Labor
Office of Multilateral and Global Affairs
202-647-2264 (Office)
[redacted] (Personal)

B6

This email is UNCLASSIFIED.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Law, Rosemary C

From: Daley, John D
Sent: Friday, October 15, 2010 3:55 PM
To: Perina, Alexandra H
Cc: Gorove, Katherine M; Martin, Julie B; Buchwald, Todd F
Subject: URGENT--SEE BELOW

RELEASED IN PART
B5,B6

From: Koh, Harold Hongju
Sent: Friday, October 15, 2010 3:42 PM
To: Schwartz, Jonathan B; Buchwald, Todd F
Cc: Daley, John D; Townley, Stephen G; Zelinsky, Aaron
Subject: Turkey Flotilla ICC guidance

Jim Steinberg called re guidance, [redacted] B5

[redacted]

Harold Hongju Koh
The Legal Adviser
United States Department of State
2201 C St. N.W. Suite 6421
Washington, D.C. 20520
202-647-9598 phone
[redacted] B6
202-647- 7096 fax

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

This email is UNCLASSIFIED.

From: Johnson, Clifton M
Sent: Thursday, March 24, 2011 10:29 AM
To: Schwartz, Jonathan B; Jacobson, Linda
Cc: Pomper, Stephen E; McDonough, Patricia E; Baumert, Kevin A; Landsidle, Jennifer R
Subject: Turkel Commission on Flotilla Incident

Jon/Linda,
I met with Ady Schonmann yesterday on the various UJ cases pending against Israel in Spain and elsewhere. In the course of the meeting she gave me a bound copy of the Turkel Commission's 300 page report on the flotilla incident. It includes a detailed discussion of the IDF's use of force to enforce the naval blockade analysis. I don't think I have a need for it – would any of you like it? Cliff

Clifton M. Johnson
Assistant Legal Adviser
Law Enforcement and Intelligence

(202) 647-5654 (Direct)
(202) 647-7324 (Office)
(202) 647-2304 (STE)
(202) 647-4802 (Fax)

SBU
This email is UNCLASSIFIED.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

RELEASED IN FULL

Law, Rosemary C

From: Woodward, Shirley G
Sent: Tuesday, June 08, 2010 5:01 PM
To: Gorove, Katherine M
Subject: news update - international role?

Did you see this? Opening line refers to an "international body" while the Crowley statement just says "international participation"

- Published 21:16 08.06.10
- Latest update 21:16 08.06.10

U.S.: International probe into Gaza flotilla raid is 'essential'

Netanyahu demands to testify before an investigation panel, comprised of Israeli jurists, over deaths of Turkish activists last week.

By Natasha Mozgovaya and Barak Ravid Tags: Gaza flotilla Benjamin Netanyahu

Echoing countless calls on Israel to subject itself to an international investigation of the events that led up to the deaths of nine Turkish activists aboard a Gaza-bound aid ship last week, the U.S. on Tuesday demanded that some international body be involved in the probe of the events.

This, after a senior official said earlier Tuesday that Prime Minister Benjamin Netanyahu has nearly completed a draft of guidelines for the establishment of a commission of inquiry comprised of Israeli jurists.

The future commission would investigate the clash between Israeli navy commandos who were rappelled onto a Turkish ship, participating in a flotilla attempting to break Israel's three-year blockade on the Gaza Strip and deliver aid, and Turkish activists aboard the ship.

The incident sparked harsh criticism against Israel and international calls for an independent investigation. Israel has so far rejected any external investigation, insisting that any investigation by an external body would be biased against Israel.

"International participation in investigating these matters will be important to the credibility that everybody wants to see," said U.S. State Department spokesman Philip Crowley on Tuesday. "We are discussing with Israel and others the prospective nature of international participation in the investigation. And we're sharing different ideas on how to best accomplish that."

"We want to see an impartial, credible, prompt, thorough investigation. We recognize that international participation, which lends itself to countries and entities being able to vouch for the results of the investigation - will be an essential element to putting this tragedy behind us," he went on to say.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05330680 Date: 07/31/2013

Meanwhile Tuesday, Netanyahu demanded that he and his forum of seven senior ministers be allowed to testify before the investigation committee that will be established, comprised of Israeli jurists, and said that he and his top ministers would supply any future committee with all the required information.

In drafting the guidelines for the future investigation, Netanyahu insisted that Israel Defense Forces soldiers will not be personally interrogated, and asked that the investigation committee use instead the findings of internal military investigations already conducted. Netanyahu added that IDF Chief of Staff would testify.

According to the senior official, the guidelines for the panel of investigation have been almost finalized by the forum of seven during a meeting they held Monday morning. However, the forum is expected to convene an additional meeting on the topic on Wednesday. The draft of the guidelines has been approved unanimously by the forum ministers, who supported Netanyahu's demands.

The Prime Minister's Bureau has neither made the draft public nor the names of the individuals who will serve on the committee. The reason, according to the official, is the fact that the cabinet has yet to complete coordinating the investigation with the U.S. administration and other Western countries in order to ensure their support. The aim, he said, is that these countries will send observers to oversee the investigation. In addition, the official added, conflicts of interest must be examined in regard to the possible members of the investigation panel.

The Prime Minister's Bureau approached several top litigators to inquire whether they would be interested in taking part in the work of the committee. Several of the candidates are former Israeli ambassador to the U.S. Meir Rosen, former legal adviser to Israel's Foreign Ministry Alan Baker, and Bar-Ilan University professor Yaffa Zilbershatz, who is also a candidate to become Israel's next ambassador to the United Nations.

Law, Rosemary C

RELEASED IN FULL

From: Bass, Warren
Sent: Tuesday, May 17, 2011 4:03 PM
To: Masilko, Barbara J (USUN); Zurcher, Kenneth M
Cc: Sindle, James M; Doutrich, Jack T; Gregonis, Meghan E; Sachar, Alon (NEA/IPA); Reisser, Wesley J; Jacobson, Linda; Gorove, Katherine M; Swiney, Gabriel; Germain, Ellen J
Subject: RE: Clearance: COB Wed: DeLaurentis Flotilla

Here's a few changes on top of Barbara's, mostly drawn from last month's UNSC open debate remarks. Completely agree with Barbara's approach here.
Warren

From: Masilko, Barbara J (USUN)
Sent: Tuesday, May 17, 2011 3:19 PM
To: Zurcher, Kenneth M
Cc: Sindle, James M; Doutrich, Jack T; Gregonis, Meghan E; Sachar, Alon (NEA/IPA); Bass, Warren; Reisser, Wesley J; Jacobson, Linda; Gorove, Katherine M; Swiney, Gabriel; Germain, Ellen J (USUN)
Subject: FW: Clearance: COB Wed: DeLaurentis Flotilla

My points draw from the previous UN and USG public statements on this issue – as I assume this is for public Hill testimony prep – we should probably not go beyond.

Barbara Masilko
Political Adviser
U.S. Mission to the United Nations
Office 212-415-4190

SBU
This email is UNCLASSIFIED.

From: Swiney, Gabriel
Sent: Tuesday, May 17, 2011 2:38 PM
To: Zurcher, Kenneth M; Sindle, James M; Doutrich, Jack T; Gregonis, Meghan E; Sachar, Alon (NEA/IPA); Bass, Warren; Masilko, Barbara J (USUN); Reisser, Wesley J; Jacobson, Linda; Gorove, Katherine M
Subject: RE: Clearance: COB Wed: DeLaurentis Flotilla

+ Kate.

SBU
This email is UNCLASSIFIED.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

From: Zurcher, Kenneth M
Sent: Tuesday, May 17, 2011 11:22 AM
To: Sindle, James M; Doutrich, Jack T; Gregonis, Meghan E; Sachar, Alon (NEA/IPA); Bass, Warren; Masilko, Barbara J

(USUN); Reisser, Wesley J; Jacobson, Linda; Swiney, Gabriel
Subject: Clearance: COB Wed: DeLaurentis Flotilla

Good morning,

Attached please find a DeLaurentis Q&A on the Gaza Flotilla, which draws from previously cleared material, for your review. Please provide comments/clearances by COB Wednesday.

Thank you,
Ken

Ken Zurcher
Office of UN Political Affairs
Bureau of International Organization Affairs
Ph. 202-647-0044
Fax 202-647-0039

SBU
This email is UNCLASSIFIED.

Law, Rosemary C

RELEASED IN PART B6

From: Johnston-Gardner, Sarah R (DRL)
Sent: Friday, January 21, 2011 9:58 AM
To: Bass, Warren; Kolb, Natalie; Gorove, Katherine M; Banos, Mariano H; Perina, Alexandra H
Cc: Lieberman, Jessica D (DRL)
Subject: FW: Turkel Commission to Issue First Part of its Report on Sunday,23.1.11

FYI - Turkel report expected on Sunday

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL)
Office of Multilateral and Global Affairs (MLGA)
202-647-2286

From: Lapenn, Jessica
Sent: Thursday, January 20, 2011 7:00 PM
To: Khanna, Melanie J; Cassayre, Mark J; Donahoe, Eileen C
Cc: Reisser, Wesley J; Nossel, Suzanne F; Honigstein, Michael D; Ostermeier, Amy A; Johnston-Gardner, Sarah R (DRL)
Subject: FW: Turkel Commission to Issue First Part of its Report on Sunday,23.1.11

SBU
This email is UNCLASSIFIED.

From: [redacted]
Sent: Thursday, January 20, 2011 4:03 PM
Subject: Turkel Commission to Issue First Part of its Report on Sunday,23.1.11

Dear Friends & Colleagues,

As you may have heard, the Turkel commission is scheduled to present its findings to the Prime Minister, on Sunday (including photo-op and reading of main points from the report). Soon thereafter it will become public.

(Links and Spokesman's statement below)

1. *FYI –*
The Public Commission, headed by retired Supreme Court Justice Turkel and with full participation of two foreign observers, was established by the GOI, following the flotilla incident, in order to examine the event in an independent manner, as so performed in Israel from time to time, as part of the Israeli democracy.

The report is scheduled to address the flotilla event entirely, but there is however, another report scheduled in a few months time, RE Military investigations (raised as an additional question to the Commission, by GOI). As for the flotilla itself, we do not expect another report, but the Turkel Commission will continue its work on the last question.

On the day of publication, GOI will present the report to the SG's Panel (headed by former PM of New Zealand, Jeffry Palmer). We expect this Panel, participated by Israel, will continue its work in the coming months.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

2. links -

http://www.haaretz.com/news/diplomacy-defense/turkel-panel-to-say-idf-acted-in-self-defense-during-gaza-flotilla-raid-1.338216

http://www.ynetnews.com/articles/0,7340,L-4016792,00.html

http://www.jpost.com/Defense/Article.aspx?id=204441

3. Turkel Commission Spokesman -

Turkel Commission to Issue First Part of its Report on Sunday, 23.1.11
(Communicated by Turkel Commission Spokesman)

The Turkel Commission will on Sunday, 23.1.11, submit the first part of its report to Prime Minister Benjamin Netanyahu. Afterwards, the Commission will convene at 14:00, at the Yitzhak Rabin Guest House (Reut Hall), at 1 Nahman Avigad St., in Jerusalem, and publicly present the first part of its report.

It will be possible to broadcast retired Supreme Court Justice Jacob Turkel's reading of the report live. Journalists who have registered may enter between 13:00-13:45. Interested journalists and crews are requested to email their details ASAP to Commission Spokesman Ofer Lefler.

The Commission will present its report in two parts. The first will deal with Article 4 of the 14.6.10 Cabinet decision:

"a) Examination of the security circumstances surrounding the imposition of the naval blockade on the Gaza Strip and the conformity of the naval blockade with the rules of international law.

b) The conformity of the actions taken by Israel to enforce the naval blockade in the incident of 31 May 2010 with the rules of international law.

c) Examination of the actions taken by the organizers of the flotilla and its participants, as well as their identity."

The first part of the report will be posted on the Commission's website, in Hebrew and English, upon the conclusion of Justice Turkels's reading.

The second part of the Commission's report will deal with Article 5 of the aforesaid Cabinet decision:

"In addition, the Commission will examine the question of whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, and as implemented with regard to the present incident, conform with the obligations of the State of Israel under the rules of international law."

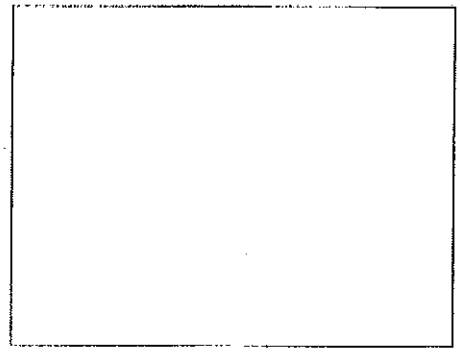
Details regarding the presentation of the second part of the Commission's report will be issued separately; no date has yet been determined.

Best,

[redacted]

B6

B6



****
This footnote confirms that this email message has been scanned by
PineApp Mail-SeCure for the presence of malicious code, vandals & computer viruses.
****

RELEASED IN PART B5

Law, Rosemary C

From: Gorove, Katherine M
Sent: Wednesday, September 22, 2010 4:12 PM
To: Schwartz, Jonathan B
Subject: FYI only: Flotilla FFM Report Readout

From: Banos, Mariano H
Sent: Wednesday, September 22, 2010 4:08 PM
To: Andris, Matthew R; Nossel, Suzanne F; Hale, David M; Bass, Warren; Walles, Jacob; Lapenn, Jessica; Sutphin, Paul R; Rudman, Mara; Khoury-Kincannon, Sahar; Rudman, Mara (Jerusalem); Khoury-Kincannon, Sahar; Doutrich, Jack T; Anderson, Brooke D (USUN); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Cassidy, Joseph P; Perina, Alexandra H; Jacobson, Linda; Gorove, Katherine M
Cc: Honigstein, Michael D; Johnston-Gardner, Sarah R (DRL); Bame, David J; 'Scott_W._Busby@nss.eop.gov'; 'prem_g._kumar@nss.eop.gov'; Waters, John R; Goldberger, Thomas H; Feltman, Jeffrey D; 'Samantha_J._Power@nsc.eop.gov'; 'dshapiro@nsc.eop.gov'; Donahoe, Eileen C; Khanna, Melanie J; Cassayre, Mark J; Le Mon, Christopher J; P-IO Duty; Katz, Jonathan D
Subject: RE: FFM Report Readout

+ others at L following this

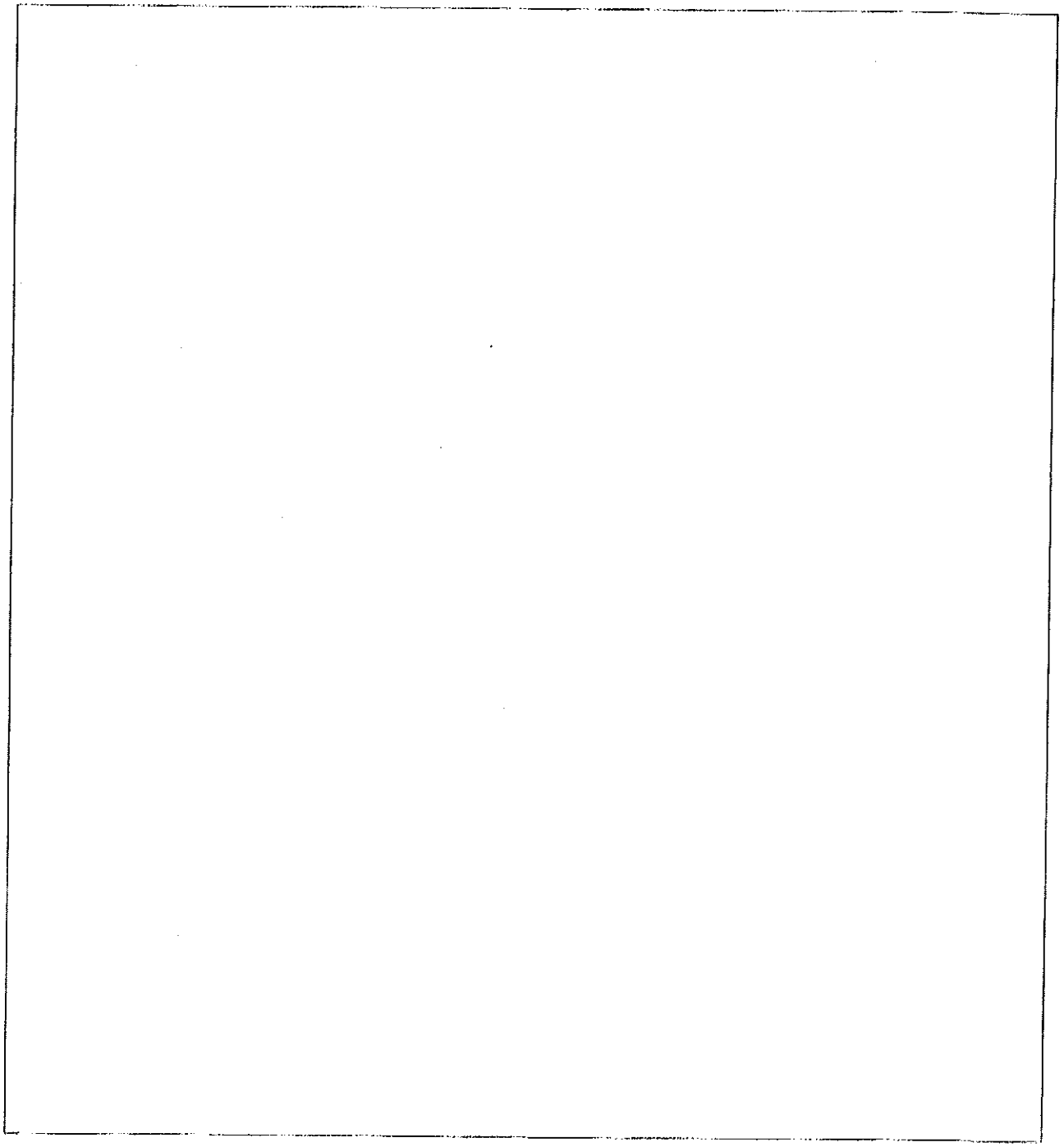
From: Andris, Matthew R
Sent: Wednesday, September 22, 2010 3:57 PM
To: Nossel, Suzanne F; Hale, David M; Bass, Warren; Walles, Jacob; Lapenn, Jessica; Sutphin, Paul R; Rudman, Mara; Khoury-Kincannon, Sahar; Rudman, Mara (Jerusalem); Khoury-Kincannon, Sahar; Doutrich, Jack T; Anderson, Brooke D (USUN); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Banos, Mariano H; Cassidy, Joseph P
Cc: Honigstein, Michael D; Johnston-Gardner, Sarah R (DRL); Bame, David J; 'Scott_W._Busby@nss.eop.gov'; 'prem_g._kumar@nss.eop.gov'; Waters, John R; Goldberger, Thomas H; Feltman, Jeffrey D; 'Samantha_J._Power@nsc.eop.gov'; 'dshapiro@nsc.eop.gov'; Donahoe, Eileen C; Khanna, Melanie J; Cassayre, Mark J; Le Mon, Christopher J; P-IO Duty; Katz, Jonathan D
Subject: FFM Report Readout

All:

[redacted] B5

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

B5



Law, Rosemary C

From: Gorove, Katherine M
Sent: Thursday, September 23, 2010 7:27 AM
To: Schwartz, Jonathan B
Subject: FYI: Turks on Geneva Issues (SBU)

RELEASED IN PART B5,B6

From: Khanna, Melanie J
Sent: Thursday, September 23, 2010 6:59 AM
To: Goldberger, Thomas H; Nossel, Suzanne F; Bass, Warren; Banos, Mariano H; Andris, Matthew R; Hale, David M; Walles, Jacob; Lapenn, Jessica; Sutphin, Paul R; Rudman, Mara; Khoury-Kincannon, Sahar; Rudman, Mara (Jerusalem); Khoury-Kincannon, Sahar; Doutrich, Jack T; Anderson, Brooke D (USUN); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Cassidy, Joseph P; Perina, Alexandra H; Jacobson, Linda; Gorove, Katherine M; Cunningham, James B; Levin, Jan; Silverman, Robert J
Cc: Honigstein, Michael D; Johnston-Gardner, Sarah R (DRL); Bame, David J; 'Scott_W._Busby@nss.eop.gov'; 'prem_g._kumar@nss.eop.gov'; Waters, John R; Feltman, Jeffrey D; 'Samantha_J._Power@nsc.eop.gov'; 'dshapiro@nsc.eop.gov'; Donahoe, Eileen C; Cassayre, Mark J; Le Mon, Christopher J; Katz, Jonathan D; Griffiths, Douglas M B6
Subject: Re: Turks on Geneva Issues (SBU)

We met with [redacted] here. It was worse than what they're saying in NY. He advises that they will seek implementation of all of the flotilla reports conclusions and follow up at the HRC until fully implemented. [redacted] B5

[redacted]

From: Goldberger, Thomas H
To: Nossel, Suzanne F; Bass, Warren; Banos, Mariano H; Andris, Matthew R; Hale, David M; Walles, Jacob; Lapenn, Jessica; Sutphin, Paul R; Rudman, Mara; Khoury-Kincannon, Sahar; Rudman, Mara (Jerusalem); Khoury-Kincannon, Sahar; Doutrich, Jack T; Anderson, Brooke D (USUN); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Cassidy, Joseph P; Perina, Alexandra H; Jacobson, Linda; Gorove, Katherine M; Cunningham, James B; Levin, Jan; Silverman, Robert J
Cc: Honigstein, Michael D; Johnston-Gardner, Sarah R (DRL); Bame, David J; 'Scott_W._Busby@nss.eop.gov' <Scott_W._Busby@nss.eop.gov>; 'prem_g._kumar@nss.eop.gov' <prem_g._kumar@nss.eop.gov>; Waters, John R; Feltman, Jeffrey D; 'Samantha_J._Power@nsc.eop.gov' <Samantha_J._Power@nsc.eop.gov>; 'dshapiro@nsc.eop.gov' <dshapiro@nsc.eop.gov>; Donahoe, Eileen C; Khanna, Melanie J; Cassayre, Mark J; Le Mon, Christopher J; Katz, Jonathan D
Sent: Thu Sep 23 06:28:10 2010
Subject: RE: Israeli embassy on Geneva Issues (SBU)

Adding others in Tel Aviv.

News of the report is in the Israeli press today. YNet has a long story, with AP,and a link to an "advance unedited version" of the report on the OHCHR website: http://www.ynetnews.com/articles/0,7340,L-3958812,00.html

The MFA has also put out the following press statement:

Israel responds to report by the HRC Committee of Independent Experts

22 Sep 2010

Israel is a democratic and law abiding country that carefully observes international law and, when need be, knows how to investigate itself. That is how Israel has always acted, and that is the way in which investigations were conducted following Operation Cast

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Lead, launched to protect the inhabitants of southern Israel from rockets and terror attacks carried out by Hamas from Gaza.

The Israeli investigation system, which conforms to all international standards, is being examined by the Turkel Committee, an independent panel with international observers. This committee is still carrying out its work.

In view of all this, as well as of the biased, politicized and extremist approach of the same Human Rights Council that had initiated the skewed Goldstone Report, Israel sees no reason to cooperate with this commission.

Israel will nonetheless read and study the report.

http://www.mfa.gov.il/MFA/About+the+Ministry/MFA+Spokesman/2010/Israel_responds_report_HRC_Committee_Independent_Experts_22-Sep-2010.htm

From: Nossel, Suzanne F
Sent: Wednesday, September 22, 2010 11:36 PM
To: Bass, Warren; Banos, Mariano H; Andris, Matthew R; Hale, David M; Walles, Jacob; Lapenn, Jessica; Sutphin, Paul R; Rudman, Mara; Khoury-Kincannon, Sahar; Rudman, Mara (Jerusalem); Khoury-Kincannon, Sahar; Doutrich, Jack T; Anderson, Brooke D (USUN); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Cassidy, Joseph P; Perina, Alexandra H; Jacobson, Linda; Gorove, Katherine M
Cc: Honigstein, Michael D; Johnston-Gardner, Sarah R (DRL); Bame, David J; 'Scott_W._Busby@nss.eop.gov'; 'prem_g._kumar@nss.eop.gov'; Waters, John R; Goldberger, Thomas H; Feltman, Jeffrey D; 'Samantha_J._Power@nsc.eop.gov'; 'dshapiro@nsc.eop.gov'; Donahoe, Eileen C; Khanna, Melanie J; Cassayre, Mark J; Le Mon, Christopher J; Katz, Jonathan D>
Subject: Re: Israeli embassy on Geneva issues (SBU)

A/S Brimmer, EUR Jess Baily and I met today with Turkey in New York. More will follow via cable but key relatively new elements were: 1) HRC resolution will send report to GA, in addition to referring it to the NY panel. Will not attempt to take to UNSC; 2) they referenced such a resolution being drafted by "groupings" though we noted all sources in Geneva point to Turkey as guiding the content and direction: 3) they expect feeding frenzy in Turkish and international press due to report content. While promising to keep in touch and assuring that they do not wish to demonize Israel they were clear that the upcoming session will be tough. We made all our points.

Best,
Suzanne

From: Bass, Warren
To: Banos, Mariano H; Andris, Matthew R; Nossel, Suzanne F; Hale, David M; Walles, Jacob; Lapenn, Jessica; Sutphin, Paul R; Rudman, Mara; Khoury-Kincannon, Sahar; Rudman, Mara (Jerusalem); Khoury-Kincannon, Sahar; Doutrich, Jack T; Anderson, Brooke D (USUN); Germain, Ellen J (USUN); Masilko, Barbara J (USUN); Cassidy, Joseph P; Perina, Alexandra H; Jacobson, Linda; Gorove, Katherine M
Cc: Honigstein, Michael D; Johnston-Gardner, Sarah R (DRL); Bame, David J; 'Scott_W._Busby@nss.eop.gov' <Scott_W._Busby@nss.eop.gov>; 'prem_g._kumar@nss.eop.gov' <prem_g._kumar@nss.eop.gov>; Waters, John R; Goldberger, Thomas H; Feltman, Jeffrey D; 'Samantha_J._Power@nsc.eop.gov' <Samantha_J._Power@nsc.eop.gov>; 'dshapiro@nsc.eop.gov' <dshapiro@nsc.eop.gov>; Donahoe, Eileen C; Khanna, Melanie J; Cassayre, Mark J; Le Mon, Christopher J; P-IO Duty; Katz, Jonathan D
Sent: Wed Sep 22 17:25:00 2010
Subject: Israeli embassy on Geneva issues (SBU)

SBU

Just got a call from [redacted] from the Israeli embassy, who's spoken to several others here too, I suspect. B6

Tomuschat:

- Israel is telling the PA at various levels that they're hoping the inevitable resolution draft will be as lukewarm a draft as possible, given the sensitive timing.
- The Israelis are, of course, hoping for a no vote on whatever the draft is.

Flotilla:

- Like Yaar, he says it's "even worse than we thought—66 pages bashing us left, right, and center."
- Israelis are preparing a press release, which they'll send out depending on how much noise the report actually makes when it comes out. They'll probably limit themselves to just that release; no comments currently planned for senior officials, and since the festival of Sukkot is about to start, it's hard for them to come out with anything until Thursday night Israel time.
- Israelis expect the Turks to be very active in Geneva—not least because they know they don't stand a chance in NY. They hope POTUS will tell Gul to keep a low profile when they see each other tonight.
- Israel wants to keep the focus on the SYG panel.
- Amb. Oren plans to speak to Mike Posner, Esther Brimmer; sounds like he's playing phone tag with Dennis Ross.

Law, Rosemary C RELEASED IN PART B5

From: Jacobson, Linda
Sent: Friday, April 22, 2011 1:11 PM
To: Zelinsky, Aaron
Cc: Banos, Mariano H; Gorove, Katherine M; Gutherie, Peter A
Subject: LEGAL-#290926-v1-Flotilla_Investigation_reports.DOC
Attachments: LEGAL-#290926-v1-Flotilla_Investigation_reports.doc

Aaron, for HHK here are Mariano's points on flotilla investigation issues, including my comments and Kate's clearance. This does not address the issue of the upcoming flotilla exercise. Also I am

[redacted] B5

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Law, Rosemary C RELEASED IN PART B6

From: Zurcher, Kenneth M
Sent: Thursday, September 01, 2011 11:42 PM
To: 'Joseph Cassidy (Joseph_P_Cassidy@nss.eop.gov)'; [redacted] Neville, Colleen C; Harrell, Peter E; Heinemann, Thomas B; Gorove, Katherine M; Kimball, Emily J; Rled, Curtis R; Mokhtarzada, Homeyra N; Barte, Peter R B6
Cc: Chue, Jason
Subject: OOB Sherman Flotilla
Attachments: 110902 Sherman Flotilla.docx

Good evening,

Attached please find the latest draft, with all input received this evening. The only question unresolved is from L, on if we need an "if pressed point" on the conclusions. As this is for a Q&A for a murder board next week rather than press points – I defer to P, but recommend that we not focus on that level of speculative detail, as the final version will need updating by then any.

At present, we still lack EUR, NSC, D(B), S/P, L, IO/FO and USUN clearances.

P staff,

Please advise as to how you'd like me to proceed given that you'll turn this over in the morning. As with above, might I recommend that we provide this draft with the understanding that it will be finalized through the course of tomorrow, as significant details and responses might change during the day? (It also remains likely that it will need revisiting next week).

Thanks,

Ken

SBU
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REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Law, Rosemary C RELEASED IN PART B6,NR

From: Banos, Mariano H
Sent: Tuesday, November 30, 2010 4:21 PM
To: Sullivan, David B; Jacobson, Linda; Dolan, JoAnn
Cc: Gorove, Katherine M
Subject: RE: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

[redacted] B5

From: Sullivan, David B
Sent: Tuesday, November 30, 2010 4:16 PM
To: Banos, Mariano H; Jacobson, Linda; Dolan, JoAnn
Cc: Gorove, Katherine M
Subject: FW: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

Kate, thanks. Mariano or L/AN, do you have thoughts on the flotilla para pasted below? (for use in meetings December 8-11) Thank you. David

From: Gorove, Katherine M
Sent: Tuesday, November 30, 2010 3:50 PM
To: Sullivan, David B
Subject: Re: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

This may be out of date or about to be out of date. Is Mariano around? Or Linda? [redacted]

From: Sullivan, David B
To: Gorove, Katherine M
Sent: Tue Nov 30 15:33:08 2010
Subject: RE: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

OK, many thanks. See the para below. Context is BCL for our Special Envoy Hussain trip to Turkey. [redacted]

David

IF RAISED: REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Flotilla Investigation Resolution:

[redacted]

From: Gorove, Katherine M
Sent: Tuesday, November 30, 2010 3:25 PM
To: Sullivan, David B
Subject: Re: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

No. Not on clearances. If you dump into email clean coopy, Ill look.

From: Sullivan, David B
To: Gorove, Katherine M
Sent: Tue Nov 30 15:22:57 2010
Subject: FW: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

true? thx. DBS

From: Johnson, Darin E
Sent: Tuesday, November 30, 2010 3:22 PM
To: Sullivan, David B; Brancato, Gilda M; Aswad, Evelyn M
Subject: RE: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

I think Kate's checking her BB.

From: Sullivan, David B
Sent: Tuesday, November 30, 2010 12:32 PM
To: Brancato, Gilda M; Aswad, Evelyn M; Johnson, Darin E
Subject: RE: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

I followed up to IO on one point - who should look at the Flotilla section of this in Kate's absence? Thanks. David

From: Sullivan, David B
Sent: Tuesday, November 30, 2010 12:29 PM
To: Brancato, Gilda M; Aswad, Evelyn M; Johnson, Darin E; Botet, Violanda; Moore, Holly
Subject: FW: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

Fyi. Thanks for your (& others'!) help on this. David

From: Sullivan, David B
Sent: Tuesday, November 30, 2010 12:28 PM
To: Hesprich, Benjamin D
Subject: FW: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

Again, sorry for the tardiness of this response. Some parts of these memos are labeled as incomplete, and we will need to review after those have been drafted. [ ] NR [ ] Also I would like to run this past the relevant L regional offices once regional sections are complete, but did not feel this was yet fully-baked enough to warrant their review. So this is not a full L clearance. But on the sections that were drafted, I have the following comments:

[ ]

[ ]

If Pressed:

[ ]

NR

Contact me with any questions. Thanks.

David

From: Aswad, Evelyn M
Sent: Monday, November 29, 2010 11:19 AM
To: Hesprich, Benjamin D
Cc: Sullivan, David B; Brancato, Gilda M
Subject: FW: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

David/Gilda -- would one of you be able to review while I'm away? Thanks, EA

From: Hesprich, Benjamin D
Sent: Monday, November 29, 2010 9:17 AM
To: Morrison, Andrew L; Germano, Maria L.; Badat, Nasreen I (DRL); Morales, Joannella X (DRL); Aswad, Evelyn M; McGeeney, Kristen R (DRL); Daley, Rebecca S; Stanton, Mary Ellen (GH/HIDN/MCH); 'Fitzsimmons, John (CDC/OID/NCIRD)'; McLinn, Erin J; SRAP-InternationalPartnershipTeam-DL; Reed, Julia G; Sachar, Alon (NEA/IPA); McCants, William F; Rand, Dafna H; Laika, Robert T; Mokhtarzada, Homeyra N; O'Mara, Martin J; Patch, Seth L (HST); Yi, Eugene X (Beijing); Liederbach, Erik; Ahn, Michael; Flashberg, Andrew L (Jeddah); Hibrawi, Yasmeen (Jeddah)
Subject: Clearance 11:00am Tuesday November 30 SE Hussain BCL for meetings/events in China, Kazakhstan, Turkey, Saudi Arabia and Qatar

Dear colleagues,

Attached is a shell BCL for SE Hussain's meetings/events in China, Kazakhstan, Turkey, Saudi Arabia, and Qatar. Some points will require only minimal tweaks, in other cases, I am asking for

I've done my best to draft points where possible,

but defer to the experts to help us address any sensitivities.

Please clear by 11:00am Tuesday, November 30.

Thank you!

Ben

Benjamin D. Hesprich
International Relations Officer
Bureau of International Organizations (IO)
Office of Policy, Regional and Functional Organizations (PRF)
Room 4524, Main State
P: 202.736.4829
F: 202.647.0598

SBU
This email is UNCLASSIFIED.

RELEASED IN PART B6

Law, Rosemary C

From: Buchwald, Todd F
Sent: Thursday, February 24, 2011 6:05 PM
To: Gorove, Katherine M; Swiney, Gabriel; Jacobson, Linda; Banos, Mariano H; Kimball, Emily J
Subject: RE: Clearance: QA35 Goldstone Flotilla.docx
Attachments: 110224 QA35 Goldstone Flotilla.docx

See my edit - could we try to get at least this. [redacted] B5

[redacted]

This email is UNCLASSIFIED.

From: Gorove, Katherine M
Sent: Thursday, February 24, 2011 2:14 PM
To: Buchwald, Todd F; Swiney, Gabriel; Jacobson, Linda; Banos, Mariano H
Subject: FW: Clearance: QA35 Goldstone Flotilla.docx
Importance: High

[redacted]

This email is UNCLASSIFIED.

From: Swiney, Gabriel
Sent: Thursday, February 24, 2011 1:57 PM
To: Buchwald, Todd F
Cc: Gorove, Katherine M
Subject: FW: Clearance: QA35 Goldstone Flotilla.docx
Importance: High

Todd, I haven't followed Goldstone etc. at all. In Kate's absence, do you want to clear on this?

SBU
This email is UNCLASSIFIED.

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

From: Zurcher, Kenneth M
Sent: Thursday, February 24, 2011 1:54 PM
To: Reisser, Wesley J; Bass, Warren; Ried, Curtis R (USUN); Masilko, Barbara J (USUN); Doutrich, Jack T; Reed, Julia G; Sachar, Alon (NEA/IPA); Jacobson, Linda; Swiney, Gabriel

Subject: Clearance: QA35 Goldstone Flotilla.docx
Importance: High

Good afternoon,

Attached please find the HFACO Q&A on Goldstone and the Flotilla. As these papers draw 100% from previously cleared material – I appreciate any ability to provide your comments/clearance by COB today.

Thank you,
Ken

SBU
This email is UNCLASSIFIED.

RELEASED IN PART B5,NR

Law, Rosemary C

From: Ingber, Rebecca M
Sent: Thursday, March 10, 2011 4:15 PM
To: Johnston-Gardner, Sarah R (DRL); Banos, Mariano H
Cc: Gorove, Katherine M
Subject: RE: Clearance request - U.S. Statements at the HRC - Item 7

Sarah – I'm sorry, I've been crashing on something all day. Per MB's email, I think you can just put me down for info. Thanks much.

This email is UNCLASSIFIED.

From: Johnston-Gardner, Sarah R (DRL)
Sent: Thursday, March 10, 2011 4:14 PM
To: Banos, Mariano H
Cc: Gorove, Katherine M; Ingber, Rebecca M
Subject: RE: Clearance request - U.S. Statements at the HRC - Item 7

Thanks. Will do. Kate or Rebecca, do you have any comments?

Best
Sarah

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL)
Office of Multilateral and Global Affairs (MLGA)
202-647-0293

From: Banos, Mariano H
Sent: Thursday, March 10, 2011 11:54 AM
To: Johnston-Gardner, Sarah R (DRL)
Cc: Gorove, Katherine M; Ingber, Rebecca M
Subject: RE: Clearance request - U.S. Statements at the HRC - Item 7

Thanks Sarah. These look fine. If there are significant substantive changes from other bureaus, can you send us a consolidated redline? I defer to them, but I am not sure you need further clearance for these from L/PM or L/UNA, as they are old points and mostly HRC directed.

Best,

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Mariano

SBU
This email is UNCLASSIFIED.

From: Johnston-Gardner, Sarah R (DRL)
Sent: Wednesday, March 09, 2011 8:22 PM
To: Ingber, Rebecca M; Banos, Mariano H; Masilko, Barbara J (USUN); Hickey, Matthew B; Gorove, Katherine M; Richardson, Eric N; Rand, Dafna H; 'Busby, Scott W.'; Kumar, Prem G.; Ellis, Colin C; Bass, Warren; Khoury-Kincannon, Sahar; Doutrich, Jack T
Cc: Reisser, Wesley J; Galindo, David R
Subject: Clearance request - U.S. Statements at the HRC - Item 7

Hello,

Attached please find the U.S. statements on Item 7 issues at the HRC 16th session. **Please provide your clearance by COB tomorrow, Thursday March 10.** These statements cover flotilla, Goldstone/Tomuschat/McGowan-Davis, Item 7, and the three Palestinian resolutions on settlements, self-determination and HRs in the OTs. These statements have been cleared by NEA, SEMEP, IO/HR, EUR, and USUN W so far. There is an additional statement on SR Falk's report which we just learned will also be considered this session, it has been cleared with IO and DRL/NEA so far. All of the statements are based on previously cleared and public USG statements.

Debate on Item 7 will take place on Monday, March 21. Final guidance is due in Geneva next week. We will call for a vote and deliver EOVs on flotilla, the 3 Palestinian resolutions, Goldstone follow-up, but no EOV on the Syrian Golan.

Below are short summaries of the reports we have so far. We do not have the Committee of Legal Experts report (previously known as the Tomuschat Committee/Goldstone follow-up) but I will send around as soon as we have it.

UN High Commissioner Pillay on flotilla HRC res. 15/1: A/HRC/16/28

[redacted] B5

http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-73.pdf

UN High Commissioner Pillay Tomuschat/Goldstone follow-up HRC res 15/6: A/HRC/16/73

[redacted] NR

http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-28.pdf

SR Falk: A/HRC/16/72

- Covers flotilla, Israel/UN, settlements, humanitarian situation, peace talks, West Bank roads, Gaza, Israeli treatment of Palestinian children (killings/arrests/detention/recent Silwan stone throwing situation)

[redacted] NR

[redacted] B5

NR

http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-72.pdf

UNSYG report on HR in the occupied Syrian Golan: A/HRC/16/25

http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-25.pdf

Best,
Sarah

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL)
Office of Multilateral and Global Affairs (MLGA)
202-647-0293

RELEASED IN PART B5

Law, Rosemary C

From: Daley, John D
Sent: Thursday, October 14, 2010 3:51 PM
To: Gorove, Katherine M
Subject: RE: Clearance Request: IO Press Guidance on Turkish Complaint to ICC on Gaza Flotilla

Yes.

From: Gorove, Katherine M
Sent: Thursday, October 14, 2010 3:48 PM
To: Daley, John D
Subject: FW: Clearance Request: IO Press Guidance on Turkish Complaint to ICC on Gaza Flotilla

[redacted] B5

From: Busby, Scott W. [mailto:Scott_W._Busby@nss.eop.gov]
Sent: Thursday, October 14, 2010 1:17 PM
To: Johnston-Gardner, Sarah R (DRL); Bass, Warren; Cooper, Kurtis A; IO-HR-DL; Coughlin, Shaun (S/WCI); Banos, Mariano H; Sayles, Ambrose G; Vasquez, Edgar J; Ventrell, Patrick H (USUN); Kornblau, Mark (USUN); Cook, Akunna E; P-IO Duty; Burke-White, William; Scott_W._Busby@nss.eop.gov; EUR-Press; Khoury-Kincannon, Sahar; Kumar, Prem G.; Masilko, Barbara J (USUN); Kolb, Natalie; Lieberman, Jessica D (DRL); Gregonis, Meghan E; Gorove, Katherine M; Martin, Julie B; Perina, Alexandra H; Doutrich, Jack T; Mokhtarzada, Homeyra N; Andris, Matthew R; Honigstein, Michael D
Cc: Levin, Jan; Sicade, Lynn M (DRL); Cassidy, Joseph P; McGeeney, Kristen R (DRL)
Subject: RE: Clearance Request: IO Press Guidance on Turkish Complaint to ICC on Gaza Flotilla

[redacted]

From: Johnston-Gardner, Sarah R (DRL) [mailto:JohnstonGardnerSR@state.gov]
Sent: Thursday, October 14, 2010 12:57 PM
To: Bass, Warren; Cooper, Kurtis A; IO-HR-DL; Coughlin, Shaun (S/WCI); Banos, Mariano H; Sayles, Ambrose G; Vasquez, Edgar J; Ventrell, Patrick H (USUN); Kornblau, Mark (USUN); Cook, Akunna E; P-IO Duty; Burke-White, William; Scott_W._Busby@nss.eop.gov; EUR-Press; Khoury-Kincannon, Sahar; Kumar, Prem G.; Masilko, Barbara J (USUN); Kolb, Natalie; Lieberman, Jessica D (DRL); Gregonis, Meghan E; Gorove, Katherine M; Martin, Julie B; Perina, Alexandra H; Doutrich, Jack T; Mokhtarzada, Homeyra N; Andris, Matthew R; Honigstein, Michael D
Cc: Levin, Jan; Sicade, Lynn M (DRL); Cassidy, Joseph P; McGeeney, Kristen R (DRL)
Subject: RE: Clearance Request: IO Press Guidance on Turkish Complaint to ICC on Gaza Flotilla

Adding Turkey desk, S/WCI and more from L.

I clear for DRL/MLGA with attached edits. [redacted]

[redacted]

[redacted]

Best,

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

Sarah

Sarah Johnston-Gardner
Foreign Affairs Officer
Bureau of Democracy, Human Rights and Labor (DRL)
Office of Multilateral and Global Affairs (MLGA)
202-647-2286

From: Bass, Warren
Sent: Thursday, October 14, 2010 11:52 AM
To: Cooper, Kurtis A; IO-HR-DL; Coughlin, Shaun (S/WCI); Banos, Mariano H; Sayles, Ambrose G; Vasquez, Edgar J; Johnston-Gardner, Sarah R (DRL); Bass, Warren; Ventrell, Patrick H (USUN); Kornblau, Mark (USUN); Cook, Akunna E; P-IO Duty; Burke-White, William; 'Scott_W._Busby@nss.eop.gov'; EUR-Press; Khoury-Kincannon, Sahar; Kumar, Prem G.; Masiiko, Barbara J (USUN)
Subject: FW: Clearance Request: IO Press Guidance on Turkish Complaint to ICC on Gaza Flotilla
Importance: High

Looping Barbara, SEMEP and NSC/NENA.

From: Cooper, Kurtis A
Sent: Thursday, October 14, 2010 11:41 AM
To: IO-HR-DL; Coughlin, Shaun (S/WCI); Banos, Mariano H; Sayles, Ambrose G; Vasquez, Edgar J; Johnston-Gardner, Sarah R (DRL); Bass, Warren; Ventrell, Patrick H (USUN); Kornblau, Mark (USUN); Cook, Akunna E; P-IO Duty; Burke-White, William; 'Scott_W._Busby@nss.eop.gov'; EUR-Press
Subject: Clearance Request: IO Press Guidance on Turkish Complaint to ICC on Gaza Flotilla
Importance: High

Colleagues:

[redacted] B5

Kurtis

Turks accuse Israel of war crimes at int'l court

Associated Press

By ARTHUR MAX, Associated Press Writer Arthur Max, Associated Press Writer

AMSTERDAM – Turkish lawyers representing pro-Palestinian activists filed a complaint Thursday with the International Criminal Court accusing Israel of committing war crimes in May when its troops raided a boat trying to break Israel's blockade of Gaza.

It was unclear whether the prosecutor would agree to pursue the case or whether the court has jurisdiction. But the filing reignited an issue that has severely strained Israel's relations with Turkey, previously its strongest ally in the Muslim world, and keeps Israel on the defensive over its much-criticized Gaza blockade.

A delegation representing some 300 activists and a Turkish nongovernment organization submitted the complaint to the prosecutor's office in The Hague seeking an investigation into the May 31 raid.

Nine Turkish citizens, including 19-year-old Furkan Dogan who had dual U.S.-Turkish nationality, were killed during the melee after Israeli troops rappelled from helicopters onto the deck of the ship Mavi Marmara before dawn.

"I have confidence the international court and the prosecutor will take this case," said Ahmet Dogan, Furkan's father.

Israel has said its troops fired live ammunition only after they were attacked by activists with clubs and metal bars and they felt their lives were in danger.

Attorney Ugur Sevgili said the victims want Israel investigated for torture, inhuman treatment, the taking of hostages and other violations of the Geneva war crimes convention.

"We demanded from the prosecutor to initiate an investigation and prosecute the perpetrators of this crime," Sevgili said. "We didn't mention any Israeli soldiers or any Israeli politicians. We just told them that we believe war crimes and crimes against humanity were committed."

The court, which began work in 2002 as the world's first permanent war crimes tribunal, receives hundreds of complaints every year, but so far has filed indictments against 17 war crimes suspects — all of them involved in African conflicts.

Dogan, speaking outside the court's headquarters, said he thought politics might get in the way of justice.

"I believe that people who killed my son will be prosecuted. However, this case also has international and political dimensions," he said.

A U.N.-appointed panel of human rights experts, chaired by a former judge of the international court, found last month that Israel violated human rights law during its interception of the flotilla carrying humanitarian supplies to Gaza, which has been under an Israeli blockade for three years.

Israel rejected the panel's findings, which it said were biased and one-sided, and said the U.N. Human Rights Council that appointed the panel is heavily weighted in the Palestinians' favor.

The court normally intercedes only if the country involved is among the 114 nations that have endorsed the court's founding treaty. Israeli is not a signatory, but the ship was flying the flag of the Comoros Island, which is a member of the court.

Sevgili said he expected the Comoros to support the victims' application to the court or file its own complaint.

The prosecutor also may initiate an investigation even if the accused country does not belong to the court — but only if he determines that the country is unable to launch its own credible investigation of human rights abuses.

Among the complaints submitted and presumably pending in the prosecutor's office is an application by the Palestinian Authority 18 months ago asking for a war crimes investigation into Israel's brief yet deadly 2008 war in Gaza.

SBU
This email is UNCLASSIFIED.

Law, Rosemary C RELEASED IN PART B6

From: Schwartz, Jonathan B
Sent: Monday, June 14, 2010 4:00 PM
To: Gorove, Katherine M
Subject: RE: EU Council statement on Gaza Flotilla

Sounds like we drafted.

From: Gorove, Katherine M
Sent: Monday, June 14, 2010 3:56 PM
To: Schwartz, Jonathan B
Subject: FW: EU Council statement on Gaza Flotilla

From: Banos, Mariano H
Sent: Monday, June 14, 2010 3:51 PM
To: Jacobson, Linda; Gorove, Katherine M; Perina, Alexandra H; Dolan, JoAnn; Townley, Stephen G
Subject: Fw: EU Council statement on Gaza Flotilla

FYI.

From: Cassayre, Mark J
To: Nossel, Suzanne F; Fitzpatrick, Kathleen M; Cassidy, Joseph P; Johnston-Gardner, Sarah R (DRL); Enav, Carl R; Donahoe, Eileen C; Khanna, Melanie J; Griffiths, Douglas M; Ostermeier, Amy A; Banos, Mariano H; Aswad, Evelyn M; Brancato, Gilda M; Foley, Tara E
Sent: Mon Jun 14 14:18:56 2010
Subject: EU Council statement on Gaza Flotilla

FYI.
THE EUROPEAN UNION

Council conclusions on Gaza

3023rd FOREIGN AFFAIRS Council meeting
Luxembourg, 14 June 2010

The Council adopted the following conclusions:

1. "The EU deeply regrets the loss of life during the Israeli military operation in international waters against the Flotilla sailing to Gaza and condemns the use of violence. The Council believes that an immediate, full and impartial inquiry into these events and the circumstances surrounding them is essential. To command the confidence of the international community this should include credible international participation.

2. The situation in Gaza remains unsustainable. The continued policy of closure is unacceptable and politically counterproductive. The EU calls for an urgent and fundamental

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer

change of policy leading to a durable solution to the situation in Gaza. In line with UNSC Resolution 1860, the EU reiterates its call for an immediate, sustained and unconditional opening of crossings for the flow of humanitarian aid, commercial goods and persons to and from Gaza including goods from the West Bank. The Council calls for a solution that addresses Israel's legitimate security concerns including a complete stop to all violence and arms smuggling into Gaza.

3. The Council deplores the continuing acts of rocket fire. All those responsible must take immediate and concrete steps to cease and prevent such violence. The Council calls on those holding the abducted Israeli soldier Gilad Shalit to release him without delay. Hamas must also unconditionally allow ICRC access and end its interference with the operations of NGOs and UN agencies in Gaza.

4. The EU stands ready to contribute to the implementation of a mechanism based on the 2005 Agreement on Movement and Access that would permit the reconstruction of Gaza and the revival of its economy. To this end, full and regular access via land crossings, and possibly by sea, on the basis of a list of prohibited goods, should be the prime aim, while at the same time providing strict control over the destination of imported merchandise. To achieve progress on the ground, the High Representative will continue to engage with the Government of Israel, the Palestinian Authority, Quartet members and other appropriate parties as a matter of urgency and present EU options with a view to the next Foreign Affairs Council.

5. The Council recalls its conclusions of December 2009. The EU stresses the paramount importance that the proximity talks continue with a view to the resumption of direct negotiations which should lead to a settlement negotiated between the parties within 24 months. All efforts to achieve Palestinian reconciliation behind President Mahmoud Abbas must be accelerated. The Council acknowledges Egyptian efforts in this respect."

Mark Cassayre
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UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05330857 Date: 06/25/2013

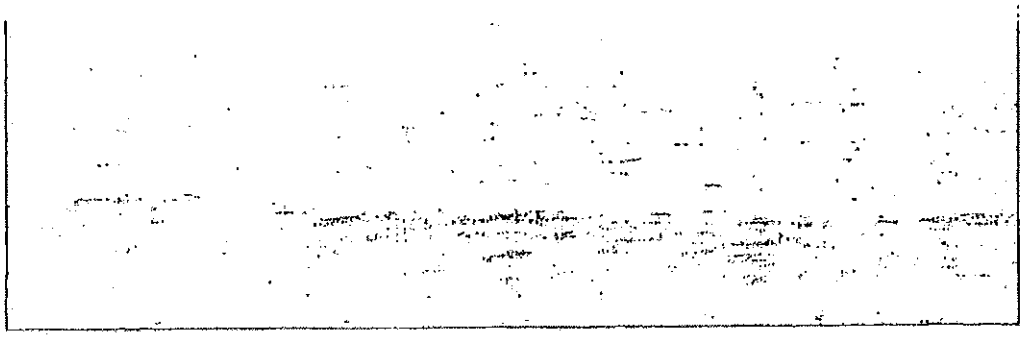
RELEASED IN FULL

The Public Commission to Examine the Maritime Incident of 31 May 2010

The Turkel Commission

Report | Part one

REVIEW AUTHORITY: Sharon Ahmad, Senior Reviewer



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The Public Commission to Examine the Maritime Incident of 31 May 2010

The Turkel Commission

January 2010

Report | Part one

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05330857 Date: 06/25/2013

UNCLASSIFIED U.S. Department of State Case No. F-2010-04163 Doc No. C05330857 Date: 06/25/2013

The Public Commission to Examine the Maritime Incident of 31 May 2010

Mr. Benjamin Netanyahu

The Prime Minister

The honorable Prime Minister,

Re: **Report of the Commission for Examining the Maritime Incident of May 31, 2010 - Part One**

Pursuant to paragraph 10 of Government resolution no. 1796 of June 14, 2010, we respectfully submit to the Government a report on the following matters:

a. The security circumstances in which the naval blockade on the Gaza Strip was imposed and whether the blockade complies with the rules of international law (paragraph 4a of the Government resolution).
b. Whether the actions carried out by Israel to enforce the naval blockade on May 31, 2010, complied with the rules of international law (paragraph 4b of the Government resolution).
c. The actions carried out by the organizers and participants of the flotilla and their identities (paragraph 4c of the Government resolution).

In the next stage, the commission will submit part two of the report, which will address the question whether the mechanism for examining and investigating complaints and claims of violations of the laws of war, as carried out by Israel in general, and as implemented with regard to the events of May 31, 2010, in particular, complies with the obligations of the State of Israel pursuant to the rules of international law. Part two of the report will also address other questions that arose from the material before the commission.

Justice Emeritus Jacob Türkel
Chairman of the commission

Ambassador Reuven Merhav
Member of the commission

Major-General (res.) Amos Horev
Member of the commission

Prof. Miguel Deutch
Member of the commission

Lord David Trimble
Observer

Brigadier-General (ret.) Kenneth Watkin
Observer

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Commission Members
Justice (Ret.) Jacob Turkel, Chairman
Ambassador Professor Shabtai Rosenne, (Deceased 21.9.10)
General (Ret.) Amos Horev
Ambassador Reuven Merhav
Professor Miguel Deutch

Foreign Observers
Lord David Trimble (United Kingdom)
Brigadier General (Ret.) Kenneth Watkin, Q.C. (Canada)

Commission Coordinator
Advocate Hoshea Gottlieb

Special Consultants
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Prof. Michael Schmitt (United Kingdom\ U.S.A.)

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Mrs. Toni Foigelman
Mr. Aviad Feigin

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The Rt. Hon. (William) David Trimble, Lord Trimble

Brigadier-General (Ret.) Kenneth Watkin, Q.C.

It is an honour for us to serve as Observers to the Public Commission appointed to inquire into the maritime incident of 31 May 2010. We understood and accepted the sensitivities that led to our appointment as observers to the Commission and not, strictly speaking, members of it. Nonetheless we are satisfied that we had access to all the material before the Commission and we were fully involved by the Commission in all its work.

All testimonies, both in open and private session and all formal meetings of the Commission were, of course, conducted in Hebrew. However they were simultaneously translated for us into English. In the early days there were some difficulties with the translation of documents into English; these were quickly overcome as our work proceeded.

We are glad that the Commission made repeated efforts to hear both sides, extending to making arrangement for evidence to be given by video conferencing and offering to take evidence in a neutral location. We regret that these offers were not taken up. But we would like to express our appreciation of the Israeli Arabs, who were on the Mavi Marmara and who gave evidence to us. We would also like to thank the representatives of the Israeli Human Rights Non-Governmental Organizations who testified and provided significant material to the Commission.

The Commission made enormous efforts, to get as much information as possible. This involved going back to the IDF for additional information, obtaining further staff to examine all the video material (hundreds of hours) including the CCTV downloaded from the Mavi Marmara and to collate the material so that it has been able to examine each use of force by the IDF. We have also been impressed with the efforts of the small but very dedicated team of lawyers supporting the work of the Commission.

We have no doubt that the Commission is independent. This part of the report is evidence of its rigour.

On a personal note we want to thank all the members of the Commission who each have gone out of their way to welcome and assist us. It is a pleasure to work with them. Special mention must be made of the chairman, Judge Turkel, for his consideration of us personally and the clarity with which he directed the work of the commission.

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We would also like to extend our sincere appreciation to the tireless efforts of Commission Coordinator, Hoshea Gottlieb, who has been instrumental in ensuring our successful participation in this Commission.

We would also like to place on record our enormous regard for those who have assisted us as Observers from outside of Israel including the staff who provided the simultaneous translations of all the oral proceedings, punctuated only by reminders to us to speak into the microphones; the translators who ensured voluminous texts were available to us in English; and the ever helpful and diligent administrative staff who have looked after our every logistical need.

Finally we regret that our acquaintance with Shabtai Rosenne was cut short by his death. He impressed us with his knowledge, experience, insight and, above all, with his character and courtesy. He was a true gentleman.

Lord David Trimble

Kenneth Watkin
Brigadier-General (Ret.)

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Preface to the Report

When the commission was established, we took upon ourselves, jointly and as individuals, the difficult and agonizing task of ascertaining the truth regarding the issues that we were asked to address. The commission was given complete independence, and each of its members has a record of many years of independent and objective service in various capacities: a Supreme Court justice, one of the most senior judges in Israel, as chairman of the commission; a professor, scholar, diplomat and researcher of international reputation in the field of international law, who sadly passed away during the Commission's work on September 21, 2010; a former president of the Technion - Israel Institute of Technology, a major-general in the IDF and the chairman of the board of directors of Rafael, with rich experience, including on public commissions of inquiry; an expert in Middle-East studies, a senior member of the intelligence and security establishment, a diplomat experienced in international relations, an ambassador and former director-general of the Ministry of Foreign Affairs; a professor, teacher, scholar, researcher and author of repute in the field of civil law. Two observers sat with us, as members of the commission in every respect: Lord David Trimble from Ireland, a Nobel peace prize winner and formerly the First Minister of the Northern Ireland Assembly, and Brigadier-General (res.) Kenneth Watkin from Canada, formerly the Judge Advocate-General of the Canadian Forces.

Initially we thought that the investigation of the circumstances in which the naval blockade was imposed on the Gaza Strip and enforced and the legality of these actions would not require the consideration of difficult factual and legal questions. But it soon became clear to us that the investigation would be lengthy and complex, and require a detailed study both of fact and law. We therefore asked the Government to extend the powers of the commission and to increase the number of its members (from three, at the time of the original appointment, to five), in order to enable it to carry out its duties in an optimal manner. The Government agreed to this request.

As an example of the need that arose for wider and more comprehensive investigations, it should be said here that at quite an early stage we realized that we could not examine the naval blockade without also examining the land crossings policy for the transfer of humanitarian supplies to the Gaza Strip and even the humanitarian situation in the Gaza Strip in general. Admittedly, the question of the land crossings policy and the humanitarian situation in the Gaza Strip would appear, *prima facie*, to go beyond the scope of the naval blockade - whose purpose was to prevent the passage of weapons to the Gaza Strip by sea, a route that

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has never been used to convey humanitarian supplies - but the mistaken impression formed in certain circles with regard to the purposes of the blockade compelled us to consider this issue as well, and to widen our investigation far more than we had originally thought.

Another example of a question that required far more extensive and thorough consideration was the question of the circumstances and legality of the takeover of the *Mavi Marmara* and the other flotilla vessels by IDF forces. In this regard we felt ourselves duty-bound to examine the precise details of all the acts and operations carried out by each individual member of the armed forces and the security personnel that boarded the *Mavi Marmara* and the other flotilla vessels, minute by minute, and we examined the legality of the acts with great care from every proper perspective.

In investigating these and other issues in all their aspects, we have been as precise as possible and done everything that flesh and blood can do when called upon to pass judgment in such a matter. We have devoted ourselves to our work and aspired to arrive at the exact truth, even if it is hard and painful. Along this route, we have hoped that we should not stumble or err either in a matter of fact or of law. We hope that we have succeeded in achieving this.

Here we would like to express our gratitude and deep appreciation to the observers who sat with us, Lord Trimble and Brigadier-General Watkin, for their substantial and important contribution to the commission's work and for the considerable trouble that they took; to the external consultants of international reputation, Prof. Dr. Wolff Heintschel von Heinegg and Prof. Michael Schmitt, who agreed with the legal conclusions of the report; reviewed and commented on the Commission's legal analysis; and agreed with the legal conclusions, for their very valuable help; to Prof. Ruth Lapidoth, recipient of the Israel Prize for international law, for her advice and very important guidance. Special thanks are given to the excellent team of jurists and the administrative staff who assisted us tirelessly, and especially to Advocate Hoshea Gottlieb, the Commission Coordinator. Without his considerable and important legal and administrative assistance, this report could not have been published.

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Introduction

The background to the establishment of the Commission and the Government decisions

1. Since the beginning of 2001, thousands of mortars and rockets of various kinds have been fired in ever growing numbers from the Gaza Strip at towns in the South of Israel near the Gaza Strip, various IDF military bases, the border crossings between Israel and the Gaza Strip (and before the disengagement from the Gaza Strip, also at Israeli towns in the Gaza Strip).[1] After the Hamas terrorist organization seized control of the Gaza Strip in June 2007, the Government adopted various measures. Later, on January 3, 2009, a naval blockade was also imposed on the Gaza Strip.[2]

2. Following information regarding the organization of flotillas whose stated destination was the Gaza Strip (and which therefore sought to breach the naval blockade), the State of Israel took various diplomatic and other measures, both openly and covertly, to prevent the departure of these flotillas by peaceful means. Several ships that tried to reach the Gaza Strip did indeed turn back; others were intercepted by the Israeli navy without the use of force and brought to a port in Israel, and the humanitarian supplies on board were transported to the Gaza Strip via the land crossings.

3 In the days preceding May 31, 2010, a flotilla of six vessels[3] advanced towards the coastline of Israel, with approximately 700 persons on board.[4] The largest of the ships in the flotilla, the *Mavi Marmara*, with

1 See "The Public Commission to Examine the Maritime Incident of May 31, 2010" (position paper by the IDF Military Advocate General, July 2010), marked by the Commission as exhibit 10 [hereinafter *MAG position paper*]; "threat of rockets from Gaza Strip 2000-2007" (report by The Intelligence and Terrorism Information Center, The Intelligence Legacy Center (IICC) chaired by Reuven Ehrlich, December 2007), terrorism-info.org.il/malam_multimedia/Hebrew/heb_n/pdf/rocket_threat.pdf.

2 See declaration by Minister of Defense "Resolution of Naval Blockade" (Jan. 3, 2009).

3 This report uses the definitions of the Ministry of Transportation (Shipping and Ports Authority), which defines a 'boat' as a vessel which is not a ship and its full length is above 7 meters; and a 'ship' as a vessel whose capacity (gross) is above 100 tons, its length is above 24 meters and is licensed to transport more than 12 passengers out of the Israeli coasts. In this flotilla, there were two boats (Boat SFENDONH 8000, CHALLENGER) and four ships (Mavi Marmara, GAZZE, SOFIA, DEFNE Y). See the definitions chapter of the Seamanship (Sailors) regulations, 5762-2002.

4 See Ministry of the Interior data as submitted to the Commission on Jan. 9, 2011, found in folder marked by the Commission as exhibit 147. According to the Immigration Authority 690 foreign citizens participated in the cruise, along with five Israeli citizens and two

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approximately 29 crew members and 561 passengers,[5] constituted the scene of the incident that is described below. The State of Israel also adopted various measures with regard to this flotilla before it departed, but these efforts were unsuccessful. Offers to allow the supplies for the Gaza Strip to enter via Ashdod port or El-Arish port and thereafter via the land crossings were not accepted.

On May 31, 2010, in the early hours of the morning, IDF forces boarded the *Mavi Marmara* and took control of the vessel. During the boarding and taking control of the ship, the IDF forces encountered violent resistance. When the conflict ended, it was found that nine of the ship's passengers had been shot dead, and fifty-five passengers and nine IDF soldiers were wounded.

4 On June 14, 2010, the Government of Israel decided to establish an independent public Commission to examine various aspects of the actions taken by the State of Israel to prevent the ships from reaching the Gaza Strip coast on May 31, 2010 (hereafter: **the Government resolution of June 14, 2010**).[6] Supreme Court Justice Emeritus Jacob Türkel was appointed to chair the Commission, and the late Professor Shabtai Rosenne and General (res.) Amos Horev were appointed as members. Two foreign experts were also appointed to act as observers (hereafter: **the observers**): Lord David Trimble and Brigadier-General (ret.) Kenneth Watkin.

The Commission was asked to examine the following issues:

Palestinians.

5 It should be noted that the data transferred to the Commission on this matter is not unambiguous. This data which will serve us later on, is based on the radio recording of the Marmara captain's answer to the navy's question regarding the number of passengers on the ship; audio file "gc_12_156.550_30_05_2010_22_23_28_19_1.WAV" (minute 02:00 and onwards) from folder 633, in the Navy folder on a data hard disc, marked by the Commission as exhibit 133, transferred to the Commission on 16.09.2010 [hereafter: *Navy data disc*]. This data corresponds with a list by AMAN. At the same time, various sources at IDF and Israeli Police have transferred different data to the Commission on this matter. Thus for example, various IDF sources estimated that there were a larger number of passengers on the Marmara's deck. The ship's log, transferred to the Commission by Israeli Police, stipulates a different number - 601 - including 44 crew members and 557 passengers. The list is detailed and also includes the nationalities of the passengers. At the same time, it cannot be known whether this list was actually updated or whether it is a list containing the names of the passengers who signed up for the cruise. The Ministry of the Interior stated that at the end of the day 535 passengers disembarked from the Marmara at Ashdod's port (since some of the passengers wounded in the course of events were evacuated by air and the nine killed were evacuated by sea).

6 Resolution 1796 of the 32nd Government "appointment of a independent public Commission, chaired by the supreme court judge (ret.), Jacob Turkel, to examine the maritime incident of May 31, 2010" (Jun. 14, 2010) [hereinafter *Government Resolution of 14.6.2010*].

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a. An examination of the security circumstances for imposing a naval blockade on the Gaza Strip and whether the naval blockade complies with the rules of international law.
b. Whether the acts carried out by Israel to enforce the naval blockade on May 31, 2010, complied with the rules of international law.
c. An examination of the acts carried out by the organizers and participants of the flotilla, and their identities.'[7]

The Commission was also asked to examine 'the question whether the examination and investigation process for complaints and allegations raised with regard to violations of the law of combat, as generally practiced in Israel and as implemented with regard to the incident under consideration, is consistent with the obligations of the State of Israel pursuant to the rules of international law.'[8]

The resolution also provided that the observers would participate in the deliberations and consultations of the Commission, but 'would not have a right to vote with regard to the Commission's proceedings and conclusions.'[9] At the outset, it should be noted that the two foreign observers were full participants in the Commission's work, as if they were actual members, including the hearing of the testimonies, the internal consultations and the preparation of this report. The observers gave of their time and efforts in order to ensure the work was of the highest standard, while critically examining the procedures that were followed and seeking to arrive at the truth, and they thereby made a very significant contribution to the Commission's work.

Advocate Hoshea Gottlieb was appointed as the Commission's Coordinator.

5 On July 4, 2010, the government decided to extend the Commission's powers and to give it certain powers pursuant to the Commissions of Inquiry Law, 5729-1968:

> 'The Minister of Justice shall determine that the Commission will be given powers pursuant to sections 9 to 11 and 27(b) of the Commissions of Inquiry Law, 5729-1968, subject to the restrictions stated in paragraph 6(c) of the aforesaid Government resolution no. 1796 [the Government resolution of June 14, 2010].'[10]

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7 *Government Resolution of 14.6.2010, supra* note 6, at art. 4.
8 *Government Resolution of 14.6.2010, supra* note 6, at art. 5.
9 *Government Resolution of 14.6.2010, supra* note 6, at art. 3.
10 Resolution 1895 of the 32nd Government "granting authority to the public Commission for the examination of the maritime incident of May 31, 2010" (Jul. 4, 2010) [hereinafter *Government Resolution of 4.7.2010*].

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On July 5, 2010, the Minister of Justice decided accordingly.[11]

On July 25, 2010, the Government decided to expand the Commission's panel by adding two more members, Ambassador Reuven Merhav and Professor Miguel Deutch.[12]

On September 21, 2010, the late Professor Shabtai Rosenne passed away. The government subsequently resolved on October 11, 2010, not to appoint a replacement. The chairman of the Commission was given a 'casting vote in any case of a tied vote by the members of the Commission.'[13]

6 At the time of writing this report, two consultants that are prominent experts in the field of international law advised the Commission; Professor Dr. Wolff Heintschel von Heinegg[14] and Professor Michael Schmitt,[15] who agreed with the legal conclusions of the report. Professor Ruth Lapidot, who received the Israel Prize for international law, also contributed significantly to the preparation of the report, and the Commission extends its thanks to her.

7 The team that assisted in the Commission's work included Christine Bjork, Adv. Haim Wismontsky, Adv. and Moran Yahav, Adv.

For the sake of completeness, it should be mentioned that after the Commission was established, a petition was filed in the Supreme Court

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11 See Justice Minister's Resolution "determination regarding the granting of authority to the public Commission for the examination of the maritime incident of May 31, 2010" (Jul. 5, 2010) [hereinafter *Justice Minister Resolution of 5.7.2010*].

12 Resolution 2134 by the 32nd Government "appointing additional members to participate in the public Commission chaired by the supreme court judge (ret.), Jacob Turkel, to examine the maritime incident of May 31, 2010" (Jul. 25, 2010) [hereinafter *Government Resolution of 25.7.2010*].

13 Resolution 2297 by the 32nd Government "the public Commission to examine the maritime incident of May 31, 2010 chaired by judge (ret.), Jacob Turkel - following the death of Prof. Shabtai Rosenne" (Oct. 4, 2010) [hereinafter *Government Resolution of 4.10.2010*].

14 Prof. Dr. Wolff Heintschel von Heinegg is the Vice-President of the Europa-Universität Viadrina in Frankfurt (Oder), Germany, where he is Professor of Public International Law, European Law and Comparative Constitutional Law. He previously served as dean of the law faculty of the Europa-Universität and was the Charles H. Stockton Professor of International Law at the U.S. Naval War College in Newport, R.I., USA. He is a member of the Council of the International Institute of Humanitarian Law in San Remo, Italy and was a member of the group of international lawyers and naval experts who produced the San Remo Manual.

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against the establishment of a public Commission of examination by the government instead of a public Commission of inquiry.[16] Another petition was filed on account of the absence of women members on the Commission.[17] The former petition was amended after the Government resolution of July 4, 2010, regarding the extension of the Commission's powers, and it is pending before the Supreme Court, with the consent of the parties and pursuant to the court's recommendation, until the Commission's conclusions are submitted, in view of the possibility that the issue raised in the petition may become moot. The latter petition was granted by the court, which ordered that a woman should be appointed as a member of the Commission, but it went on to hold that insofar as the appointment would be offered by a specified date to five women who had not been offered the position in the past and all of them refused it, the Government would have discharged it duty pursuant to the Women's Equal Rights Law, 5711-1951. Pursuant to the court's decision, efforts were made to find women who would agree to serve as members of the Commission. On August 18, 2010, the Minister of Justice notified the Prime Minister that an offer was made to five women who had not been offered the position in the past, and all of them refused it.[18] A notice to this effect was submitted to the Supreme Court.[19]

Deliberations of the Commission

8 It is not superfluous to emphasize from the outset that the scope of the Commission's work involves questions of both fact and law, and it follows that the examination of the facts was an essential and main element of its work. The Commission took steps to collect the information in various ways, and also heard oral and written evidence. At each stage of its work, the Commission sought to arrive independently and impartially at the truth, by means of a careful and objective consideration of the evidence that was brought before it, and with maximum transparency of its proceedings.

9 *Hearing testimonies.* In view of the importance that the Commission attached to making as much information as possible available to the public, the sessions at which testimonies were heard were open to the

16 See HCJ 4641/10 *Uri Avneri v. Prime Minister* (submitted on Jun. 15, 2010).

17 HCJ 5660/10 *Itach - Women Lawyers for Social Justice v. Prime Minister* (still unpublished, Aug. 22, 2010) [hereinafter *HCJ 5660/10*].

18 On this matter see letter from Minister of Justice Yaakov Neeman to the Prime Minister of Israel titled "Supreme Court order in its function as high court of justice on *HCJ 5660/10*" (dated Aug. 22, 2010).

19 See state's notice regarding *HCJ 5660/10* (submitted Aug. 22, 2010).

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public, even though parts of the testimonies were heard *in camera* for reasons of State security and Israel's foreign relations, pursuant to what was stated in the Government's resolution of June 14, 2010.[20] The Commission informed the witnesses that after hearing the testimonies *in camera*, it might decide to disclose parts of them. It should also be noted that the transcripts of all of the testimonies that were heard publicly were uploaded to the Commission's Internet site shortly after the testimonies were heard.[21] All of the testimonies were translated into English by means of simultaneous translation and the transcripts in English were also uploaded to the Commission's Internet site.

In total the Commission heard twenty-six testimonies during fifteen days of hearings, and eleven testimonies *in camera*. The list of the witnesses that appeared before the Commission and the dates and classified status of their testimonies are set out in annex "A".

It should be noted that the Government resolution of June 14, 2010, determined (which was also confirmed in the Government decision of July 4, 2010) that with regard to the examination of the military operations that were carried out by Israel to enforce the naval blockade on May 31, 2010, the Commission 'would be able to inspect the documents that it requires and would also be able to ask the head of the investigation team appointed by the Chief of Staff to show it the conclusions of the operational investigations that were carried out following the incident' (i.e., the final report of the military investigations that were carried out by a committee chaired by Major-General (res.) Giora Eiland; hereafter: the **Eiland Committee report**). However, it was determined that insofar as after reviewing these conclusions of the investigation the Commission would be of the opinion that 'there is a need for more thorough and extensive investigations, it could ask the head of the expert investigation team appointed by the Chief of Staff to order this to be done and to present to the Commission the conclusions of the investigations that would be carried out within this context.'

In order to ascertain the whole truth and in order to obtain closer access to the actual sources of the information, the Commission exercised the power given to it in the aforesaid Government resolution to request more thorough and extensive investigations (hereafter: **Further Debriefings of September 20, 2010**). Pursuant to the Commission's request, it was therefore resolved that a representation of the Commission

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20 See *Government Resolution of 14.6.2010, supra* note 6, at art. 7.

21 See *The Public Commission to Examine the Maritime Incident of May 31, 2010, available at* www.turkel-committee.gov.il.

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would work with IDF personnel that were appointed for this purpose and were not involved in the incident, who would carry out further inquires for the Commission, in accordance with detailed instructions of the Commission's representation and with its assistance. Within the scope of these inquiries, documented testimonies were taken from 38 combat personnel and other IDF personnel who were directly involved in the events, and extensive additional material documenting the various aspects of the incident was received (the written statements that were provided to the Commission within this context will be referred to in this report as "testimonies"). Following this, additional supplementary inquires were carried out, in which twenty additional combat personnel and 23 combat and other IDF personnel provided additional written testimony (hereafter: **IDF Supplementary Response to the Commission's Questions of November 7, 2010; IDF Supplementary Response to the Commission's Questions of November 15, 2010; IDF Supplementary Response to the Commission's Questions of November 29, 2010; IDF Supplementary Response to the Commission's Questions of December 7, 2010; IDF Supplementary Response to the Commission's Questions of December 8, 2010; IDF Supplementary Response to the Commission's Questions of December 30, 2010**). This material enabled the Commission to make a precise examination of the whole process of taking control of the ship and the military preparations that preceded it. In order to complete the picture of the investigation, even the Chief of Staff was summoned to testify once again on October 24, 2010 (in addition to his initial testimony on August 11, 2010).

In this regard it should be noted that the Commission has decided to prohibit the publication of the names of IDF personnel that testified in the further debriefings and in the supplementary responses that were conducted by the Commission (as mentioned above), including the publication of any identifying details with regards to them, in accordance with article 11 in the government's decision of June, 14, 2010.[22]

The Commission also sought to hear testimonies from non-officials and from non-Israelis in order to receive as complete a picture as possible. On September 12, 2010, the Commission sent an invitation to testify, through the Turkish Embassy in Israel, to the captain of the *Mavi Marmara*, Tural Mahmut.[23] Furthermore, on September 28, 2010, an invitation to testify was sent to the leader of the IHH, Bülent Yildirim, which stated

22 See *Government Resolution of 14.6.2010, supra* note 6, at art. 11.

23 Letter from Hoshea Gottlieb, Commission Coordinator, to the Turkish Embassy in Israel, titled "The Public Commission to Examine the Maritime Incident of May 31, 2010", no. 2010-96 (dated Sep. 12, 2010).

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that the Commission would be prepared to consider various procedural solutions in order to facilitate the testimonies.[24] No response was received to these invitations.[25] On October 14, 2010, the Commission contacted the Turkish Embassy in Israel and requested its help in compiling a list of witnesses who had information and/or relevant documents and who were prepared to testify before the Commission. Once again, the Commission stated that it would be prepared to assist in finding appropriate solutions regarding the manner of hearing the testimonies and in order to facilitate them. To the Commission's dismay, this request also did not receive a response.

On October 21, 2010, an invitation was issued to the public, in which any person who had in his possession relevant information or documents on the matters within the Commission's jurisdiction was requested to submit it to the Commission. Moreover, on October 22, 2010, following a request of the British Embassy in Israel to the Israeli Ministry of Foreign Affairs, British nationals who took part in the flotilla and expressed their desire to submit evidence to the Commission were invited (through their counsel) to submit to the Commission a synopsis of the matters that they wished to bring before it so that a decision could be made with regard to the need for their testimony. The Commission also proposed, after making arrangements with the British authorities, to hear these testimonies via Video-conference. The Commission's proposal remained unanswered. On October 22, 2010, the representatives of three Israeli human rights organizations[26] and two Israeli nationals who participated in the flotilla were invited to testify, and did so, before the Commission.[27]

In these circumstances, the Commission was therefore compelled to rely mainly on testimonies and reports of Israeli parties (although it also had before it statements that were made by some of the flotilla participants during the time they were in Israel, and Commission additional written and video/photographic material that it was able to obtain). The Commission examined all of the testimonies, sources, and references critically and analytically, while cross-checking them against

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24 Letter from Hoshea Gottlieb, Commission Coordinator, to the Turkish Embassy in Israel, titled "The Public Commission to Examine the Maritime Incident of May 31, 2010", no. 2010-111 (dated Sep. 28, 2010).

25 It should be noted that in spite of the fact that the two addresses were not sent directly to the addressees but transferred through the Turkish Embassy in Israel, it may be cautiously assumed that they reached the addressees, or at the very least the addressees were made aware of their existence, in light of the broad publicity granted to them by the Turkish media.

26 See Protocol of Meeting 12 of the Commission (Oct. 13, 2010).

27 See Protocol of Meeting 14 of the Commission (Oct. 25, 2010).

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each other and against additional sources of information, insofar as they were direct and authentic sources as stated in paragraph 10 below.

10 *Assembling information.* In addition to the testimonies that it heard, the Commission received as aforesaid many documents for its inspection, which were included in more than 150 files of exhibits. A list of all documents that were submitted to the Commission can be found on the Commission's website.[28]

The Commission also received various synopses on issues relating to its work (some of which were prepared at the Commission's request); transcripts of Government meetings, Cabinet meetings and inner Cabinet meetings; summaries of work meetings of various parties in the Israeli Government, the IDF and other relevant authorities; internal investigations that were carried out in the IDF (including the investigations carried out by the Navy, the head of Israel Military Intelligence and the head of the Operations Division, and a summary of the investigation of the head of the Operations Branch) and additional bodies. Apart from all of these, the Commission received, *inter alia*, documentary material that directly documented the events that occurred on the flotilla vessels, and the manner in which the flotilla participants were treated after IDF servicemen took control of the vessels, which have a very high level of credibility. Thus, for example, the Commission received thousands of video and audio clips containing hundreds of hours of audio and video recordings, which were assembled from various sources. IDF authorities submitted to the Commission material from a variety of sources, including video recordings from the security cameras on the *Mavi Marmara*, the results of recordings made by various video devices, video recordings that were made by cameras installed in the helmets of the IDF combat personnel who operated on the *Mavi Marmara*, recordings of radio reports during the incident and photographs and video recordings that were made by participants in the flotilla when they were on board the *Mavi Marmara*, by personnel from the IDF spokesperson's unit, etc. The Israeli Police submitted 46 CDs of interrogations that it conducted following the incident, and the Commission also received documentation from media sources in Israel and abroad. Moreover, the Commission received objects and documents that were seized on the *Mavi Marmara*; material that was seized from computers on the *Mavi Marmara*; medical documents and medical certificates (including documents that were received from Magen David Adom, documents that were received from the Abu Kabir Forensic Institute, documents that were received from hospitals where the injured were hospitalized and treated), etc. All of these were reviewed and examined thoroughly by the Commission and were before it when preparing this report.

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28 *The Public Commission to Examine the Maritime Incident of May 31, 2010, available at* www.turkel-committee.gov.il.

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The structure of the report

11 The Commission decided to divide its report into two parts. The first part, which is being submitted now, addresses three issues:

a. The first issue concerns the legality of the naval blockade that was imposed on the Gaza Strip, pursuant to the rules of international law (paragraph 4(a) of the Government resolution of June 14, 2010). Within the framework of this examination, the Commission examined the factual basis for imposing the blockade, including the conditions for maintaining it, the restrictions on the land crossings into the Gaza Strip and the relationship between them and the naval blockade, the humanitarian situation in the Gaza Strip and the question whether the blockade is affecting this situation. Alongside all of these issues, it examined the rules of international law that apply in such situations and the manner in which they are implemented, in general and in the incident under discussion.

b. The second issue concerns the actions carried out by the IDF in order to enforce the naval blockade (paragraph 4(b) of the Government resolution of June 14, 2010). Here, the main focus is a specific and precise examination of all the actions that were taken in order to stop the flotilla and identifying the rules of international law that apply to activity of this kind, and the application thereof in the case before us.

c. The third issue, which is related to the second issue, concerns the actions of the organizers and participants of the flotilla and their identities (paragraph 4(c) of the Government resolution of June 14, 2010).[29]

12 In the second part of the report, which will be submitted at a later point in time, we shall address the question that was presented in paragraph 5 of the Government resolution of June 14, 2010, namely whether the mechanism for examining and investigation complaints and claims raised in relation to violations of the laws of armed conflict that is practiced in Israel in general, and as applied with regard to the current incident, is consistent with the duties of the State of Israel pursuant to the rules of international law. Moreover, in the second part of the report we shall consider additional questions that arose in the course of the Commission's work, including questions that have importance from a domestic Israeli perspective.

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29 By nature, these three issues are intertwined and it is certainly possible that throughout this report, specific issues will come up in more than one place. The Commission has preferred, for the sake of convenience, and in spite of the repetitiveness of this, to return and discuss these issues where they are relevant.

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Chapter A:
The naval blockade of the Gaza Strip

13 In this chapter we shall survey the security situation that led to the imposition of the naval blockade on the Gaza Strip, and we shall also examine whether the naval blockade that was imposed on the Gaza Strip is consistent with the rules of international law. The legal analysis in this chapter shall be divided into several parts. In the first part of this chapter we shall present, in brief, the complex factual background concerning the legal status of the Gaza Strip, the status of Gaza's territorial waters throughout the period since the capture of the Gaza Strip in 1967, and the circumstances in which the naval blockade of the Gaza Strip was imposed on January 3, 2009.

The second part of this chapter addresses the question of what a 'naval blockade' is from a conceptual and legal viewpoint, and the source of the legal rules regulating this method of warfare, including the rules of customary international humanitarian law and the international consensus regarding the rules that govern a naval blockade.

The third part addresses the classification of the conflict in the Gaza Strip: is the armed conflict between Israel and the Gaza Strip an international or non-international one, and is the Gaza Strip a territory that is occupied by Israel? The fourth and fifth parts examine how and why the naval blockade was imposed on the Gaza Strip, the alternatives to imposing the naval blockade that were considered by Israel, the relationship between the naval blockade and the restrictions imposed by Israel on September 19, 2007, with regard to the transfer of goods by land, and whether the measures adopted by Israel are consistent with the rules of international humanitarian law that govern the imposition of a naval blockade.

The next three parts address the humanitarian aspects of the naval blockade on the Gaza Strip. Here we shall examine several controversial issues with regard to the question of imposing the naval blockade and Israel's land crossings policy. We will also asses the applicability of human rights law to the case at hand and the claim that the naval blockade imposed on the Gaza Strip by Israel is a form of collective punishment directed by Israel at the population of the Gaza.

In the final part of this chapter, we shall consider the measures that individuals or groups are permitted to utilize when they object to the legality of a naval blockade.

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General background to the imposition of the naval blockade on the Gaza Strip

The status of the Gaza Strip in the years 1967-2010

14 In June 1967, during the hostilities in the Six Day War, the Gaza Strip was captured by IDF forces (in addition to other areas, including East Jerusalem, the West Bank, the Golan Heights, the Sinai Peninsula). Shortly thereafter, a military administration was established in the 'territory' (i.e., the West Bank and the Gaza Strip), which operated pursuant to the laws of belligerent occupation in international law.[30] This legal perspective regarding the laws applicable in the territory was adopted by the Supreme Court since that time.[31] It should also be mentioned that, following the Six Day War, Israeli settlement also began in the Gaza Strip.[32]

15 During the 1990s, political negotiations were held between the Palestinian Liberation Organization (hereafter: the PLO), as the representative of the Palestinian people, and the State of Israel, in which context a declaration of principles was signed between the parties in September 1993 with regard to interim arrangements for Palestinian self-government.[33] On May 4, 1994, the Agreement on the Gaza Strip and Jericho Area (the Cairo Agreement) was signed.[34] Following this, the IDF

30 In fact, two separate military governments were established: one in the West Bank and the second in the Gaza Strip. See HCJ 1661/05 *Hof Azza Regional Municipality v. Israel Knesset*, 49(2) 481, at para. 3 (2005) [hereinafter matter of *Hof Azza*]. It should be mentioned that as part of these rules, Israel also applied the fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War from 1949 and the relevant guidelines from the regulations appended to the fourth Hague Convention, Respecting the Rules and Customs of War on Land, of 1907 (to which Israel is not a party, but which already at the time of the Gaza Strip's occupation was considered to reflect customary international law, see HCJ 606/78 *Ajouri v. Defense Minister*, 33(2), 113, 120 (1979); *MAG position paper*, *supra* note 1, at 3). In this context it should be mentioned that Israel has rejected the formal application of the fourth Geneva Convention regarding the West Bank and the Gaza Strip. As to the Gaza Strip, this position was based on various claims, chief among them that the strip was not part of Egypt's sovereign territory prior to its occupation by Israel (see *MAG position paper*, *supra* note 1, at 3; Meir Shamgar, *Legal Concepts and Problems of the Israeli Military Government - The Initial Stage*, *in* MILITARY GOVERNMENT IN THE TERRITORIES ADMINISTERED BY ISRAEL 1967-1980: THE LEGAL ASPECTS 13, 15-16 (M. Shamgar ed., 1982); matter of *Hof Azza*, *Id.*, at para. 4.

31 *Hof Azza* case, *Id.*

32 In 2003, the number of settlers in the Gaza Strip was estimated at 8,000 people; See *Hof Azza* case, *Id.*, at para. 12 and references there.

33 Declaration of principles regarding interim agreements of self governance with PLO (signed in 1994) [hereinafter *Oslo A Accords*], *available at* www.knesset.gov.il/process/docs/oslo.htm

34 Agreement regarding Gaza Strip and Jericho region (signed in 1994) [hereinafter *Cairo*

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forces withdrew from most of the territory of the Gaza Strip, except for the Israeli settlements, the main access routes to these settlements and the area of the military installations along the southern border of the Gaza Strip. Moreover, most of the administrative responsibility was transferred to the autonomous Palestinian entity that was established, the Palestinian Authority (hereafter: **the Palestinian Authority**). The Cairo Agreement also incorporated the Paris Protocol that was signed a short time earlier (on April 29, 1994), which regulated economic relations between Israel and the autonomous Palestinian entity.[35] On September 28, 1995, the parties signed an interim agreement, which incorporated the previous agreements signed between the parties (hereafter: **the Interim Agreement**).[36]

16 In October 2000, violent incidents broke out in the West Bank and the Gaza Strip, which were given the name 'the Second Intifada' by the Israeli public (the Palestinians call these incidents 'the Al-Aqsa Intifada'; the official title given to these incidents by the Israeli security establishment was the 'Ebb and Tide Events'). In these, suicide attacks were restarted in cities in Israeli territory, and from the beginning of 2001 and thereafter on an ever increasing scale, mortar and rocket attacks of various kinds were used to attack Israel, the Israeli settlements in the Gaza Strip, IDF bases in the Gaza Strip and the border crossings. Israel was no longer able to employ the measures that it had used in the past (such as administrative detentions) because of the transfer of control of significant parts of the West Bank and the Gaza Strip, and it responded in various ways, including prolonged large-scale military operations. Against this background, Israel declared that an armed conflict was taking place between it and the Palestinian terrorist organizations, and that the normative framework to be applied to the activity of the IDF was

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Agreement], *available at* www.knesset.gov.il/process/docs/cairo_agreement.htm

35 Paris protocol signed in April 1994 and included as appendix to *Cairo Agreement*, *supra* note 34, at 31.

36 Israeli-Palestinian Interim Agreement regarding the West Bank and the Gaza Strip (signed in 1995) [hereinafter *The Interim Agreement*], *available at* www.knesset.gov.il/process/docs/heskemb1.htm; the legal status of the interim agreements, particularly in all that relates to the Gaza Strip, constitutes a complex judicial issue. As a rule, even in the current time and in spite of Israel's withdrawal from Gaza (which made many clauses of the interim agreement redundant) and the Hamas's rise to power (that is, the rise to power of a party which does not recognize the interim agreements), Israel continues to apply the instructions of the agreements to the extent possible. For a review of the existing agreements and the questions that arises regarding their status see: Ruth Lapidot, *Israel and the Palestinians: Some Legal Issues* (The Jerusalem Institute for Israel Studies, 2003).

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the principles and rules of the laws of war. This position was adopted by the Supreme Court in several judgments.[37]

17 In December 2003, the Prime Minister at that time, Mr. Ariel Sharon, announced a plan for the disengagement of the State of Israel from the Gaza Strip and from the area of North Samaria.[38] On September 12, 2005, the last of the IDF forces left the territory of the Gaza Strip, and the IDF Commander in the Gaza Strip signed a declaration terminating the military administration that had operated in the territory.[39] On September 20, 2005, the Minister of Interior designated five crossings and land terminals between Israel and the Gaza Strip as 'border stations,' in accordance with the power given to him pursuant to section 7 of the Entry into Israel Law, 5712-1952.[40] In November 2005, Israel and the Palestinian Authority signed a Movement and Access Agreement, in which Israel took upon itself various commitments with regard to the export of goods from the Gaza Strip and the movement of persons, and which arranged for the operation of the Rafah and Kerem Shalom border crossings, through which the movement of persons and goods was supposed to be facilitated at the Egyptian border under the supervision of a third party.[41] In December 2005, the Ministerial National Security Committee authorized the Minister of Defense to decide upon the opening or closing of the border terminals.[42]

A map of the Gaza Strip and the land crossings between it and Israel is attached to this report as annex "B".

18 In the general elections for the Palestinian Legislative Council that took place in January 2006, the Hamas[43] organization won a majority. The Hamas organization calls for the establishment of an Islamic law state in

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37 See, for example HCJ 9252/00 *El Ska v. State of Israel* (unpublished, May 23, 2001); HCJ 9293/01 *Bracha v. Defense Minister*, 56(2) 509 (2002); HCJ 3114/02 *Bracha v. Defense Minister*, 56(3) 11 (2002); HCJ 3451/02 *Almadni v. Defense Minister*, 56(3) 30 (2002); HCJ 4219/02 *Gossin v. Commander of IDF Forces in Gaza Strip*, 56(4) 608 (2002); HCJ 7015/02 *Ajuri v. Commander of IDF Forces in West Bank*, 56(6) 352 (2002); HCJ 8990/02 *Physicians for Human Rights v. Southern Command General*, 57(4) 193 (2003); HCJ 4764/04 *Physicians for Human Rights v. Commander of IDF Forces in Gaza Strip*, 58(5) 385 (2004); HCJ 769/02 *Public Committee Against Torture v. Government of Israel*, (unpublished, Dec. 14, 2006) [hereinafter *Targeted Killing* case].

38 Following the declaration the plan was brought to the Knesset's approval; See law implementing Disengagement Plan, 5765-2005, LB 1982.

39 *Manifest Regarding Termination of Military Rule* (manifest no. 6) (Gaza Region) 5765-2005.

40 See Order Regarding Entrance to Israel (border crossings) (amendment), 5765-2005.

41 Agreement regarding movement and access (signed in 2005) [hereinafter *Movement and Access Agreement*].

42 Resolution B/43 of the ministers' Commission on matters of national security (2005).

43 Initials of Harakat al-Muqāwamat al-Islāmiyyah, that is, Islamic Resistance Movement.

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the whole of the territory of Mandatory Palestine, does not recognize the existence of the State of Israel and rejects reaching final agreements with it. Therefore, Israel called upon Hamas to accept the three basic conditions determined by Israel in the Government resolution of February 19, 2006,[44] which were approved in the resolution of the Quartet on the Middle East (an international body comprised of the United States, Russia, the United Nations and the European Union, which was established in 2002 at Madrid in order to oversee the resolution of the Israeli-Palestinian dispute; hereafter: **'the Quartet'**): (1) recognition of the State of Israel and repeal of Hamas's charter; (2) abandoning terrorism and dismantling terrorist infrastructure; (3) recognition of the agreements and understandings that Israel reached with the Palestinians.[45] Hamas refused to do so. In March 2006, a Palestinian government (whose territorial authority includes both the West Bank and the Gaza Strip) headed by Hamas was sworn in.[46] The Israeli Government's resolution of April 11, 2006, determined the general policy of Israel towards the Palestinian Authority following the establishment of the Hamas Government. In this context, regarding the Gaza Strip, it was resolved that 'subject to security considerations, the crossings from Israel into the Gaza Strip will remain open in order to allow the entry of humanitarian aid into the Gaza Strip.'[47]

On June 25, 2006, two IDF soldiers were killed, four were injured and Corporal Gilad Shalit was taken captive after a cell that had penetrated into Israel by means of a tunnel that was dug under the border with the Gaza Strip carried out an attack against an IDF tank. Corporal Shalit is currently still being held in captivity by the Hamas.[48]

During this period, the firing of rockets and mortars from the Gaza Strip at the towns of Southern Israel continued, as did attacks on the

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44 See Resolution 4705 of 30th Government "The Palestinian System Following Elections in Palestinian Authority - Israel's Policy in view of the Swearing in of the Palestinian Legislative Council" (Feb. 19, 2006) [hereinafter *Government Resolution of 19.2.2006*].

45 *Joint Statement by Quartet Engaged in Facilitation of Mideast Peace Process* (Jul. 16, 2002).

46 See Resolution 4780 of 30th Government ""Israel's Policy towards the Palestinian Authority upon Establishment of Hamas Government" (Apr. 11, 2006) [hereinafter *Government Resolution of 11.4.2006*]; The resolution stipulated, among other things, that the Palestinian Authority is a terrorist entity hostile to Israel and that the State of Israel will not have ties with it. See also government resolution of Feb. 19, 2006. This resolution determined, among other things, that "in light of the increasing security threat, the security examinations at border crossings will increase, particularly at Karni and Erez, in regards to people and workers as well as merchandise. Likewise there will be a continuation of the operation to upgrade the crossing in the Gaza Strip, in order to make more efficient security supervision possible."

47 *Id.*

48 For a detailed analysis, see MAG Position paper, *supra* note 1, at 8.

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land crossings into the Gaza Strip. The IDF responded to these attacks by using artillery and aerial attacks, and also with operations, some of which were extensive, in the territory of the Gaza Strip. Consequently, the activity at the crossings was restricted (sometimes to the point of closing them entirely) and the Israeli security authorities were therefore required to determine priorities for goods entering the Gaza Strip, while giving preference to food products and basic products. In general, the entry of raw materials for building, industry and agriculture was also permitted, but the amount of goods exported from the Gaza Strip was restricted. This policy was approved by the Supreme Court.[49]

After a long period of tension between the Hamas and the Fatah, which led, *inter alia*, to violent incidents between the operatives of the two movements and the establishment of a unity government headed by Ismail Haniyeh in March 2007, the Hamas violently seized control of the Gaza Strip in June 2007.[50] After the Hamas seized control of Gaza, the rocket and mortar attacks on Israeli towns increased dramatically. On September 19, 2007, the Ministerial National Security Committee declared Gaza a 'hostile territory' and instructed the security establishment to impose 'additional restrictions' in the civilian sphere, including with regard to the passage of goods, the supply of oil and electricity and the movement of persons to and from the Gaza Strip.[51] Following this resolution, which expressly states that it will be implemented only after a legal examination and with the intention of preventing the creation of a humanitarian crisis in the Gaza Strip, trade with the Gaza Strip was prohibited, restrictions were imposed on the passage of goods between Israel and the Gaza Strip and the supply of fuels to Gaza was reduced.[52] It should be noted that throughout the whole period, efforts were made to continue coordination

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49 HCJ 5841/06 *The Association for Civil Rights v. Defense Minister* (unpublished, Mar. 13, 2007).

50 In response to this takeover, the Chairman of the Palestinian Authority, Mahmoud Abbas (Abu Mazen), announced the disassembly of the Palestinian Unity Government on Jun. 15, 2007, the firing of the Hamas appointed Prime Minister Ismail Haniyeh, and a general state of emergency. In addition, Abbas appointed Salam Fayyad, the Finance minister in the Unity Government, as the Prime Minister of the Palestinian Government, and outlawed Hamas' military wing.

51 Resolution B/34 of the ministers' commission on matters of national security "Israel's policy regarding Gaza (Military and Civilian)" (Sep. 19, 2007) [hereinafter *Ministers' Commission on National Security Resolution of 19.9.2007*].

52 See "Civilian Policy regarding Gaza Strip - Part A" (summation by Government Activity Coordinator in the Territories (COGAT), Aug. 31, 2010) marked by the Commission as exhibit 51 [hereinafter *Civilian Policy Regarding Gaza Strip - Part A*]; For a detailed review of Israel's border crossing policy following the resolution of the ministers' commission on matters of national security of Sep. 19, 2007, see paras. 67, 68, 73.

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between the State of Israel and the Palestinian Authority (as distinct from the Hamas Government), even with regard to the Gaza Strip.[53]

19 With the assistance of Egyptian mediation, a ceasefire was reached in June 2008 for a period of six months. This was called a 'lull' (Arabic: *tahdia*). This lull collapsed in December 2008, when the rocket and mortar attacks against Israel recommenced. On December 27, 2008, Israel began a large-scale military operation in the Gaza Strip, the 'Cast Lead' operation, which lasted twenty-two days and at the end of which Israel withdrew its forces from the Gaza Strip and unilaterally declared a ceasefire.[54]

After the operation Cast Lead, on February 18, 2009, the Ministerial National Security Committee decided that, *inter alia*, Israel should continue the humanitarian effort, in coordination with the Palestinian Authority and the relevant international organizations, in order to provide the immediate and basic needs of the Palestinian population, and to this end it should allow the activity of the crossings, on a partial basis, from its territory into the Gaza Strip.[55] Nonetheless, in an affidavit signed by the Cabinet secretary that was submitted on March 31, 2009, in the State's reply to HCJ 2650/09 *Mitrael Ltd. v. Minister of Agriculture* (unpublished, April 1, 2009), it said that this decision was not intended to change Israel's fundamental policy towards the Gaza Strip and to remove the civilian restrictions imposed on it in the resolution of September 19, 2007, but merely to 'increase the list of food products whose entry into the Gaza Strip would be permitted and to give an appropriate response to the needs of the Palestinian population not involved in terrorism.'[56] Following this decision, the variety of products permitted to enter the Gaza Strip was indeed increased.[57]

On June 29, 2010, the Government announced a change of this policy and significantly reduced the restrictions on the passage of goods.[58]

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53 See expansion in paras. 66, 73.

54 Resolution B/84 of ministers' Commission on matters of national security "Declaration on cease fire concerning Operation 'Cast Lead'" (Jan. 17, 2009).

55 Resolution B/90 of ministers' Commission on matters of national security "Contact with Egypt following Operation 'Cast Lead'; Policy Regarding Response to Continued Terrorist Activity from Gaza; Abducted Soldier Gilad Shalit" (Feb. 18, 2009).

56 See the State response to HCJ 2650/09 *Mitrael LTD. v. Minister of Agriculture* (still unpublished, Aug. 22, 2010).

57 See "Civilian Policy Regarding Gaza Strip - Part B" (summation by Government Activity Coordinator in the Territories (COGAT), Aug. 31, 2010), at 56, marked by the Commission as exhibit 51 [hereinafter *Civilian Policy Regarding Gaza Strip - Part B*].

58 See Resolution B/44 of ministers' Commission on matters of national security "application of border crossing policy in relation to Gaza Strip" (Jun. 20, 2010; in the resolution the Prime Minister, Defense Minister, and Foreign Minister were authorized to make resolutions - in accordance with the opinion of the ministers' Commission on matters of national security

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It was also decided that several alleviating measures would be carried out without delay, including publishing a list of items that would not be allowed into the Gaza Strip, which would 'include only weapons, military equipment and problematic dual-purpose items.'[59] Any item that did not appear on the aforesaid list would be allowed into Gaza. On December 8, 2010, the Ministerial National Security Committee further announced that subject to certain restrictions, a gradual plan for allowing goods to leave the Gaza Strip for places outside of Israel and the West Bank would be approved.[60]

The territorial waters of the Gaza Strip in the years 1967-2010

20 Prior to the implementation of the disengagement plan and as long as the State of Israel exercised effective control over the Gaza Strip, the IDF operated with regard to the territorial waters off the Gaza Strip with all of the powers given to the party in control of a certain territory with respect to the territorial waters adjoining that territory, including control of the passage of naval transportation for security reasons. In 1968, the IDF Commander in the Gaza Strip determined that the Gaza Strip was a closed area, and permission was required to enter it and depart from it in any way, including by sea.[61] It should be noted that during the whole of the aforesaid period, Gaza did not have a port that could service international maritime transport, but only an anchorage for fishing boats.

21 The political agreements with the Palestinians, as discussed, retained this authority with the IDF. These agreements provided, *inter alia*, that the State of Israel would have full control and sole security authority in the territorial waters adjoining the Gaza Strip[62] and that ships of the Israel Navy would be permitted to sail in this area, as needed and

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- regarding steps and specific actions to enforced a border crossing policy in relation to the Gaza Strip; On Jun. 20, 2010 the Prime Minister's office announced undertaking a series of steps in order to "prevent the entrance of weaponry and combat-supportive materials into Gaza, and at the same time expand the manner of civilian merchandise's entrance into the Strip." See statement by Prime Minister's office regarding Israel's policy towards the Gaza Strip following the security cabinet meeting (Jun. 20, 2010).

59 *Id.*, at para. 1.

60 Resolution B/64 of the ministers' Commission on matters of national security (Dec. 8, 2010).

61 An order regarding the closing of the region (Gaza Strip and North Sinai) (no. 144), 5728-1968, as amended in order no. 191 and order no. 847.

62 The security arrangements regarding the Gaza Strip's naval space were initially determined in the *Cairo Agreement*, *supra* note 34; Afterwards they were absorbed into the *Interim Agreement*, *supra* note 36, in article XIV of appendix I.

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without restriction, and take all of the necessary steps against shipping vessels suspected of terrorist activity or illegal activity, including against ships suspected of smuggling weapons, drugs, etc.[63] The agreements also provided that the issue of international maritime transport to and from the Gaza Strip will be settled in final arrangement negotiations between the parties (negotiations that have not ended). The agreement also provided that until a suitable port is established in the Gaza Strip, foreign ships will not be allowed into an area extending to a distance of 12 nautical miles from the coast, and that the entry of passengers and goods via the sea would be possible only through Israeli ports, pursuant to the rules and regulations applying to this matter in Israel.[64] It should be noted that after the Interim Agreement was signed, negotiations were begun between Israel and the Palestinian Authority with regard to the construction of a port in Gaza and several steps were even taken towards this goal, but the project was stopped when the Second Intifada broke out in the year 2000.[65] As stated above, the question of the status and application of the Interim Agreement today is complex and controversial. Moreover, the Military Advocate-General's Office pointed out to the Commission the a difficulty in relying on the Interim Agreement to prevent the entry of ships sailing under a foreign flag into the territorial waters of the Gaza Strip, since they are not a party to or bound by the agreement.[66]

22 Over the years, several shipping vessels have tried to reach the Gaza Strip by sea. In the last decade, these attempts have become more frequent, and weapons have been found on board some of the ships that were seized on their way to the Gaza Strip. Thus, for example, in May 2001 the *Santorini* left Lebanon for the Gaza Strip. This ship was seized by the Israeli navy and brought to Israel. Many weapons were found on the ship, including anti-tank RPGs (Rocket Propelled Grenades), Kalashnikov rifles, etc. In May 2003, the *Abu Hassan* was seized on its way from Lebanon to the Gaza Strip. A Katyusha fuse and weapons were found on the ship, as well as a Hezbollah operative. On January 3, 2002, the *Karine A*, which set sail from Iran, was seized with approximately fifty tons of weapons on board, including rockets, mortars, anti-tank missiles, mines, assault rifles, etc., which were intended for the Gaza Strip.

23 When the disengagement plan was implemented and the military administration in the Gaza Strip ended, the IDF was of the opinion that, in consequence, it no longer had the powers that it received pursuant

63 *Id.*
64 *Id.*
65 See *MAG position paper, supra* note 1.
66 *Id.*

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to the laws of occupation under international law and Israeli security legislation. In view of the armed conflict with the Hamas Government in the Gaza Strip, the Military Advocate-General examined the actions of the IDF in the territorial waters of the Gaza Strip pursuant to the laws of naval warfare.[67]

24 In July 2008, various flotillas whose stated destination was the Gaza Strip were organized. In view of the fact that the ships concerned were neutral, the IDF had relatively limited options, which mainly included the power of visit and search, a power that can be used, *inter alia*, on condition that there are reasonable grounds for suspecting that a ship is subject to capture.[68] The IDF expressed the concern that because of the need for this condition to be satisfied, the measures available to the IDF were insufficient to prevent attempts to smuggle weapons into the Gaza Strip.[69]

25 On August 13, 2008, the Shipping Authority at the Ministry of Transport published a Notice to Mariners (hereafter: **NOTMAR**),[70] calling upon shipping to refrain from entering the territorial waters off the Gaza Coast and stating that it would be possible to transport humanitarian supplies to Gaza by means of the land crossing, by arrangement with the Israeli authorities:

> 'The Israel Navy is operating in the maritime zone off the coast of the Gaza Strip. In light of the security situation, all foreign vessels are advised to remain clear of area A in the attached map [...]
>
> Delivery of humanitarian supplies to the civilian population in the Gaza Strip is permitted through the land crossings between Israel and the Gaza Strip, subject to prior coordination with the Israeli Authorities.'[71]

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67 *Id.*, at 35.

68 For expansion on this matter see para. 54 below.

69 See *MAG position paper*, *supra* note 1, at 39.

70 Advisory Notice (Maritime Zone off The Coast of Gaza Strip), no. 6/2008 (Aug. 11, 2008), *available at* en.mot.gov.il/index.php?option=com_content&view=article&id=74:no62008&catid=17:noticetomariners&Itemid=12; See also protocol of meeting 3 of the Commission "Defense Minister's open door testimony" 17 (Aug. 10, 2010) [hereinafter *Defense Minister's Open Door Testimony*]; protocol of meeting 4 of the Commission "Chief of Staff's open door testimony" 13 (Aug. 11, 2010) [hereinafter *Chief of Staff's Open Door Testimony of 11.8.2010*]. These testimonies are accessible to the public at the Commission's website, *available at* http://www.turkel-committee.gov.il.

71 The map attached to the notice to mariners, as well as a list of exact coordinates, are attached as appendix C of this report. In para. 3 of the notice to mariners it is mentioned that the entry of foreign vessels into the maritime zone adjacent to the Gaza Strip is also prohibited according to the agreements between Israel and the Palestinian Authority.

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The Military Advocate-General expressed his opinion before the Commission that this constituted a declaration that the maritime zone near the coast of the Gaza Strip was a 'combat zone' or an 'exclusion zone,' but he said that there was a dispute on the question of what are the powers given to a State that declares such a maritime zone.[72]

Despite the aforesaid NOTMAR, on August 20, 2008, two yachts set sail from Larnaca in Cyprus in the direction of the Gaza Strip, with forty passengers on board (the yachts *Liberty* and *Free Gaza*). Prior to this flotilla, which the IDF gave the name of 'Winds of Heaven 1,' the Navy determined an operational plan and defined operational possibilities, which including transmitting diplomatic messages, and also considered the possibility of stopping ships before they set sail or stopping them without the use of force during the voyage. Moreover, it considered the possibility of taking control of ships or, alternatively, of allowing ships to reach the Gaza Strip. Pursuant to a decision of the political echelon (the Prime Minister and the Minister of Defense),[73] the yachts were permitted to enter the Gaza Strip. Four additional yachts that left Larnaca port on separate occasions during the months of August-December 2008 were also permitted to enter Gaza. In their testimonies before the Commission, various parties said that the reasons for allowing the yachts to pass included, *inter alia*, the difficulty in carrying out searches on these boats, the thought that allowing them to pass would prevent repeated occurrences of the phenomenon and taking into account that these were relatively small yachts that according to intelligence did not present a real danger of carrying weapons.[74] Another ship (the *Al Marwa*), carrying a Libyan flag, which tried to reach the Gaza Strip on November 29, 2008, turned back after messages were transmitted to it that it was on course for an area where security activity of the Israeli Navy was taking place.[75] On December 29, 2008, another yacht (the *Dignity*) left Larnaca port with 25 passengers on board ('Winds of Heaven 2'). The Navy ordered the ship to turn back and not to enter the area adjoining the Gaza Strip because of the military operations in the area. During the incident, the yacht hit the bow of a Navy vessel and was damaged, but it made its way without assistance to the port of Beirut in Lebanon.[76] The IDF once again expressed the concern that in view of the dispute on the question of the legal ramifications of declaring an area a 'combat zone' or

72 See *MAG position paper*, *supra* note 1, at 38-39.
73 See *Defense Minister's Open Door Testimony*, *supra* note 70, at 20-21.
74 *Id.*, at 19-21; *Chief of Staff's Open Door Testimony of 11.8.2010*, *supra* note 70, at 11.
75 *Chief of Staff's Open Door Testimony of 11.8.2010*, *supra* note 70, at 11.
76 *Id.*, at 12; *Defense Minister's Open Door Testimony*, *supra* note 70, at 12-21.

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an 'exclusion zone,' the NOTMAR did not provide a complete solution to the difficulties that arose when the IDF dealt with the various flotillas.[77]

26 In these circumstances, on January 3, 2009, during the operation Cast Lead, the Minister of Defense ordered a naval blockade off the coastline of the Gaza Strip up to a distance of 20 nautical miles from the coast. The significance of imposing a naval blockade according to the rules of international law is that it allows a party to an armed conflict to prevent entry into the prohibited area of any vessel that attempts to breach the blockade (even without it being established that the vessel is assisting terrorist activity). Consequently, a NOTMAR was published in the following terms:

> 'All mariners are advised that as of 03 January 2009, 1700 UTC, Gaza maritime area is closed to all maritime traffic and is under blockade imposed by Israeli Navy until further notice.
>
> Maritime Gaza area is enclosed by the following coordinates [...].'[78]

The notice was published on the IDF web site, on the web site of the Shipping Authority and the Ministry of Transport, and on several standard international channels, such as NAVTEX; an international satellite network that collects and distributes notices to vessels worldwide.[79] Moreover, this notice was broadcast twice a day on the emergency channel for maritime communications to ships that sailed at a distance of up to 300 km from the Israeli coast.[80] The Minister of Defense testified before the Commission that in any case of an attempt to transport humanitarian supplies by sea, the vessels would be directed to Ashdod port and the humanitarian supplies on board would, after inspection, be sent to the Gaza Strip via the land crossings.[81]

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77 See *MAG position paper, supra* note 1, at 39; See also letter from Brigadier General Avichai Mandelblit, the Military Advocate General, to Major General Eli Marom, Commander of the Navy (Dec. 29, 2008); letter from Brigadier General Avichai Mandelblit, the Military Advocate General, to Lieutenant General Gabi Ashkenazi, IDF Chief of Staff (Dec. 30, 2009); "The Public Commission to Examine the Maritime Incident of May 31, 2010" (position paper by the IDF Military Advocate General - Appendix, July 2010), marked by the Commission as exhibit no. 13 [hereinafter *MAG position paper - Appendix*]. In these letters, the Military Advocate General underlined the need to declare a naval blockade that would provide the navy with the proper tools and authorities to deal with the phenomenon of civilian vessels wishing to reach the Gaza Strip.

78 Advisory Notice (Blockade of Gaza Strip), no. 1/2009 (Jan. 3, 2009), *available at* 199.203.58.11/EN/index.php?option=com_content&view=article&id=124:no12009&catid=17:noticetomariners&Itemid=12.

79 See *IDF Answer to Commission's Completion Request of 15.11.2010*, marked as exhibit 145 of the Commission's exhibits.

80 See *Defense Minister's Open Door Testimony, supra* note 70, at 23.

81 *Id.*, at 24.

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A map of the territorial waters of the Gaza Strip, including the blockaded area is attached to this report as annex "D".

In January 2009, during operation Cast Lead, two ships; the general cargo ship *Iran Shahed* and the *Spirit of Humanity*, decided not to breach the naval blockade as they had intended after naval forces sent them warnings not to enter the area ('Winds of Heaven 3' and 'Winds of Heaven 4,' respectively).

27 After operation Cast Lead ended, the resolution regarding the imposition of a naval blockade remained in force. In his testimony before the Commission, the Prime Minister Mr. Benjamin Netanyahu confirmed that the resolution to impose the naval blockade was not reexamined after the operation ended.[82]

In February 2009, the general cargo ship *Tali*, which left the port of Tripoli in Lebanon, tried to reach the Gaza Strip ('Winds of Heaven 5') with weapons on board. In June 2009, the vessel *Arion* tried to reach the Gaza Strip with 30 passengers on board ('Winds of Heaven 6'). It also carried humanitarian equipment (medications, infant formula, a few toys, some olive tree saplings, etc.) and bags of cement. The two ships were seized by the Navy, without the use of force, after they failed to heed warnings sent to them. The ships were brought to Ashdod port, proceedings were begun to expel the passengers from Israel and the humanitarian supplies on board were sent to the Gaza Strip through the United Nations after a security inspection.[83]

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82 See protocol of meeting 2 of the Commission "Prime Minister's open door testimony" 17-18 (Aug. 9, 2010) [hereinafter *Prime Minister's Open Door Testimony*].

83 It should also be noted that in the period from February 2009 to January 2010 a number of land convoys attempted to enter Gaza through its border with Egypt. A land convoy headed by a British Member of Parliament which included 3,000 participants was permitted to enter the Strip through the Rafah crossing. An additional convoy including 225 participants was allowed to enter the strip in July 2009 in a reduced capacity including 55 activists and 50 vehicles. In December 2009 another convoy departed from a number of countries in Europe. The Turkish organization named the IHH, whose participation in the flotilla we will discuss later, assisted in the transportation of participants from Turkey to El Arish. After the Egyptians placed various limitations on the convoy only about half the provisions were permitted to enter the Gaza Strip through the Rafah border crossing. In addition, there were rioting by the participants in the El Arish region and confrontations with the Egyptian security forces. During the confrontations, about 50 participants of the convoy were injured, including five in a critical manner. The leader of the IHH Bülent Yildirim later admitted that during the confrontation seven Egyptian soldiers were taken hostage; See also: *IICC report* (Jun. 20, 2010) (all of the reports received from the IICC were marked by the Commission and are found in an exhibit marked by the Commission as folder no. 150; hereafter, all of the exhibits in this binder will be called "*IICC report*" and will be distinguished by their date of issuance); *IICC report* (Jul. 19, 2010).

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The Questions before the Commission

28. In this part of the report, the Commission will address the following questions:

a. What is a naval blockade, and what are the legal rules that govern the imposition and the actual enforcement of such a blockade?

b. Did Israel act in accordance with these rules?

c. What legal obligations does Israel have vis-à-vis the Gaza Strip? Does the naval blockade have an impact on the humanitarian situation in the Gaza Strip that renders it contrary to international law?

d. Do individuals or groups have a right under international law to disregard an established blockade?

The Conformity of the Naval Blockade with International Law

The legal framework

The concept of a 'naval blockade' in general

29. The term "blockade" is frequently used to cover diverse and often complex military operations.[84] While the term blockade is sometimes used to refer to land operations, the most common context in which the term appears is in naval operations. Historically, the concept differed only slightly from the concept of a 'siege'[85] but it should be emphasized that a naval blockade is not identical to a siege. Whereas a siege means the encircling of the enemy's military forces; a strategic fortress; or any other location defended by the enemy, and cutting it off from support and supply lines, a naval blockade describes a wider variety of operations.[86] Thus, for

84 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY; Vol I 755 (Bruno Simma et al. eds., 2nd ed., 2002):

85 "The concept of blockade does not assume a technical law-of-war sense, but rather points to military action with a view to sealing off particular coasts or land areas".
The term "Blockade" is defined in the online Oxford Dictionary (2010) as:
"an act or means of sealing off a place to prevent goods or people from entering or leaving: *they voted to* **lift the blockade** *of major railway junctions*. Origin: late 17th century: from block + -ade, probably influenced by *ambuscad*".
Wolff Heintschel von Heinegg, *Naval Blockade*, 75 INT'L L. STUD. SER. U.S. NAVAL WAR COL. 203, 205 (2000).

86 YORAM DINSTEIN, THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT 133 (2004):

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example, in a current collection of articles published as *Naval Blockades and Seapower: Strategies and Counter-Strategies, 1805-2005* (hereafter: *Naval Blockades and Seapower*), it has been noted that:

> '... while legal definitions of naval blockades attempt to be precise, the range of activities that have historically fit under this rubric are vast indeed.'[87]

Naval Blockades and Seapower provides eighteen examples of maritime blockade operations including those that were conducted during the two World Wars, in the conflict between the People's Republic of China and the Republic of China (Taiwan) (in 1949-1958), in the Korean War (1950-1953), during the Cuban Missile Crisis (1962), in the Vietnam War, during the sanctions against Iraq (1990-2003), etcetera.[88] Naval blockades were also imposed, *inter alia*, in the Bangladesh Liberation War in 1971; by Egypt against the city of Eilat and the Gulf of Aqaba in 1967, and on the Bab el-Mandeb Strait in 1973;[89] during the Iran-Iraq War of 1980-1988,[90] and by Israel on the coasts of Lebanon during the Second Lebanon War (March 2006).[91] The variety of examples and contexts in which naval blockades were imposed shows the range of military actions that have historically been included in the term 'naval blockade.' While a strict legal assessment might challenge whether some of these operations meet the technical legal requirements of a 'blockade', it is clear that preventing the enemy from having access to the maritime area on which the blockade has been imposed, and preventing it from being able to receive supplies and assistance via that area, was and remains an integral part of this

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87 "Siege warfare is conducted by encircling an enemy military concentration, a strategic fortress or any other location defended by the enemy, cutting it off from channels of support and supply".
L. OPPENHEIM, INTERNATIONAL LAW: A TREATISE; VOL II: DISPUTES, WAR AND NEUTRALITY 768 (7th ed., H. Lauterpacht ed., 1952):
"Blockade must not be confused with siege, although it may take place concurrently with siege".
NAVAL BLOCKADES AND SEAPOWER: STRATEGIES AND COUNTER-STRATEGIES 1805-2005 4 (Bruce A. Elleman & S.C.M. Paine eds., 2006).

88 *Id.*; see also ix-xi (details of different subjects in table of contents).

89 *Heintschel von Heinegg, Int'l L. Stud, supra* note 85, at 211-212.

90 *Id.*

91 ANTHONY H. CORDESMAN, GEORGE SULLIVAN & WILLIAM D. SULLIVAN, LESSONS OF THE 2006 ISRAELI-HEZBOLLAH WAR 131-135 (Significant Issues Series 29(4), 2007); Wolff Heintschel von Heinegg, *Blockade*, MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (Rüdiger Wolfrum, ed., 2010), *available at* www.mpepil.com/subscriber_article?script=yes&id=/epil/entries/law-9780199231690-e252&recno=3&author=Heintschel_von_Heinegg,_Wolff [hereinafter *Heintschel von Heinegg, EPIL*]. nd a naval blockade was imposed by Israel on the coasts of Lebanon during the Second Lebanon War (March 2006).he dispute sized

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method of warfare.[92] Indeed, imposing naval blockades is 'a basic and fundamental activity of navies.'[93]

30. The imposition of a naval blockade may have various purposes. One purpose is the strategic military one of frustrating giving possible aid to the enemy's military operations or preventing the transport of weapons or supplies to a military force operating in the country whose coast is subject to the blockade.[94] However, a unique aspect of blockade as a method of warfare is that "in view of its impact on the commercial relations between the blockaded belligerent and neutrals, a blockade is regularly considered a method of economic warfare."[95] As the eminent Israeli international scholar and former member of this Commission, the late Ambassador Shabtai Rosenne noted, one of the greatest advantages of a naval blockade is the ability to effectively cripple an enemy's external trade, which is a legitimate object in armed conflict.[96]

The legal sources

31. The law of the sea, which is the legal framework that normally applies in times of peace, constitutes one of the oldest fields in international law. Much of the law of the sea is codified by the United Nations Convention on the Law of the Sea of December 10, 1982 (hereafter: **UNCLOS**).[97] The State of Israel is not a party to this convention, but it is bound by those provisions that are regarded as having customary status.[98] For our purposes, two basic principles in the law of the sea are of particular importance: (1) sovereignty of the flag State, which means that ships on the high seas (i.e. in international waters) are subject to the

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92 See, for example, U. S. Navy, THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS 4-9 (2007); See also *Heintschel von Heinegg, Int'l L. Stud, supra* note 85, at 211.

93 NAVAL BLOCKADES AND SEAPOWER, *supra* note 87, at xviii.

94 See CONSTANTINE JOHN COLOMBOS, THE INTERNATIONAL LAW OF THE SEA 716-717 (1967); OPPENHEIM, *supra* note 86, at 769-770.
(who both use the term "strategic" when referring to a blockade that forms part of other military operations and "commercial" when the object of the blockade is to cut off all trade from the blockaded area).

95 *Heintschel von Heinegg, EPIL, supra* note 91, at para. 1; see also HERSCH LAUTERPACHT, INTERNATIONAL LAW: COLLECTED PAPERS; VOLUME 5: DISPUTES, WAR AND NEUTRALITY, PARTS IX-XIV 661 (Elihu Lauterpacht ed., 2004); COLOMBOS, THE INTERNATIONAL LAW OF THE SEA, *Id.*

96 Shabtai Rosenne, *Modern Blockade: Some Legal Aspects*, 23 BRITISH YEAR BOOK OF INT'L LAW 346, 347-353 (1946).

97 United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

98 Transcript of session no. 4 "Testimony of the Military Advocate-General" (August 26, 2010), at 32 [hereinafter *Military Advocate-General's testimony*].

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jurisdiction of the State whose flag they bear;[99] (2) freedom of the high seas, which is a fundamental principle in modern law of the sea, meaning, *inter alia*, that all ships are entitled to complete freedom of movement in the high seas. Impeding the freedom of navigation of a ship on the high seas is likely to be regarded as a violation of the sovereignty of the flag State, unless consent of the flag State has been obtained or if permitted on another ground in international law. This principle applies not only in times of peace, but also to neutral shipping in times of armed conflict.

Admittedly, there have been proposals to prohibit use of the sea for military purposes altogether, but these efforts have encountered opposition. The laws of the sea do not operate in isolation from other rules and principles of international law,[100] in particular, the admissibility and legality of military uses of the sea derive from the laws of naval warfare, rules of neutrality, and principles of customary international law.[101] Accordingly, in times of armed conflict, the law of naval warfare, as *lex specialis*, prevails over the law of the sea.[102] In other words, the rules of international law permit a belligerent Party to restrict the operation of neutral vessels, with the result that some of the rights of neutral nations are set aside in favor of a State engaged in the armed conflict.[103]

32. The rules that regulate the imposition of a naval blockade are part of the laws of naval warfare and most of the have the status of customary international law. Customary international law is an integral part of Israeli law.[104] Indeed, attempts were made in the Paris Declaration of 1856 and the London Declaration of 1909 to codify the rules, but the Paris Declaration was signed by only seven States and the London Declaration was never given binding force; however, it is accepted that the customary

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99 A third principle of importance is the principle of territorial waters, according to which, unlike the arrangement which applies to international waters, in a country's territorial waters vessels are not allowed freedom of movement. These waters are under the jurisdiction of the coastal country and it is authorized to prevent vessels from entering it, excluding places where this is required within the frameworks of "innocent passage," that is, a passage necessary for quick and efficient arrival at the vessel's destination (including the port of said country) or dictated by force majeure or the vessel's distress, and which does not disrupt the peace, order, or security of the coastal country. See *Military Advocate-General's testimony*, *supra* note 98, at 33. *MAG position paper*, *supra* note 1, at 33.

100 See the introduction to UNCLOS, *supra* note 97: "matters not regulated by this Convention continue to be governed by the rules and principles of general international law".

101 For additional analysis of the law see GEORGE P. POLITAKIS, MODERN ASPECTS OF THE LAWS OF NAVAL WARFARE AND MARITIME NEUTRALITY (1998); WOLFF HEINTSCHEL VON HEINEGG, SEEKRIEGSRECHT UND NEUTRALITÄT IM SEEKRIEG (Berlin, 1995).

102 International Law Association, Committee on Maritime Neutrality, *Final Report to the Sixty-Eighth Conference* 496-521, at 498 (London 1998).

103 OPPENHEIM, *supra* note 86, at 769-770.

104 *Targeted Killing* case, *supra* note 37, at para. 19.

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international humanitarian law governing blockades is largely based on the London Declaration of 1909.[105]

The development of these customary rules over the twentieth Century saw a number of disagreements, such as what constituted "effectiveness" (a requirement for naval blockades, discussed below) with regard to the imposition of a naval blockade, and whether it is permitted to operate vessels at a distance from the coast of a party to the conflict, ultimately being resolved.[106] In the two World Wars, states did not act in accordance with the rules appearing in the London Declaration of 1909,[107] which gave rise to the question whether this method of warfare had fundamentally changed.[108] However, despite the challenges presented by such large-scale conflicts, since 1945, States have, in general, taken care to operate within the limitations of the traditional rules governing blockades.[109]

33. At the end of the twentieth century, it became clear that it was necessary to update the understanding of the rules governing blockades because of the dated nature of the law; the introduction of new technology and modern methods and means of warfare; the development of the law governing armed conflict after the Second World War, including the First Additional Protocol to the Geneva Conventions; and developments in other fields of international law, such as the law of the sea, the United Nations Charter, environmental protection law, and laws of aerial

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105 See *Heintschel von Heinegg, Int'l L. Stud, supra* note 85, at 205-213 for a brief history of the development of naval blockade laws, particularly his statements on page 214:

106 "In general States are willing to accept the customary character of the principles laid down in the 1909 London Declaration".
See also, *Collections of Documents on the Law of Armed Conflict, Hague Conventions, Geneva Conventions & Additional Protocols, Charter of the United Nations, UNCLOS, Other Treaties and Related Canadian Statutes (Concerning general land, sea, air, neutrality, humanitarian law, disarmament and anti-personnel land mines* (Directorate of Law Training, ed., 2005), *available at* www.forces.gc.ca/jag/publications/Training-formation/coll_docs_LOAC-DDCA_2005_eng.pdf.
Heintschel von Heinegg, Int'l L. Stud, supra note 85, at 205-213.

107 See *Heintschel von Heinegg, EPIL, supra* note 91, at 205-209, which explains that the blockade system made use of terms like "continuous voyage" when the ships sailing to a neutral port could be captured, if their final destination was a port under blockade and long distance blockades were made possible by technological advancement such as long range artillery, submarines, and military aircrafts, who have made a blockade close to the enemy's shore impossible to supervise. See also, Geoffrey Till, *Naval Blockade and Economic Warfare in the European War, 1939-45,* in NAVAL BLOCKADES AND SEAPOWER, *supra* note 87, at 123 (regarding the Navicert certification system which was employed by British clerks abroad during the second World War, which approved cargoes and even whole ships); Rosenne, *Modern Blockade, supra* note 96, at 347-349.

108 *Heintschel von Heinegg, Int'l L. Stud, supra* note 85, at 211-212.

109 *Id.*, at 211; see also *U.S. Navy, The Commander's Handbook, supra* note 92, at para. 7.7.5.

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warfare.[110] In the years 1988-1994, a group of experts engaged in an attempt to combine the rules governing the law of naval warfare with innovations and new trends in this field. The result was the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea (hereafter: **San Remo Manual**), which offers a detailed current statement of the customary international law of naval warfare, including naval blockades. This manual will serve as the primary basis for the legal analysis of the issues before the Commission. However, since some of the provisions in the San Remo Manual are regarded as reflecting a progressive development of the law rather than merely a restatement thereof, the analysis below is also based on other accepted texts and manuals in order to identify areas where there may not be complete international consensus on the San Remo rules.[111] However, it should also be noted that the areas of divergence are limited.

34. Due to the influential role that the United States Navy plays in naval matters, reference will also be made to the *2007 Commander's Handbook On The Law Of Naval Operations NWP 1-14M* (hereafter: **the U.S. Navy Commander's Handbook**).[112] Manuals of other states regarding the law of armed conflict [113] and academic texts[114] will serve as additional sources. The *2009 Harvard Manual on International Law Applicable to Air and Missile Warfare* (hereafter: **the Harvard Air and Missile Warfare Manual**);[115] although it concerns aerial rather than naval blockades

110 See San Remo Manual on International Law Applicable to Armed Conflicts at Sea (Louise Doswald-Beck ed., 1995) [hereinafter *San Remo Manual* when referring to the provisions, and *San Remo Explanation* when referring to the accompanying explanatory text].

111 *San Remo Explanation* (preface).

112 See also *U.S. Navy, The Commander's Handbook, supra* note 92.

113 For example, *The Manual of The Law of Armed Conflict: UK Ministry of Defence* (2004), *available at* www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/LegalPublications/LawOfArmedConflict/ [hereinafter *The UK Manual*]; the *Canadian Law of Armed Conflict at the Operational and Tactical Level* (2001), *available at* www.forces.gc.ca/jag/publications/Training-formation/LOAC-DDCA_2004-eng.pdf [hereinafter *The Canadian Manual*]; THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW (Dieter Fleck, ed., 1st ed., 1995 and 2nd ed., 2008) (the key statements in the Handbook of International Humanitarian Law were promulgated for the German Bundeswehr as Joint Services Regulations (ZDv) 15/2 to guide the conduct of military operations) [hereinafter *The German Manual*, when referring to its key statements, or *International Humanitarian Law Handbook*, when referring to its commentaries].

114 DINSTEIN, THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT, *supra* note 86; LESLIE C. GREEN, THE CONTEMPORARY LAW OF ARMED CONFLICT (2nd ed., 2000); *International Humanitarian Law Handbook, supra* note 113, *Id.*

115 Humanitarian Policy and Conflict Research at Harvard University (HPCR), 'The Commentary on the Humanitarian Policy and Conflict Research (HPCR) Manual on International Law Applicable to Air and Missile Warfare', (Mar. 2010), *available at* http://ihlresearch.org/amw/Commentary%20on%20the%20HPCR%20Manual.pdf. [hereinafter *The Air and Missile Warfare Manual*].

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(even when enforced by military planes, as in the operations to enforce the naval blockade on May 31, 2010), also provides a useful benchmark against which to assess the degree to which a consensus in the applicable law has developed over time.[116]

The legal definition of the term 'naval blockade' and the rules governing its imposition and enforcement

35. A widely accepted definition of the term 'blockade' can be found in the U.S. Navy Commander's Handbook:

> 'Blockade is a belligerent operation to prevent vessels and/or aircraft of all nations, enemy as well as neutral, from entering or exiting specified ports, airfields, or coastal areas belonging to, occupied by, or under the control of an enemy nation.'[117]

36. Provisions 93-104 of the San Remo Manual cover the imposition and enforcement of a naval blockade. These rules provide that a blockade should be declared and notified;[118] such a declaration should specify the commencement, duration, location and extent of the blockade;[119] the blockade must be 'effective';[120] the force maintaining the blockade may be stationed at a distance from the coast determined by military requirements;[121] the blockade may be enforced by a combination of legitimate methods and means of warfare;[122] access to the ports and coasts of neutral States may not be blocked;[123] the blockade should be applied impartially to the vessels of all States;[124] and any cessation, temporary lifting, re-establishment, extension or other alteration of a blockade must be declared and notified.[125]

The San Remo Manual also specifically addresses the humanitarian aspects of imposing and enforcing of a naval blockade, and prohibits the imposition of a naval blockade if its sole purpose is to starve the civilian

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116 *Id.*; The Air and Missile Warfare Manual represents the "most up to date re-statement of existing international law applicable to air and missile warfare, as elaborated by an international Group of Experts" of blockade law at least where the use of aircraft is concerned.

117 See also U.S. Navy, *The Commander's Handbook*, *supra* note 92, at para. 7.7.1; *Heintschel von Heinegg, EPIL*, *supra* note 91, at para. 1 (which adopts the same definition).

118 See *San Remo Manual*, *supra* note 110, at 26, rule 93.

119 See *Id.*, at rule 94.

120 See *Id.*, at rule 95.

121 See *Id.*, at rule 96.

122 See *Id.*, 27, at rule 98.

123 See *Id.*, at rule 99.

124 See *Id.*, at rule 100.

125 See *Id.*, at rule 101.

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population, or prevent objects essential for its survival.[126] Further, the imposition of a naval blockade is also prohibited 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.[127] This is the principle of 'proportionality.' Moreover, subject to certain conditions, the blockading party must provide free passage of foodstuffs and other essential objects if the civilian population is inadequately provided with these supplies.[128] Similarly, subject to the right of the blockading party to prescribe the technical arrangements, the passage of medical supplies to the civilian population or the wounded and sick members of enemy forces must be permitted.[129]

As noted, the rules that concern the imposition and enforcement of a naval blockade apply during armed conflict. Therefore, the analysis will now turn to examine the question of the nature of the conflict in the Gaza Strip, because this determination impacts the assessment of the naval blockade imposed by Israel.

The conflict in the Gaza Strip

The classification of the conflict between Israel and the Hamas and the implications of this classification for the naval blockade

37. International law distinguishes between two types of armed conflict: international armed conflict and non-international armed conflict. In the traditional-formal sense, international humanitarian law classified 'international armed conflict' as war between States.[130] According to this approach, a conflict between a State and a non-state actor would be regarded as a non-international armed conflict. However, in reality, the complexities of modern warfare pose a significant challenge when classifying an armed conflict, since not all armed conflicts can be easily classified within the framework of the traditional definition.

38. The importance of classifying the armed conflict between Israel and the Hamas is a consequence of the fact that the international community is more willing to accept the imposition of a naval blockade within the

126 See *Id.*, at rule 102(a).
127 See *Id.*, at rule 102(b).
128 See *Id.*, at rule 103.
129 See *Id.*, at rule 104.
130 See GREEN, THE CONTEMPORARY LAW OF ARMED CONFLICT, *supra* note 114, at 54, where he mentions that the classic approach is that international law deals only with relations between countries. As a result of this, the conflict between countries is what this law regulates.

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framework of an international armed conflict. This is likely the result of two interrelated factors. First, the rules governing naval blockades were developed within the framework of international conflicts, whereas, traditionally, States have demonstrated a reluctance to apply international humanitarian law to internal disputes. Second, the imposition of a naval blockade usually causes a disruption of trade with parties that are neutral to the conflict; an activity usually carried out by States or with their approval. Therefore, States have a particular interest in the issue of when and how naval blockades are instituted and enforced.

39. Naval blockades have, nevertheless, been imposed in non-international armed conflicts (which is not surprising in view of the large number of internal armed conflicts relative to the number of international armed conflicts throughout history). In certain situations, States have imposed a military or economic blockade against an enemy that is not a *de jure* government.[131] Historically, in order for the rules of international humanitarian law that govern international armed conflicts to apply to non-international ones, recognition of a 'belligerency' was required of other States. Such recognition was limited to circumstances in which the level of the conflict has reached 'a certain threshold of intensity manifesting a situation similar to that of a war between states.'[132] However, it should be noted that this has become less important and today is almost irrelevant.[133]

40. The Military Advocate-General, Major-General Avichai Mandelblit, testified before the Commission on the difficulty of classifying the conflict between Israel and the Hamas terrorist organization.[134] In his testimony,

131 See also *Prosecutor v. Tadic*, Appeals Judgment, No. IT-94-1-A, para. 84 (July 15, 1999): "[i]t is indisputable that an armed conflict is international if it takes place between two or more States".
See also *Legal Consequences Of The Construction Of A Wall In The Occupied Palestinian Territory*, I.C.J., (Jul., 2004) at 56, para. 139, *available at* www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm [hereinafter *the Wall* case] (where the ICJ indicated that the exercise of inherent right to self-defense under s. 51 of the United Nations Charter is only available where there has been an attack by one State against another State).
The most famous example of such a blockade was the blockade placed by Union states on the Confederate states during the American Civil War between 1861-1865. In the period following the Second World War, we may name the conflict of the "nationalists" with the People's Republic of China (1949-1958). See e.g., COLOMBOS, INTERNATIONAL LAW OF THE SEA, *supra* note 94, at 714-730 (for references to historical examples of blockades by and against insurgents) and David G. Surdam, *The Union Navy's Blockade Re-considered*, *in* NAVAL BLOCKADES AND SEAPOWER, *supra* note 87, at 61.

132 ANTHONY CULLEN, THE CONCEPT OF NON-INTERNATIONAL ARMED CONFLICT IN INTERNATIONAL HUMANITARIAN LAW 17 (2010).

133 *The UK Manual*, *supra* note 113, at 382; See also CULLEN, *supra* note 132, at 22-23.

134 *Military Advocate-General's testimony*, *supra* note 98, at 11-19; Israel and several other States have recognized the Hamas as a terrorist organization: these include the United States (www.state.gov/s/ct/rls/other/des/123085.htm), Canada (www.publicsafety.gc.ca/

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he said that after Operation Cast Lead, Israel adopted the position that it is bound by the laws of war that apply to both international armed conflict and non-international armed conflict.[135] The Military Advocate stated that, in practice, the IDF therefore focuses on compliance with the rules of international humanitarian law.[136]

41. While armed conflicts with non-State parties have been recognized as a non-international in character,[137] this approach has not been universally adopted. For example, there is a consensus that the conflict between the State of Israel and the Hamas is an international armed conflict, although the reasons that have led various parties to this conclusion vary, as we shall see below.

Indeed, in HCJ 769/02 *Public Committee Against Torture v. Government* [2006] (4) TakSC 3958; [2006] (2) IsrLR 459 (hereafter: the **Targeted Killings case**), the Supreme Court of Israel adopted the position that international humanitarian law applies to an armed conflict between Israel and terrorist organizations not merely in an area that is subject to occupation, but 'in any case of an armed conflict of an international character - in other words, one that crosses the borders of the state - whether or not the place in which the armed conflict occurs is subject to a belligerent occupation.'[138] The Israel Supreme Court has implemented this approach consistently in several judgments that addressed the issue of entering Israel via the crossings between it and the Gaza Strip.[139] In additional judgments, the Israel Supreme Court has gone on to hold that although the Gaza Strip is no longer occupied,[140] it is subject to those provisions in the Fourth Geneva Convention and the First Additional Protocol that reflect customary international law and apply only where there is an international armed conflict.[141]

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prg/ns/le/cle-eng.aspx#Hamas) and the European Union (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:178:0028:0030:EN:PDF).

135 *Military Advocate-General's testimony, supra* note 98, at 91.

136 *Id.*, at 75-76.

137 See *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

138 See *Targeted Killing* case, *supra* note 37, at paras. 18.

139 See for example HCJ 201/09, 248/09 *Physicians for Human Rights v. Prime Minister* (still unpublished. Jan. 19, 2009) 10, para. 14:
"The normative arrangements that govern the armed conflict between the State of Israel and the Hamas organization are complex. They revolve around the international laws relating to an international armed conflict. Admittedly, the classification of the armed conflict between the state of Israel and the Hamas organization as an international conflict raises several difficulties. But in a host of judgments we have regarded this conflict as an international conflict."

140 See for example HCJ *9132/07 Al-Bassiouni v. Prime Minister* (unpublished, Jan. 30, 2008) [hereinafter *Al-Bassiouni* case], at para. 12.

141 *Id.*, at paras. 12-15.

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The Supreme Court of Israel is not alone in classifying the conflict between Israel and the Hamas as an international armed conflict. Various United Nations organizations, humanitarian organizations, and human rights organizations also classify the conflict between Israel and the Hamas as an international armed conflict, although the reasons that led them to this conclusion differ. This classification is largely a result of the position of these organizations that the Gaza Strip is, even today and despite Israel's disengagement from the Gaza Strip in 2005, a territory occupied by Israel.[142] No doubt consistent with their humanitarian focus, the approach that Israel is an occupying power vis-à-vis the Gaza Strip optimizes the argument that the provisions of the Fourth Geneva Convention regarding the protection of civilians in a territory that is subject to a belligerent occupation apply to the population of Gaza. Since an occupation can only exist within the context of an international armed conflict, the position that the Gaza Strip is subject to an occupation necessarily leads to the conclusion that the conflict in the Gaza Strip is international in character.[143]

42. However, even if the conflict in the Gaza Strip were to be classified as a non-international armed conflict, it would appear that the rules of international humanitarian law regarding naval blockades would still be applicable given the decline of the doctrine of 'recognition of belligerency;'[144] the increasing acceptance by courts and tribunals to apply international

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142 See *Human Rights Watch: I Lost Everything, available at* www.hrw.org/en/reports/2010/05/13/i-lost-everything (2010), at 117.

143 YORAM DINSTEIN, THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION 276-280 (2009);
Amnesty International: Occupied Palestinian Territories: The Conflict in Gaza: A Briefing on Applicable Law, Investigations, and Accountability, available at www.amnesty.org/en/library/asset/MDE15/007/2009/en/4c407b40-e64c-11dd-9917-ed717fa5078d/mde150072009en.html#1 (2009).
Human Rights Watch: Israel: 'Disengagement' Will Not End Gaza Occupation, available at www.hrw.org/english/docs/2004/10/29/isrlpa9577.htm (2004).
ICRC: Dignity Denied in the Palestinian Territories, available at www.icrc.org/web/eng/siteeng0.nsf/htmlall/palestine-report-131207 (2007).
United Nations: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/498/94/PDF/N1049894.pdf?OpenElement (2010).
Gisha: Disengaged Occupiers: The Legal Status of Gaza, available at www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf (2010).
B'Tselem: Israel's Obligations According to International Law, *available at* www.btselem.org/hebrew/gaza_strip/israels_obligations.asp.
See *International Humanitarian Law Handbook, supra* note 113, at 272:

144 "The law of belligerent occupation applies in international armed conflict only".
See also DINSTEIN, THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION, *supra* note 142, at 33.
See *The UK Manual, supra* note 113, at 382; See also CULLEN, *supra* note 132, at 22-23.

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humanitarian law to internal conflicts;[145] the consensus that is developing among legal experts regarding customary law rules applicable in non-international conflict;[146] and the difficulty previously discussed in classifying contemporary armed conflicts. In light of the aforesaid, it is likely there will be a willingness on the part of courts and other bodies to recognize that the rules governing the imposition and enforcement of a naval blockade are applicable to non-international armed conflicts.[147] A step in this direction was taken in the San Remo Manual, where it is stated that although its provisions were intended to apply mainly in situations of international armed conflicts at sea, this fact was not stated expressly in order not to deter the application of the manual's provisions to non-international armed conflicts, insofar as they involve naval warfare:

> "However, it should be noted that although the provisions of this Manual are primarily meant to apply to international armed conflict at sea, this has intentionally not been expressly indicated in paragraph 1 in order not to dissuade the implementation of these rules in non-international armed conflicts involving naval operations."[148]

43. In light of this complex reality and in the absence of a general consensus under international law regarding the classification of such conflicts, the approach presented by the Military Advocate-General before the Commission; that Israel is bound by international humanitarian law regardless of the classification of the conflict, is an understandable and practically focused one. It should also be noted that the imposition of the naval blockade on the Gaza Strip is not the first case in which Israel has confronted these difficulties. For example, while the international community had difficulty in classifying the armed conflict between Israel and the Hezbollah organization in Lebanon in 2006,[149] that did not stop recognition of the naval blockade that Israel imposed during that conflict.

44. In view of the aforesaid, the Commission has examined the conditions for imposing and enforcing the naval blockade on the Gaza Strip on the basis of the assumption that the conflict between Israel and

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145 See, for example, *Prosecutor v. Tadic*, *supra* note 130, at paras. 65-142.

146 CUSTOMARY INTERNATIONAL HUMANITARIAN LAW (Jean-Marie Henckaerts & Louise Doswald-Beck eds., 2005).

147 This should not be interpreted in any way to suggest that the historic doctrine of "belligerency" is applicable or appropriate in this case. As has been noted, it is a doctrine widely recognized to have fallen into disuse. Further, the application of such a doctrine implies a level of legitimacy that should not be applied to a recognized terrorist entity.

148 See *San Remo Explanation*, *supra* note 110, at 73.

149 NOAM LUBELL, EXTRATERRITORIAL USE OF FORCE AGAINST NON-STATE ACTORS 250-254 (2010).

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Hamas is international in character. However, it should be noted that given the degree of *de facto* control that the Hamas exercises over the Gaza Strip; the significant security threat that it presents; and its attempts to import weapons, ammunition and other military supplies, *inter alia*, by sea; the Commission would have considered applying the rules governing the imposition and enforcement of a naval blockade even if the conflict between Israel and the Gaza Strip had been classified as a non-international armed conflict.

Is the Gaza Strip an occupied territory?

45. In *Al-Bassiouni v. Prime Minister*, the Supreme Court of Israel held that since the disengagement in 2005, Israel does not have 'effective control' over the Gaza Strip. Because of the importance of this conclusion, the actual wording of the Supreme Court is cited below:

> '... since September 2005 Israel no longer has effective control over what happens in the Gaza Strip. Military rule that applied in the past in this territory came to an end by a decision of the government, and Israeli soldiers are no longer stationed in the territory on a permanent basis, nor are they in charge of what happens there. In these circumstances, the State of Israel does not have a general duty to ensure the welfare of the residents of the Gaza Strip or to maintain public order in the Gaza Strip according to the laws of belligerent occupation in international law. Neither does Israel have any effective capability, in its present position, of enforcing order and managing civilian life in the Gaza Strip.'[150]

In its judgment, the Supreme Court further held that the main obligations imposed on the State of Israel vis-à-vis the inhabitants of the Gaza Strip derive from the existence of an armed conflict between Israel and the Hamas organization; the degree of control exercised by the State of Israel over the border crossings between it and the Gaza Strip; and the relationship of dependency that was created - at least in certain spheres, such as the electricity supply to the Gaza Strip - during the long period of military rule in the Gaza Strip.[151] The court also held, in accordance with the position presented by the State, that Israel is subject to the rules of customary international law that apply in armed conflict, including the requirement to permit the passage of 'food and basic humanitarian supplies necessary for the survival of the civilian population.'[152]

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150 *Al-Bassiouni* case, *supra* note 140, at para. 12.
151 *Id.*
152 *Id.*, at para. 14.

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As previously noted, notwithstanding the Supreme Court's holding, several organizations have adopted the position that despite the disengagement, the Gaza Strip continues to be under Israeli occupation. This position is mainly based on the claim that although Israel no longer has a permanent military presence in the Gaza strip, Israel's control of several areas that effect the fabric of life in the Gaza Strip amount to 'effective control' of the Gaza Strip. For example, the organization Gisha - Legal Center for Freedom of Movement presented before the Commission its position that Israel effectively continues to control the Gaza Strip for six reasons: (i) Israel controls movement to and from the Gaza Strip via land crossings; (ii) Israel exercises complete control over Gaza's airspace and territorial waters; (iii) Israel controls movement within Gaza through periodic incursions and a "no-go zone"; (iv) Israel controls the Palestinian population registry; (v) Israel exercises control over Gaza's tax system and fiscal policy; (vi) Israel exercises control over the Palestinian Authority and its ability to provide services to Gaza residents.[153] A similar position was also presented by the representatives of the B'Tselem organization in their testimony before the Commission.[154]

46. Indeed, academics have diverging opinions as to whether Israel has 'effective control' over the Gaza Strip.[155] Certainly, the adoption of the position that Israel continues to be an occupying power in the Gaza strip requires an unjustifiably flexible and novel interpretation of the term 'effective control.' In other words, this interpretation would have to be based on the understanding that two different opposing powers can exercise 'effective control' in a territory at the same time: the Hamas and Israel. Moreover, the interpretation of the term 'effective control' needs to be assessed against the currently accepted approach in international law that 'occupation' does not merely require military forces to be stationed

153 *Disengaged Occupiers, supra* note 142.

154 Transcript of session no. 12 "Testimony of member of the B'Tselem organization" (Jessica Montel & Eyal Hareoveny) (Oct. 13, 2010), at 2:
"There is a dispute regarding the question of whether Gaza is still subject to Israeli occupation. There is no doubt that Israel does not currently have effective control in all aspects of life in the Gaza Strip, but it has such control in a few very central areas; in the air space, the maritime space, the population registry, the entry and exit of people and of cargo".

155 For examples of the viewpoints of some leading Israeli scholars, see DINSTEIN, BELLIGERENT OCCUPATION, *supra* note 142, at 12-30 (reaching the conclusion that Israel continues to be an occupying force); Yuval Shany, *Faraway, So Close: The Legal Status of Gaza After Israel's Disengagement* 8 Y. B. INT'L. HUM. LAW 369 (2005) (reaching the conclusion that the disengagement Plan led to the transfer of effective control of the entire Gaza Strip to the Palestinian Authority).

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in a certain territory, but also that the occupying power performs the functions of an existing government.[156]

Indeed, during the long period that Israel had the Gaza Strip under effective control, the Gaza Strip did become dependent on Israel in certain spheres. However, as the Supreme Court of Israel held in *Al-Bassiouni v. Prime Minister*, this dependency is insufficient to establish 'effective control.' It should also be stated, *inter alia*, that insofar as the conclusion that Israel is an occupying power in the Gaza Strip derives from Israel's control of the airspace of the Gaza Strip, there is no support in international law for the proposition that the control of airspace amounts to 'effective control.'[157] With regard to land access to the Gaza Strip, it should be noted that the Gaza Strip also has a border crossing with Egypt (the Rafah crossing), even though Egypt, for its own reasons, also exercises control of the crossing from its territory into the Gaza Strip.[158] Similarly, the imposition of a naval blockade does not create a situation in which the laws of occupation come into effect. It should be emphasized that the very lack of 'control' over the land territory in the Gaza Strip in the traditional sense of this term is what makes an external naval blockade necessary to control access to and egress from that territory. As a comparison, a land siege does not automatically result in the besieged city being held under occupation. States, and particularly those that might employ navies or air forces, either unilaterally or within the framework of a coalition, will likely be wary of accepting the argument that the mere imposition of a naval blockade or influence over events on the shore of a State by the use of military power automatically creates a situation of occupation.

If Israel did indeed have effective control over the Gaza Strip, then it would have the power to act as the authority responsible for maintaining order in the Gaza Strip. The Israeli forces would then be able to wait on the coast of the Gaza Strip and intercept the vessels there. In practice, however, Israel does not control the coast of the Gaza Strip. This area is under the 'effective control' of the Hamas. The lack of effective control

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156 See *Case Concerning Armed Activities On The Territory Of The Congo*, I.C.J., 231(2005) *available at* www.icj-cij.org/docket/files/116/10455.pdf (where it was held the physical stationing of troops at an airport and the existence of "administrative control" was not sufficient to establish occupation in the sense of article 42 of the Hague Regulations).

157 *Bankovic v. Belgium and Others* 123 I.L.R. 94 (2001) (where NATO's control over the airspace of Federal Republic of Yugoslavia during the 1999 bombing campaign was rejected as a basis for arguing "effective control").

158 It should be noted that at a later stage, we will maintain that the fact that there is an additional border crossing between Egypt and the Gaza Strip does not diminish Israel's humanitarian responsibility for the situation in the Gaza Strip. Here, we are dealing with a question of a different nature, namely the question of "effective control" of the Gaza Strip.

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over the Gaza Strip, including the ability to impose order there, and the security threat that the Hamas presents to the naval forces operating near the coast of the Gaza Strip, clearly indicate the underlying logic of international law that permits the enforcement of a naval blockade at some distance from the coast. Similarly, it is difficult to see how the Gaza situation differs in a practical sense from Lebanon in 2006, when the blockading Israeli warship INS *Hanit* was hit by a missile launched by Hezbollah from the Lebanese coast.[159] In light of the fact that the territorial waters of the Gaza Strip contain mainly small vessels that are capable of moving at high speeds, Israel's naval forces are confronted with a significant risk.[160] Examples such as the attack on the *USS Cole* in 2000 in Yemen and the attack on the French supertanker *Limburg* in 2002 highlight both the threat presented by small vessels and the difficulty in stopping them.[161]

47. An examination of the arguments, both individually and cumulatively, therefore leads to the conclusion that Israel does not have 'effective control' in the Gaza Strip. Therefore, in alignment with the Supreme Court of Israel, the Commission takes the position that Israel's effective control of the Gaza Strip ended when the disengagement was completed in 2005.

Israel's imposition of the naval blockade

The purpose of the naval blockade

48. According to the testimonies before the Commission, the Government of Israel imposed the naval blockade on the Gaza Strip on January 3, 2009, for military-security reasons, which focused on preventing weapons, ammunition, military supplies, terrorists and money from entering the Gaza Strip, and the need to prevent the departure of terrorists, vessels filled with explosives and other maritime borne threats from Gaza.[162] The various witnesses emphasized the large amount of weapons that can be smuggled by sea in one single operation

159 See GORDESMAN ET AL., *supra* note 91, at 131-135.

160 *Chief of Staff's Open Door Testimony of 11.8.2010, supra* note 70, at 34-35.

161 See Thad Allen, *Friend or Foe? Tough to Tell*, 134 PROCEEDINGS MAGAZINE (2008), *available at* www.usni.org/magazines/proceedings/2008-10/friend-or-foe-tough-tell.

162 *Chief of Staff's Open Door Testimony of 11.8.2010, supra* note 70, *at* 28; *Military Advocate-General's testimony, supra* note 98, at 25; Transcript of session no. 7 "Testimony of Major-General Eitan Dangot, Coordinator of Government Activities in the Territories" (Aug. 31, 2010), at 134 [hereinafter *Testimony of Government Activity Coordinator in the Territories*]; *Defense Minister's Open Door Testimony, supra* note 70, at 22.

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and therefore the danger that this route presents.[163] The purpose of the naval blockade was, therefore, to restrict the military resources available to the Hamas for carrying out hostilities against Israel.

49. A few officials, including the Military Advocate-General, took care in their testimony to distinguish between the 'purpose of the naval blockade' and 'Israel's border crossings policy,' i.e., the policy relating to the land border crossings with the Gaza Strip that Israel adopted after September 19, 2007, when the Ministerial National Security Committee decided to impose restrictions on the goods entering the Gaza Strip; on the movement of persons; and on the supply of electricity and fuel to the Gaza Strip, as a result of Hamas's rise to power.[164] They emphasized in their testimonies that the naval blockade was not imposed to disrupt the commercial relations of the Gaza Strip, for the reason that there is no commercial port on the coast of the Gaza Strip, and therefore there has been no maritime commerce via the coast of the Gaza Strip in the past.[165] As a result, the maritime activity in the Gaza Strip was limited to fishing, whereas any such commerce went via the Israeli port of Ashdod or the Egyptian port of El Arish.[166] The Military Advocate-General testified before the Commission that the IDF was compelled to find a suitable operational solution for the maritime zone in view of the increase in the phenomenon of flotillas bound for the Gaza Strip.[167] The Military Advocate-General further clarified that the possibility of imposing a naval blockade, specifically, arose in discussions held by the IDF with regard to the appropriate methods of contending with the phenomenon of the flotillas. A naval blockade was regarded as the best operational method of dealing with the phenomenon[168] because other solutions, such as the use of the right of visit and search, were proved to be problematic and other sources of authority were regarded as weaker.

This can also be seen from written material that was submitted to the Commission, which includes legal opinions, summaries of meetings, and letters that were written during the period that preceded the imposition

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163 *Israel's Actions to Prevent the Arrival of Vessels to Gaza's Shore* 8 (Opinion of Political-Security Branch, Aug. 3, 2010) [hereinafter *Opinion of Political-Security Branch*]; see also *Prime Minister's Open Door Testimony*, *supra* note 82, at 7; *Defense Minister's Open Door Testimony*, *supra* note 70, at 8; *Chief of Staff's Open Door Testimony of 11.8.2010*, *supra* note 70, at 6-7.

164 *Military Advocate-General's testimony*, *supra* note 98, at 25; *Testimony of Government Activity Coordinator in the Territories*, *supra* note 162, at 134.

165 *Military Advocate-General's testimony*, *supra* note 98, at 77.

166 *Id.*

167 *Military Advocate-General's testimony*, *supra* note 98, at 14-17.

168 *Id.*

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of the naval blockade. Thus, for example, already on August 3, 2008, the legal advisor of the Israeli Navy wrote an opinion dealing with the powers of the Navy to stop foreign vessels off the coast of the Gaza Strip. The opinion, which was written in the context of operational deployment of the Navy prior to the arrival of a flotilla with two yachts flying Greek flags, surveyed in great detail the applicable law and the various possible actions open to the Navy, while mentioning the limitations faced by the Navy. In her 'Recommendations for further treatment,' she wrote: 'As stated, in the current security... in order that the IDF should have the powers required to deal with ships reaching the Gaza Strip, I recommend considering a "naval blockade" on the Gaza Strip (with an official announcement), which will restrict the entry of foreign shipping vessels into the Gaza Strip...'[169] An opinion with a similar conclusion was given by the International Law Department at the headquarters of the Military Advocate-General's Office on August 6, 2008.[170] On August 11, 2008, the Military Advocate-General approached the Attorney-General and brought to his attention the recommendation of the Military Advocate-General's Office as well as various legal disagreements that arose in this regard with the legal adviser of the security establishment, the legal adviser of the Ministry of Foreign Affairs and the legal adviser of the Israel Police. The Military Advocate-General also requested holding a meeting on the subject, with the participation of all of the relevant parties, in order to formulate a settled legal position.[171] On the same day the Military Advocate-General apprised the Chief of Staff in writing that he had spoken with the Attorney-General, who also expressed the position that the declaration of a naval blockade on the Gaza Strip gave the 'optimal legal-operational solution to preventing the entry of foreign shipping vessels into the Gaza Strip, and gave the Navy all of the tools and powers required to prevent the passage of shipping vessels. The sources of authority that allow action to be taken against shipping vessels, in the absence of a declaration of a "naval blockade," are weaker, and their practicability is doubtful.'[172] From the materials submitted to

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169 See "the Navy's authorities regarding foreign ships off the shore of the Gaza Strip" (opinion by the navy's legal advisor, 3.8.2008) *MAG position paper - Appendix, supra* note 77.

170 See "the Navy's authorities regarding foreign ships off the shore of the Gaza Strip" (opinion by the Chief Military Advocate General - Department of International Law, 6.8.2008) *MAG position paper - Appendix, supra* note 77.

171 See letter from Brigadier General Avichai Mandelblit, the Military Advocate General, to Yehuda Weinstein, Attorney General (11.8.2008) *MAG position paper - Appendix, supra* note 77.

172 See first letter from Brigadier General Avichai Mandelblit, the Military Advocate General, to Lieutenant General Gabi Ashkenazi, IDF Chief of Staff (11.8.2008) *MAG position paper - Appendix, supra* note 77.

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the Commission, it appears that the Attorney-General agreed on the whole but thought that the issue required a practical solution within the authority of the political echelon and recommended holding a discussion at that level.[173]

On December 29, 2008, the Military Advocate-General once again approached the Navy Commander when, in the situation assessments that took place during Operation 'Cast Lead,' the question of how to deal with civilian shipping vessels that might try to reach the coast of the Gaza Strip arose once again. In his letter, the Military Advocate-General said that 'in view of the intensive combat operations taking place at this time in the Gaza Strip' (i.e., Operation 'Cast Lead'), he thought it right to recommend once again the imposition of a naval blockade on the Gaza Strip, even though no decision had yet been made on this issue.[174] On December 30, 2008, the Military Advocate-General once again contacted the Chief of Staff and said that in the early hours of the morning the Navy forces were required to contend with the yacht *Dignity* that left Cyprus for the Gaza Strip and that the incident highlighted the legal difficulty of dealing with foreign civilian shipping vessels trying to reach the coast of the Gaza Strip. He once again asked the Chief of Staff to bring his recommendation of a naval blockade before the political echelon.[175]

From a memorandum of the Minister of Defense it would appear that on December 30, 2008, a request was received from the Prime Minister's military secretary to act to impose a naval blockade, and that on December 31, 2008, a request was received by his military attaché from the Chief of Staff's office in this regard. On January 3, 2009, after the security establishment's legal advisor gave his opinion on the subject, the Minister of Defense signed an order to impose the blockade.[176]

50. It should be noted that, the leader of the opposition - who was Minister of Foreign Affairs at the time of imposing the naval blockade on the Gaza Strip, MK Tzipi Livni, said in her testimony that the imposition of the naval blockade, even though it was not done in order to disrupt the

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173 See second letter from Brigadier General Avichai Mandelblit, the Military Advocate General, to Lieutenant General Gabi Ashkenazi, IDF Chief of Staff (11.8.2008) *MAG position paper - Appendix, supra* note 77.

174 See letter from Brigadier General Avichai Mandelblit, the Military Advocate General, to Major General Eli Marom, Commander of the Navy (29.12.2008) *MAG position paper - Appendix, supra* note 77.

175 See letter from Brigadier General Avichai Mandelblit, the Military Advocate General, to Lieutenant General Gabi Ashkenazi, IDF Chief of Staff (30.12.2009) *MAG position paper - Appendix, supra* note 77.

176 See Defense Minister's Memorandum, 21 (30.8.2010), marked by the Commission as exhibit 53 [hereinafter *Defense Minister's Memorandum*].

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commercial relations of the Gaza Strip, was done in a wider context, as part of Israel's comprehensive strategy (which she referred to as a 'dual strategy') of delegitimizing Hamas on the one hand and strengthening the status of the Palestinian Authority vis-à-vis the Gaza Strip on the other. Pursuant to this strategy, Israel does not recognize Hamas, yet it continues to act and uphold, insofar as possible, the interim agreements with the Palestinian Authority. According to her approach, the broad context is not merely the war on terror, but also the political ability to reach agreements between Israel and the Palestinian Authority since the attempts to transfer goods to the Gaza Strip by sea (despite Israel's offer to transfer humanitarian supplies to the Gaza Strip via the land crossings) is contrary to the arrangements determined in the interim agreements (according to which Israel will retain control of the territorial waters of the Gaza Strip until the final arrangement is reached) and it also gives legitimacy to the Hamas regime in the Gaza Strip, and harms the ability to reach future agreements between Israel and the Palestinian Authority.[177] MK Livni also stated that it would be a mistake to examine the circumstances of imposing the naval blockade from a narrow security perspective only.[178]

Similarly, in a document dated August 3, 2010, Major-General (res.) Amos Gilad, the head of the Political, Military and Policy Affairs Bureau at the Ministry of Defense gave details of the security and political reasons that led to imposing the naval blockade on the Gaza Strip. The document contains two considerations: one, which is mentioned as the main consideration, is to prevent any military strengthening of the Hamas; the other, which is mentioned alongside the security consideration, is to 'isolate and weaken Hamas.' In this context, Major-General (res.) Gilad stated that the significance of opening a maritime route to the Gaza Strip was that the Hamas' status would be strengthened significantly from economic and political viewpoints. He further stated that opening a maritime route to the Gaza Strip, particularly while it is under Hamas control, rather than within the framework of a political agreement between Israel and the Palestinians, would be tantamount of 'a very significant achievement for Hamas and the "path of resistance" in the internal arena, at the expense of Abu Mazen's government and the "path of agreements".'[179] Major-General (res.) Gilad concluded:

177 Transcript of session no. 14 "Leader of the Opposition Tzipi Livni's open door testimony" 2-3 (Oct. 25, 2010) [hereinafter *Leader of the Opposition Tzipi Livni's open door testimony*].

178 See *Id.*, at 3: "The narrow security view, which is correct for such a body, in my view does somewhat of a disservice in the broader matter based upon which Israel could basically be granted legitimacy for actions which are security actions".

179 *Opinion of Political-Security Branch*, *supra* note 163, at 9, paras. 49-52.

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> 'In summary, the need to impose a naval blockade on the Gaza Strip arises from security and military considerations of great weight, which are mainly the need to prevent a military strengthening of terrorists in the Gaza Strip, the entry of terrorists and the smuggling of weapons into the Gaza Strip by sea, and also to prevent any legitimization and economic and political strengthening of Hamas and strengthening it in the internal Palestinian arena.'[180]

It would therefore appear that even though the purpose of the naval blockade was fundamentally a security one in response to military needs, its imposition was also regarded by the decision makers as legitimate within the concept of Israel's comprehensive 'dual strategy' against the Hamas in the Gaza Strip.

Alternatives to the naval blockade

51. From the material that was submitted to the Commission, it is evident that Israel - even though it was not obliged to do so under the rules of international law - imposed the naval blockade only after other options were considered. These included stopping and searching shipping vessels with consent, declaring a 'maritime zone,' and exercising the authority of 'visit and search.' During an armed conflict, it is lawful to impose a naval blockade, without considering alternatives, as long as the naval blockade itself satisfies the requirements of international humanitarian law. Rather, the analysis of the options demonstrates the degree to which Israel carefully considered the decision to impose a blockade.

52. *The power to stop and search ships with consent.* According to the principle of the freedom of the high seas in the law of the sea, as discussed above, there is a very limited authority to interrupt the voyage of a vessel in international waters and carry out a consensual search. While there are States that claim the consent of the ship's master is sufficient, the general view appears to be that the consent of the flag State is required.[181] In any event, virtual certainty that consent for a search would not be granted by the Masters of the ships bent on reaching Gaza limited the utility of following that option. The consent of the flag State provides a stronger legal basis for carrying out a search of a vessel. However, it was not certain that the consent of the flag State would actually be obtained, and,

180 *Id.*, at 9, para. 53.

181 See UNCLOS, *supra* note 97, at art. 110 (UNCLOS generally limits the right of a warship to visit a foreign ship to situations where there is grounds for suspecting that a vessel is involved in piracy, slave trade, unauthorized broadcasting, is without nationality or in fact of the same nationality as the warship).

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in any case, it is not possible to ensure that the consent would be given in a timely manner.

53. *Declaration of a 'maritime zone.'* International humanitarian law permits a party to a conflict to limit the activity of a neutral vessel (including taking control of the communications of a neutral vessel)[182] in or close to an area where naval military activity is taking place, as well as the establishment of maritime zones (or 'exclusion zones').[183] The possibility of creating a 'maritime zone' limiting access to the Gaza strip by the area where combat activity is taking place was not merely considered by Israel in theory, but was also implemented in practice.[184] As stated above (para. 25) on August 13, 2008, a NOTMAR was published, calling for all foreign vessels in the area not to enter the maritime zone adjacent to the Gaza Strip. The NOTMAR also stated that humanitarian aid would be transferred to the Gaza Strip via the existing land crossings. However, there is a lack of clarity in the law as to whether such a zone provides an authority to only search for contraband. Notwithstanding this NOTMAR, flotillas whose declared destination was the Gaza Strip continued to arrive. In the period between the months of August-December 2008, the Government of Israel even permitted six vessels to enter the Gaza Strip. The increasing interest in opening a maritime route to the Gaza Strip aroused grave concern in the security establishment that a permanent 'maritime traffic route' to the Gaza Strip would be created, since it could be abused for smuggling military supplies and terrorists.[185]

54. *Right of visit and search.* Another option considered by Israeli authorities was the exercise of the right of visit and search. As indicated in the U.S. Navy Commander's Handbook, the law of neutrality - a part of the law of armed conflicts that defines the rights of parties that are not involved in the armed conflict - does not prohibit commerce between a neutral State and a party to an armed conflict. However, a neutral government cannot itself supply war materials without it being regarded as a breach of neutrality. Moreover, a neutral government 'may forbid its citizens from carrying on non-neutral commerce with belligerent nations,'[186] but it is not required to do so.

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182 See *U.S. Navy, The Commander's Handbook, supra* note 92, at 7-11, para. 7.8; See also *San Remo Manual, supra* note 110, at rule 108.
183 See *U.S. Navy, The Commander's Handbook, supra* note 92, at 7-12, para 7.9; See also *San Remo Manual, supra* note 110, at rule 105.
184 *San Remo Manual, supra* note 110, at rule 119.
185 *MAG position paper, supra* note 1, at 39.
186 See *U.S. Navy, The Commander's Handbook, supra* note 92, at para. 7.4.

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In order to ensure that cargo that is supplied to a party to a conflict does not breach the rules of neutrality, the laws of naval warfare grant 'a right to visit and search merchant vessels outside neutral waters where there are reasonable grounds for suspecting that they are subject to capture.'[187] An accepted definition of the concept is found in the U.S. Navy Commander's Handbook:

> 'Visit and search is the means by which a belligerent warship or belligerent military aircraft may determine the true character (enemy or neutral) of merchant ships encountered outside neutral territory, the nature (contraband[188] or exempt "free goods") of their cargo, the manner (innocent or hostile) of their employment, and other facts bearing on their relation to the armed conflict.'[189]

However, a key requirement is that such a right cannot be arbitrarily exercised. The challenge that confronted the Israeli authorities was to obtain sufficient information regarding the cargo and/or personnel on board the vessels in order to find a ground for suspicion that the vessel is engaged in transporting contraband, enemy combatants, is presenting fraudulent documentation, is contributing to the enemy's military activity, and similar actions.[190] In addition, exercising the right of visit and search at sea can be a complex process in view of the size of merchant vessels, practical difficulties that have arisen with regard to searching the cargo on vessels, the weather, limited naval resources and the need to carry out other operations.

55. None of the alternatives discussed above provided the means to comprehensively prevent the import of arms, ammunition, and war materials. Moreover, these alternatives did not provide authority to stop terrorists and vessels from leaving Gaza. Here it should be recalled that the Hamas has proven time and again its intention to camouflage its activity behind a civilian cloak. Therefore, it is legitimate for Israel to carefully scrutinize every action of the Hamas in order to determine whether it constitutes a threat to Israel's armed forces or its citizens. Imposing a naval blockade is therefore the only measure that gives authority under international humanitarian law to prevent the departure of vessels from the area where the naval blockade has been declared. It should also be pointed out that imposing a naval blockade is the method of warfare that

187 See *San Remo Manual, supra* note 110, at rule 118.

188 See *San Remo Manual, supra* note 110, at rule 148 (defining contraband as "goods which are ultimately destined for territory under the control of the enemy and which may be susceptible for use in armed conflict").

189 See *U.S. Navy, The Commander's Handbook, supra* note 92, at para. 7.6.

190 See *San Remo Manual, supra* note 110, at rule 146.

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interferes the least with neutral shipping, at least in principle, mainly for the reason that this method of warfare is restricted geographically to the specific area that is subject to the naval blockade, unlike the right of visit and search which can be exercised anywhere, except in the territorial waters of a neutral State.[191]

Given the aforesaid, Israel ultimately decided that imposing a naval blockade provided the most efficient and comprehensive legal tool to confront the prevailing security threat, which, as stated above, constitutes a legitimate method of warfare.

Israel's Compliance with the Legal Rules Governing a Naval Blockade

Commitment to the rules of international law

56. The analysis will now turn to the question of whether Israel complied with the conditions required for the imposition and enforcement of a naval blockade. The material before the Commission clearly shows that all of the organs of the State of Israel (the Government, the IDF, the Military Advocate-General, the Ministry of Foreign Affairs and the Attorney-General) made great efforts in order to comply with the technical legal rules governing the imposition of a naval blockade. The Government of Israel consulted military and civilian legal experts regarding all aspects of the comprehensive planning. From the first discussion of whether a naval blockade was to be introduced, it appears that there was a commitment to two principles: first, the blockade would be imposed pursuant to the rules of international law, i.e., Israel committed itself to follow the widely accepted legal limitations of a traditional blockade as reflected in the *San Remo Manual*. Second, the blockade would be imposed subject to Israel's legal obligations regarding provision of humanitarian assistance.

57. As stated above, the technical legal requirements for imposing a naval blockade can be found, *inter alia*, in articles 93-101 of the San Remo Manual.[192] The evidence before the Commission shows that Israel complied with the conditions regarding the effectiveness of the blockade,[193]

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191 *Id.*

192 *San Remo Manual*, *supra* note 110, at rule 93-101; See also *Heintschel von Heinegg*, *EPIL*, *supra* note 91, at paras. 28-40.

193 *San Remo Manual*, *supra* note 110, at rule 95; *Heintschel von Heinegg*, *EPIL*, *supra* note 91, at paras. 33-37 (as far as is known, the blockade has prevented all ships from accessing the coast of the Gaza Strip since the time of its establishment).

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impartiality in imposing it[194] and non-interference with ports and coasts of neutral States.[195] One aspect of the technical compliance with the law governing blockades that warrant comment is the duty to give notice of the imposition of a blockade, and especially the duty to give notice of the 'duration' of the naval blockade.

'Notice' of the imposition and duration of a naval blockade

58. The requirement of giving notice of a naval blockade appears, *inter alia*, in articles 93-94 of the San Remo Manual. Although the London Declaration of 1909 provides that notice of the imposition of a naval blockade should be given to neutral States by sending messages to their governments, today the accepted opinion is that publishing a 'Notice to Airmen' and a 'Notice to Mariners' satisfies the requirement of the article.[196] The Commentary to the San Remo Manual is of no assistance in this regard, since it merely states that article 94 of the San Remo Manual is 'self-explanatory.'[197]

In the case at hand, the State of Israel took the following steps in order to give notice of the naval blockade: from the testimony of the Military Advocate-General, Major-General Avichai Mendelblit, it can be seen that the Military Advocate-General's Office asked the Ministry of Transport to transmit information regarding the imposition of the naval blockade by all methods at its disposal, in order to ensure that the notice would reach all vessels in the Mediterranean Sea. This was also done. The notice was also published on the Internet sites of the IDF, the Shipping Authority, the Military Advocate-General, and the Ministry of Transport, and, as noted above, via several international channels. The announcement was also transmitted twice a day via the emergency channel for maritime communication to all ships within a distance of up to 300 kilometers from the Israeli coast.[198] In addition, notices were also sent to the flag States

194 *San Remo Manual*, *supra* note 110, at rule 100; See also *Heintschel von Heinegg, EPIL*, *supra* note 91, at para. 40 (it appears that Israel has not authorized any vessel to access the coast of the Gaza Strip since the establishment of the blockade; as a result, Israel has not discriminated between vessels of different nationalities when enforcing the blockade).

195 *San Remo Manual*, *supra* note 110, at rule 99; See also *Heintschel von Heinegg, EPIL*, *supra* note 91, at para. 38 (there is no evidence that the blockade interferes with any ports or coasts outside the Gaza Strip).

196 See *Heintschel von Heinegg, EPIL*, *supra* note 91, at para. 31.

197 *San Remo Explanation*, *supra* note 110, at 177, para. 94.1.

198 *Defense Minister's Open Door Testimony*, *supra* note 70, at 29-30; *Military Advocate-General's testimony*, *supra* note 98, at 74.

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and the States that Israel knew intended to send ships to the area.[199] These steps clearly satisfy the requirement of 'notice.'

59. An issue that requires consideration in this context is whether Israel complied with the condition that notice should be given of the 'duration' of the naval blockade. The NOTMAR of January 3, 2009, states that 'Gaza maritime area is closed to all maritime traffic and is under blockade imposed by the Israeli Navy until further notice'.[200]

The requirement that the duration of the naval blockade (hereafter: **the duration**) should be stipulated from the outset is stated in the San Remo Manual (article 94),[201] in the Harvard Air and Missile Warfare Manual (rule 148(b)),[202] and in the UK[203] and Canadian[204] Manuals (which adopted the provisions of the San Remo Manual). It is not, however, required by the 1909 London Declaration, nor does it appear in the U.S. Naval Commander's Handbook.[205] The Military Advocate-General pointed to the fact that there is a lack of clarity with regard to the accepted norm in customary international law in this context. As stated above, the Commentary on the San Remo Manual cannot assist in the interpretive process.[206] The Commentary on rule 148(b) of the Harvard Air and Missile Warfare Manual states that this requirement refers to a grace period during which neutral aircraft are allowed to leave the blockaded area.[207]

Restricting the blockade to a specific duration was regarded as impossible, in view of the open ended nature of the conflict with Hamas.[208] Even if we regard the 'duration' as an emerging rule of customary international law, great weight is not attached to establishing a specific term during which the blockade is required to run. Therefore, it appears that the notice that the naval blockade would continue 'until further notice' satisfies the legal requirements. This notification was also included in the periodic notices that were sent with regard to the existence of a naval blockade. At the crux of the notification provisions is the goal of ensuring that neutral ships are aware of the existence of a naval blockade

199 *Defense Minister's Memorandum, supra* note 176, at 22.
200 Notice to mariners 1/2009 (Jan. 6, 2009).
201 *San Remo Manual, supra* note 110, at rule 94.
202 *The Air and Missile Warfare Manual, supra* note 115, at art. 148(b).
203 See *The UK Manual, supra* note 113, at 363, para. 13.66.
204 *The Canadian Manual, supra* note 113, at 8-11/8-12, para. 845.
205 See *U.S. Navy, The Commander's Handbook, supra* note 92, at 7-10, para. 7.7.2.2.
206 *San Remo Explanation, supra* note 110, at 177, para. 94.1.
207 *The Air and Missile Warfare Manual, supra* note 115, at 289, art. 148(b).
208 *Defense Minister's Open Door Testimony, supra* note 70, 3-5.

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so that they can avoid entering the area. In the case at hand, the flotilla organizers' stated intention was to breach it and enter the Gaza Strip.[209]

60. Despite the aforesaid, one advantage of stipulating a specific duration is that it would ensure a systematic and periodic review of the blockade at the highest echelons of the Government, in order to examine whether there has been a change in circumstances and whether the naval blockade continues to achieve the anticipated effect. As noted, the lack of a specific duration of the blockade does not affect its legality, but stipulating a fixed duration would ensure that its effectiveness in achieving the Government's anticipated security purposes and its effect on the civilian population would come under review.

Humanitarian obligations

61. As stated above, one of the unique features of a naval blockade is that irrespective of the purpose for which the blockade is imposed, all neutral vessels breaching the blockade or attempting to breach the blockade must be stopped, whether they are carrying weapons or other supplies (commercial cargo, humanitarian equipment, etc.).[210] In order for the blockade to be regarded as binding, it must be effective, i.e., the entry of all vessels into the Gaza Strip must be prevented *de facto*.[211] Israel satisfied these conditions. Once a blockade is established, it is likely to have a humanitarian impact on the civilian population in the blockaded area. The blockading party must therefore consider the humanitarian impact that the blockade will have on the civilian population of the territory.

The duty to consider the humanitarian impact of a naval blockade is stated in articles 102-104 of the San Remo Manual. Pursuant to these articles, the imposition of a naval blockade is prohibited if its sole purpose

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209 See Insani Yardim Vakfi, The Foundation for Human Rights and Freedoms and Humanitarian Relief (IHH), *Palestine Our Route Humanitarian Aid Our Load, Flotilla Campaign Summary Report* 20 [hereinafter *IHH Flotilla Campaign Summary*], *available at www.ihh.org.tr/insani-yardim-filosu-ozet-raporu/en/*. See also Protocol "Freedom Flotilla Coalition Meeting" (May 16, 2010), found on the computer of a journalist who participated in the flotilla on board the *Mavi Marmara*. The intention to breach the blockade was dispatched by the flotilla participants over the radio when the IDF Navy's forces halted the ships at the start of the enforcement operation. See also *ICC report* (Jan. 19, 2010), *supra* note 83, at 5; *ICC report* (Jan. 31, 2010), *Id.*, at 1; *ICC report* (Mar. 7, 2010), *Id.*, at 3; and appendix 39 to "Defense Minister's Memorandum - Appendices" (A Collection added to the Defense Minister's Memorandum, Aug. 30, 2010), marked by the Commission as exhibit 54 [hereinafter *Defense Minister's Memorandum - Appendices*].

210 OPPENHEIM, *supra* note 86, at 774-775.

211 *Heintschel von Heinegg, EPIL, supra* note 91, at para. 33.

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is to starve the civilian population or deprive them of other objects essential for their survival (article 102(a)) or if the damage to the civilian population is excessive, or is expected to be excessive, in relation to the military advantage anticipated from the blockade (article 102(b)). Article 103 concerns the duty of the blockading party to provide the civilian population with food and other objects essential for its survival, subject to certain conditions. Article 104 provides that, subject to certain conditions, the blockading party should ensure the passage of medical supplies for the civilian population or for the wounded and sick members of the enemy forces. In the original language:

> '102. The declaration or establishment of a blockade is prohibited if:
>
> (a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or
>
> (b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.
>
> 103. If the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must provide for free passage of such foodstuffs and other essential supplies, subject to:
>
> (a) the right to prescribe the technical arrangements, including search, under which such passage is permitted; and
>
> (b) the condition that the distribution of such supplies shall be made under the local supervision of a Protecting Power or a humanitarian organization which offers guarantees of impartiality, such as the International Committee of the Red Cross.
>
> 104. The blockading belligerent shall allow the passage of medical supplies for the civilian population or for the wounded and sick members of armed forces, subject to the right to prescribe technical arrangements, including search, under which such passage is permitted.'

The analysis shall now turn to the question whether the naval blockade that Israel imposed on the Gaza Strip had a humanitarian impact on the civilian population in the Gaza Strip that rendered it contrary to international law.

62. One of the difficulties that presented itself before the Commission was that the witnesses testifying on this matter found it hard to identify the 'humanitarian' impact of the naval blockade on the population of the

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Gaza Strip, as distinct from the impact of Israel's land crossings policy. The difficulty created by the attempt to assess the humanitarian impact of the naval blockade itself arises in part because of the fact that even before the naval blockade, there was no maritime trade via the coasts of the Gaza Strip since there was no suitable port, and in part because of the fact that before Israel imposed the land crossings policy (September 19, 2007), the international community only made limited attempts to bring goods into the Gaza Strip by sea. Admittedly, the absence of a commercial port is not a decisive factor, since it is clear that it is possible to find other ways of transporting goods arriving by sea, such as by means of unloading the goods with the help of fishing boats. Moreover, the assumption that goods cannot be transported into the Gaza Strip in the absence of a commercial port inherently contradicts the main purpose of the blockade, i.e., preventing the passage of weapons to the Gaza Strip, since, according to the same logic; it would not be at all possible to transport weapons to the Gaza Strip by sea.

Although the transport of goods via the sea appears to be a limited possibility in the Gaza Strip, in the absence of information and records in this regard, it is difficult to determine the effect of the naval blockade alone on the humanitarian situation in the Gaza Strip. It would appear that the flotilla organizers themselves sought to focus attention on the 'humanitarian' impact of the land crossings policy, and not especially on the issue of the naval blockade.[212] The reason why the issue arose from a maritime perspective was that the activists on the Flotilla were seeking to focus attention on the "humanitarian" impact of the land border policy by loading the vessels with medical and other supplies and seeking to breach the blockade, instead of using the land route. Access from the sea offered a unique opportunity to internationalize and publicize the broader Israeli policy of limiting access to Gaza. Access from the sea offered a unique opportunity to internationalize and publicize the broader Israeli policy of limiting access to Gaza. The goal of the Flotilla was obviously not just to breach the blockade, but also to bring international pressure to bear in a bid to end the land based restrictions.[213]

63. As noted above, it should be recalled that the naval blockade was not imposed in a vacuum. Both the naval blockade and the land crossings policy were imposed and implemented because of the prolonged

212 *Defense Minister's Open Door Testimony, supra* note 70, at 23-25.

213 The large number of members of the media on board the Marmara strengthens this assumption; it seems that the primary goal was political and concentrated on creating a media event; See also: *Prime Minister's Open Door Testimony, supra* note 82, at 8; *Military Advocate-General's testimony, supra* note 98, at 65.

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international armed conflict between Israel and the Hamas. As noted, on the strategic level - even though this may not have been the primary purpose underlying the imposition of the naval blockade - the naval blockade is regarded by the Government as a part of Israel's wider effort not to give legitimacy to the Hamas's rule over the Gaza Strip, to isolate it in the international arena, and to strengthen the Palestinian Authority.[214] In this context, the leader of the opposition, Tzipi Livni testified before the Commission:

> 'On a practical level, even if not conceptually, on a practical level, when problems of this kind arise, I remember those times that we offered to transport the goods for them by land. And therefore the story is not whether it is possible to transport goods and whether for this purpose we are breaking the blockade, but a field that is a different field altogether, which is really a security field, and it is also diplomatic and political and another framework altogether.'[215]

The naval blockade is also connected to the land crossings policy on a tactical level. Because of the considerable difficulty of examining cargo on the high seas, the land border crossings provide a more controlled environment for the passage of humanitarian supplies.[216] Nonetheless, when vessels are directed for military-tactical reasons to Ashdod port, in practice, the transport of the goods on board is subject to the land crossings policy. Therefore, despite the circumstances described above, it is possible that the enforcement of the naval blockade in addition to the implementation of the land crossings policy has a humanitarian impact on the population, at least in principle. In other words, as long as the land crossings are subject to Israeli control, there is *prima facie* a possibility that the opening of an additional route to the Gaza Strip, such as a maritime route that is not controlled by the State of Israel, will affect the humanitarian situation in the Gaza Strip.

Thus, in the present case, some of the flotilla vessels carried iron and cement; materials that have been defined by Israel as materials that can be used for military purposes because of the extensive use made by the Hamas of these materials in order to fortify buildings and tunnels

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214 *Leader of the Opposition Tzipi Livni's open door testimony, supra* note 177, at 13-15

215 *Id.*, at 18.

216 Already in the Notice to Mariners from 2008 (which was issued prior to the establishment of the blockade), it was specifically mentioned that humanitarian equipment would be transferred through the land crossings. Likewise, in relation to this flotilla, the Israeli authorities offered the flotilla participants to change the direction towards the port of Ashdod and transfer the humanitarian supplies on board to the Gaza Strip through the land crossings).

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in the Gaza Strip.[217] Therefore, the Israeli Government has allowed the supply of building materials, including cement and iron, through the land border crossings only for projects approved by Israel and on the condition that their entry is coordinated in advance with international agencies operating in the Gaza Strip.[218] By contrast, the representatives of human rights organizations that testified before the Commission emphasized the need to bring building materials into the Gaza Strip, in order to allow for housing and reconstruction in the wake of Operation Cast Lead.[219] According to the flotilla organizers, their decision to try and transport such materials by sea arose from their view that these materials, which they claim are required by the civilian population in the Gaza Strip, will not be permitted to pass by the land border crossings.[220] The approach of the Israeli Government therefore created, in this sense, a connection regarding the humanitarian effect on the Gaza Strip between the naval blockade and the land crossings policy.

64. Before assessing the humanitarian situation in the Gaza Strip, the analysis will briefly consider a preliminary question: does the fact that Israel is not in control of the southern border between the Gaza Strip and Egypt (i.e., the Rafah crossing) affect Israel's responsibility for the humanitarian situation in the Gaza Strip? The Commission has reached the conclusion that the answer to this question is no, for two reasons. First, even if the land crossing into Egypt was open (which was indeed the case at times), Israel would still be obliged, as the party that imposed the naval blockade, to examine the humanitarian situation in Gaza. Second, Egypt did indeed impose restrictions on movement at the Rafah crossing

217 For a list of materials found on board the flotilla's ships See: "Civilian Policy regarding Gaza Strip - *Regarding the Claims of Human Rights Organizations*" (Oct. 31, 2010), at 27, marked by the Commission as exhibit 127 [hereinafter *Civilian Policy Regarding Gaza Strip - Regarding the Claims of Human Rights Organizations, Dated 31.10.2010*]; *IICC report* (Jun. 14, 2010), *supra* note 83.

218 *Id.*, at 27-28. For the current list of items which could serve both military purposes and non-military purposes and whose entrance into the Gaza Strip is not permitted; see: Israel Ministry of Foreign Cases: Gaza - Lists of Controlled Entry Item, *available at* www.mfa.gov.il/MFA/HumanitarianAid/Palestinians/Lists_Controlled_Entry_Items_4-Jul-2010.htm (2010).

219 *Fact Sheet: United Nations Humanitarian Country Team Advocacy Event on the Gaza Strip's Agricultural Sector, available at* www.ochaopt.org/documents/gaza_agriculture_25_05_2010_fact_sheet_english.pdf (2010) [hereinafter *Fact Sheet*];

220 *United Nations: 2010 Consolidated Appeal: Occupied Palestinian Territory, available at* http://ochaonline.un.org/humanitarianappeal/webpage.asp?Page=1823 (2009), at 53 [hereinafter *Consolidated Appeal*];
United Nations Relief and Works Agency (UNRWA): Emergency Operations in Gaza, Interim Progress Report January-March 2009, available at www.unrwa.org/userfiles/20100119593.pdf (2009), at 10 [hereinafter *Emergency Operations*].
IHH Flotilla Campaign Summary, supra note 209, at 10.

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during the relevant time period. Given the legal requirement to consider the impact of the naval blockade on the humanitarian situation in Gaza, the analysis will now turn to that issue.

The humanitarian situation in the Gaza Strip

Background

65. The examination of the humanitarian situation in the Gaza Strip must be carried out in the context of the general framework of this discussion. As noted above, from the time that Israel took control over the Gaza Strip until 1981, Israel supplied all the civilian needs of the Gaza Strip through the military administration. In 1981, the civilian administration was established, which supplied the needs of the Gaza Strip until the Gaza-Jericho Agreement was signed in 1994. From this stage onward until the implementation of the disengagement plan in 2005, Israel's role was diminished and mainly included aid, coordination, and carrying out liaison operations with the Palestinian Authority. In 2005, when the military administration in the Gaza Strip was cancelled and the IDF left the territory, the need to continue to coordinate Government operations regarding the Gaza Strip remained, especially with regard to the activity of the land crossings between Israel and the Gaza Strip, which Israel continues to control.[221]

66. The Israeli entity responsible for coordinating with the Gaza Strip and the West Bank is called the 'Coordination of Government Activities in the Territories' (COGAT), which is headed by the Coordinator of Government Activities in the Territories, an officer with the rank of Major-General, who is directly subordinate to the Minister of Defense and at the same time is a member of the General Staff of the IDF. The branch of COGAT that deals with the Gaza Strip is the District Coordination and Liaison Office for the Gaza Strip (Gaza Strip DCO), which is headed by an officer with the rank of Colonel. The Gaza Strip DCO coordinates the activity with the Palestinian Authority, and it also advises IDF commanders in the field (headed by the Southern District Commander and the Gaza Division Commander) with regard to civilian and humanitarian issues in the Gaza Strip.

According to testimony of the Coordinator of Government Activities in the Territories, Major-General Eitan Dangot, it appears that COGAT's mission regarding the Gaza Strip is: (1) 'leading and implementing the civilian policy... in the changing reality, in coordination and cooperation

221 *Civilian Policy Regarding Gaza Strip - Part A, supra* note 52, at 6-7.

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with the IDF, the security establishment and Government ministries; (2) formulating and implementing contacts with the Palestinian Authority, civilian organizations and the international community...'.[222] The Coordinator of Government Activities in the Territories also stated that at the beginning of 2010, COGAT defined two particular goals for the coming two years: formulating an assessment of the civilian situation in the Palestinian sphere while identifying and analyzing trends and processes, and, with regards to the Gaza Strip, of 'planning and realizing the humanitarian effort and assistance to the population, while integrating them into the campaign to weaken Hamas.'[223]

Today, three land crossings between Israel and the Gaza Strip are active: the Kerem Shalom crossing, which is used, *inter alia*, as the official crossing for fuel into the Gaza Strip; the Erez crossing, which is used for the movement of people; and the Karni crossing, which is used for transporting seeded food and aggregates, and whose operation is assessed each day according to security considerations.[224] All of the crossings are operated by the Land Crossings Authority at the Ministry of Defense and in coordination between the Gaza Strip DCO and the Palestinian Crossings Administration, which is subordinate to the Palestinian Prime Minister, Salam Fayyad.[225]

Israel's border crossings policy September 19, 2007- June 10, 2009

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222 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 2-3; the third designation - to constitute a civilian authority for the Israeli settlement in the West Bank in the fields of planning and infrastructure - is irrelevant to the Gaza Strip following the Disengagement.

223 *Id.*, at 4.

224 Over the years, border crossings Sufa and Nahal Oz also operated between Israel and the Gaza Strip. The Sufa crossing served as a temporary alternative passage following the closure of the Karni crossing in 2007 (in light of the difficult security situation in the area; the risk of operating the crossing; and the lack of a coordination entity on the Palestinian side). In August 2008, this crossing was closed and the activity was transferred to the Kerem Shalom crossing. The Gas terminal at Nahal Oz was targeted in a number of terrorist attacks, including the killing of two Israeli civilians who worked at the terminal on Apr. 9, 2008, as well as the firing of rockets and mortar shells and an attempt to dig a tunnel and plant explosives under the passage; it was therefore decided to shut it down. It should also be mentioned that the other crossings were also targeted by terrorist attacks, including a combined attack at Karni crossing on Jan. 13, 2005 where an explosive charge detonated at the crossing and three terrorists burst into the crossing and killed six Israeli civilians. On Apr. 19, 2008, Passover eve, an attack took place on the Kerem Shalom crossing, backed by mortar shells, an armored vehicle and two cars packed with explosives disguised to look like IDF jeeps. In this attack, 13 soldiers were injured and the crossing had to be shut down for repairs (estimated at ten million shekels); See *Civilian Policy Regarding Gaza Strip - Part A, supra* note 52, at 35-40.

225 *Id.*

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67. As stated above, in 2007 there was a change in Israel's policy towards the Gaza Strip. As a result of the Hamas takeover of the Gaza Strip, the Ministerial National Security Committee decided to impose civilian restrictions on the Gaza Strip, including a restriction on the transfer of goods; a reduction in the supply of fuel and electricity; and a restriction on the movement of persons in and out of the Gaza Strip, after a legal examination of the issue and with the intention of preventing a humanitarian crisis in the Gaza Strip.[226] On June 10, 2009, the Ministerial Committee further decided that the activity of the crossings would be determined, *inter alia*, by the basic needs of the Palestinian population, and control was introduced with regard to the transfer of money to the Gaza Strip (hereafter, jointly: **the land crossings policy**). As evidenced by the testimonies that the Commission heard, the land crossings policy sought to achieve two goals: a security goal of preventing the entry of weapons, ammunition and military supplies into the Gaza Strip in order to reduce the Hamas' attacks on Israel and its citizens, and a broader strategic goal of 'indirect economic warfare,' whose purpose is to restrict the Hamas' economic ability as the body in control of the Gaza Strip to take military action against Israel.[227] This is not a unique circumstance; as has been noted historically, 'the two forms tend [military and economic] to run into each other.'[228]

It should be noted that pursuant to the aforesaid resolutions, there is no contact between Israel and the Hamas government in the Gaza Strip, and any communication with the Gaza Strip is carried out through representatives of the Palestinian Authority (the government of Salam Fayyad) or through international organizations.[229] The actual implementation of the policy is carried out by COGAT.[230] We shall discuss the principles that COGAT follows in implementing the policy and its actual implementation below.

68. In order to complete the picture it should be noted that the land crossings policy was altered in June 2010. In the relevant resolution, it was stated that several steps would be taken without delay, including

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226 *Id.*, at 10-11; See also *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 37.

227 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 51; on this matter see also JEREMY MATAM FARRALL, UNITED NATIONS SANCTIONS AND THE RULE OF LAW 107 (2007).

228 See COLOMBOS, THE INTERNATIONAL LAW OF THE SEA, *supra* note 94, at 716-717.

229 The Government Activity Coordinator in the Territories has contact with approximately 160 international organizations on matters regarding the Gaza Strip; See *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 14.

230 *Id.*, at 17.

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the publication of a list of items prohibited from entering the Gaza Strip that would include 'only weapons, military equipment and problematic dual-purpose items.' Any item that does not appear on the aforesaid list, according to the resolution, will be permitted to enter. An additional change in this policy was made on December 8, 2010, when it was resolved that, subject to certain restrictions, approval would be given to a gradual policy for sending goods from the Gaza Strip outside the borders of Israel and to the West Bank.[231] Notwithstanding these recent alterations, below we shall consider the land crossings policy that was in force in May 2010.

Claims regarding the humanitarian situation in the Gaza Strip

69. The evidence that the Commission took into consideration when assessing the impact of the land crossings policy on the civilian population in the Gaza Strip were the testimony of the Coordinator of Government Activities in the Territories, the testimonies of human rights organizations, and reports of human rights and humanitarian organizations that operate in the Gaza Strip. In this context, it should be noted that assessing the effectiveness and humanitarian consequences of economic sanctions can be challenging because of the difficulty in separating the effects of sanctions from other causes of political and social disruption. While this does not mean that tracing the influence of sanctions is impossible "it does suggest the need for humility and caution in drawing conclusions about sanctions effects."[232] At the same time, great care should be taken when analyzing the humanitarian situation in territories where the humanitarian situation was poor from the outset because '... countries already on the verge of humanitarian crisis clearly are more likely to be pushed over the edge by effectively imposed economic sanctions.'[233]

70. It is therefore important to bear in mind the position that prevailed in the Gaza Strip before this policy was adopted. From a publication of the World Bank of June 23, 2004, it would appear that the poverty level in the Gaza Strip has steadily increased. In 1998, the level was 21,6%,

231 See decision no. B/64 of the Ministerial National Security Committee (the Political-Security Cabinet) of December 8, 2010.

232 DAVID CORTRIGHT AND GEORGE A. LOPEZ, THE SANCTIONS DECADE: ASSESSING UN STRATEGIES IN THE 1990S 213 (2000).

233 *Id.*

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rising to nearly 35% in 2006.[234] In 2003, the unemployment level was 29%.[235] Sanitary conditions in Gaza were assessed as 'very poor.'[236]

71. As for the humanitarian situation prevailing in the Gaza Strip since the establishment of the land crossings policy in September 2007, the evidence brought before the Commission and additional material examined by the Commission of its own initiative seemed at times to present two very different perceptions of reality. Human rights and humanitarian organizations presented (before the Commission and in other forums) a position that there is a real humanitarian crisis in the Gaza Strip.[237] By contrast, Israeli government officials were unanimously clear in their assessment that there was no "humanitarian crisis" in Gaza.[238] *Prima facie*, it is difficult to reconcile the view of the humanitarian situation presented by human rights organizations with that of the Israeli government. However, the Committee will provide a brief overview of some of the main areas that require further examination - which appears to be food, health care, medical supplies, electricity, fuel, water, sanitation, and livelihood - in order to clarify and illuminate the two positions.

72. According to reports of human rights and humanitarian organizations report that 60.5% of households suffer from 'food insecurity.'[239] Food insecurity is defined as a situation in which 'people

234 *The World Bank: West Bank and Gaza: Economic Developments and Prospects - March 2008, available at* http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/WESTBANKGAZAEXTN/0,,contentMDK:21694302~menuPK:294370~pagePK:2865066~piPK:2865079~theSitePK:294365,00.html (2008).

235 *Id.*

236 *ICRC: Gaza Closure: Not Another Year, available at* www.icrc.org/web/eng/siteeng0.nsf/htmlall/palestine-update-140610 (2010) [hereinafter *Gaza Closure*].

237 *Consolidated Appeal, supra* note 219, at 9 (which relates to the situation in Gaza as a crisis of "Human Dignity");
UNRWA: *Emergency Appeal 2010, 9, available at* www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/VVOS-7ZUU59-full_report.pdf/$File/full_report.pdf (2010), 6 [hereinafter *Protracted Socioeconomic Crisis*];
United Nations, Office for the Coordination of Humanitarian Cases (OCHA): *Occupied Palestinian Territory, The Humanitarian Monitor, available at* www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2010_06_21_english.pdf (2010) [hereinafter *Serious Crisis of Human Dignity*];
See also *Gaza Closure, supra* note 236, and *Fact Sheet, supra* note 219.

238 *Prime Minister's Open Door Testimony, supra* note 82, at 8; *Military Advocate-General's testimony, supra* note 98, at 57; *Open Door Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 60; *Defense Minister's Open Door Testimony, supra* note 70, at 24; *Leader of the Opposition Tzipi Livni's open door testimony, supra* note 177, at 31.

239 See *Consolidated Appeal, supra* note 219, at 2, 23.
The matter may actually reflect a certain improvement as compared to previous years, with the report showing that 75% of Gaza's population suffered from food insecurity following Israel's attack as part of Operation "Cast Lead", however; it still presents a high level of food insecurity. See *OCHA: Locked In: The Humanitarian Impact of Two Years of*

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lack sustainable physical or economic access to adequate safe, nutritious and socially acceptable food to maintain a healthy and productive life.'[240] This situation is described as a result of 'food price inflation, poverty, livelihoods' deterioration and erosion of coping mechanisms, leading to increased difficulties of households to afford sufficient quantities of quality food.'[241]

These organizations also claim that the health care system in the Gaza Strip is deteriorating. Stocks of essential medical supplies have reached an all-time low.[242] The restrictions imposed on persons passing through the land border crossings affects patients that require medical treatment outside the Gaza Strip, the major impediment being lack of response by Israeli authorities to applications for permit by the time of the scheduled appointment.[243] According to the testimony of Physicians for Human Rights (a non-governmental organization, which advocates for human rights in general and for the right to health in particular, in Israel and in the territories), approximately 30 per cent of applications for permits are rejected or delayed.[244] With regard to the supply of electricity to the Gaza Strip, these organizations said that the demand at 240-280 Megawatts, is not being met. As a result, the population in the Gaza Strip experiences prolonged electricity outages of an average of seven hours a day. These outages have devastating effects on the health system, which now relies on generators for which fuel reserves are not easily accessible.[245]

As stated by various organizations, during the Operation Cast Lead, approximately 3,500 houses in the Gaza Strip were completely destroyed, and approximately 2,800 houses were significantly damaged.[246] The prohibition imposed by Israel on the entry of building materials prevents the building and reconstruction of residential houses, schools, medical facilities and public infrastructures. Moreover, only approximately 60% of

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Blockade on the Gaza Strip, available at www.ochaopt.org/documents/Ocha_opt_Gaza_impact_of_two_years_of_blockade_August_2009_english.pdf (2009) [hereinafter *Special Focus*].

240 *Special Focus, supra* note 239, at 9.

241 See *Consolidated Appeal, supra* note 219, at 23.

242 See *Gaza Closure, supra* note 236.

243 *UNRWA: Updated Quick Response Plan for Gaza: An Assessment of Needs Six Months after the War, available at* www.unrwa.org/userfiles/20100119144213.pdf (2010), at 26 [hereinafter *Quick Response Plan for Gaza*].

244 Transcript of session no. 4 "Testimony of Physicians for Human Rights Representatives" (Professor Tzvi Bentowitz, Ran Yeron & Dr. Moustafa Yasin) (Oct. 13, 2010), at 8 [hereinafter *Testimony of Physicians for Human Rights*].

245 *Special Focus, supra* note 239, at 3.

246 See *Consolidated Appeal, supra* note 219, at 15; *Special Focus, supra* note 239, at 3.

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the population of the Gaza Strip is connected to the sewage system,[247] and 90% of the water supplied to the inhabitants of the Gaza Strip is unsafe for drinking according to the standards of the World Health Organization.[248]

According to various reports, more than a million people live on humanitarian aid provided by various humanitarian organizations in the Gaza Strip.[249] Various human rights and humanitarian organizations estimate that the prohibition on exports imposed by Israel, in addition to the severe restrictions on imports, has *de facto* paralyzed the private sector.[250] These organizations therefore conclude that the collapse of the economy of the Gaza Strip derives from the naval blockade imposed by Israel and its land crossings policy.[251] However, it should be noted that even though the various humanitarian organizations criticize the imposition of the naval blockade in January 2009, in reality, the imposition and the enforcement of the blockade drew only little attention prior to the event of May 31, 2010.

73. By contrast, the Coordinator of Government Activities in the Territories, in a testimony that was supported by a significant number of documents, explained how Israel *de facto* implements its land crossings policy in the four areas identified in the Government resolution: entry and exit of goods from the Gaza Strip, movement of persons, electricity and fuel, and monetary activity. The Coordinator of Government Activities in the Territories also addressed specific claims that were raised before the Commission by the testifying human rights organizations.

The entry and exit of goods from the Gaza Strip. The Coordinator of Government Activities in the Territories testified before the Commission that the implementation of the Government's policy in this field is guided by dual considerations: to implement the restrictions determined in the Government's resolutions and to transfer the goods necessary to meet the needs of the civilian population.[252] The Coordinator of Government Activities in the Territories clarified that all the goods entering the Gaza Strip are financed by the Palestinian Authority, merchants on market terms, or by international organizations; not by Israel.[253] Israel

247 See *Gaza Closure*, *supra* note 236.
248 *Gisha: Red Lines Crossed: Destruction of Gaza's Infrastructure, available at* www.gisha.org/UserFiles/File/publications_/Infrastructure_Report_Aug09_Eng.pdf (2009) [hereinafter *Red Lines Crossed*].
249 *Special Focus*, *supra* note 239, at 10.
250 *Quick Response Plan for Gaza*, *supra* note 243, at 7.
251 *Id.*, at 22.
252 *Testimony of Government Activity Coordinator in the Territories*, *supra* note 162, at 77.
253 *Id.*, at 10-11.

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is merely the party that coordinates and oversees the passage of goods in and out of the Gaza Strip. The Coordinator of Government Activities in the Territories went on to describe in detail the mechanism whereby this process operates as follows: the requests to bring goods into the Gaza Strip are received by the DCO from four parties. The Gaza Strip Economic Committee (a representation of the Palestinian Authority) is the main Palestinian party from which requests are received for entry of goods. This committee receives requests from private market forces and importers in the Gaza Strip. The requests need to include all of the relevant details, including the parties supplying the foods and details of the carriers. Ordering the goods and determining priorities between the various parties requesting the entry of goods is done by representatives of the Palestinian Authority in the Gaza Strip. This list is delivered each day from the Gaza Strip DCO to the head of the Economy Division (an officer with the rank of Lieutenant-Colonel), which examines the requests in accordance with the civilian policy as stated above. Persons in the Gaza Strip DCO only intervene in this internal order of priorities when according to their judgment there is a shortage of certain products in the Gaza Strip. In addition, the DCO receives requests from official bodies in the Gaza Strip, including the Palestinian Ministry of Agriculture in the Gaza Strip and the Palestinian Authority's water and electricity authorities. Other entities that submit requests to the DCO to bring goods into the Gaza Strip are international organizations.

The entry of goods is subject to the crossings' capacity. Between the various requests, the order of priorities for the entry of goods is determined as follows: (1) medical supplies and medicine; (2) requests by international organizations - humanitarian aid and supplies for approved projects; (3) agricultural materials; (4) the balance of supply capacity for the private market, according to the order of priorities determined by the Palestinians. After agreeing upon the list, the parties in the Gaza Strip DCO coordinate the actual entry of the goods with international bodies, the Palestinians, and the Land Crossings Authority of the Ministry of Defense. Implementation reports are distributed with a summary for each day, week, and month to all of the security authorities and the international community.[254]

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254 *Civilian Policy Regarding Gaza Strip - Part A, supra* note 52, at 17-18. Examples of said reports were transferred to the Commission, marked as exhibit 111-112 of the Commission's exhibits. As a rule, the daily reports include reference to the transfer of goods and fuel to the Gaza Strip; the crossings through which these goods passed; and the type of goods and fuel brought into the Gaza Strip according to the number of trucks (or tankers, as the case may be) and in metric tons.

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In practice, there is a restriction on the *variety* of products that can be brought into the Gaza Strip, in the form of the 'list of humanitarian products approved for entry into the Gaza Strip.'[255] With regard to the restriction on the *quantity* of goods entering the Gaza Strip via the land crossings, the material submitted by COGAT states that apart from a restriction deriving from the capacity of the crossings and a quota for the entry of fuel (which was approved by the Supreme Court)[256] and a quota for the entry of agricultural products,[257] there is no quota limiting the amounts of foods that are allowed to enter the Gaza Strip. Notwithstanding, it should be stated that from the material submitted to the Commission by COGAT, it is evident that at least during certain periods there was a restriction on the number of trucks permitted to enter at the crossings each day / week for products that do not fall within the scope of agricultural products or fuel.[258] In addition, the Coordinator of Government Activities in the Territories added that, in general, the flow of goods at the land crossings is stable and permanent, but sometimes Israel is compelled to close the land crossings because of direct shooting attacks of rockets that are fired at them by Hamas. In such situations, the activity at the crossings usually decreases for several days, but usually returns thereafter to its previous level.

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255 See *Civilian Policy Regarding Gaza Strip - Regarding the Claims of Human Rights Organizations, Dated 31.10.2010, supra* note 217, at appendix A (marked as a draft but according to his statement served as an obligating order); from the document it is evident that the guidelines for the inclusion of a specific product in the list of products authorized to enter the Gaza Strip are: necessity of the product for meeting humanitarian needs, including implications on public health (in the Gaza Strip and in Israel); "the imagistic perception [thus in original] of the product" (that is, whether the product is considered to be a luxury item); legal/judicial obligation to permit the entrance of the product; "implications of the product's uses (will it be used for conservation, rebuilding, or development) while stressing the influence of its entrance on the status of the Hamas regime"; security implications (can the product be used for military purposes); sensitivity to the needs of the international community; the existence of alternatives.

256 *Al-Bassiouni* case, *supra* note 140, at paras. 17-21.

257 *Civilian Policy Regarding Gaza Strip - Part A, supra* note 52, at 14; 22 trucks a day which was expanded to 26 trucks a day, though it was mentioned that this is not a strict limit. Likewise it was mentioned that this cap does not apply to agricultural produce transferred from the West Bank to the Gaza Strip in coordination with the Economic committee in the strip. From the material submitted by the Government Activity Coordinator in the Territories, it can be seen that following the government's decision of 18.3.2009 the average daily number of trucks entering the strip rose to 71 double food trucks, as compared to 67 trucks (not all of them double) previously; at the same time it should be stressed that this data refers to the total food and agricultural products entering the Gaza Strip and not just the agricultural produce and input.

258 *Civilian Policy Regarding Gaza Strip - Regarding the Claims of Human Rights Organizations, Dated 31.10.2010, supra* note 217, at Appendix A. thus for example it arises from the material that on 30.5.2010 there was a quantitative cap on the number of trucks carrying clothing and shoes allowed to pass through the land crossings.

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The Coordinator of Government Activities in the Territories made clear in his testimony that after the disengagement, the State of Israel is unable to monitor the destinations of the goods inside the Gaza Strip, since Israel has no physical presence in the territory itself.[259] However, he explained that COGAT monitors the situation with all of the means at its disposal in order to ensure that the policy does not lead to a humanitarian crisis in the Gaza Strip. For instance, COGAT makes use of situation assessments and periodic forums with Palestinian Authority authorities in the Gaza Strip, with Israeli Government ministries and the international community (such as UN agencies, the Secretary-General's Special Coordinator for the Middle East Peace Process, diplomatic representations, representatives of the Quartet, representatives of the European Union, the Red Cross, non-governmental organizations and human rights organizations), information that is received from the Palestinian media, etc. During the second half of 2008, COGAT formulated a support model for building up a situation picture, which is known as a 'Supply Assessment;' an economic model expressed in a formula that is supposed to help calculate the 'supply level' of various products (i.e., for how many days the amount of supplies currently present in the Gaza Strip will last). The premise is that at any given moment there should be a certain 'supply level' for each of the products whose entry is permitted. When the supply level for a certain product falls below a set minimum, procedures are put into operation in order to verify the figures; produce a daily supply assessment report until the supply is stabilized; and a plan is developed for 'increasing the entry of the relevant product, unless there is a deliberate restriction policy.' It was determined that in such a case, the implications of the shortage of the relevant product should be presented to the decision-makers.[260] The model itself is based on figures of the goods transported via the land crossings and information about local crops, and it is calculated each week for food products, animal feeds, and fuel. The economic model is as follows:

- Daily consumption for the product per capita × size of the population = estimated daily consumption for the Gaza Strip
- Estimated supply in the Gaza Strip on day X + amount that entered via crossings + [additional figures] - estimated daily consumption = supply assessment
- Supply / estimated daily consumption = supply level

259 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 31.
260 *Civilian Policy Regarding Gaza Strip - Regarding the Claims of Human Rights Organizations, Dated 31.10.2010, supra* note 217.

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The Coordinator of Government Activities in the Territories emphasized that this is merely a support model for carrying out the monitoring process, and not a model for determining what enters the Gaza Strip on a day to day basis.[261]

Regarding the aforementioned claims of food insecurity in the Gaza Strip, the Coordinator of Government Activities in the Territories said that in most cases the requests sent by the Palestinian Authority correspond with COGAT's assessments regarding the population's needs.[262] Despite this, there is a large disparity between the information provided by the humanitarian organizations at work meetings regarding the coordination of aid to the Gaza Strip and their subsequent declarations to the media.[263] The Coordinator of Government Activities in the Territories particularly pointed out that a significant amount of consumption in the Gaza Strip is based on the supply of crops grown in the Gaza Strip itself, and Israel's land crossings policy has no effect on the consumption of these crops.[264] The Coordinator of Government Activities in the Territories repeatedly and clearly stated that there is no starvation in the Gaza Strip. With regard to medicine and medical supplies, he reemphasized that there is no disparity between the requests received from the Palestinian Authority and the products approved for entry into the Gaza Strip, except for medical supplies that also have military uses (such as radiation devices). The entry of these supplies is subject to a special system of approval before they are brought into the Gaza Strip.[265]

Movement of persons. The established principles permit movement between Israel and the Gaza Strip only in exceptional humanitarian cases, with an emphasis on urgent medical cases. Each request in this regard is examined on its merits.[266] According to the Coordinator of Government Activities in the Territories, four out of every five requests to receive permits for medical treatment outside the Gaza Strip are granted.[267] When such an application is refused, the reason is usually that the applicant has a security background that does not allow them to enter Israel or that the Palestinian Authority, for its own reasons, prefers that person to receive treatment in Gaza or Egypt.[268]

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261 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 30.
262 *Id.*, at 42-43.
263 *Id.*, at 23.
264 *Id.*, at 103.
265 *Id.*, at 105-106.
266 *Civilian Policy Regarding Gaza Strip - Part A, supra* note 52, at 20.
267 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 83.
268 *Id.*, at 82

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Electricity and fuel. The principles determined for the entry of fuel and electricity, which were reviewed by the Supreme Court in *Al-Bassiouni v. Prime Minister*,[269] include the imposition of restrictions on the supply of fuel and electricity, without harming the humanitarian needs of the population. The Coordinator of Government Activities in the Territories explained that the supply of electricity in the Gaza Strip comes from three sources: Israel, Egypt and the power station in Gaza. In the context of implementing the land crossings policy, it was resolved to maintain the electricity supply capacity to the Gaza Strip as it was prior to the resolution of the Ministerial Security Committee of September 19, 2007,[270] and not to restrict the actual supply of electricity via the power lines. Likewise, it was decided to maintain the supply capacity of the power station in the Gaza Strip by allowing in a sufficient quantity of fuel to exhaust the station's full capacity of electricity production and to determine quotas of fuel that would meet the humanitarian needs of the population (as stated in *Al-Bassiouni v. Prime Minister*).[271] Moreover, as the Coordinator of Government Activities in the Territories said, in practice, Israeli authorities are not involved at all in fuel orders since these are made directly between the Palestinian Authority and the Israeli fuel companies. The restrictions on bringing fuel into the Gaza Strip that were mentioned in the testimonies of the human rights organizations were restrictions imposed by the Palestinian Authority in order to receive reimbursement from the Hamas.[272] Thus, for example, COGAT noticed at the end of 2009 that the supply of diesel to the power station in the Gaza Strip had decreased to an extent that could cause a reduction in the supply of electricity to the Gaza Strip. When COGAT contacted the Palestinian Authority in this regard, it was told that Hamas had not sent the tax payments that it collected for the use of electricity and, therefore, the Palestinian Authority decided to reduce the electricity supply.[273]

Monetary activity. The Coordinator of Government Activities in the Territories testified that because of the concern that considerable amounts of money brought into the Gaza Strip are used for terrorism, the banks in Israel have suspended their working relationship with the banks in the Gaza Strip. Therefore, it was resolved that until a suitable alternative that complies with international standards can be found, the Bank of Israel will be the party that assists in realizing monetary activity. Israel allows

269 *Al-Bassiouni* case, *supra* note 140, at paras. 17-21.
270 *Testimony of Government Activity Coordinator in the Territories*, *supra* note 162, at 112.
271 *Civilian Policy Regarding Gaza Strip - Part A*, *supra* note 52, at 22.
272 *Testimony of Government Activity Coordinator in the Territories*, *supra* note 162, at 113.
273 *Id.*, at 55.

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a fixed amount of money into the Gaza Strip each month to pay salaries to the employees of the Palestinian Authority; to pay the salaries and ongoing expenses of international organizations (UNRWA and the Red Cross[274]) at their request; and to take money out of the Gaza Strip at the request of the Palestinian Authority (surplus cash that accumulates in the bank deposit boxes and/or replacements for worn out bills). In addition, any other individual request received from the Palestinian Authority is reviewed by COGAT.[275]

The Coordinator of Government Activities in the Territories also addressed additional issues that the crossings policy is claimed to affect. As he confirmed, the water situation in Gaza has been bad for years, but according to him, the poor water quality is the result of thousands of wells that have been illegally drilled.[276] He emphasized that Israel has not refused to transfer equipment for projects relating to the maintenance of the water system. Israel supplies hypochlorite to purify drinking water and several projects to improve the sewage infrastructure are also underway.[277] Moreover, before Hamas took control of the Gaza Strip, Israel coordinated with the United Nations and the Palestinian Authority the advancement of several housing projects in the Gaza Strip, but these projects were stopped because of the increase in the number of missile attacks and hostilities.[278] The Coordinator of Government Activities in the Territories explained that Hamas is the entity that is responsible for the economic situation in the Gaza Strip, because it chose the path of terrorism that prevents the development of economic relations, such as those that Israel has with the Palestinian Authority.[279]

74. In sum, the main disagreement between Israel and the human rights and humanitarian organizations is not whether the land crossings policy (and, as explained above, indirectly the naval blockade) impacts on the population of the Gaza Strip since Israel recognizes the fact that its policy has an effect on the civilian population in Gaza. The disagreement concerns the question whether the rules of international humanitarian law have been violated. Various human rights and humanitarian organizations argue that Israel has violated the rules of international humanitarian law,

274 It should be mentioned that according to the material submitted by the Government Activity Coordinator in the Territories since May 2009 the Red Cross did not request the entrance of funds into the Gaza Strip for its activity. See *Civilian Policy Regarding Gaza Strip - Part A*, *supra* note 52, at 25.

275 *Id.*, at 23-25.

276 *Testimony of Government Activity Coordinator in the Territories*, *supra* note 162, at 108.

277 *Id.*, at 104.

278 *Id.*

279 *Id.*, at 59, 71.

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whereas Israel holds the position that it is acting in accordance with the rules of international law and that it, in fact, has taken exceptional steps in order to comply with these obligations. Therefore, the analysis will now turn to consider the question whether international humanitarian law has been violated.

The prohibition of starving the civilian population

75. As stated above, article 102(a) of the San Remo Manual prohibits the imposition of a naval blockade if its sole purpose is to starve the civilian population or prevent the supply of other objects essential for its survival. This rule of customary international law is also reflected in the military manuals of several countries,[280] and in legal[281] and academic[282] literature. Another customary rule that imposes a prohibition on starvation is found in article 54(1) of the First Additional Protocol to the Geneva Convention, which provides that 'Starvation of civilians as a method of warfare is prohibited.' This rule applies to operations on land as well as those at sea. However, in respect of starvation, the wording in Rule 102(a) is more limited in scope than the general prohibition reflected in article 54(1). *Prima facie*, one might conclude that as long as starvation is the consequence of a naval blockade but not its sole purpose, then it is not prohibited pursuant to international humanitarian law. However, insofar as a civilian population is actually starved as a result of a naval blockade, the party imposing the blockade is required to consider this result in the proportionality analysis required by article 102(b) of the San Remo Manual.[283] It should also be noted that the Harvard Air and Missile Warfare Manual recently proposed slightly amending the wording of article 102(a), so that the imposition of a naval blockade will be prohibited if the starvation of the civilian population is its sole or 'main' purpose.[284]

76. There is no formal definition of the concept of 'starvation' in international humanitarian law. However, the term 'causing starvation' should not be understood to simply cause hunger. The Commentary on article 54(1) of the First Additional Protocol states that the use of starvation as a means of warfare implies '... to provoke it deliberately, causing the

280 See *U.S. Navy, The Commander's Handbook*, *supra* note 92, at paras. 7.7.2.5; *The UK Manual*, *supra* note 113, at 64, para. 13.74; *The Canadian Manual*, *supra* note 113, at 8-12, para. (a)(1)850; *The German Manual*, *supra* note 113, at 470, para. 1051.

281 *Heintschel von Heinegg*, INT'L L. STUD, *supra* note 85, at 217.

282 DINSTEIN, THE CONDUCT OF HOSTILITIES, *supra* note 86, at 137-138, *International Humanitarian Law Handbook*, *supra* note 113, at 470-471 and GREEN, THE CONTEMPORARY LAW OF ARMED CONFLICT, *supra* note 114.

283 See paras. 87-97 below.

284 *The Air and Missile Warfare Manual*, *supra* note 115, at 296, art. 157(a).

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population to suffer hunger, particularly by depriving it of its sources of food or of supplies' and that '... starvation is referred to here as a method of warfare, i.e., as a weapon to annihilate or weaken the population.'[285] The Commission found no evidence in the considerable amount of material that was submitted to it, including the material submitted by human rights organizations, to the effect that Israel is trying to deprive the population of the Gaza Strip of food or to annihilate or weaken the population by means of starvation.

It is important to emphasize that humanitarian and human rights organizations themselves describe the situation in the Gaza Strip as a situation of 'food insecurity' (i.e., the lack of physical and economic access to sustainable food sources), and not as 'starvation' (a deliberate deprivation of food, which is intended to weaken or annihilate the population). Thus, the Coordinator of Government Activities in the Territories - the most senior official Israeli authority responsible for Israel's compliance with its humanitarian obligations vis-à-vis the Gaza Strip, who is in constant contact with the Palestinian Authority and the local and international humanitarian and human rights organizations operating in the Gaza Strip - also testified unequivocally before the Commission that no one has ever stated to him that the population of the Gaza Strip is 'starving.'[286] In a letter sent to the Commission on August 26, 2010, the organization Gisha stated that '[i]ndeed, it does appear that even during the flotilla events there was enough food in the Gaza Strip, but the continuing closure seriously impaired the economic ability of many people to purchase food products.'[287] The representatives of Gisha and Physicians for Human Rights confirmed in their testimonies before the Commission that during the relevant period, there was a sufficient quantity of food in the Gaza Strip, and that the problem was mainly economic, i.e., an inability of the population to purchase this food.[288]

77. There is no doubt that, economic warfare impacts on a blockaded population, and at least in theory has the potential to cause starvation. As article 103 of the San Remo Manual states, when the population does not receive an adequate supply of food and other objects essential

285 See ICRC Commentary on Protocols Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims in Armed Conflicts (Protocol I), Jun. 8, 1977 [hereinafter *ICRC Commentary on Protocol I of the Geneva Conventions*], at paras. 2089, 2090.

286 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 59.

287 See letter from Gisha - Legal Center for Freedom of Movement to The Public Commission to Examine the Maritime Incident of May 31, 2010 (Aug. 26, 2010).

288 Transcript of session no. 12 "Testimony of Gisha Representatives" (Tamar Feldman & Sari Beshi) (Oct. 13, 2010), at 32 [hereinafter *Testimony of Gisha Representatives*]; *Testimony of Physicians for Human Rights, supra* note 244, at 3.

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for its survival, a duty arises to provide the civilian population with aid consignments[289] (with regard to an occupied territory, an identical obligation is found in article 59 of the Fourth Geneva Convention).[290] As noted, Israel's position is that there is no intention to cause 'starvation' of the population of the Gaza Strip and it is making significant efforts in order to prevent it. The material before the Commission shows that the IDF is working in close collaboration with the Palestinian Authority, human rights organizations, and the international community in order to prevent this outcome.[291] The restrictions imposed by Israel considered this humanitarian obligation and were planned precisely in order to prevent a situation of 'starvation.' 'Food insecurity' does not equate to 'starvation.'

In sum, the steps taken in this regard by Israel are consistent with customary international law as provided in articles 102(a) and 103 of the San Remo Manual.

The provision of objects essential for the survival of the civilian population

78. The second obligation expressed in article 102 of the San Remo Manual is not to deprive the civilian population of 'objects essential for its survival.' Indeed, there is no exhaustive list of what constitutes objects essential for the population's survival, but various conventions state that this expression may include 'foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works,'[292] and 'clothing, bedding, means of

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289 *ICRC Commentary on Protocol I of the Geneva Conventions, supra* note 285, at para. 2095:
"It should be emphasized that the object of a blockade is to deprive the adversary of supplies needed to conduct hostilities, and not to starve civilians. Unfortunately it is a well-known fact that all too often civilians, and above all children, suffer most as a result. If the effects of the blockade lead to such results, reference should be made to Article 70 of the Protocol' (Relief actions), ' which provides that relief actions should be undertaken when the civilian population is not adequately provided with food and medical supplies, clothing, bedding, means of shelter and other supplies essential to its survival. Such actions may be very extensive."

290 See art. 59 of the Fourth Geneva Convention which provides that:
"If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal. Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing. All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection."

291 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 60.

292 Article 54(2), Protocols Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims in Armed Conflicts (Protocol I), 8 June 1977

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shelter... and objects necessary for religious worship.'[293] Moreover, in HCJ 201/09 *Physicians for Human Rights v. Prime Minister* and in HCJ 248/09 *Gisha - Legal Center for Freedom of Movement v. Minister of Defense*[294] (joined), in which the Supreme Court of Israel considered the humanitarian obligations of the IDF during Operation Cast Lead, the Court recognized that international law required the civilian population to receive access to industrial diesel for operating the local power station in Gaza, as well as additional humanitarian requirements, such as cooking gas, diesel oil for transport, water, food and medications.[295]

79. Humanitarian organizations and human rights organizations have raised concerns regarding the sufficiency of such essential objects in the Gaza Strip, including the lack and means of shelter. With regard to the provision of shelter, Israel has indeed imposed restrictions on the import of construction materials into the Gaza Strip and it closely supervises the transfer of these materials. These restrictions are put in place because of the risk that the identified materials may be used for military purposes, since the intelligence information indicates that the Hamas uses these materials extensively in order to fortify buildings and tunnels.[296] It is clear that the restrictions were not imposed in order to prevent the use of these materials by the civilian population of the Gaza Strip. Moreover, Israel is even working in full cooperation with the international community in order to allow the passage of building materials for various projects that are supervised and approved by it, in a manner that is consistent with its duty to supply aid to the civilian population.[297]

Indeed, as described above, Israel imposes various restrictions on the supply of diesel and fuel but according to the testimony of the Coordinator of Government Activities in the Territories, not on the supply of electricity. However, diesel oil is needed in order to operate the power plant in Gaza for the supply of electricity. However, the Supreme Court has determined, according to the evidence brought before it in *Al-Bassiouni v. Prime Minister*, that despite these restrictions, and even if the restrictions were imposed on the supply of electricity, Israel is in compliance with its humanitarian obligations. In *Al-Bassiouni v. Prime Minister* the Court said that the relevant Palestinian authorities have made clear 'they have the capability to carry out load reductions if limits are placed on the

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[hereinafter *Additional Protocol I*].

293 *Id.*, at art. 69.

294 *Testimony of Physicians for Human Rights, supra* note 244, at 22, para. 27.

295 *Id.*, at para. 26.

296 *IICC report* (Jun. 14, 2010), *supra* note 83.

297 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 104.

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power lines, and they have made actual use of this capability in the past.'[298] Moreover, like many issues that arise with regard to the humanitarian situation in the Gaza Strip, it should be remembered that the scope of the electricity supply is also affected by the relations between the Palestinian Authority and the Hamas, since a significant part of the Gaza Strip's electricity needs is not supplied by Israel.

80. There is therefore no evidence before the Commission that Israel is denying objects essential for the survival of the civilian population, and, therefore, there is no basis for the conclusion that Israel is in violation of international humanitarian law in this regard. On the contrary, considerable evidence was presented to the Commission to show that Israel allows the passage of objects essential for the survival of the civilian population and that it provides humanitarian aid as required by the rules of international humanitarian law in those areas that human rights organizations identify as a source of concern.

Israel has therefore acted pursuant to the principles of customary international humanitarian law with regard to the imposition of the naval blockade, as stated in article 102(a) and article 103 of the San Remo Manual.

Passage of medical supplies

81. Another well recognized requirement of customary international humanitarian law is to allow the passage of medical equipment, subject, however, to the right of the blockading party to prescribe technical arrangements, including a search, under which such passage is permitted[299] (it should be noted that on board some of the vessels in the flotilla there were some medical supplies as evidence of the humanitarian nature of the flotilla).[300]

82. Humanitarian and human rights organizations raised a concern regarding the adequacy of the medical supplies and the medical services in the Gaza Strip. However, in the complex situation that prevails in the Gaza Strip, it is not necessarily Israel that is responsible for any shortages. In this context, it should be noted that according to the report of the International Committee of the Red Cross: 'Stocks of essential medical supplies have reached an all-time low because of a standstill in cooperation between Palestinian authorities in Ramallah and Gaza.'[301] Moreover, certain types

298 *Al-Bassiouni* case, *supra* note 140, at para. 18.
299 See *San Remo Manual*, *supra* note 110, rule 104.
300 *Testimony of Government Activity Coordinator in the Territories*, *supra* note 162, at 47.
301 See *Gaza Closure*, *supra* note 236.

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of supplies are legitimately restricted by Israel for security reasons, such as optical equipment, which, in addition to its ordinary use, can be used for military purposes.[302] No evidence was presented before the committee to the effect that Israel prevents the passage of medical supplies apart from those included in the list of materials whose entry into the Gaza Strip is prohibited for security reasons.[303] According to the Coordinator of Government Activities in the Territories, sometimes a request to transfer complex medical equipment requires careful examination, which can be time-consuming, and of course it is preferable that the length of time required be as short as possible. However, from the testimony of the Coordinator of Government Activities in the Territories, it can also be seen that when the relevant Israeli authorities are notified of a shortage of any medical supplies, there is an organized system for replenishing those supplies.[304]

83. In a press release on June 14, 2010, the International Committee of the Red Cross indicated how a shortage of certain materials might result in a deterioration in the maintenance of medical supplies, and as a result, to requests from many inhabitants of the Gaza Strip to seek medical treatment in Israel.[305] Israel has indeed allowed a substantial

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302 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 105; *Testimony of Physicians for Human Rights, supra* note 244, at 7.

303 *Civilian Policy Regarding Gaza Strip - Regarding the Claims of Human Rights Organizations, Dated 31.10.2010, supra* note 217, Appendix A; More accurately, the restrictions stem from three sources - the instructions of the Israeli Ministry of Health, the instructions of the Israeli Ministry of Industry and Commerce, and the supervisory orders on defense export. In this context see *Reference to Claims Made by Physicians for Human Rights to the Commission to Examine the Maritime Incident* (opinion by Government Activity Coordinator in the Territories, Jan. 6, 2011), marked by the Commission as exhibit 166 [hereinafter *Response by Government Activity Coordinator in the Territories to Claims Made by Physicians for Human Rights*].

304 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 28, It should be mentioned that the document transferred by the Physicians for Human Rights Organization to the Commission on Nov. 7, 2010 was appended with a list of medical equipment whose entrance was not approved or was delayed (see letter from the Physicians for Human Rights Organization to the Turkel Commission titled *Follow Up Report to Testimony of Physicians for Human Rights to the Turkel Commission* (Nov. 7, 2010), found in the folder marked by the Commission as exhibit 165. From the reference submitted by the Government Activity Coordinator to this matter it seems that the majority of the requests are unknown to the Gaza District Coordination Office. As to the requests which the District Coordination Office was able to track down it was mentioned that of the initial request, which included 21 items of complex medical equipment which required a meticulous examination by the security forces, 18 items were approved and there was a delay in transferring three items due to a shortage of these items (*Response by Government Activity Coordinator in the Territories to Claims Made by Physicians for Human Rights*).

305 See *Gaza Closure, supra* note 236.

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number of inhabitants of the Gaza Strip access to the health system in Israel for various reasons, including the historical connection between the Gaza Strip and Israel (for years before the land crossings policy and the naval blockade were introduced, the inhabitants of the Gaza Strip were permitted to consult experts and receive advanced treatments in the Israeli health system). The evidence also shows that the number of persons requesting to leave the Gaza Strip in order to receive medical treatment has increased during the period since the land border crossings were introduced. This is apparently the result of Egypt introducing a restrictive border policy at the Rafah crossing, which traditionally was also used to exit the Gaza Strip (in this context, it should also be noted that the COGAT stated that activity at the Rafah crossing was significantly expanded after Operation 'Cast Lead').[306] In this regard it should be noted that even after this crossing was opened on June 1, 2010, the number of persons requesting treatment in the Israeli health system has remained high, apparently because many patients prefer it.[307]

84. Sorting through the evidence of whether Israel is adequately meeting its humanitarian law obligations in this area is in many respects an exercise in trying to sort out statistics. The Israeli authorities presented detailed statistics regarding the number of inhabitants of the Gaza Strip that are permitted to exit in order to receive medical treatment. Thus, for example, according to the material that was presented to the Commission, in 2009, Israel allowed 11,036 patients and their family members to exit the Gaza Strip to receive medical treatment.[308] It is important to point out that 86% of the exit applications that were submitted during this period were approved, whereas of the remaining 14%; about 10% were cancelled by the Palestinian Authority for its own reasons.[309] In their testimony before the Commission, representatives of Physicians for Human Rights also focused on delays in processing applications to receive medical treatment in Israel, and particularly the suffering caused to those involved. According to their testimony, approximately 70%-80% of the applications take between eight weeks to three months to be processed, and in many cases medical treatment is prevented as a result, even if a permit is approved at the end of the process.[310] It should be noted that, obviously, delays in the approval process that affect the health of the patient should be avoided wherever

306 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 60-61; *Civilian Policy Regarding Gaza Strip - Regarding the Claims of Human Rights Organizations, Dated 31.10.2010, supra* note 217, at 20-26.
307 *Testimony of Physicians for Human Rights, supra* note 244, at 14.
308 *Civilian Policy Regarding Gaza Strip - Part A, supra* note 52, at 65.
309 *Id.*, at 11.
310 *Testimony of Physicians for Human Rights, supra* note 244, at 7.

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possible. However, it must also be remembered that most of the reasons for the delays involve security issues. It should also be understood that a Palestinian patient seeking to exit for medical treatment undergoes a complex process before the request reaches the Gaza Strip DCO. In general, the patient obtains a referral from a Palestinian hospital, which he submits to the representative of the Palestinian Ministry of Health in the Gaza Strip, who transfers it to the Ministry of Health in Ramallah for review. The Palestinian Ministry of Health transfers the referral to the Palestinian office which coordinates the treatment with a hospital in Israel or the West Bank. Only at this stage is the request transferred to the Gaza Strip DCO, who examines the request for security issues. Thus, a significant part of the process is not conducted by Israel at all.[311] What is crucial in terms of meeting international humanitarian law obligations in this regard is that there is a specifically established system put in place by the Israeli authority that serves to meet humanitarian needs while seeking to address the security concerns.

85. An analysis of the state of the health system in the Gaza Strip shows that a distinction should be made between the *existence* of a health care system and the *standard* of medical care. Thus, for example, a report of one of the UN agencies (the UN Officer for the Coordination of Humanitarian Affairs) stated:

> 'The blockade, the internal Palestinian divisions and the "Cast Lead" offensive have undermined the ability of the health system in Gaza to function properly. As a result, *while most services are available to the population and there were no outbreaks of communicable diseases, there has been an overall decline in the quality of health services provided to the population.*'[312] [emphasis added]

86. Indeed, as evident from the testimony of Physicians for Human Rights, significant challenges face the health system in the Gaza Strip. However, these challenges are not the sole responsibility of Israel. It should also be noted that, even in this regard, Israel is acting in cooperation with the Palestinian Authority and the international community in order to minimize the problems. However, Israel should continue in the future to examine whether it is possible to improve the current position, so that the humanitarian needs of the inhabitants of the Gaza Strip will be fully addressed.

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311 *Civilian Policy Regarding Gaza Strip - Regarding the Claims of Human Rights Organizations, Dated 31.10.2010, supra* note 217, at 22.

312 See *Consolidated Appeal, supra* note 219, at 26

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The Commission has reached the conclusion that Israel is complying with its obligations pursuant to international humanitarian law under article 104 of the San Remo Manual for the passage of medical supplies during a naval blockade. It should be emphasized that any passage of medical supplies to the Gaza Strip by sea would be possible by the method of transporting them via Ashdod port and the land border crossings.

The military advantage of the naval blockade versus harm caused to the civilian population

87. According to article 102(b) of the San Remo Manual, the damage caused or expected be caused to the civilian population should be considered in relation to the direct and concrete military advantage anticipated from the imposition of a naval blockade.[313] This principle is usually called the 'principle of proportionality.'[314] In this context, great care must be taken in its application. The obligation is not to cause "excessive" damage in relation to the concrete and direct military advantage anticipated from the blockade.[315] In that context the term "excessive" has been suggested to mean "the disproportion is clearly discernable".[316] The fact that considerable damage has been caused does not necessarily mean that the damage is 'excessive.' The word 'excessive' does not refer to an absolute concept and it is always measured 'in light of the military advantage that the attacker anticipates to attain through the attack.'[317] A significant military advantage can justify significant damage, whereas a marginal advantage will not.[318]

88. In his testimony before the Commission, the Military Advocate-General expressed doubt about the customary status of this rule although he also indicated that Israel implements it.[319] However, Like many of the

313 See also DINSTEIN, THE CONDUCT OF HOSTILITIES, *supra* note 86, at 138, In applying that test he states:
"in accordance with the general (customary law) principle of proportionality, the expected injury to civilians in the wake of a blockade must not be excessive in relation to the military advantage anticipated (and, consequently, that a blockade must not have the starvation of civilians as its sole purpose".

314 *San Remo Manual, supra* note 110, rule 102(b) and *San Remo Explanation, supra* note 110, at 179 paras. 102.3-4.

315 *The Air and Missile Warfare Manual, supra* note 115, at 297.

316 DINSTEIN, THE CONDUCT OF HOSTILITITES, *supra* note 86, at 120.

317 *The Air and Missile Warfare Manual, supra* note 115, at 92.

318 *Id.*

319 *Military Advocate-General's testimony, supra* note 98, at 54. In the position paper submitted by the MAG, it was stated more expressly that the principle of proportionality in the San Remo Manual is not customary international law but that this rule is an example of the progressive developments in the San Remo Manual, see *MAG position paper, supra* note 1.

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provisions of the San Remo Manual, this rule has been adopted in various military manuals,[320] international humanitarian law texts[321] and other legal literature.[322] The principle has also been adopted by the Harvard Air and Missile Warfare Manual of 2009.[323] Humanitarian and human rights organizations have also addressed the effect of the naval blockade on the civilian population of the Gaza Strip in terms of its proportionality.[324] The Commission therefore adopts the position that article 102(b) does indeed reflect an obligation under the rules of customary international law.

89. As for the military advantage, in his testimony before the Commission, the Chief of Staff, Lieutenant-General Gabi Ashkenazi, gave details of the nature of the current threat posed by the Hamas, which the naval blockade is intended to counter. The Chief of Staff explained that the Hamas has taken advantage of the relative calm after Operation Cast Lead in order to expand its military abilities in two main areas: arming itself with rockets and developing ground-based capabilities.[325] The Chief of Staff went on to explain that in the past, the Hamas only had mortars; then they bought short-range Qassam missiles; and today, it has longer-range missiles. The Chief of Staff stated that rockets, anti-tank missiles, anti-aircraft missiles, night vision equipment and additional military equipment is smuggled into the Gaza Strip via tunnels, by land, and by the sea. The main efforts of the Israeli navy currently focus on disrupting smuggling, especially because of the fact that it is possible to transport much larger amounts of weapons by sea than via the tunnels.[326] The Chief of Staff's assessment is that Hamas is also trying to improve its abilities to act in deep water against Israeli navy vessels. Therefore, the Chief of Staff anticipated that the threat in the territorial waters of the Gaza Strip derives not only from the possibility that vessels of terrorists laden with weapons or military supplies will reach the coast of the Gaza Strip but also from the possibility that ships laden with explosives will leave this area in

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320 *The Air and Missile Warfare Manual*, *supra* note 115, at 297. At the same time, see *U.S. Navy, The Commander's Handbook*, *supra* note 92, at paras. 7.7.2.5-7.7.3 (The US manual is silent on this issue, making reference to the specific requirement not to starve the civilian population or deny it objects essential to its survival, as wells as permitting neutral vessels engaged in transporting relief supplies to pass through the blockade cordon subject to prescribed technical arrangement.

321 DINSTEIN, THE CONDUCT OF HOSTILITIES, *supra* note 86, at 137-138; and *Humanitarian Law Handbook* (2d ed.), *supra* note 113, at at 555, fn395 [for reference to the *San Remo Manual*, Rule 102(b)].

322 *Heintschel von Heinegg*, INT'L L. STUD, *supra* note 85, at 217.

323 *The Air and Missile Warfare Manual*, *supra* note 115, at 91-94.

324 See *Gaza Closure*, *supra* note 236.

325 *Chief of Staff's Open Door Testimony of 11.8.2010*, *supra* note 70, at 8.

326 *Id.*, at 9-10.

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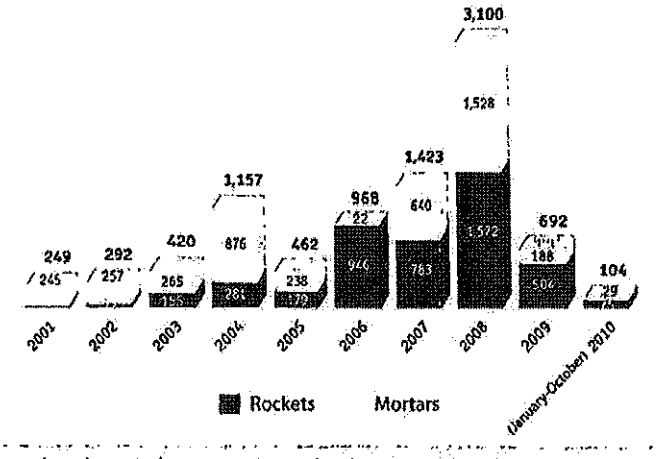
the direction of the coast of Israel or in the direction of strategic facilities in the sea.[327] An additional purpose addressed by the Chief of Staff is to prevent the unsupervised flow of money to the Gaza Strip, something that happens from time to time via the tunnels, but can be done much more easily by sea. The Chief of Staff stated in his testimony that money is 'oil upon the wheels of terror' since large amounts of money are required to finance the smuggling operations.[328] According to this testimony and other evidence, the Commission is persuaded that were it not for the naval blockade, the Hamas could further increase its rearmament or attack the State of Israel by sea.

Moreover, as stated, the combined purpose of the naval blockade and the land crossings policy is to strategically limit the ability of the Hamas to carry out operations against Israel and its citizens. An important fact that should be taken into account in this regard is that the number of missile attacks from the Gaza Strip at Israel that has fallen from a record of 3,278 in 2008 to 165 in 2010 (as of October 7, 2010).[329]

The firing of rockets and mortars at Israel, 2001-2010



Taken from Information Provided by COGAT to the commission

327 *Id.*, at 8.
328 *Id.*, at 11.
329 *Israeli Defense Forces: Rocket Attacks towards Israel, available at* http://idfspokesperson.com/facts-figures/rocket-attacks-toward-israel (2010).

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It could be assumed that Operation Cast Lead had a significant effect on Hamas's ability to attack Israel, but, as stated above, one of the purposes of the naval blockade is also to close Hamas's rearmament channel. Indeed, it is not always possible to determine the precise effect of a naval blockade, and it should be remembered that naval operations are often combined with land operations.[330] Therefore, in the present case we should consider the overall combined effect of Operation Cast Lead, additional targeted operations, the naval blockade and the land crossings policy, by examining the decrease in the Hamas's ability to attack Israel.

In terms of anticipated military advantage, the Commission's opinion is that Israel's anticipated military gains can be assessed in part by reference to the fact that the attacks on Israel and its citizens have decreased significantly. Admittedly, recently the firing of rockets at Israel has recommenced. However, it would appear that the combined measures that were adopted have led to the Hamas being relatively limited in its abilities and the speed of rearmament is reduced relative to what it would have been if these steps had not been undertaken. This 'anticipated military advantage,' which concerns restricting Hamas's ability to continue to attack the citizens of Israel, is significant, especially in view of Israel's responsibility to protect its citizens against attacks and security threats, the scope and duration of the attacks in the past, and the fact that Israel is confronted against an enemy that is committed to Israel's destruction.

90. It is obvious that determining the anticipated military advantage of imposing the naval blockade is only the first stage in weighing its proportionality, and there remains the question of what criteria should be used in order to determine whether the damage to the civilian population in this regard is 'excessive.' Article 102(b) of the San Remo Manual recognizes that the civilian population in a territory at war will suffer to some extent. Indeed, this suffering is a tragic reality of both the population in Israel and the population of the Gaza Strip. International humanitarian law therefore adopts a practical approach to the realities of the conflicts, in that its rules do not necessarily preclude a negative effect on the population but seek to limit it.

The question to be resolved, therefore, is what constitutes 'damage' within the meaning of article 102(b) of the San Remo Manual. In the Commentary to the Sam Remo Manual, the concept of 'damage' is linked to starvation.[331] Article 103 of the Manual further provides that if the

330 Till, *Naval Blockade*, *supra* note 107, at 130.
331 *San Remo Explanation*, *supra* note 110, at 179, para. 102.4.

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civilian population in the area subject to a naval blockade is inadequately provided with food and other objects essential for its survival, the blockading party is obliged to allow free passage of foodstuffs and other basic objects, subject to the supervision of the blockading party. Further guidance regarding the proper interpretation may be found in the Harvard Air and Missile Warfare Manual, in which rule 157(b) replaces the word 'damage' with the word 'suffering.' The commentary on the Harvard Air and Missile Warfare Manual says that 'The main thrust of Rule 157(b) is to preclude a "hunger blockade" which causes severe suffering of the civilian population.'[332] Nonetheless, the Commentary states that 'suffering' is not confined to extreme instances such as a 'hunger blockade.' Where such suffering exists, the Commentary provides that the '...blockade has to be lifted, or free passage of foodstuffs and essential supplies is to be allowed...'[333] From these remarks, and from the context of the rule of proportionality in both the San Remo Manual and the Harvard Air and Missile Warfare Manual, it clearly follows that the 'damage' or 'suffering' discussed in international humanitarian law are mainly those that are identified in the prohibitions of starvation and deprivation of objects essential for the survival of the civilian population. In this context, we reiterate our conclusion above that the naval blockade has not caused starvation in the Gaza Strip, and that Israel has not prevented the passage of objects essential for the survival of the civilian population or the passage of medical supplies.

91. In the course of examining the principle of proportionality, the overall humanitarian cost of Israel's economic warfare should also be considered. The purpose of the economic warfare in the Gaza Strip is to weaken the economy in order to undermine the Hamas' ability to attack Israel and its citizens.[334] The non-security related restrictions on the passage of goods - such as the restrictions upon certain food products - are a part of this strategy. The restrictions on items such as food are of particular concern, *inter alia*, because of the unequivocal prohibition against starvation, but also because such restrictions can have a significant effect on the civilian population. Israel's policy of economic warfare gives rise, in general, to two significant issues. First, to what extent is it permissible for the land crossings policy and the naval blockade to restrict the access to foodstuffs and other basic products that are used solely for civilian needs when these restrictions do not cause starvation. The second problem

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332 *The Air and Missile Warfare Manual, supra* note 115, at 297, para. 1.
333 *Id.*, at 297, para. 3.
334 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 19; *Leader of the Opposition Tzipi Livni's open door testimony, supra* note 177, at 10-11.

concerns the duration of the land crossings policy and naval blockade, because there is a real danger that the longer they last, systemic damage to the economy will result. Therefore, it may be assumed that the ability of the civilian population to recover from the blockade after it is removed will be adversely affected the longer it lasts. These two issues should be taken into account when reviewing the principle of proportionality on an ongoing basis.

92. When we examine the principle of proportionality, a relevant comparison is the international responses to the economic sanctions imposed by the United Nations Security Council pursuant to chapter 7 of the United Nations Charter (i.e. when it determines that there is a threat to world peace, a breach of the peace or acts of aggression).[335] Admittedly, because of the deadlock in the Security Council during the Cold War, economic sanctions were imposed by the United Nations only twice during that period.[336] By contrast, in the decades since the fall of the Iron Curtain, the Security Council has imposed economic sanctions in more than a dozen cases.[337] Pursuant to article 42 of the United Nations Charter,

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335 See U.N. Charter, chapter 7, art. 41:
"The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations".
It should be mentioned that the establishment of a naval blockade or a land crossing policy are actually a type of "economic sanctions" or "economic measures" intended to disrupt or prevent the passage of goods or services to a country or from it. Sanctions such as these may be imposed according to a decision by a country or a regional organization (for the purpose of this report, these sanctions will be referred to as "unilateral") or as binding United Nation's Security Council [hereinafter The UN Security Council] resolution (for the purpose of this report, these sanctions will be referred to as "multilateral sanctions"). See FARRALL, SANCTIONS, *supra* note 227, at 107.
Using such unilateral sanctions have been common throughout history (see GARY CLYDE HUFBAUER ET AL., ECONOMIC SANCTIONS RECONSIDERED: SUPPLEMENTAL CASE HISTORIES 142-270 (3rd ed., 2007), which presents dozens of case studies of economic sanctions). Such sanctions were placed, among other cases, within armed conflicts; as a tactic to weaken opponents; to counter expropriation; and lately, to counter the proliferation of weapons of mass destruction and to combat international terrorism (id., sanctions database on accompanying CD, 14, 65-75). At the same time, the establishment of a unilateral naval blockade for purposes of economic warfare during an armed conflict [hereinafter "Economic Warfare"; historically, it was not unusual to call such a blockade a "commercial blockade"] have been the exception in the post World War II period.

336 Prior to 1990, the UN's obligatory sanctions were only placed on South Rhodesia (1966) and South Africa (1997). See FARRALL, SANCTIONS, *supra* note 227, at 107; See also Kimberly Ann Elliot, *Trends in Economic Sanctions Policy*, *in* INTERNATIONAL SANCTIONS, BETWEEN WORDS AND WARS IN THE GLOBAL SYSTEM 3, 10-11 (Peter Wallensteen & Carina Staibano eds., 2005).

337 For an updated list of sanctions placed by the Security Council see UN Security Council

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if the imposition of economic sanctions is ineffective, the Security Council may also take military action, and *inter alia* order the imposition of a naval blockade.[338] The power of the Security Council to impose economic sanctions 'that do not involve the use of military force' and the recognition of this form of warfare within the scope of the laws of armed conflict reflect the legality of using economic sanctions and the effectiveness of exercising economic pressure in order to influence States and other parties. Here, it should be stated that operations that are carried out with the approval of the United Nations Security Council are not necessarily subject to the same rules of international law that are mainly intended to regulate the conduct of states within the context of an armed conflict.[339] However, the deliberations that took place with regard to the imposition of these economic sanctions can help us find a standard for assessing the way in which they may be used.

Before the analysis, it is important to clarify that when assessing the use of economic sanctions as a means of economic warfare, care should be taken not to focus merely on the tactical level of conducting warfare[340] in the sense of 'seizing ground and weakening or neutralizing the enemy's armed forces.'[341] An armed conflict is ultimately conducted in order to achieve strategic aims, and not merely tactical goals.

Sanctions Committee: Security Council Resolutions on General Issues Concerning Sanctions, *available at* www.un.org/sc/committees/sanc_res.shtml (2006). See also Craig H. Allen, *Limits on the Use of Force in Maritime Operations in Support of WMD Counter-Proliferation Initiatives*, 81 INT'L. STUD. SER. U.S. NAVAL WAR COL. 77, 122, fn. 16 (2006). The term Maritime Interdiction Operations have been used to cover a variety of different measures; while it was originally contemplated as naval operations to enforce UN Security Council Resolutions imposing embargoes the term is now used in a broader sense, *inter alia*, to cover naval operations for purposes of peacekeeping or to enforce economic sanctions.

See also HUFBAUER ET AL., *supra* note 335, at 33.

338 See U.N. Charter, chapter 7, art. 42:
"Should the Security Council consider that measures provided for in art. 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations".

339 *Heintschel von Heinegg, EPIL, supra* note 91, para. 55.

340 See the United States Department of Defense (DOD) Dictionary of Military and Associated Terms, Joint Publication 1-02 (Jul. 2010), *available at* http://www.dtic.mil/doctrine/dod_dictionary/data/t/7465.html (which defines the "tactical level of war" as "The level of war at which battles and engagements are planned and executed to achieve military objectives assigned to tactical units or task forces. Activities at this level focus on the ordered arrangement and maneuver of combat elements in relation to each other and to the enemy to achieve combat objectives.").

341 See *ICRC Commentary on Protocol I of the Geneva Conventions, supra* note 285, at 57, para. 2218; see also letter from Gisha - Legal Center for Freedom of Movement to The Public

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93. 'Comprehensive' sanctions (i.e., sanctions that affect all or almost all goods, products and economic resources), as opposed to 'targeted' or 'smart' sanctions (i.e., sanctions that only affect specific goods or products or that restrict a specific service of a specific economic instrument) have been imposed by the United Nations Security Council five times, all of which, with one exception, at the beginning of the 1990s.[342] These measures gave rise to criticism because of the drastic negative effects that they had on vulnerable groups in the civilian population, especially on children.[343] The conflict following the Iraqi invasion of Kuwait is an example of sanctions that led to a wave of critique during the 1990s. In this instance, the United Nations Security Council also imposed economic sanctions that are commonly referred to as a 'naval blockade,' even though no use was made of this term in the actual resolution that approved them.[344] Thus, for example, it is expressly written in resolution 661 of the United Nations Security Council, which imposed a complete export and import embargo on Iraq, that only '... supplies intended *strictly* for medical purposes, and, *in humanitarian circumstances*, foodstuffs...'[345] [emphases added] would be allowed into Iraq. The significance and effect of the economic sanctions and the naval blockade imposed on the Iraqi population are widely documented,[346] and it is superfluous to discuss them once more here. The UN sanctioned blockade prompted allegations of breaches of international

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Commission to Examine the Maritime Incident of May 31, 2010 (Oct. 10, 2010).

342 See SC Res 253 (May 29, 1968) concerning Southern Rhodesia; SC Res 661 (Aug. 6, 1990) concerning Iraq; SC Res 757 (May 30, 1992) and SC Res 820 (Apr. 17, 1993) concerning the former Yugoslavia; and SC Res 917 (May 6, 1994) concerning Haiti.
See also FARRALL, SANCTIONS, *supra* note 228, 107-108; as well as Nicco Schrijver, *The Use of Economic Sanctions by the UN: An International Legal Perspective*, *in* INTERNATIONAL ECONOMIC LAW AND ARMED CONFLICT 129-130, 132-135 (H.H.G. Post ed., 1994).

343 See for example *UNICEF: Iraq Watching Brief*, *available at* www.unicef.org/evaldatabase/files/iraq_2003_watching_briefs.pdf (2003) [hereinafter *Iraq, Watching Brief*]. Various studies concluded that during the period of the Iraq sanctions, infant and child mortality rates increased significantly: See Christopher C. Joyner, *United Nations Sanctions after Iraq: Looking Back to See Ahead*, 4 CHI J. INT'L L. 329, 338-339 (2003).
See also *CESCR: Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 8*, E/C.12/1997/8, ¶ 5, 15, *available at* www.unhchr.ch/tbs/doc.nsf/0/974080d2db3ec66d802565c5003b2f57?Opendocument (2007) [hereinafter *CESCR, Comment 8*].

344 See YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE 295 (2005); see also *Heintschel von Heinegg, EPIL, supra* note 91, at para. 54 (where he notes technically the blockade can be discussed in terms of "non-military enforcement" under article 41 of the Charter).

345 S.C. Res. 661, ¶3, UN Doc. S/RES/661 (Aug. 6, 1990).

346 See for example FARRALL, SANCTIONS, *supra* note 227, at 224-227; *Iraq, Watching Brief, supra* note 343; Joyner, *United Nations Sanctions, supra* note 343, at 338-339; *CESCR, Comment 8, supra* note 343, at para. 2.

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humanitarian law,[347] although there appears to be no suggestion by the United Nations or the participating member states that the blockade was ultimately considered to have been illegal.[348] Responding to the critiques, various governments sponsored processes in which methods to make smart sanctions more effective were examined as alternatives to comprehensive sanctions.[349] This trend could also be noted in the United Nations General Assembly,[350] and the United Nations Security Council has not been indifferent to this process either; in recent years it has not imposed comprehensive sanctions and it has also established a working group whose function is to recommend how to improve the effectiveness of smart sanctions.[351] However, the implementation of this new approach also gives rise to difficulties. It has been noted that 'Even though sanctions of the scope imposed on Iraq *may* not be employed again, it is likely that relatively comprehensive sanctions will be used in the future, given that mere arms embargoes or travel bans will not prove sufficiently coercive in all situations.'[352]

94. In sum, when evaluating proportionality in this context, the negative effect on the civilian population inherent in economic sanctions, whether in or outside an armed conflict, should be taken into account. While it is not possible to anticipate or identify the effects of such sanctions with scientific precision, the goal is to limit the suffering of civilian populations. Israel has indeed done this by setting up the comprehensive

347 See Marc Bossuyt, *The Adverse Consequences of Economic Sanctions*, Working Paper, Economic and Social Council, E/CN.4/Sub.2/2000/33 para. 71 (2000), *available at* www.globalpolicy.org/component/content/article/202/42501.html;
Denis J. Halliday, *The Deadly and Illegal Consequences of Economic Sanctions on the People of Iraq*, 7 THE BROWN J. OF WORLD AFF. 229 (2000).

348 See for example Halliday, *Deadly and Illegal Consequences*, *supra* note 347, *Id.*; CORTRIGHT & LOPEZ, THE SANCTIONS DECADE, *supra* note 232, at 43, 45-48, 57.

349 These processes are: Interlaken processes (1998-2001); Bonn-Berlin (1999-2001); Stockholm (2001-2002). See Thomas J. Biersteker et al., *Consensus from the Bottom Up? Assessing the Influence of the Sanctions Reform Processes in* INTERNATIONAL SANCTIONS, *supra* note 336, at 15-31.

350 2005 World Summit Document (Sep. 2005) A/60.1/L.1 para. 106, *available at* www.un.org/summit2005/documents.html. In the 2005 World Summit Outcome Document, the issue of sanctions was addressed, as member states pledged to "ensure that sanctions are implemented in ways that balance effectiveness to achieve the desired results against the possible adverse consequences, including socio-economic and humanitarian consequences, for populations and third States.").

351 Report of the Informal Working Group of the Security Council on General Issues of Sanctions (Dec. 22, 2006) S/2006/997, *available at:* www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WG%20Sanctions%20S2006997.pdf

352 Robin Geiss, *Humanitarian Safeguards in Economic Sanctions Regimes: A Call for Automatic Suspension Clauses, Periodic Monitoring, and Follow-up Assessments of Long-Term Effects*, 18 HARV. HUM. RTS. J. 167, 198 (2005) [emphasis added].

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mechanism for supervising and monitoring the transfer of humanitarian supplies to the Gaza Strip via the land border crossings. From the material that was brought before the Commission, it is clear that Israeli authorities regularly supervise the land crossings policy and make adjustments to this policy, in order to provide a response to problems brought to their attention. The Coordinator of Government Activities in the Territories meets with members of the Palestinian Authority, human rights groups, and representatives of the international community on a regular basis. At the end of 2009, such a meeting led to an increase in the variety of goods that could be brought into the Gaza Strip in order to reconstruct and repair residential buildings (such as glass, aluminum, and wood).[353] Nonetheless, it seems worthwhile to consider the progress that was made around the world with regards to targeted or "smart" sanctions. It seems that the Israeli government's current policy is more in line with those recommendations; in other words, there should be continued efforts to making the sanctions more focused on the Hamas itself.

95. With regard to the duration of the economic warfare, the Commission is of the view that there is a danger that comprehensive restrictions on goods may not be regarded as proportionate indefinitely As stated in the Harvard Air and Missile Warfare Manual, 'The suffering of the civilian population may not originally be expected to be excessive in relation to the concrete and direct military advantage anticipated. However, later on, there may be empirical evidence to the effect that such excessive suffering is actually taking place.'[354] These remarks emphasize the need to maintain a regime of effective supervision and to carry out periodic reviews at the highest levels of government with regard to the restrictions imposed on the civilian population. Nonetheless, the Commission concludes that with regard to the period that it examined - from the introduction of the land crossings policy on September 19, 2007, until the incident on May 31, 2010, which is the subject of this report -the naval blockade and the land crossings policy did not become disproportionate pursuant to the rules of international law because of their duration.

96. In reaching its conclusions, the Committee notes that "proportionality" - a standard that directs decisions within international humanitarian law - often involves interpretation of difficult decisions and complex assessments. It has been said that 'Although tribunals and other commentators frequently endorse the principle of proportionality,

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353 *Testimony of Government Activity Coordinator in the Territories, supra* note 162, at 120.
354 *The Air and Missile Warfare Manual, supra* note 115, at art. 157(b), para. 3.

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they have been less fastidious in explaining the exchange rate they have used to equate disparate integers...'.[355] An assessment of proportionality requires striking a balance on difficult and delicate questions, colloquially known as a 'comparison of apples and oranges,'[356] which in our case is between the military advantage anticipated from the imposition of a naval blockade on the one hand, and humanitarian considerations on the other.[357] The Supreme Court addressed the principle of 'proportionality' in *Public Committee Against Torture v. Government* within the context of considering the scope of judicial review, stating: 'Proportionality is not a precise criterion. Sometimes there are several ways of satisfying its requirements. A margin of proportionality is created. The court is the guardian of its limits.'[358] In this regard it is important to emphasize two issues:

Within the "zone of proportionality", there can be disagreement regarding the impact of a decision and the answers can be politically and morally controversial. There is no exact formula against which a determination of excessiveness can be made. As a result, a determination that an act is "disproportionate" is invariably left to the clearest of examples.

In addition the monitoring and reviewing of Israeli authorities concerning the legality of the blockade remain subject to scrutiny by the Israeli judicial system. Israeli authorities have often be called upon to defend their position before the Supreme Court of Israel, and in the framework of the litigation, all parties are given an opportunity to present their claims.[359] As a result of this, Israeli authorities operate with the knowledge that the policy they introduce and implement has been examined and will be examined by an independent court in a democratic state where many human rights organizations are active in bringing these issues before the court. Indeed, it is regrettable that much of the criticism leveled at Israeli policy with regard to the Gaza Strip does not take into account the essential and direct role that the Israeli legal system plays in ensuring that operations carried out by the Israeli Government satisfy the requirements of the rule of law. Such an approach greatly undermines the basis of the scrutiny and testifies to an approach which regards the international community as the only arbiter of the operations of the Israeli

355 Thomas M. Franck, *On Proportionality of Countermeasures in International Law*, 102 AM. J. INT'L. L. 715, 729 (2008).
356 *Id.*
357 *Id.*, at 716.
358 *Targeted Killing* case, *supra* note 37, at para. 58.
359 See for example *Al-Bassiouni* case, *supra* note 140.

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Government. This approach is flawed from a legal, policy, and practical perspective.

97. As stated above and to complete the picture, it should be noted that in June 2010, the Israeli Government changed the land border crossings policy from a policy in which only the transfer of limited humanitarian supplies was allowed to a policy where only the entry of goods that have military purposes is prohibited.[360] The Prime Minister, Mr. Benjamin Netanyahu, stated that this change was made for policy reasons, and not because the land border crossings policy was contrary to international humanitarian law.[361] On December 8, 2010, the Government further determined that subject to certain restrictions, a gradual plan would be approved for allowing goods to leave the Gaza Strip for destinations outside of Israel and the West Bank. Nonetheless, a report published by various human rights organizations on November 30, 2010, states that in practice only a slight change in Israel's policy toward the entry of goods to the Gaza Strip was apparent after Israel announced this relaxing of its land border policy.[362] The Commission did not examine new evidence relating to the new land crossings policy and therefore it is unable to assess its

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360 The current list of items whose entrance is controlled includes, among others; weapons and ammunition, "dual-use" objects, and building materials, see *Israel Ministry of Foreign Cases: Gaza: Lists of Controlled Entry Items, available at* www.mfa.gov.il/MFA/HumanitarianAid/Palestinians/Lists_Controlled_Entry_Items_4-Jul-2010.htm (2010).

361 *Prime Minister's Open Door Testimony, supra* note 82, at 17.

362 FIDH (International Federation for Human Rights, Dashed Hopes: Continuation of the Gaza Blockade (Nov. 30, 2010), *available at* http://www.fidh.org/DASHED-HOPES-CONTINUATION-OF-THE-GAZA-BLOCKADE; at the same time, in Gisha's report of December 2010 it was stated: "The past five months since the July 6th implementation of the government's decision have seen a steady increase in the amount of consumer goods entering the Gaza Strip, corresponding with the relaxing of the ban on household items and food products, and infrastructure changes made to the Kerem Shalom Crossing. Despite a seemingly promising International Monetary Fund report issued in September reflecting growth in the Strip, however, socioeconomic indicators point to a much less positive picture. Rates of unemployment, food insecurity, and poverty remain high." The report by Gisha points to the changes made in the field in terms of Israel's policy. Thus, for example, the report mentions that the volume of goods entering has increased to about 40% of need, rather than 22% of need during the past three years, "Some limited export has begun in the past weeks, with a promise to allow further export of items from the agriculture, furniture and light industry sectors, according to a December 8th cabinet decision." Likewise the report mentions that there is "a slight increase in the number of permits given to businesspersons" to exit the Gaza Strip. The report asserts that these easements are insufficient and that to obtain "true and sustainable economic recovery [...] requires removing remaining restrictions on the movement of goods and people." See "Reconstructing the Closeure: Will recent changes to the closure policy be enough to build in Gaza?" (position paper by the Gisha organization - Legal Center for Freedom of Movement, December 2010).

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effect. However, insofar as it might have improved the position of the civilian population in the Gaza Strip, it is of course to be commended.

The Commission has therefore reached the conclusion that Israel is in compliance with the requirement of proportionality provided in international humanitarian law, especially in view of the extensive steps that it took recently in order to restrict the effects of the naval blockade and the land crossings policy on the population of the Gaza Strip.[363]

International human rights law and its application in our case

98. As mentioned above, as with many other contemporary questions concerning the implementation of international humanitarian law, an examination of the interface between these rules and international human rights law is required. In the *Wall* case, the International Court of Justice recognized that international human rights law, which includes political and civil rights and economic, social and cultural rights, continues to apply during an armed conflict.[364] Nonetheless, it is not always clear to what extent these rights apply, especially where rules of international humanitarian law apply as a *lex specialis*.[365]

Before we begin the analysis, it should be noted that in the *Wall* case, the International Court of Justice also considered the application of two normative systems to a territory that it classified as an 'occupied territory.' In a situation of occupied territory, it is often considered that human rights law may be more readily applied than in other armed conflict situations. Indeed, while this report concludes that Israel no longer has effective control over the Gaza Strip, the analysis also discusses how various organizations and bodies continue to hold the position that Israel is an occupying power in the Gaza Strip. However, even in the context of occupation, questions have been raised as to whether the whole panoply of human rights law can or should be applied by an occupying state that clearly cannot act as the sovereign authority.[366] This issue is especially

363 See *The Air and Missile Warfare Manual*, *supra* note 115, at art. 157(b), para. 3 (where it is stated that if an aerial blockade causes excessive suffering "blockade has to be lifted, *or free passage of foodstuffs and essential supplies is to be allowed*" [emphasis added].

364 See *the Wall* case, *supra* note 130, at paras. 102-107.

365 See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. (Jul. 1996) para. 239-240, *available at* http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=09&case=95 [hereafter: *Nuclear Weapons Case*].

366 See Naz K. Modirzadeh, *The Dark Sides of Convergence: A Pro-civilian Critique of the Extraterritorial Application of Human Rights Law in Armed Conflict*, 86 INT'L L. STUD. 349, 375-376 (2010).

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complex in the Gaza situation since the argument suggesting Israel is the occupying power has to address the existence of an entity, the Hamas, that carries out actual physical control over the territory, while Israel controls only the borders. Human rights groups have rightly noted that it is the Hamas, as the ruling power in the Gaza Strip, who is responsible for protecting the human rights of the Gaza residents, which includes "protecting the right to life, health, education, adequate living conditions and clean water."[367]

99. Since there are comprehensive and detailed rules in international humanitarian law regulating the imposition of a naval blockade, the question arises as to what extent the criteria of international human rights law should be taken into account. For example, the rules of the international humanitarian law dealing with a naval blockade, such as the prohibition of starvation or the prohibition of depriving the civilian population of objects essential for its survival and the question of the 'damage' or 'suffering' addressed in article 102(b) of the San Remo Manual, address the right to life, a right that also lies, of course, at the heart of international human rights law. From this viewpoint, the two normative regimes 'share a common "core" of fundamental standards which are applicable at all times, in all circumstances and to all parties, and from which no derogation is permitted.'[368] Since the right of the inhabitants of the Gaza Strip to life is addressed in the *lex specialis* that applies here, namely the rules of international humanitarian law, it is these rules that should primarily be applied.

100. Allegations have also been raised that Israel is in violation of international human rights law [369] because it restricts the movement of people to and from the Gaza Strip and thereby violates the right to

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367 *Gisha: Electricity Shortage in Gaza: Who Turned Out the Lights?, available at* www.gisha.org/UserFiles/File/publications/ElectricitypaperEnglish.pdf (2010).
See also *Testimony of Physicians for Human Rights, supra* note 244, at 19.

368 *Prosecutor v. Delalic*, Appeals Judgment, No. IT-96-21-A, para. 149 (Feb. 20, 2001) (Celebici case); see also Theodor Meron, *The Humanization of Humanitarian Law*, 94 AJIL 239, 266-267 (2000).

369 See for example United Nations OHCHR: Human Rights Situation in Palestine and Other Occupied Arab Territories, ¶ 30, U.N. Doc. A/HRC/12/37 (Aug. 19, 2009), *available at* http://unispal.un.org/UNISPAL.NSF/0/71266F7CD47BBDEA85257615004D8635:
"The military operation and the continued blockade have had severe cumulative effects on the realization of a wide range of economic, social and cultural rights, as well as civil and political rights of the Gaza population".
See also *Consolidated Appeal, supra* note 219, at 8:
"Palestinians in the OPT continued to face widespread denial of their basic human rights, including the right to life, liberty, freedom of movement, self-determination and access to employment, health and education".

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