

Report of the Public Commission To Examine the Maritime Incident of 31 May 2010 - Part One

Summary¹

1. For reasons detailed below, on January 3, 2009 Israel established a naval blockade off the coast of the Gaza Strip as part of its armed conflict with Hamas. In the days preceding May 31, 2010, a flotilla of six vessels approached the coastline of Israel, with approximately 700 persons on board. The largest of the ships in the flotilla, the *Mavi Marmara*, had approximately 590 passengers and crew on board. On May 31, 2010, IDF forces intercepted and boarded the *Mavi Marmara* during an operation to enforce the naval blockade against the Gaza Strip. During the boarding and takeover of the ship, the IDF forces encountered violent resistance. When the hostilities ended, nine of the ship's passengers had been killed and fifty-five were wounded. Nine IDF soldiers were also wounded.

2. On June 14, 2010 the Government of Israel established an independent public Commission to examine various aspects of the actions taken by the State of Israel. Supreme Court Justice Emeritus Jacob Türkel was appointed to chair the Commission, and the late Prof. Shabtai Rosenne, Major-General (res.) Amos Horev, Ambassador Reuven Merhav and Professor Miguel Deutch were appointed as members. On September 29, 2010 Prof. Shabtai Rosenne passed away. Two foreign experts were also appointed to act as observers: Lord David Trimble and Brigadier-General (ret.) Kenneth Watkin. The two foreign observers were full partners in the Commission's work, as if they were actual members but were not given the right to vote. In this context, it should be noted that the Commission's work took place in Hebrew and English, the Commission's staff was bilingual, and the task of writing was conducted in both languages. Advocate Hoshea Gottlieb was appointed as the Commission Coordinator. At the time of writing this report, the Commission was advised by two consultants that are prominent experts

1 A detailed factual and legal analysis of all the issues below, and additional issues, can be found in the report itself, which can be viewed in full (aside from a privileged Addendum, as detailed below), in the Commission's website, *available at* <http://www.turkel-committee.gov.il/index-eng.html>.

in the field of international law, Prof. Dr. Wolff Heintschel von Heinegg, Professor of Public Law at Viadrina European University in Germany, and Prof. Michael Schmitt, Professor of Public International Law at Durham University in the United Kingdom. The two have also agreed with the legal conclusions of the report. Prof. Ruth Lapidot, a recipient of the Israel Prize for international law, also assisted the Commission with advice and guidance.

When the Commission was established, it took upon itself, as a Commission and as individuals, the difficult and agonizing task of ascertaining the truth on the issues that it was 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. In investigating the issues before the Commission it became clear that the investigation would be lengthy and complex, and require a detailed study both of fact and law. The Commission has been as precise as possible and done everything that human beings can do when called upon to pass judgment in such a matter. The Commission has devoted itself to its 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.

3. The first part of the report, which is being submitted now, examines the legality of the naval blockade imposed on the Gaza Strip and the legality of the actions carried out by the IDF in order to enforce the naval blockade and in accordance with the rules of international law. The actions and identities of the organizers and participants of the flotilla are also examined. In an additional part of the report, which will be submitted at a later date, the Commission shall address the question that was presented in paragraph 5 of the Government resolution of June 14, 2010, namely whether the investigation and inquiry mechanism 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 that part of the report we shall also consider additional questions that arose in the course of the Commission's work, including questions that have importance from a domestic Israeli perspective.

4. The Commission heard oral and written testimonies, with maximum transparency of its proceedings. The sessions at which testimonies were heard were open to the public and were published on the Commission's Internet site. Some of the testimonies were heard *in*

camera for reasons of State security and Israel's foreign relations. In total the Commission heard twenty-six testimonies during fifteen days of hearings, and eleven testimonies *in camera*.

The Commission sent an invitation to testify, through the Turkish Embassy in Israel, to the captain of the *Mavi Marmara*, Tural Mahmut, and to the leader of the IHH, Bülent Yildirim, which stated the fact that the Commission would be prepared to consider various procedural solutions in order to facilitate the testimonies. The Commission also asked the Turkish Embassy in Israel for help in compiling a list of eye witnesses who had information and/or relevant documents and who were prepared to testify before the Commission. To the Commission's regret, these requests did not receive any response. Moreover, the Commission issued an invitation 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 these to it. Moreover, British nationals who took part in the flotilla and expressed their desire to submit evidence to the Commission were invited 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 closed-circuit television. The Commission's proposals went unanswered. However, the representatives of three Israeli human rights organizations and two Israelis who participated in the flotilla were invited to testify before the Commission, which they did. In these circumstances, the Commission was therefore compelled to rely mainly on testimonies and reports of Israeli parties, but also on additional reliable written and recorded material that it was able to obtain.

In order to ascertain the whole truth and to obtain closer access to the actual sources of the information, it was resolved that a representation of the Commission would work with IDF personnel that were appointed for this purpose and which conducted de-briefings according to detailed instructions of the Commission's representatives and in accordance with their guidance. Within the scope of these investigations, documented testimonies were taken from dozens of servicemen and other IDF personnel who were directly involved in the events. The Commission also received thousands of video and audio clips, containing hundreds of hours of recordings, which were assembled 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, 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*.

In addition, the Commission received many documents for its inspection, which were included in more than 150 files of exhibits, including 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 and additional bodies. Further, the Israel Police submitted 46 CDs that documents questioning of some of the flotilla participants and the Commission received documents and documentation of objects that were seized on the *Mavi Marmara*, material that was seized from computers on the *Mavi Marmara*, various medical documents, etc.

The Commission examined all of the testimonies, sources and references critically and analytically, while cross-checking them against each other and against additional sources of information, insofar as they were direct and authentic sources.

The naval blockade of the Gaza Strip

5. 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). After the Hamas terrorist organization seized control of the Gaza Strip in June 2007, the Government adopted various measures. On January 3, 2009, during Operation 'Cast Lead,' Israel imposed a naval blockade on the coastline of the Gaza Strip. 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 tries to breach the blockade.

6. The testimonies heard by the Commission show that the Government of Israel imposed the naval blockade on the Gaza Strip for military-security reasons, which mainly concerned the need to prevent weapons, terrorists, and money from entering the Gaza Strip, and the need to prevent the departure of terrorists and additional threats from the Gaza Strip by sea. The naval blockade was not imposed in order to restrict the transfer of humanitarian supplies to the Gaza Strip or 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 for this

reason there was in the past no maritime commerce that went via the coast of the Gaza Strip. However, the naval blockade was also regarded as legitimate within the framework of Israel's overall strategy to prevent a legitimization of the Hamas regime in the Gaza Strip.

After Operation 'Cast Lead' ended, the resolution regarding the imposition of a naval blockade remained in force and was not re-examined.

Does the naval blockade comply with the rules of international law?

7. At the opening of the deliberations on the question of the conditions for imposing and enforcing the naval blockade on the Gaza Strip, the Commission arrived at two conclusions that have significance for the applicable legal framework: (1) the conflict between Israel and Hamas is an international one; (2) Israel's effective control of the Gaza Strip ended when the disengagement was completed in 2005.

8. The legal rules that regulate the imposition of a naval blockade are a part of the laws of naval warfare. According to the San Remo Manual on International Law Applicable to Armed Conflicts at Sea – the result of a work of a group of experts offering a detailed current statement of customary international law on naval warfare, including the imposition of naval blockades – the formal conditions for imposing a naval blockade are, *inter alia*, that a blockade should be declared and notified; that such a declaration should state the commencement, duration, location and extent of the blockade; the blockade should be 'effective'; the force maintaining the blockade may be stationed at a certain distance from the coast determined by military requirements; the blockade may be enforced by a combination of legitimate methods and means of combat; the blockade should be applied impartially to the vessels of all States; and any cessation, temporary lifting, re-establishment, extension or other alteration of a blockade should be declared and notified. The Commission examined these conditions carefully and in detail and came to the conclusion that Israel satisfied all of them.

9. According to the San Remo Manual, the party imposing a naval blockade must consider the humanitarian impact on the civilian population in the territory. In order to assess the humanitarian impact of the naval blockade on the civilian population in Gaza, the Commission also examined the humanitarian impact of Israel's land crossings policy - the civilian restrictions on, *inter alia*, entry and exit of goods and movement of people, imposed on the Gaza Strip following the Hamas' takeover in 2007. This was done due to the overall context in which the naval blockade was imposed, namely Israel's comprehensive strategy against the Hamas regime in the Gaza Strip; the fact that, *de facto*, shipping vessels

seeking to reach the Gaza Strip are diverted to Ashdod port, where the humanitarian supplies on board the vessels are transported via the land crossings and pursuant to a security check, to the Gaza Strip; and the difficulty of isolating the effect of the naval blockade on the humanitarian situation in the Gaza Strip from the land crossings policy.

10. As evident by the testimonies that the Commission heard, the purpose of the land crossings policy was 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 Hamas's attacks on Israel and its citizens; and a broader strategic goal of 'indirect economic warfare,' whose purpose is to restrict Hamas's economic ability as the body in control of the Gaza Strip to take military action against Israel.

11. The Commission learned of the effect of the land crossings policy on the civilian population in the Gaza Strip from the testimony of the Coordinator of Government Activities in the Territories (COGAT; an officer with the rank of Major-General heading the mechanism responsible for coordinating the government activities in the West Bank and the Gaza Strip) detailed written reports that he compiled, the testimonies of human rights organizations before the Commission and the reports of human rights organizations and humanitarian organizations that operate in the Gaza Strip. In this context, it is important to point out that the main question that the Commission addressed was whether Israel has complied with its obligations according to the rules of international humanitarian law. The San Remo Manual prohibits the imposition of a naval blockade if its sole purpose is to starve the civilian population or deny it other objects essential for its survival, or 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. Moreover, subject to certain conditions, the party that imposed the blockade is required to provide free passage of food and other essential objects, insofar as the civilian population is inadequately supplied with such food and essential objects. It also provides that, subject to the right to determine technical arrangements, the passage of medical supplies to the civilian population or to the wounded and sick members of enemy forces should be allowed.

12. *The prohibition of starving a civilian population* (article 102(a) of the San Remo Manual). The material before the Commission shows that the restrictions imposed by Israel within the framework of the land crossings policy took this humanitarian obligation into account and were also planned precisely in order to prevent a situation of 'starvation,' while operating in close collaboration with the Palestinian Authority, human

rights organizations and the international community in order to prevent such a condition.

13. *The supply of essential objects for the survival of the civilian population* (articles 102(a) and 103 of the San Remo Manual). The Commission has found that Israel is not denying the entry into the Gaza Strip of essential objects for the survival of the civilian population. Moreover, 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.

14. *Passage of medical supplies* (article 104 of the San Remo Manual). 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. There are certain delays in approving the entry of supplies into the Gaza Strip and with regard to obtaining approvals for medical treatment outside the Gaza Strip. Efforts should clearly be made to avoid these, but it would appear that most of the reasons for these delays involve security issues or the complex procedure undergone by each application for medical treatment outside the Gaza Strip (approval by the Palestinian Authority in Gaza and Ramallah before approval by Israel). Further, it should be said that also in this regard Israel is acting in cooperation with the Palestinian Authority and the international community in order to minimize the difficulties. It should be emphasized that the passage of medical supplies to the Gaza Strip by sea is made possible by the method of transporting them via Ashdod port and the land border crossings. Therefore, the Commission has reached the conclusion that Israel is complying with its obligations regarding medical supplies during a naval blockade. Nevertheless, Israel should remain mindful of those issues which are under its responsibility in the future as well, in order to examine whether it is possible to improve the current situation, and so that the medical needs of the inhabitants of the Gaza Strip are properly addressed.

15. *The military advantage of the naval blockade versus harm caused to the civilian population* (article 102(b) of the San Remo Manual). 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. The fact that missile attacks from the Gaza Strip against

Israel decreased from a peak of 3,278 in 2008 to a total of 165 attacks as of October 2010, shows not only the damage suffered by Hamas' military infrastructure during Operation 'Cast Lead,' but also the difficulties that Hamas is encountering in trying to rebuild that infrastructure, including the closing off of its naval rearmament route. In terms of anticipated military advantage 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. 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. 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.

It is obvious that determining the anticipated military advantage of imposing the naval blockade is only the first stage in weighing its proportionality. Article 102(b) of the San Remo Manual recognizes that the civilian population in a territory of war will suffer to some extent International humanitarian law therefore adopts a practical approach to the realities of the conflicts, in that its rules do not preclude a negative effect on a population but seek to limit it. As to the examination of the harm to the civilian population in the Gaza Strip, from the material before the Commission it 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. Similarly, it is meeting its obligations regarding the provision of objects essential to the survival of the civilian population and the provision of medical supplies.

Israel has indeed done this by setting up the comprehensive 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. With regard to the period that the Commission examined — from the introduction of the land crossings policy on September 19, 2007, until the incident on May 31, 2010, that is the subject of this report — the Commission's conclusion is that Israel is in compliance with the requirement of proportionality within the context of placing a naval blockade, especially in view of the extensive steps that it took in order

to moderate the humanitarian effects of the naval blockade and the land crossings policy on the population of the Gaza Strip.

However, the Commission's opinion is that there is a danger that comprehensive restrictions on goods may not be regarded as proportionate in the long term. In this context it is important to emphasize that the land crossings policy was changed in June 2010, so that all items would be allowed to enter the Gaza Strip apart from 'only weapons, military equipment and problematic dual-purpose items.' 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 program for exporting goods from the Gaza Strip beyond the borders of Israel and to the West Bank. The Commission did not examine new evidence regarding the new land crossings policy and therefore it is unable to assess its effect. However, insofar as it is capable of improving the position of the civilian population in the Gaza Strip, it is of course to be commended.

16. *Claims regarding 'collective punishment'*. The Commission's conclusion is that the imposition and enforcement of the naval blockade on the Gaza Strip — even when they are considered together with the land crossings policy — do not constitute 'collective punishment' of the population in the Gaza Strip. There is nothing in the evidence, including the material contained in the many humanitarian reports and human rights reports that were before the Commission, that indicates that Israel *deliberately* imposed restrictions on bringing goods into the Gaza Strip with the sole or main purpose of denying them to the civilian population of the Gaza Strip. Rather, the restrictions were put in place to limit the Hamas' abilities — including its economic ability — to carry out attacks against Israel.

Means of resolving disputes regarding the legality of a naval blockade

17. Individuals or groups do not have a right to breach a naval blockade that has been established in accordance with the applicable rules governing blockades, even if they hold the position that it is illegal because of its impact on the civilian population.

Conclusion regarding the legality of the naval blockade

18. **The Commission's conclusion is, therefore, that the imposition of the naval blockade on the Gaza Strip was lawful and complied with the rules of international law, in view of the security circumstances and Israel's efforts to fulfill its humanitarian obligations.**

The Operations to Enforce the Naval Blockade on May 31, 2010

General

19. Reports about the organization of the flotilla began in early 2010. From the reports, it clearly arose that this flotilla is different in scope – in terms of the number of vessels participating and the number of passengers and quantity of equipment that the various ships could carry – from the flotillas that came before it. Israeli preparations commenced accordingly, both from a diplomatic viewpoint in order to prevent the departure of the flotilla, and from a military viewpoint, in order to enforce the naval blockade and prevent the vessels from reaching the Gaza Strip. The diplomatic efforts undertaken were unsuccessful and the flotilla, comprised of six vessels, embarked on its way.

20. This flotilla was organized by a coalition comprised of a number of organizations, of which the leading organization was the IHH, a Turkish humanitarian organization which also assists terrorist organizations with a radical-Islamic and anti-Western orientation. The IHH supports the Hamas and does not conceal the ties between the organizations. In 2008 the Minister of Defense declared this organization an "impermissible association" in Israel; the organization was outlawed in Germany; and in recent months an American examination is being conducted to declare it as an organization that finances terror.

The Military Operation to Enforce the Naval Blockade on May 31, 2010 – The Implementation Stage

21. Before the flotilla reached the coast of Israel, several warnings were sent to the ships, which stated that the ships are approaching the area of a naval blockade and they were requested to turn back. These warnings also stated that if the ships did not comply, the Israeli navy would adopt all of the measures at its disposal in order to enforce the naval blockade. Each of the warnings also stated that, after a security inspection, it would be possible to send the humanitarian cargo on board the ships to the Gaza Strip via the land crossings. The transmission of communications began at 22:40, when the flotilla vessels were at a distance of eighty miles from the shore of Atlit. All of the flotilla vessels, apart from one, responded to the radio communications, but did not change the course of the vessels. The captain of the *Mavi Marmara* stated over the radio that he refused to stop since the purpose of the flotilla was humanitarian only, and because Israel did not have authority to act against the ship outside its territorial waters.

22. In retrospect, it turned out that the passengers on board the *Mavi Marmara* were in fact divided into two groups: the *first group* of peace activists, which was the largest group, whose members boarded the *Mavi Marmara* at the port of Antalya and following a security check; the *second group*, including both a hard core of approximately 40 activists in the IHH organization who boarded the *Mavi Marmara* at the port of Istanbul and who marked themselves throughout the cruise as a separate group by means of items of equipment and carried out preparations, as well as activists in other organizations and additional flotilla participants who decided, for various reasons, to affiliate themselves with this group. This second group, which will be referred as the '**IHH activists**', was the one who partook in the violence on board the *Mavi Marmara*, which will be described below.

It should be mentioned that it was later discovered that at the stage when the Navy began transmitting messages to the vessels, an order went out over the *Mavi Marmara's* public address system to passengers to return to their seats. Some IHH activists remained on the upper decks and began sawing chains and other gear made of metal, as well as to gather axes, knives, hammers, work tools, bolts and glass found on the ship. The activists were divided into groups which were stationed in several different areas, some of the groups were given an advance briefing, some of the IHH activists were equipped with gas masks, and most of them were equipped with clubs, iron rods, chains, slingshots and ball bearings.

23. When the ships reached a distance of approximately 70 nautical miles from the coast of Atlit and still did not respond to the warnings, a military operation was started at 4:26 a.m. to take control of the ships with the forces of the Shayetet 13 unit (the Israeli navy's special forces), who fast-roped from helicopters and boarded the ships from the navy's Morena speedboats.

24. The takeover of the *Mavi Marmara* began with an attempt to board from the navy's Morena speedboats. This attempt failed because of violent resistance on the part of IHH activists, which included throwing objects at the Morenas, shooting water at them with hoses, cutting the ladders on which the IDF soldiers were climbing with an electric saw, using lights to blind them, etc. At this stage, it was decided to deploy fifteen soldiers who would fast-rope down onto from the first helicopter and take over the ship or clear the side to allow the ascent of the soldiers from the Morenas. The soldiers began to fast-rope down from the first helicopter. The statements by the soldiers who descended one by one to the roof of

the *Mavi Marmara* from the first helicopter and the magnetic media which includes many video files submitted to the Commission both indicate that the IDF soldiers encountered a real resistance force, armed with clubs, iron rods, chairs, etc. several videos captured the moments following the first soldiers' descent to the roof of the *Mavi Marmara*, where each one of them was attacked immediately upon landing on the roof by a number of violent activists, most of them wearing life jackets and some of them wearing gas masks, with rods, objects thrown at them, pushing, and punching. Three soldiers (soldiers no. 1, no. 3 and no. 4) were attacked, beaten, their gear and weapons were taken away from them, and they were thrown onto the lower deck, then taken below deck, where they were beaten and refused proper medical care. As part of the expansion of the IDF inquiries performed at the Commission's request the soldiers testified about the events that transpired at these moments. Below are some of their descriptions:

Soldier no. 1 stated:

"Before I managed to touch my feet to the deck, about ten people jumped onto me and began brutally beating me from every direction, using clubs, metal rods and fists ... [A]t this stage I was not armed ... A number of attackers grabbed me by my legs and my torso and threw me over the side to the deck below, about 3.5 meters. ...

Upon landing on the middle deck, I fractured my arm, and a mob of dozens of people attacked me and basically lynched me – including pulling off my helmet, strangling me, sticking fingers into my eyes to gouge them out of their sockets, pulling my limbs in every direction, striking me in an extremely harsh manner with clubs and metal rods, mostly on my head. I truly felt that I was about to die, way beyond what we define as life-threatening. The behavior of the people at this stage was definitely like fighters of an enemy which has come to kill the other side, that is, me. I felt that at any moment I would take a blow to the head which would kill me. At this stage the mob succeeded in tearing my vest off of me (which included the weapon) and the weapon fell out of the vest. ...

At a certain stage I managed to reach the weapon, I cocked it, and I shot one of the attackers in his leg. ... Immediately after I fired the shot, I took an extremely harsh blow directly to my head from a metal rod. This stunned me briefly, and in this second they grabbed the weapon from me. At this stage, I thought that the mob wanted to take me as a captive and use me as a bargaining chip for entry to Gaza or in general. A lot of blood began streaming down my face from the wounds to my

head. The mob continued to hit me and push me forward inside the ship."

Soldier no. 3 gave a statement about the events that preceded his being taken below the ship's deck:

"They are all wearing orange life vests, some of them have *kafiyot* over their faces, some have gas masks, and some have their faces uncovered. I realize immediately that my life is in danger, I realize that the lives of the other soldiers who fast-roped and are fast-roping are in danger. ... While I'm drawing [my] weapon, I feel myself flying – as the result of being pushed.

Someone pushes me forcefully and I fall onto the side. I find myself sitting on the deck with my back to the side and facing all the people surrounding me. The people surrounding me have axes, knives, metal poles and clubs, and they're running towards me – it's a matter of a second or two before they reach me. I manage to cock the weapon and release two bullets.

I don't know if I have hit anyone or who. People immediately reach me, grab the weapon from me, and hit me with full force with poles and clubs. I sit against the side with my knees bent – my side is turned toward the side of the wall, hands protecting my face. A mob of people around me are hitting me with many blows, mainly towards my head. The people surrounding me are going berserk, and they're constantly shouting "Allahu Akbar". ... After about two minutes ... I feel a number of people grabbing my hands and feet, lifting me up. In this second I realize that they intend to throw me over the side into the water. ... I am holding onto the side, with my hands, and hanging from the side. At this stage, the people from above me are hitting my hands and a second group of people is pulling me from below by grabbing my legs. ...

As I land, another group of people are running towards me. Here as well there are shouts of Allahu Akbar. I am lying on the deck, there are many people above me, one of the people jumps on me and I feel a sharp pain in the lower abdomen. I put my hand there and I feel a knife, and I realize that I've been stabbed, I instinctively pull the knife out of my abdomen."

Soldier no. 4 stated:

"As I reached the deck, I noticed a terrorist with an iron crowbar waiting to strike me in the head, but when he tried to hit me, I pushed him, and immediately another four terrorists jumped onto me while one of them wrapped the chain around my neck and strangled me, while I am struggling with them I thought of drawing my pistol but I felt that if I drew it, because they were up against me and kicking me, I wouldn't be able to shoot and they

would grab the pistol from me. At this stage, I lost consciousness (apparently from the strangling – I saw stars), and when I awoke, I felt that I was in the air, and three / four terrorists are throwing me from the upper deck to the bridge deck. I was very heavy, and I felt a very quick and forceful fall. About 20 men were waiting there with poles, axes and more, and as I fell (this seemed to me as if it were planned), they grabbed me and dragged me inside the ship."

It should also be stated that in their testimonies, these three soldiers differentiated between those IHH activists that captured them and took them below deck, and the other participants of the cruise whom they met below deck and that attempted to defend them and improve their situation. This is also the place to mention that the abduction of the three IDF soldiers was not understood by the chain of command immediately upon their abduction, but after some time.

25. Two soldiers from the takeover force in the first helicopter were wounded by live fire. Soldier no. 2 was shot in his abdomen by a bullet with a 9 mm circumference; soldier no. 5 was shot in his right knee and he was stabbed.

Soldier no. 2 stated:

"[T]hey strangled me and tried to throw me over the right side of the *Mavi Marmara*. I got down into a half-kneeling position and I held onto the railing (the rail of the ship). I realized my life was in danger and they're trying to kill me and throw me over in order to wipe me out. I felt that I was fighting for my life and that this was not a game of stopping a ship, but a battle for my life, and so I fought back hard. At this stage I felt a strong blow to my abdomen on the left side and I realized that it was likely that I had been wounded by a bullet in my abdomen...."

The Commission has found that the IHH activists employed firearms against the IDF soldiers in order to prevent the IDF's takeover of the ship. It should be mentioned that the Commission was not able to reach a definitive finding regarding the question of whether the IHH activists brought firearms with them aboard the *Mavi Marmara*.

26. Because the soldiers from the first helicopter did not respond to the radio, the Shayetet 13 commander ordered another helicopter to the *Mavi Marmara*. At 4:36 a.m. fast-roping began from the second helicopter, and at 4:46 a.m. fast-roping began from a third helicopter, which was also sent to assist the forces on the *Mavi Marmara*. At this stage, and after IDF soldiers managed to partially secure the roof and towards the lower decks, movement started towards the ship's command bridge with the goal of

taking it over. After the completion of the IDF's takeover, the captain announced over the vessels' public announcement system that the ship was under the control of IDF soldiers, and ordered all of the passengers to go inside the ship.

27. While the events described were taking place, the naval forces on the Morena speedboats continued trying to board the *Mavi Marmara*, and attempted to establish contact with the force on the *Mavi Marmara* to clarify its situation and instruct the soldiers to advance towards the command bridge in order to complete the ship's takeover. At a certain stage, the senior commander in the force intended to take over the *Mavi Marmara* – the Commander of Center A – realized that a soldier from the first helicopter's force was missing, and so, at 05:07 a.m., he ordered the soldiers on both Morena speedboats to board the *Mavi Marmara*.

28. After the soldiers ascended from the Morenas and after the captain of the *Mavi Marmara* announced over the loud speaker system that the ship was under the control of IDF soldiers, a report was received that the three soldiers who had been abducted were brought out and taken to the bow by IHH activists. Two of the soldiers jumped into the water, and were picked up by the navy's first Morena speedboat; IDF forces on the *Mavi Marmara* treated the other soldier who suffered from a severe head injury.

From the Takeover of the Command Bridge to the Arrival at Ashdod Port

29. After the takeover of the vessel was completed, at around 5:17 a.m., the stage of evacuating the wounded commenced. At this stage, the IDF forces realized that some of the flotilla participants in the halls of the vessel were wounded, and thus an order was given to first bring all of the wounded out through the entranceways of the halls. A doctor, a medic, and a medical team were stationed at each of the entranceways to conduct the first examination of the wounded. From there, the wounded were taken up to the roof. By 11:40 a.m. 31 wounded flotilla participants had been evacuated, 20 of whom were in critical condition and the rest moderately or lightly injured (a total of 55 participants were wounded during the incident). It should be mentioned that in the course of this incident, treatment was provided by 18 doctors, 6 paramedics, about 70 soldier-medics and a senior doctor from unit 669 (the rescue and airlift evacuation unit), who assisted with the prioritization for evacuating the wounded. The statements of the medical caregivers indicate that some of the *Mavi Marmara* passengers who had been injured resisted receiving medical treatment. At the same time, and in spite of the complex conditions

under which the treatment took place, not one of the wounded died of his injuries from the moment the stage of evacuation began.

After the incident, it was regrettably discovered that nine of the flotilla participants were dead. The bodies of the deceased were collected at a certain location on the roof, covered, and transported separately on the navy's missile boats to the port of Haifa.

30. After the wounded had left the halls, the IDF soldiers ordered the rest of the flotilla participants to leave the halls. At this stage, the flotilla participants were checked in order to ensure that they did not possess any weapons. These searches revealed that several passengers had knives. The material in the Commission's possession indicates that only some of the flotilla participants were handcuffed, mainly young men who the forces were concerned would try to attack them or to cause a disturbance. During the searches performed by the IDF soldiers in the halls, some of the equipment taken from the three abducted soldiers was found. Soldier no. 3's pistol was found hidden inside the halls with its magazine empty and the guard drawn back. A large amount of cold weapons were also found, including approximately 200 knives, as well as scarves and flags of the Hamas movement and its military arm. No humanitarian supplies were found on board the *Mavi Marmara*.

After the searches and the handcuffing had been completed, the flotilla participants were brought back into the halls, where they sat until arrival in the port of Ashdod. According to the IDF soldier's statements, the participants were given water and food during this time, and they were escorted to the bathrooms upon their requests. It seems that at this stage, the plastic restraints were removed from some of the participants who had been handcuffed earlier, while for others, the plastic restraints were replaced and put on more loosely.

The Takeover of the Other Vessels in the Flotilla

31. IDF forces also took control of the other vessels in the flotilla, after they refused to heed the warnings that were transmitted to them. In the takeover of some of the vessels IDF soldiers were required to make use of force, though at a significantly lower level than the force used on the *Mavi Marmara*. Humanitarian supplies were found on some of the vessels.

Treatment of the Flotilla Participants from their Arrival in the Ashdod Port until their Deportation from Israel

32. Starting at 11:00 a.m. on May 31, 2010 the vessels in the flotilla began entering the port of Ashdod. The *Mavi Marmara* was tied to the pier on May 31, 2010, at 5:19 p.m.

From the materials before the Commission, it appears that in Ashdod, the flotilla participants underwent a process that involved a security check, the issuance of a detention order in the language of each of the flotilla participants, a medical examination, and the taking of fingerprints and a photograph. Afterwards, the flotilla participants were transferred to custody in a number of Prison Service facilities, they were kept in open cells, given food and personal effects, and permitted to meet with diplomatic representatives of their countries and attorneys. After the Attorney General decided on June 2, 2010, to order the cessation of the criminal investigation against the flotilla participants he had declared on 31.5.2010, the flotilla participants were transferred to Ben-Gurion airport and flown to the countries from which they boarded the flotilla.

It should be noted that the flotilla participants were instructed to leave their personal belongings on the vessels. This equipment was examined by the IDF, sealed, documents and collected in separate containers, and later flown to Turkey with the flotilla participants. At the same time, it is noted that after the event, the Military Police Investigations initiated seven criminal investigations against 16 suspects for various incidents of theft of property belonging to the flotilla participants by IDF soldiers who had contact with the aforesaid property. At the time of writing this report, three of the investigations have led to indictments against four defendants and the conducting of criminal trials (the proceedings in one have even concluded).

33. The bodies of the nine dead were taken to the Abu Kabir Forensic Institute. In light of the request by the Turkish government that the bodies be returned to it without autopsies being performed, it was eventually decided to transfer the bodies to Turkey after only an external examination was carried out.

Examination of the identity and organizational affiliations of those who were killed leads to the following conclusions: Of the nine people who were killed, it appears as if four were identified as activists or volunteers with the IHH organization. Four additional people appear to have been activists in Turkish Islamic organizations. The ninth person was a 19-year-old with both Turkish and American citizenship who, as far as is known, did not belong to any organization. According to a report from the Intelligence and Terrorism Information Center, the family members of four of the nine (including the 19-year-old) stated that they had expressed a desire to die as *shaheeds*. The report stated that two of the nine people had left a letter or a will before boarding the *Mavi Marmara*. It

should also be mentioned that most of the wounded belonged to the IHH organization as well as to Turkish Islamic parties and organizations.

Legal analysis

34. *The Capture of the Flotilla Vessels.* The Commission concludes that the vessels participating in the flotilla attempted to breach the naval blockade Israel had placed on the Gaza Strip, and, therefore, the IDF forces were justified to capture them in order to enforce the naval blockade. It should be emphasized here that neutral vessels do not have a right to resist capture, and if a vessel resists capture then, after prior warning, the IDF forces are entitled to consider the option of employing fire against the *Mavi Marmara* in order to neutralize it. However, it should be noted that the IDF forces did not attack the flotilla vessels; in other words, they did not use force or “violence” against the *ships*.

35. *Enforcement in International Waters.* The interception and capture of the vessels took place in international waters. According to the rules of international humanitarian law applicable to this matter, if it can be established that a ship is purposefully attempting to breach a blockade, then that ship is subject to capture wherever it is located, including international waters. Given the location and announced destination of the flotilla's vessels; the public pronouncements by the flotilla organizers and participants regarding their intention to breach the blockade; and the refusal of the ships' captains to alter their course after they were warned by the IDF, the Commission concludes that the takeover in international waters was lawful.

36. *Assessment of Takeover Tactics.* The options available to a state when attempting to halt a vessel at sea, especially large vessels like the *Mavi Marmara*, are fairly limited. The experience of other nations reveals that various tactics, including the use of intermediate levels of force – such as water cannons and “shouldering” the vessel, and more – have achieved limited success, and often posed a significant threat to the vessel, its crew and passengers. It was therefore found that the means chosen for takeover – descending from helicopters and boarding the deck of the vessels from Morenas – is fully consistent with established naval practice, whether enforcing a blockade or carrying out law enforcement operations. It is a legal, appropriate, and suitable means in terms of international law, intended to reduce the risk of loss of life or damage to civilian property, which might have occurred if the IDF had made use of force against the vessels in the flotilla.

Use of Force by IDF Soldiers

37. In response to the severe violence employed against them, the IDF soldiers made use of force, from employing stun grenades through the use of less-lethal weapons (i.e. weapons such as paintball guns) and up to the execution of live fire. It should be mentioned that, within the framework of the military preparations for the arrival of the flotilla, the requirement to avoid the use of force, to the extent possible, was emphasized. The authority to use force was limited to two distinct circumstances: “to prevent the risk of harm to a person,” and “to deal with an attempt to thwart the bringing of a vessel to an Israeli port.” The rules of engagement emphasized that, as a general rule, lethal weapons should not be used unless necessary to avert a real and immediate danger to life, when the danger cannot be averted by less harmful means. The use of less-lethal weapons was permitted in order to “neutralize a real danger to the safety or lives of human beings that comes from a specific person” and the use of lethal weapons was limited to self-defense. From the material before the Commission, it is evident that these instructions were made clear to the forces participating in the operation.

38. With respect to the enforcement of the blockade, the use of force is to be interpreted under the international humanitarian law framework. International humanitarian law is guided by the principle of “distinction,” that is, the obligation to distinguish between civilians and combatants. Therefore, the rules that apply to the use of force against persons on board the flotilla vessels are determined, primarily by their status under international humanitarian law. Civilians enjoy a general protection against the dangers arising from military operations but shall not be the object of an attack unless and for such time as they take a direct part in hostilities. The use of force against civilians must be guided by the principles of necessity and proportionality linked to the norms of law enforcement based on human rights. International humanitarian law treats combatants and civilians who take a direct part in hostilities differently than uninvolved civilians—direct participants in hostilities may be attacked for such time as they are taking part in hostilities.

39. The Commission has reached the conclusion that the persons who partook in the violence on board the *Mavi Marmara* were direct participants in hostilities. That conclusion was reached based on; *inter alia*, the following facts. The IHH activists' resistance to the IDF soldiers' boarding the deck of the *Mavi Marmara* was planned and extremely violent. These actions were not representative of acts associated with civil disobedience or isolated or sporadic acts of violence. The coordinated

manner in which the IHH activists met the Israeli soldiers individually fast-roping to the deck (for some of them, even before they reached the deck), indicates a clear intent to violently oppose a capture of the ship, which at that point was a military objective (that is, a vessel breaching a naval blockade and resisting capture). Likewise, the concerted effort on the roof to throw soldiers to other IHH activists that were waiting on the deck below, taken together with the fact that all three captured soldiers were taken to the same location below decks, points to the level of violence, the organization, and the commitment of those activists to the conflict.

Furthermore, this violent activity is directly connected to the ongoing international armed conflict between Israel and the Hamas – breaching the naval blockade would have injured Israel in its armed conflict with the Hamas in the sense that it would have proven that the naval blockade is inefficient; thus endangering the political and security goals of the blockade. Likewise, the IHH activists attempted to execute their plan by employing force against the soldiers of one party of the armed conflict, Israel. Under these circumstances, the Commission has found that the IHH activists participating in the acts of violence on board the *Mavi Marmara* were direct participants in hostilities, at least from the time the passengers were given the order to return to their cells with the approach of the Navy's vessels, and up to the completion of the ship's takeover.

However, it should be noted that the other flotilla participants, who did not actively participate in the violent actions, are not considered to have taken a direct part in hostilities based on their participation in the attempted breach of the blockade alone. Therefore, the principles of necessity and the use of proportionate force associated with law enforcement operations must be applied to the use of force against these civilians.

40. The use of force requires meticulous analysis. Therefore, the Commission has carefully examined every use of force employed by every one of the soldiers taking part in the event of 31.5.2010 according to their testimony. Within this framework, the Commission examined the uses of force reported by more than forty soldiers and commanders that participated in the takeover of the *Mavi Marmara*, the testimonies of the commanders in charge of the takeover actions of the other vessels participating in the flotilla, as well as the incidents captured on the magnetic media handed over to the Commission.

Every use of force was examined according to the applicable law-international humanitarian law. Thus, the Commission examined first whether force was used against a civilian taking a direct part in hostilities.

Where it was determined that the person was a direct participant, assessment of the use of force was first made using the applicable rules of international humanitarian law. If the person against whom the force was used was determined not to have taken a direct part in hostilities, the use of force was assessed solely under law enforcement norms. In light of the fact that the Rules of Engagement outlined for this operation did not anticipate any of the people on board the ships' decks to be direct participants in hostilities and therefore was based on self-defense principles, as well as the fact that the Israeli government had stated on a number of occasions that the use of force by IDF soldiers was done in self-defense, all uses of force were examined under the norms of law enforcement to determine the degree to which they fell within the scope of those norms, including self-defense or the defense of others.

41. It should be emphasized that the Commission's ability to construct a complete picture of the incidents in which force was employed by IDF soldiers is limited for a number of reasons, including the nature of the event, the lack of testimonies by the flotilla participants, and the fact that the scenes in which the events took place were not kept "sterile." Such an analysis is particularly complex when it is conducted retroactively, under the fluorescent lights of the office and after the fog of war has dissipated. Further, it is clear to the Commission that, especially with respect to the takeover of the *Mavi Marmara*, the IDF soldiers were required to make difficult, split-second decisions regarding the use of force, under conditions of uncertainty, surprise, pressure, and in darkness, with the perception of a real danger to their lives and with only partial information available to them. As stated above, with regards to the nature of the threat and especially in relation to the soldiers fast-roping from the helicopters, it should be noted that, *inter alia*, the IDF soldiers were at a numerical disadvantage in relation to the IHH activists who were equipped with a variety of assault weapons; that the IDF soldiers were equipped with less-lethal weapons (e.g. paintball guns, beanbags) as their primary weapons and their live firearms (pistols or rifles) were used as secondary weapons; and that the attack which all the soldiers descending from the first helicopter experienced caused the soldiers to sense that a real, clear, and immediate threat was being posed to the safety and physical well being of their fellow soldiers and themselves. Furthermore, the soldiers were also aware of the fact that some of the IHH activists on board the *Mavi Marmara* were using firearms, which heightened the risk posed to their lives. These factors were taken into account when analyzing the force used during the takeover.

42. The conclusions of this analysis are shown in the report and presented below. The detailed testimonies of the soldiers as well as the legal analysis of those testimonies can be found in an annex to the report. Under consideration of article 539 A of the Military Justice Law 57715-1955, this annex was privileged pursuant to the Commission's authority under Article 11 to the Government's decision of June 14, 2010, until the government decides to lift this privilege. The Commission recommends that the Government will examine the possibility of making this annex public pursuant to its authority under law.

43. The Commission examined approximately 130 incidents in which force was used (including events when live fire was employed; firing less-lethal weapons; shooting as a deterrent; threatening with a weapon; using a Taser, and using physical force under certain circumstances). The majority of the uses of force involved warning or deterring fire and less-lethal weapons. Of the total number of uses of force, 16 incidents of hitting the center of body ("center of mass") with rounds of live fire were reported by the soldiers.

After examining all the material it can be determined that the IDF soldiers acted professionally and in a measured manner in the face of extensive and unanticipated violence. This professionalism was evident, among other factors, in their continuing to switch back and forth between less-lethal and lethal weapons in order to address the nature of the violence directed at them.

The Commission found that 127 uses of force investigated appeared to be in conformity with international law. In five of the 127 cases, force appeared to be used against persons taking a direct part in hostilities; however, there was insufficient evidence to conclude that the force used was in accordance with law enforcement norms. In another five cases, the Commission concluded that force appeared to be used in accordance with law enforcement norms, but in two of those cases it did not have sufficient information to determine whether the person against whom force was used was a direct participant in hostilities and in three cases it was determined that the use of force involved a civilian who was not considered a direct participant in hostilities. In an additional six cases, the Commission has concluded that it has insufficient information to be able to make a determination regarding the legality of the use of force. Three out of those six cases also involved the use of live fire; in two cases physical force (kicking) was employed; and in one case there was a strike with the butt of a paintball gun.

Planning and Organization of the Operation

44. As a rule, the training and preparation of the soldiers leading up to the operation was very thorough and the participation of the Military Advocate General in the planning processes was evident. The placement of senior commanders on the scene, including the Commander of the Navy, demonstrated the seriousness with which this incident was viewed by the Israeli military. It also enhanced the situational awareness of the chain of command in order to help ensure timely and effective decision making as the incident unfolded. The decision to use Shayetet 13 was in accordance with the normal international practice for naval operations, and the use of law enforcement units, and the coordination across Government in order to handle the large number of passengers on board the vessels in the flotilla, reflected the worthy realization that following the takeover operation, the treatment of civilians was best left to forces specially trained for those types of operations

45. At the same time, from the materials before the Commission, it appears that the Israeli authorities did not have a forewarning of the violent reception planned by the IHH activists. The inability to identify IHH intentions had a direct impact on the operational tactics, the Rules of Engagement, and the training prior to the operation. In this context, it should be emphasized that the lack of appreciation of the threat was not exclusively the result of incomplete intelligence gathering, but throughout the planning process, whether looked at from a policy, operational, or legal perspective, the scenario of an organized force armed with lethal weapons actively resisting the boarding attempts appears not to have been considered. While a certain level of violence was anticipated during the strategic discussions held prior to the operation, and the possibility that there might be firearms of some sort present on the vessels was mentioned in these discussions, this possibility did not filter down in the process of planning to the tactical level. Foresight and planning in advance for a “worst case scenario” would have made the soldiers better prepared for the situation they found themselves in. In preparing exclusively for less violent scenarios, the danger from a legal perspective is that the soldiers might overreact when confronted with such unanticipated threats (though it should be emphasized that this was not the case in the situation at hand).

46. A clearer acknowledgement of these operational limitations during the preparation of the naval command might have forced consideration of other alternatives or different courses of action. Though the technical means and operational doctrine for stopping vessels on the high seas are

quite limited, the existence of an alternate plan when clear resistance was first shown might have avoided the position of having to continue to land soldiers one by one into the midst of the waiting IHH activists.

47. It should be stressed that, in spite of the comments on the planning and organization of the mission, they should not be interpreted to mean that the actual plan as developed by the Israeli military or the organization of the mission led to an unlawful application of force by the soldiers involved or a breach of international law. When examining the operation as a whole it seems that the soldiers did not overreact, and acted continually to distinguish the types of threat posed in different situations. This occurred also after it had become clear that the IHH activists were using firearms.

Conclusion

48. **The conclusion of the Commission is that – despite the fact that several incidents have not been fully clarified – overall the actions undertaken were lawful and in conformity with international law.**

Concluding Remarks

49. Today, approximately five months after hearing the first testimonies, the Commission is completing this part of its work. After a journey full of obstacles and pitfalls, and after exhaustive investigations, inquiries, studies and discussions, here are our conclusions:

The naval blockade imposed on the Gaza Strip – in view of the security circumstances and Israel’s efforts to comply with its humanitarian obligations – was legal pursuant to the rules of international law.

The actions carried out by Israel on May 31, 2010, to enforce the naval blockade had the regrettable consequences of the loss of human life and physical injuries. Nonetheless, and despite the limited number of uses of force for which we could not reach a conclusion, the actions taken were found to be legal pursuant to the rules of international law.