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HUMAN RIGHTS COUNCIL
INTERNATIONAL INDEPENDENT FACT FINDING MISSION ESTABLISHED BY
RESOLUTION A/HRC/RES/14/1

Statement by Judge Karl Hudson-Phillips on behalf of the Members of the United Nations 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

Your Excellency the President of the Human Rights Council; Your Excellency the High Commissioner for Human Rights, Excellencies, Ladies and Gentlemen.

I have the distinct honour and privilege to formally present the Report of the Fact Finding Mission appointed by the Council pursuant to resolution 14/1 of 2nd June 2010. The Mission was mandated to enquire into the events surrounding the interception by Israeli forces of a flotilla of ships bound for Gaza on the 31st May 2010.

The Mission, of which I was pleased to be the Chairman, is unanimous in expressing its deep appreciation to the Secretariat and human rights officers who very ably supported its work without which it would not have been possible to provide this Report in the limited time frame imposed by the Council.

Notwithstanding the tight schedule imposed on the Mission, I wish to assure all concerned that the Mission had sufficient evidence, of an oral, documentary and pictorial kind, to enable it to achieve a comprehensive assessment of the events as they occurred on the 31st May 2010.

The Mission considered it necessary, in fairness to all parties, to reinterpret its mandate in such a way as to approach its task without any of the apparent predeterminations present in the Resolution appointing it. Indeed, there has been justified criticism that the tenor and wording of the preambular and operative parts of the Resolution indicate a certain bias. This was immediately detected by the Mission and resulted in the reinterpretation of its mandate to conform to absolute impartiality.

The Mission considers it sufficiently important to state that it is of the view that in drafting Resolutions of this sort greater care should be taken not to give the appearance of any prejudgment of matters to be investigated. This will encourage a wider participation in the decisions of the Council.

The Mission attempted to obtain information from the widest sources possible. Of a total of over seven hundred (700) passengers on the six ships comprising the flotilla, the Mission was able to interview one hundred and twelve (112) passengers representing over twenty (20) nationalities. The testimony of all witnesses was faithfully recorded, transcribed, circulated to and considered by all members of the Mission.

The Mission is grateful to the Governments of Turkey and Jordan which facilitated travel by the Mission to those countries for the purpose of interviewing witnesses there.

The Mission attached great importance to obtaining eye witness accounts from members of the Israeli armed forces and their commanding officers. Regrettably, the Mission was advised by the Israeli Permanent Representative in Geneva on the 18th August, 2010 that the position of his government was that the Mission was superfluous and unnecessary. Notwithstanding this, your Mission tried to impress upon the Ambassador the desirability of his government co-operating and permitting the Mission to visit both Israel and Gaza. The Chairman of the Mission left with the Israeli Ambassador a list which he signed of information to which the Mission required access.

On the 7th September 2010 in my capacity of Chairman of the Mission I again communicated in writing with the Israeli Ambassador referring him to the list which had been left with him and making a further request for information. The Ambassador replied on the 13th September 2010 making two points while avoiding a direct response to the request for information. He first of all advised the Mission that evidence being given before the Commission under Judge Turkel was available on the internet. He then requested me to delay the report by the Mission until the outcome of the Commission under Judge Turkel and the Secretary-General's panel. The Mission noted the concession that its report could have such an effect but I advised the Ambassador that his request was misdirected – it should be made to the Council and not the Mission.

The Chairman of the Mission regrets that so much time has had to be spent on this aspect of the matter but thinks that it is necessary to mention it because of the attempts at criticism from some quarters concerning the methodology and conclusions arrived at in the Report. The two (2) requests for cooperation and information from the Israeli Government proved fruitless.

Before leaving this particular topic, the Mission wishes to assure the Council that it gave serious consideration to the question of the existence of more than one enquiry into the same incident. With respect to the Panel appointed by the Secretary-General, after careful examination of its mandate, the Mission decided that it was not in fact a fact finding but rather a review panel. As far as the Israeli and Turkish enquiries were concerned, the Mission contented itself with the observation that because both Israel and Turkey were deeply involved in the incident there could be legitimate concerns about the impartiality of both those countries. In particular with respect to the Israel Commission under Judge Turkel, the Mission observed that important aspects were being heard in closed sessions from which the public was excluded. In addition no military personnel who participated in the incident and who were in the best position to testify were permitted to be called as witnesses. Evidence was given on their behalf on the basis of a

report to the Commission by the Chief of General Staff. This is properly classified as hearsay evidence. Further, it is appropriate at this stage to state that the authorities in Israel knew the identities of all the passengers whom they detained, photographed and fingerprinted. By contrast the Mission, and as far as we know the Turkel Commission, was deprived of any information as to the identities of those who took part in the Israeli interception.

Of necessity the Mission paid close attention to the eyewitnesses who appeared in person and gave their evidence. Many of those who appeared before the Mission bore evidence of gun shot injuries which had not yet fully healed. Others indicated that further surgery would be necessary to complete treatment. One passenger who had been shot actually showed evidence of a colostomy which required further surgery to complete restoration. With the assistance of medical evidence, the Mission considered such evidence against the accounts as to how the injuries were received. Of necessity we gave considerable weight to such evidence if believed. Other evidence such as hearsay evidence and other evidence looked at, on the suggestion from the Israeli Ambassador, from the internet was carefully analyzed and considered and given such weight in the circumstances as the Mission considered proper in the overall context of all of the evidence.

The Mission realised very early that the Israeli government had taken extreme steps to control all visual material of the events. What it released represented a minor fraction of the actual evidence in their possession. In the light of the seizure of cameras, CCTV footage and digital media devices and of the suppression of that material with disclosure of a selected and minute quantity of it, the Mission was obliged to treat with extreme caution the versions of events released by the Israeli authorities where those versions differed from the evidence of eyewitnesses who appeared before it.

The Mission made critical findings of fact which bear repetition. These are set out as follows:

1. No arms or weapons of an offensive nature, that is manufactured for an offensive purpose, were taken on board any of the vessels of the flotilla save for a few catapults. Stringent screening was put in place to ensure this.
2. When it appeared imminent that the Israeli forces intended to board the Mavi Mamara, a very small group of the passengers armed themselves with pieces of wood and iron cut from the ship's railings. The Mission considers this to be confirmatory of the fact that the passengers did not take on board any offensive weapons. Items displayed in the press as evidence of the presence of weapons were not offensive in themselves or manufactured for offensive use. The Mavi Marmara was a ferry boat equipped with six kitchens where one would expect to find knives of all kinds. All ships have railings and brooms are useless without handles. But there is a saying from where I come that any gun is longer than the longest stick - and I might add or knife for that matter!
3. The Mission found that the Israeli personnel aboard the Zodiac boats who attempted to board the Mavi Marmara were repelled by the passengers. Objects were thrown

including chairs and plates and water hoses were used. The Mission is satisfied that stun grenades, tear gas and the like were fired from the Zodiacs on to the Mavi Marmara but that no lethal fire was used at that stage. There is no evidence that any gunfire was directed from the Mavi Marmara towards the Zodiacs.

4. The first three Israeli soldiers to descend by ropes from helicopters were seized by the passengers, beaten, disarmed and taken below deck. Their weapons with one exception, a pistol which was unloaded and hidden, were thrown over board.
5. The Mission did not find that any of these three soldiers was shot by the passengers.
6. Both live ammunition and non-lethal fire were used from the helicopters while the first and other soldiers were descending by ropes to the ship's deck.
7. After the three soldiers were taken out of sight they were attended to by doctors on the ship and not subjected to any further violence.
8. The Israeli soldiers boarded the ship, Mavi Mamara, both from helicopters and zodiac boats and proceeded to use live ammunition on the passengers of the Mavi Mamara killing nine and injuring over fifty with live bullets apart from other injuries.
9. From the evidence of passengers and analyses supplied by a forensic pathologist and ballistic expert, six of the deceased were the victims of summary executions, two of whom were shot after they were severely injured and could not defend themselves. One deceased person had what is called a soft baton charge, called a bean bag, normally used for crowd control from a distance, lodged in his brain. The Mission found that this was a discharge into the brain from very close range - a sort of coup de grace into the right temple suggestive of an execution type killing. This deceased also had other gunshot wounds.
10. Two of the deceased were using cameras when they were shot. On the evidence one was shot on the forehead between the eyes as he was filming the Israeli soldiers on the deck above him.
11. The passengers released the three Israeli soldiers by taking them to the open deck at the bow of the boat and the passengers who took them there were shot at and some were injured.
12. Once the Israeli forces took complete control of the Mavi Mamara, the passengers with few exceptions were all handcuffed with plastic ties. In the majority of cases these ties were too tight and when complaints were made the soldiers pulled them tighter. Passengers were forced to kneel, handcuffed, on open decks in harsh conditions and so kept for hours. Passengers were assaulted by being kicked and gun-butted. Many were denied access to the toilets with the resulting personal indignity.

13. Passengers on three of the other vessels of the flotilla were also subjected to unnecessary violence by Israeli forces as they took control. Although they were only met with symbolic passive resistance, the Israeli soldiers used electroshock weapons, plastic bullets and physical force and a number of the passengers received injuries.
14. When they finally disembarked at the port of Ashdod, attempts were made to get them to sign confessions that they had entered Israel illegally. Some of those who refused to sign or to give their finger prints were further beaten. In one case a Greek national had his leg broken by deliberate stamping on it after he had been knocked to the ground. The Mission saw medical certificates and x-rays confirmatory of the fact. Several of the passengers were made to strip naked in front of several persons for no apparent reason other than to humiliate them. The treatment on shore was a continuation of the treatment onboard ship after the military had taken control.
15. And at the end of the ordeal, after days in detention in an Israeli prison, passengers had to endure further violence prior to deportation at Ben Gurion international airport. The Mission received information that more than 30 passengers received beatings at the airport, by soldiers and police who were spoiling for a fight.
16. The Mission considers that the conduct of the Israeli military and other personnel towards the flotilla passengers was disproportionate and excessive and that they demonstrated levels of totally unnecessary violence. This resulted in the deaths of nine passengers and severe injuries to many others. The Mission finds that serious violations of both humanitarian and human rights law occurred during and after this incident.
17. The Mission observes that in the event of an international armed conflict a blockade can be legitimately employed. The Mission noted that the government of Israel also maintains that its blockade of Gaza is justified on the basis of the armed conflict taking place. It is also noted that the government of Israel relies on the San Remo Manual as a statement of customary international law which supports the blockade.
18. However, the Mission found that there existed in Gaza on the 31st May 2010 a humanitarian crisis of unacceptable proportions. This is still so as a fact notwithstanding protestations to the contrary. The Mission also agrees that it is in the nature of a collective punishment of the population and unsustainable.
19. Furthermore, the significance of the humanitarian crisis in Gaza is that the very San Remo Manual on which reliance is placed for the lawfulness of the blockade specifically states that a blockade is illegal if it results in excessive damage to the civilian population in relation to the concrete and direct military advantage anticipated from the blockade. The Mission so finds.

20. On this basis the blockade is unlawful with all the consequences that flow from this. For this reason the boarding of the flotilla was unlawful unless it could have been justified on grounds other than the blockade. In the view of the Mission there was no such lawful alternative justification so that the boarding of the ships was unlawful. There was no imminent threat to trigger a right to self defence.
21. The Mission finds that the organizers of the flotilla had dual purposes – one political and the other humanitarian. The political agenda was to challenge the blockade. The Mission finds that that was the motive of the organizers. However, the majority of the passengers who appeared and gave evidence in person before the Mission were impressive in their genuine desire to go to Gaza for humanitarian purposes – to help. Some indicated that they had been previously with medical supplies and in one case donating an ambulance.
22. The Mission is aware that in an attempt to portray all passengers as undesirable in some way, reference is made to the fact that one of the passengers had been convicted and sentenced to a term of imprisonment for participating in the high jacking of a boat with passengers some time previously. The Mission bore this allegation in mind but saw no evidence to suggest that that person influenced the actions of the passengers. The presence on board of one passenger with a previous conviction could not make the blockade lawful and is therefore irrelevant. In any event it would not have been the first time that members of the Mission would have been called upon to assess evidence given or influenced by persons previously convicted and imprisoned for offences.

The Mission sincerely hopes that there will be prompt and adequate compensation to those who suffered loss arising out of the incident. Families have been deprived of their fathers; others have received serious injuries, in the case of one of whom is still in intensive care with a guarded prognosis; others have lost considerable sums of money, in some cases in the thousands of dollars. There are other items of personal property which have to be returned – cameras, film footage. Swift action in this regard will signal a significant shift in positions taken before and set a climate more conducive to peaceful dialogue.

The Mission has not been requested to and therefore makes no recommendations in the matter. The course of action which should be followed if the report is accepted is self evident.

The Mission sincerely hopes that the parties concerned can find a way to reconcile historical and other differences so that Peace may once more prevail in the region on the basis of justice and equality.