



## **Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident**

**September 2011**

**Sir Geoffrey Palmer, Chair**

**President Alvaro Uribe, Vice-Chair**

**Mr. Joseph Ciechanover Itzhar**

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### **1 Summary**

On 31 May 2010 at 4.26 a.m. a flotilla of six vessels was boarded and taken over by Israeli Defense Forces 72 nautical miles from land. The vessels were carrying people and humanitarian supplies. The flotilla had been directed to change course by the Israeli forces who stated that the coast of Gaza was under a naval blockade. Nine passengers lost their lives and many others were wounded as a result of the use of force during the take-over operation by Israeli forces.

The Secretary-General established the Panel of Inquiry on the 31 May 2010 Flotilla Incident on 2 August 2010. The Panel received and reviewed reports of the detailed national investigations conducted by both Turkey and Israel. Turkey established a National Commission of Inquiry to examine the facts of the incident and its legal consequences, which provided an interim and final report to the Panel along with annexes and related material. Israel provided the report of the independent Public Commission that it had established to review whether the actions taken by the State of Israel had been compatible with international law.

The Panel reviewed these reports and further information and clarifications it received in written form and through direct meetings with Points of Contact appointed by each government. In light of the information so gathered, the Panel has examined and identified the facts, circumstances and context of the incident and considered and recommended ways of avoiding similar incidents in the future. In so doing it was not acting as a Court and was not asked to adjudicate on legal liability. Its findings and recommendations are therefore not intended to attribute any legal responsibilities. Nevertheless, the Panel hopes that its report may resolve the issues surrounding the incident and bring the matter to an end.

The Panel's Method of Work provided that the Panel was to operate by consensus, but where, despite best efforts, it was not possible to achieve consensus, the Chair and Vice-Chair could agree on any procedural issue, finding or recommendation. This report has been adopted on the agreement of the Chair and Vice-Chair under that procedure.

### **Facts, Circumstances and Context of the Incident**

The Panel finds:

- i. The events of 31 May 2010 should never have taken place as they did and strenuous efforts should be made to prevent the occurrence of such incidents in the future.

ii. The fundamental principle of the freedom of navigation on the high seas is subject to only certain limited exceptions under international law. Israel faces a real threat to its security from militant groups in Gaza. The naval blockade was imposed as a legitimate security measure in order to prevent weapons from entering Gaza by sea and its implementation complied with the requirements of international law.

iii. The flotilla was a non-governmental endeavour, involving vessels and participants from a number of countries.

iv. Although people are entitled to express their political views, the flotilla acted recklessly in attempting to breach the naval blockade. The majority of the flotilla participants had no violent intentions, but there exist serious questions about the conduct, true nature and objectives of the flotilla organizers, particularly IHH. The actions of the flotilla needlessly carried the potential for escalation.

v. The incident and its outcomes were not intended by either Turkey or Israel. Both States took steps in an attempt to ensure that events did not occur in a manner that endangered individuals' lives and international peace and security. Turkish officials also approached the organizers of the flotilla with the intention of persuading them to change course if necessary and avoid an encounter with Israeli forces. But more could have been done to warn the flotilla participants of the potential risks involved and to dissuade them from their actions.

vi. Israel's decision to board the vessels with such substantial force at a great distance from the blockade zone and with no final warning immediately prior to the boarding was excessive and unreasonable:

a. Non-violent options should have been used in the first instance. In particular, clear prior warning that the vessels were to be boarded and a demonstration of dissuading force should have been given to avoid the type of confrontation that occurred;

b. The operation should have reassessed its options when the resistance to the initial boarding attempt became apparent.

vii. Israeli Defense Forces personnel faced significant, organized and violent resistance from a group of passengers when they boarded the *Mavi Marmara* requiring them to use force for their own protection. Three soldiers were captured, mistreated, and placed at risk by those passengers. Several others were wounded.

viii. The loss of life and injuries resulting from the use of force by Israeli forces during the take-over of the *Mavi Marmara* was unacceptable. Nine passengers were killed and many others seriously wounded by Israeli forces. No satisfactory explanation has been provided to the Panel by Israel for any of the nine deaths. Forensic evidence showing that most of the deceased were shot multiple times, including in the back, or at close range has not been adequately accounted for in the material presented by Israel.

ix. There was significant mistreatment of passengers by Israeli authorities after the take-over of the vessels had been completed through until their deportation. This included physical mistreatment, harassment and intimidation, unjustified confiscation of belongings and the denial of timely consular assistance.

## **How to Avoid Similar Incidents in the Future**

The Panel recommends:

### With respect to the situation in Gaza

i. All relevant States should consult directly and make every effort to avoid a repetition of the incident.

ii. Bearing in mind its consequences and the fundamental importance of the freedom of navigation on the high seas, Israel should keep the naval blockade under regular review, in order to assess whether it continues to be necessary.

iii. Israel should continue with its efforts to ease its restrictions on movement of goods and persons to and from Gaza with a view to lifting its closure and to alleviate the unsustainable humanitarian and economic situation of the civilian population. These steps should be taken in accordance with Security Council resolution 1860, all aspects of which should be implemented.

iv. All humanitarian missions wishing to assist the Gaza population should do so through established procedures and the designated land crossings in consultation with the Government of Israel and the Palestinian Authority.

### General

v. All States should act with prudence and caution in relation to the imposition and enforcement of a naval blockade. The established norms of customary international law must be respected and complied with by all relevant parties. The San Remo Manual provides a useful reference in identifying those rules.

vi. The imposition of a naval blockade as an action in self-defence should be reported to the Security Council under the procedures set out under Article 51 of the Charter. This will enable the Council to monitor any implications for international peace and security.

vii. States maintaining a naval blockade must abide by their obligations with respect to the provision of humanitarian assistance. Humanitarian missions must act in accordance with the principles of neutrality, impartiality and humanity and respect any security measures in place. Humanitarian vessels should allow inspection and stop or change course when requested.

viii. Attempts to breach a lawfully imposed naval blockade place the vessel and those on board at risk. Where a State becomes aware that its citizens or flag vessels intend to breach a naval blockade, it has a responsibility to take proactive steps compatible with democratic rights and

freedoms to warn them of the risks involved and to endeavour to dissuade them from doing so.

ix. States enforcing a naval blockade against non-military vessels, especially where large numbers of civilian passengers are involved, should be cautious in the use of force. Efforts should first be made to stop the vessels by non-violent means. In particular, they should not use force except when absolutely necessary and then should only use the minimum level of force necessary to achieve the lawful objective of maintaining the blockade. They must provide clear and express warnings so that the vessels are aware if force is to be used against them.

#### Rapprochement

x. An appropriate statement of regret should be made by Israel in respect of the incident in light of its consequences.

xi. Israel should offer payment for the benefit of the deceased and injured victims and their families, to be administered by the two governments through a joint trust fund of a sufficient amount to be decided by them.

xii. Turkey and Israel should resume full diplomatic relations, repairing their relationship in the interests of stability in the Middle East and international peace and security. The establishment of a political round-table as a forum for exchanging views could assist to this end.

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