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FREEDOM OF INFORMATION ACT: THE GAZA 2010 FLOTILLA ATTACK

In May 2010, 700 activists, including seventeen U.S. citizens, boarded six ships that comprised the Gaza Freedom Flotilla. Their purpose was to peacefully break the Israeli sea blockade of Gaza, stand in solidarity with the Palestinians of Gaza, and provide humanitarian aid, such as medical supplies, to Gaza. At 4:00 am on May 31, 2010, Israeli Naval Forces forcefully intercepted the flotilla and attacked its passengers. In the course of the operation, the Israeli commandos killed nine passengers of the *Mavi Marmara*, including eighteen year old U.S. citizen Furkan Doğan, and injured numerous others. The other U.S. passengers, who included a former U.S. Army Colonel and a former U.S. Ambassador, were captured during this raid in international waters and brought without their consent to Israel where they were promptly detained without charge, and eventually deported.

The Flotilla FOIA

In June 2010, the Center for Constitutional Rights filed eight Freedom of Information Act (FOIA) requests seeking the release of information on the U.S. government's knowledge of, and actions in relation to, Israel's attack on the flotilla. After nearly a year of little response from the government, on May 24, 2011, CCR filed a civil complaint against eight departments of the United States government, including the Department of State, Department of Justice, Coast Guard and various components of the Department of Defense, seeking a court order to release the information. Since this filing, these departments have produced over 5,000 pages of documents related to the Gaza Freedom Flotilla and production continues.[1] Government representatives have indicated that documents are currently being reviewed for release from the U.S. Mission to Geneva, U.S. Mission to the UN in New York, the State Department's Office of the Legal Adviser, Embassies in Greece and Cyprus and various Coast Guard sub offices.

[1] The total documents released and withheld by each agency are as follows: *Coast Guard*: 57 pages released, 95 pages withheld; *Department of Defense:* 102 pages released; 207 pages withheld; *Department of Homeland Security*: 49 pages released; *Department of Justice:* 657 pages released; 21 pages withheld; and *Department of State:* 4611 pages released; 198 documents withheld. Although the Central Intelligence Agency is not a party to the litigation, it has responded to requests from defendant-agencies to review documents, and also withheld numerous documents.

In addition to the hundreds of pages that have been withheld in full, some pages have been redacted so heavily that they offer scant information, as is the case with nearly 600 pages from the FBI. These redactions were made pursuant to the U.S. Government's claimed right to withhold certain information which has been exempted from the Freedom of Information Act. Throughout the production, as the agencies withhold information, they must mark which exemption justifies the withholding. Exemptions commonly seen in the production for this case include: "**B1**" redactions of information the government claims has been properly classified in the interest of national security (invoked often in documents from the FBI and State Department, particularly in documents discussing foreign government or diplomatic information); "**B3**" information exempted because another statute requires it (invoked often in documents reviewed by the FBI or CIA, particularly to block the release of information related to the U.S. intelligence agencies); "**B5**" information exempted because of either an attorney privilege or a deliberative process privilege (invoked often in documents from the Department of State's Office of the Legal Adviser or Department of State officials); "**B6**" information redacted because of a personal privacy interest (invoked often in documents from the FBI or State Department, particularly to redact the names and email addresses of persons discussing the flotilla); or "**B7**" information redacted because of a law enforcement privacy interest. CCR has raised concerns about the use of redactions in a number of contexts, and will litigate these redactions if more information is not released upon review.

The following pages offer an overview of select topics present in the released documents, and highlights important findings. For all FOIA documents received see: http://ccrjustice.org/ourcases/current-cases/gaza-freedom-flotilla

The U.S. Government tracked citizens who were taking part in the flotilla for months, yet no documents indicate that it took high level action to ensure the flotilla's safe passage

In the weeks prior to the flotilla launch, State Department officials attempted to learn the identities of American citizens planning to participate through a variety of sources, including monitoring social and traditional media, directly contacting flotilla organizers, and communicating with foreign governments. Upon learning that American citizens would participate in the May 2010 flotilla, several State Department officials expressed concerns that the Americans may be harmed or at least detained by Israeli forces as a result of what they described as the passengers' desire for a "confrontation." However, no records reflecting high level discussions or the steps taken on the need to protect the

lives of participants have been released. Further, the U.S. government, working across multiple agencies, sought to identify which boats were U.S. flagged. The formal opinion on the consequences of U.S. flagging and any protections afforded as a result have not been released.

The U.S. Government Failed to Locate Slain American Teen or Investigate His Death

Israeli commandos shot 18 year-old Furkan Doğan five times at close range in the raid of the *Mavi Marmara*, including one shot to the face.[2] Despite desperate calls from Furkan's father trying to find out the whereabouts of his son, records indicate that U.S. officials did not become aware of Furkan's death until three days after the attack when his father discovered his remains amongst the bodies of deceased Turkish passengers that Israel had returned to Turkey. The American first response was not to call the grieving father to offer their condolences, but to wait for "confirmation" from Israel, although it had already failed to identify Furkan as U.S. citizen and shipped his body to Turkey. Though the circumstances of his death were highly suspect and Furkan was killed in international waters, the U.S. government chose not to investigate Furkan's death, and instead fully deferred to Israel's internal investigation. When Furkan's father met with a high level official in the State Department to request an investigation into his son's death, he was told that "as a rule" the U.S. does not conduct investigations into the deaths of citizens overseas. This representation contradicted earlier statements by the State Department's spokesman after the attack in June 2010, who stated that the United States government had "the option of [its] own investigation." Moreover, in response to a request from the United States for information about its investigation, the Israeli government stated would not release any information about Furkan to the U.S. government until its investigation was complete. At the same time, Israel thanked the United States "for standing by Israel in the international arena during this difficult time"

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[2] "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.." UNITED NATIONS HUMAN RIGHTS COUNCIL, 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, Page 29 (September 27, 2010) available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf

and instructed U.S. officials to warn its citizens not to participate in "pro-Hamas flotillas." Ultimately, Israel's investigation into the incident exonerated all of the soldiers involved in the attack and concluded that all of their actions were legal. A summary of documents received regarding the U.S. role in identifying Furkan Doğan and reacting to his death is available here.

The U.S. Failed to Take Significant Action to Secure U.S. Passengers' Missing and Confiscated Property and Evidence

During the raid, Israeli forces confiscated the property of U.S. citizens, including electronic devices such as cameras, video recorders, laptops, and cell phones. Many of these items have yet to be returned, despite their value as evidence recording what occurred on the night of the attack on the flotilla. Prompted by calls and letters from U.S. citizen participants searching for explanations of the failure to return confiscated property, U.S. officials tasked with securing the return of these items have done little besides make inquiries (with unsatisfactory answers) into the status of these items. Israel's apparent loss of this property and rejection of responsibility in its return is tantamount to destruction of evidence, since it impedes the investigation of the causalities that occurred during the incident. Documents received regarding the steps the U.S. took to reclaim confiscated property are available here.

The U.S. Government Stifled Independent International Investigations

Released documents reveal diplomatic efforts to obstruct attempts to gain international accountability for the attack, including an outright opposition to a fact-finding mission sponsored by the UN Human Rights Council. The U.S. mission in Geneva, in an urgent cable to the Secretary of State in Washington,[3] noted that it has "explored ways to 'turn off' the flotilla fact finding mission." The U.S. representative states that they would like the mission to "fall away."[4] A U.S. representative in Geneva further suggests that "engagement to shape the focus and outcomes appears the most effective way to potentially mitigate its impact." Noting that the Mission's mandate is to "investigate

[3] Other recipients include, Info Human Rights Council Collective, National Security Council, U.S. Mission to the UN in NY, American Embassy Ankara, , American Consul Jerusalem, and American Embassy Tel Aviv. Department of State, U.S. Mission Geneva, Cable: *HRC Gaza Flotilla Fact-Finding Mission: What Next?*, August 2030, StateDept0484-StateDept: http://ccrjustice.org/files/StateDept0432-0533.pdf
[4] *Id.*

violations of international law," the U.S. official expresses that "it will therefore be difficult for them not to orient their work towards alleged international law violations and urged the UN fact- finding mission to not make any "assessments in regards to actual violations," essentially seeking the non-fulfillment of the Human Rights Council's mandate. Other documents show the U.S. worked to silence calls for international accountability in other international institutions. A full analysis of the U.S. role in opposing international investigations is forthcoming.

The Center for Constitutional Rights will continue to update this document, the Gaza Flotilla case-page, and thematic guides to the production, as more materials are produced by the Unites States. For more information on the Gaza Flotilla 2010 FOIA, please visit: http://www.ccrjustice.org/ourcases/current-cases/gaza-freedom-flotilla.