



What Happened on the Mavi Marmara? An Analysis of the Turkel Commission Report

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Abstract

On 31 May 2010, Israeli commandos killed nine Turkish citizens aboard the Mavi Marmara, the flagship vessel of a humanitarian flotilla headed for besieged Gaza. The Israeli attack evoked international outrage, which caused Israel to appoint an official commission of inquiry chaired by former Israeli Supreme Court Judge Jacob Turkel. In January 2011, the Turkel Commission released a 300 page report that allegedly established what happened in the course of the Israeli assault. In fact, and unsurprisingly, the report was a grotesque whitewash of Israeli actions. Nonetheless this mendacious report effectively shielded Israel from further international scrutiny. A panel of inquiry created by UN Secretary-General Ban Ki-moon to resolve differences between Turkey and Israel over the Mavi Marmara killings “fully associated itself” - in the bitter words of the Turkish representative on the panel - with the the Turkel report’s findings. To date, no independent researcher has exposed in detail the dishonesty and fraud of the Turkel report. The purpose of my article is to fill this gap.

Keywords: *Mavi Marmara, Israel, Turkey, International Law, Turkel Report*

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Mavi Marmara'da Ne Oldu? Turkel Komisyonu Raporunun Analizi

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Özet

31 Mayıs 2010 tarihinde kuşatma altındaki Gazze'ye yardım götürmekte olan Mavi Marmara gemisinde bulunan 9 Türk vatandaşı İsraili komandolar tarafından öldürüldü. Söz konusu eylem uluslararası arenada şiddetli tepki uyandırdı. Bu doğrultuda İsrail, Yargıtay hakimi Jacob Turkel'i hadiseye ilişkin tahkikat yapılması amacıyla görevlendirdi ve resmi bir soruşturma komisyonu kurularak söz konusu olaya ilişkin rapor hazırlanmasını istedi. Temmuz 2011'de Turkel liderliğindeki soruşturma komisyonu tarafından hazırlanan 300 sayfalık rapor, gerçekte ne olduğundan ziyade saldırıya dair İsrail tarafından kurgulanmış sözde nedenler üzerine inşa edildi. Hiç de sürpriz olmayacak şekilde Turkel Raporu, İsrail'in alışlageldiği üzere eylemlerini örtbas edişine tipik bir grotesk örnek teşkil etti. Bununla birlikte söz konusu asılsız rapor, gelecekte karşılaşılması kuvvetle muhtemel uluslararası tahkikatlere karşı bir savunma kalkını vazifesi görmek üzere hazırlandı. Nitekim BM Genel Sekreteri Ban Ki-moon tarafından Mavi Marmara cinayetleri konusunda Türkiye ve İsrail arasındaki anlaşmazlıkların giderilmesi amacıyla oluşturulan soruşturma heyeti de Turkel Raporundaki tezlere arka çıkmıştır. Bugüne kadar hiç bir bağımsız araştırmacı, gerçeği yansıtmayan ve seviyesizce kurgulanmış Turkel raporunun detaylarını ortaya çıkaran bir çalışma yapmadı. Bu makaledeki temel amaç bu alandaki boşluğu doldurabilmektir.

Anahtar Kelimeler: Mavi Marmara, İsrail, Türkiye, Uluslararası Hukuk, Turkel Raporu

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Understanding the Arguments of the Turkel Report

In January 2011 a commission appointed by the Israeli government and chaired by former Israeli Supreme Court Justice Jacob Turkel released the first half of its report on the “maritime incident of 31 May 2010” when Israeli commandos assaulted the Gaza Freedom Flotilla and killed nine passengers aboard the flagship *Mavi Marmara*.¹ The *Report*, running to nearly 300 pages, exonerated Israel of culpability for the bloodbath and instead pinned it on a cadre of passengers who had purportedly plotted and armed themselves to kill the Israeli commandos. The *Report* divides into two principal sections: (1) a legal analysis of the Israeli blockade and (2) a factual reconstruction of the events that climaxed in the violence. It begins however by recounting the historical context of the Israeli blockade. These passages of the *Report* provide instructive insight into its objectivity.

The *Report* states that “in October 2000 violent incidents broke out in the West Bank and the Gaza Strip, which were given the name ‘the Second Intifada’...In these, suicide attacks were restarted in cities in Israeli territory.”² Its capsule description of the second intifada omits mention that Palestinians did not resort to suicide attacks until five months after Israel had started using massive, indiscriminate and lethal firepower to quell largely nonviolent demonstrations.³ Similarly the *Report* begins by highlighting that “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 Israel.⁴ But this depiction ignores Israeli attacks on Gaza during the same period that killed many times more Palestinians than projectiles launched from Gaza killed Israelis.⁵

1 Public Commission to Examine the Maritime Incident of 31 May 2010, The Turkel Commission Report, Part One (January 2011). Hereafter: Turkel Report. Shortly after publication of the Turkel Report, the Turkish government released the findings of its own investigation, Turkish National Commission of Inquiry, Report on the Israeli Attack on the Humanitarian Aid Convoy to Gaza on 31 May 2010 (February 2011). Hereafter: Turkish Report.

2 Turkel Report, para. 16.

3 Norman G. Finkelstein, *Beyond Chutzpah: On the misuse of anti-Semitism and the abuse of history* (Berkeley: 2005; expanded paperback edition, 2008), chapter 4. The first suicide attack during the second intifada occurred in March 2001.

4 Turkel Report, para. 1.

5 See Chapter 1. The Turkel Report does mention Israeli strikes against Gaza further on (paras. 16, 18), but deems them retaliatory (Israel “responded”), whereas in actuality

Although conceding that human rights and humanitarian organizations, as well as a leading Israeli jurist, have concluded that Israel's 2005 redeployment in Gaza didn't end its occupation, the *Report* nevertheless sustains the Israeli government contention that after 2005 Israel no longer occupied Gaza.⁶ The *Report* asserts that the June 2008 ceasefire between Israel and Hamas "collapsed in December 2008, when the rocket and mortar attacks against Israel recommenced."⁷ In fact—as Amnesty International observed—the lull "broke down after Israeli forces killed six Palestinian militants in air strikes and other attacks on 4 November [2008]."⁸

The *Report* upholds the legality of the Israeli blockade of Gaza on dual grounds: (a) the people of Gaza didn't experience starvation and their physical survival wasn't at risk; (b) whatever hardships Gaza's civilian population did endure were the "collateral" and "proportional" damage of a blockade directed at Hamas's military capabilities.

The *Report* juxtaposes the consensus opinion of human rights and humanitarian organizations that Israel's siege of Gaza had caused a humanitarian crisis⁹ against Israel's denial of such a crisis.¹⁰ It resolves these "two very different perceptions of reality"¹¹ by concluding, for example, that although 60 percent of Gazans did experience "food insecurity"—i.e., "people lack sustainable physical or economic access to adequate[,] safe, nutritious and socially acceptable food to maintain a healthy and productive life"¹²—Israel had met its legal responsibilities insofar as the people weren't dying of starvation but merely hungry. Thus, the *Report* approvingly quotes Israeli officials that "no one has ever stated...that the population of the Gaza Strip is 'starving.'" And again, in the *Report*'s own words defending the siege: "'Food insecurity' does not equate to 'starvation.'"¹³

conflict pauses between Israel and the Palestinians were "overwhelmingly" broken by Israel (see Chapter 2).

6 Turkel Report, p. 48n143, paras. 45-47.

7 Ibid., para. 19.

8 See Chapter 2.

9 Turkel Report, para. 72.

10 Ibid., para. 73.

11 Ibid., para. 71.

12 Ibid., para. 72, citing definition of the Office for the Coordination of Humanitarian Affairs (see also *ibid.*, para. 76).

13 Ibid., paras. 76, 77.

Prima facie, it would be strange if current international law, which accords so many safeguards to civilians in times of war and peace, sanctioned a just-shy-of-genocidal policy. Indeed, seemingly cognizant that such a legal standard was a tad too lax¹⁴—not to mention cruel, coming from an esteemed former Israeli Supreme Court justice—the *Report* simultaneously purports that even if the law kicks in not just for starvation but also for the less stringent condition of hunger, and even if the Israeli siege did induce hunger, it wasn't a *deliberate* policy to induce hunger, which is what makes denial of food legally culpable: "The Commission found no evidence...that Israel is *trying* to deprive the population of the Gaza Strip of food."¹⁵ Yet, if the foreseeable and inevitable consequence of the Israeli siege was to cause hunger, it is hard to make out how the punitive outcome was mere happenstance and not Israel's intention. Or put otherwise, for want of trying to cause hunger Israel was awfully good at it.

Just as it exonerates Israel of denying Gazans food, so the *Report* exonerates Israel of denying Gazans other "objects essential for the survival of the civilian population." It acknowledges that Israel blocks entry of construction materials but justifies this policy on the ground that—according to "intelligence information"— Hamas might use them for "military purposes." The *Report* makes short shrift of the possibility that the motive behind this ban might be to punish the people of Gaza: "It is clear that the restrictions were not imposed in order to prevent the use of these materials by the civilian population."¹⁶ One searches in vain however for proof to support this asseveration.

It might also be noticed the non-sequitur that the *Report* contends both that Israel denied entry of essential objects such as construction materials, if for alleged security reasons, and that there was "no evidence" Israel denied entry of such essential objects.¹⁷ Again, the *Report* states that "no evidence was presented...that Israel prevents the passage of medical supplies apart from those included in the list of materials whose entry into the Gaza Strip

14 See *ibid.*, para. 90, for murky acknowledgment that international law prohibits sieges causing not only starvation ("hunger blockade") but also "less extreme instances" of "suffering" (cf. *ibid.*, p. 102n363).

15 *Ibid.*, para. 76 (my emphasis).

16 *Ibid.*, para. 79.

17 *Ibid.*, paras. 80, 90.

is prohibited for security reasons.”¹⁸ But that Israeli list included, according to the World Health Organization, “vital medical supplies”—i.e., “X-ray machines, electronic imaging scanners, laboratory equipment and basic items, such as elevators for hospitals.”¹⁹ If Israel was depriving Gazans of “vital medical supplies,” then it *was* denying them “objects essential” to their “survival.” It might also be noticed the non-sequitur that the *Report* contends both that, for security reasons, Israel had denied entry of essential objects, and that, apparently without jeopardizing its security, Israel allowed entry of many of these same objects after the flotilla attack evoked international outrage.²⁰ It might finally be noticed that the *Report* never explains why respected human rights and humanitarian organizations—in what appears to be a vast conspiracy—signaled a humanitarian crisis in Gaza when none existed.

The *Report* also finds that whatever hardships Gazans did endure as a result of the Israeli siege constituted “collateral” damage that was “proportional” to the military objective of degrading Hamas’s military capabilities.²¹ The *Report* occasionally hints that the purpose of the siege went beyond achieving a strictly or narrowly military objective, but it is emphatic that the blockade did not target the civilian population.²² In one of its expansive formulations, the *Report* states that the Israeli siege had “two goals: a security goal of preventing the entry of weapons, ammunition and military supplies into the Gaza Strip..., and a broader strategic goal of ‘indirect economic warfare,’ whose purpose is to restrict the Hamas’s economic ability as the body in control of the Gaza Strip to take military

18 *Ibid.*, para. 82.

19 See Epilogue.

20 Turkel Report, paras. 19, 68, 97. The Report also repeatedly states that breaching the blockade was unnecessary because Israel conveyed beforehand to the flotilla its willingness to deliver “humanitarian” supplies on board the vessels to Gaza. But the Report also makes clear that “humanitarian” supplies did not include prohibited items on board such as cement and other construction materials. See *ibid.*, paras. 3, 27, 110, 113, 149, 198.

21 The international humanitarian law principle of proportionality states that even a clear military object cannot be targeted if the risk of harm to civilians or civilian infrastructure is larger than the anticipated military advantage. See Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge: 2004), pp. 119ff.

22 Turkel Report, paras. 50, 63.

action against Israel.”²³ It further concludes that Israel was not guilty of inflicting “collective punishment” because “there is nothing in the evidence...that suggest[s] that Israel is *intentionally* placing restrictions on goods for the sole or primary purpose of denying them to the population of Gaza.”²⁴

Yet, if the intent of the Israeli siege was to target Hamas’s military capabilities, and not to harm Gaza’s civilian population, surely it is cause for wonder why Israel severely restricted entry of goods “not considered essential for the basic subsistence of the population,” and why it allowed passage of only a “humanitarian minimum”—a benchmark that was arbitrarily determined, not sanctioned by international law, and in fact fell below Gaza’s minimal humanitarian needs.²⁵ It is also cause for puzzlement why Israeli officials kept repeating privately that “they intended to keep the Gazan economy on the brink of collapse without quite pushing it over the edge.”²⁶

Although replete with repetitions and minutiae on arcane points of law, the *Report* is notably silent on exactly what items Israel interdicted allegedly in order to thwart Hamas’s offensive capabilities. The seemingly endless list of verboten items included *inter alia* sage, coriander, ginger, jam, halva, vinegar, nutmeg, chocolate, fruit preserves, seeds and nuts, biscuits, potato chips, musical instruments, notebooks, writing implements, toys, chicks and goats.²⁷ “The purpose of the economic warfare in the Gaza Strip,” the *Report* avers, was “to undermine the Hamas’s ability to attack Israel and its citizens. The non-security related restrictions on the passage of goods—such as the restrictions upon certain food products—are a part of this strategy.”²⁸ Who can doubt the offensive potential of chips and chicks?²⁹

23 Ibid., para. 67.

24 Ibid., para. 106 (emphasis in original).

25 See Chapters 1, 2 and Epilogue.

26 “Cashless in Gaza?,” Wikileaks (3 November 2008; <http://tinyurl.com/2wfdrdp>).

27 Gisha (Legal Center for Freedom of Movement), Partial List of Items Prohibited/Permitted in the Gaza Strip (May 2010).

28 Turkel Report, para. 91.

29 At one point the Turkel Report seems to concede that Israel restricted passage of food-stuffs “used solely for civilian needs” (para. 91), but then justifies this policy (albeit with caveats) by invoking the U.S.-U.K. genocidal sanctions on Iraq (ibid., paras. 92-

Neither the facts nor the legal reasoning presented in the *Report* refute the consensus opinion that Gaza was experiencing a humanitarian crisis; that the Israeli siege was causing the humanitarian crisis; that Israel was deliberately causing this humanitarian crisis; that the Israeli siege therefore constituted a form of collective punishment; and that therefore the siege and Israel's resort to force against the flotilla to prolong the siege were also illegal.

The second half of the *Report* presents a reconstruction of the events that climaxed in the killing of nine passengers aboard the *Mavi Marmara* by Israeli commandos. The *Report* clears Israel of legal culpability for the violence and deaths. Instead it pins responsibility on a cadre of passengers who allegedly plotted and armed themselves in advance to kill Israelis, while the lethal use of force by the Israeli commandos is said to have constituted justifiable self-defense.

On all fundamental points the *Report* reaches conclusions diametrically contrary to those of the U.N. Fact-Finding Mission led by eminent international jurists.³⁰ Without access to the evidence on which each side based its conclusions, a third party is hard-pressed to definitively decide between them. Nonetheless it is possible to render a reasonable opinion on whose findings are more plausible.

Before scrutinizing the principal points of contention, the sources on which the *Report* is based merit preliminary comment. The government resolution mandating the Turkel Commission excused "IDF [Israel Defense Forces] soldiers" from testifying before it.³¹ The *Report* accordingly had to rely on "soldiers' statements [that] were only documented in writing and submitted to the Commission."³² The commando testimonies are deemed "credible and trustworthy" because the soldiers "gave detailed

93). For the Iraqi sanctions, see esp. Joy Gordon, *Invisible War: The United States and the Iraq sanctions* (Cambridge: 2010).

30 U.N. 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 (27 September 2010). Hereafter: Report of the Fact-Finding Mission.

31 Israel Ministry of Foreign Affairs, "Government Establishes Independent Public Commission" (14 June 2010).

32 Turkel Report, para. 237.

information, used natural language, and did not appear to have coordinated their versions.”³³ It puzzles what evidentiary value should be attached to the written submissions’ “natural language”—although it is true that the commandos did appear naturally to call everyone who crossed their paths on the *Mavi Marmara* a “terrorist”³⁴—and how the Commission could determine whether or not the commandos coordinated beforehand their written submissions.

The *Report* states that “the soldiers’ accounts were examined meticulously, cross-referenced against each other.”³⁵ Is it so far-fetched that the soldiers amongst themselves also “examined meticulously, cross-referenced” their respective statements prior to submitting them? In fact it is not even clear that protocol prescribed such prior coordination. The *Report* does make clear however that the soldiers knew in advance that they would not suffer judicial penalties for perjured testimony, or even undergo rigorous interrogation: “The soldiers were not put on notice that their rights were implicated when giving their statements and they did not undergo cross-examination.”³⁶ In general the Commission invested great faith in the testimony of Israeli civilian and military officials, although respected Israeli commentators have ridiculed their record of truth-telling.³⁷

Except for the oral testimony of two Israeli Palestinians, mostly sketchy and unsigned statements extracted by Israeli jailers and military intelligence from the flotilla detainees before their release, and a book publication by one of the Turks on board the *Mavi Marmara*,³⁸ the *Report* did not benefit from the input of the passengers and crew. After their release passengers and crew asserted that the statements and signatures were given under extreme physical and emotional duress, while the secretly filmed footage

33 Ibid., para. 236.

34 The Turkel Report notes (p. 157n533) the exception of one commando who called his assailants “activists.”

35 Ibid., para. 236.

36 Ibid., para. 237.

37 See Chapter 3.

38 Turkel Report, paras. 9, 237, pp. 211n736, 212n737. It cites the testimony of one Israeli Palestinian but only to discredit it by citing the testimony of another Israeli Palestinian (ibid., para. 144). It also cites critical testimony of the *Mavi Marmara*’s captain during interrogation but only to peremptorily dismiss it on the basis of contrary testimony by an Israeli aerial lookout (ibid., paras. 125, 203).

of interrogations had been distorted by editing.³⁹ The *Report* alleges that due to the non-cooperation of others it was “compelled to rely mainly on testimonies and reports of Israeli parties.”⁴⁰ It does not explain however why unsworn testimonies of Israeli commandos constituted credible evidence whereas comparable eyewitness testimonies of numerous passengers accessible in the public domain did not.⁴¹ In addition Amnesty International observed that although “the Commission invited flotilla participants to testify, it appeared to make only half-hearted attempts to secure their testimony, and made no effort to utilize the extensive eyewitness testimony collected by the International Fact-Finding Mission.”⁴² Let us now examine the main areas of dispute.

Who Initiated The Violence?

The U.N. Fact-Finding Mission concluded that as Israeli speedboats “approached” the *Mavi Marmara* they were “firing...non-lethal weaponry onto the ship, including smoke and stun grenades, tear gas and paintballs,” and possibly “plastic bullets,” and, “minutes after” this initial Israeli assault was repelled by passengers, Israeli helicopters moved in, opening fire with “live ammunition...onto the top deck prior to the descent of the soldiers.”⁴³

The *Report* presents an altogether different picture. It does acknowledge that the rules of engagement allowed for “use of force...required to fulfill the mission, i.e., stopping the vessels,” albeit its use “must be minimal” and “as a last resort.” It also acknowledges that operational orders allowed that

39 Turkish Report, pp. 40-42, 44, 47, 108.

40 Turkel Report, paras. 9, 237.

41 For a sampling of these testimonies, see Moustafa Bayoumi, ed., *Midnight on the Mavi Marmara: The attack on the Gaza Freedom Flotilla and how it changed the course of the Israel/Palestine conflict* (New York: 2010), part 1. Exceptionally, the Turkel Report makes passing reference at the end of a long footnote to a Haaretz interview with one of the passengers (pp. 202-3n703).

42 Amnesty International, “Israeli Inquiry into Gaza Flotilla Deaths No More Than a ‘Whitewash’ (28 January 2011). Although the U.N. Fact-Finding Mission failed to secure the cooperation of the Israeli government, it did make extensive use of the available public testimony before the Turkel Commission, whereas the Turkel Report makes no mention let alone use of the Fact-Finding Mission’s investigation.

43 Report of the Fact-Finding Mission, paras. 112-14. The Mission referred to the Israeli speedboats as zodiacs whereas the Turkel Report calls them Morenas.

“before the stage of taking control of the vessels...., the force commander was permitted to employ various measures to stop the vessels, including firing ‘skunk bombs’...forcing the vessels to change their course or stop by means of...firing warning shots into the air and ‘white lighting’ (blinding using a large projector).” At the very least, then, Israeli operational planning did not outright prohibit initiating force. But on the basis of “closed door testimony of the Chief of Staff” the *Report* concludes that “in practice, no use was made of these measures.”⁴⁴

The *Report* finds that Israeli speedboats approached the *Mavi Marmara* peacefully, and only after they “encountered resistance” did Israeli commanders allow the firing of paintball guns and use of stun grenades.⁴⁵ Besides Israeli testimonies the *Report* cites video recordings. It is impossible sight unseen to evaluate the video evidence, although one wonders why Israel didn’t make it available after release of the U.N. Fact-Finding Mission’s conclusions in order to discredit them. Also, although the *Report* records the precise times when passengers resorted to force against the speedboats,⁴⁶ it does not record the times when the speedboats resorted to supposedly “retaliatory” force. In a typical non-sequitur the *Report*, attempting to refute “suggestions that the IHH [Insani Yardim Vakfi] activists were acting in self-defense,” states: “In seeking to capture and board the ship, the Israeli forces had to respond to the violence offered first by the IHH. This is evident from the magnetic media that shows the extreme levels of violence used against the IDF’s soldiers.”⁴⁷ But footage of passengers resorting to “extreme levels of violence” does not corroborate that they *initiated* the violence.

The *Report* also concludes that live ammunition was not fired from Israeli helicopters that subsequently moved in. It does acknowledge however that stun grenades were thrown down from the helicopters before the commandos hit the deck. It states that the helicopters did not use live ammunition because “the accurate use of firearms from a helicopter requires both specific equipment and specially trained personnel, with which the

44 Turkel Report, para. 121.

45 Ibid., para. 128.

46 Ibid., para. 130.

47 Ibid., para. 200.

helicopters were not equipped.”⁴⁸ But if the purpose of the firepower had been to terrorize the passengers and clear the deck before the commandos rappelled on board, the necessity of it being precisely accurate is unclear, while it perplexes that no one among Israel’s elite fighting unit was a trained marksman.

The decision to intercept the flotilla in the dead of night appears to belie the *Report’s* version of what happened. The *Report* states that Israel launched its operation at 4:26 a.m. because—according to the Israeli Chief of Staff—“during such an operation, there is a great advantage to operating under the cover of darkness.”⁴⁹ But why? The *Report* repeatedly emphasizes that “throughout the planning process” Israeli authorities at all levels anticipated that “the participants in the flotilla were all peaceful civilians” and “seem not to have believed that the use of force would be necessary.” They “had expected” the commandos to meet “at most, verbal resistance, pushing or punching,” “relatively minor civil disobedience,” “some pushing and limited physical contact.” The *Report* quotes the commandos themselves testifying that “we were expected to encounter activists who would try to hurt us emotionally by creating provocations on the level of curses, spitting...but we did not expect a difficult physical confrontation”; “we were expected to encounter peace activists and therefore the prospect that we would have to use weapons or other means was...nearly zero probability.”⁵⁰

But if it didn’t expect forceful resistance, why didn’t Israel launch the operation in broad daylight, indeed, bringing in tow a complement of journalists who could vouch for its nonviolent intentions? An operation launched in the blackness of night would appear to make sense only if Israel wanted to sow panic and confusion as a prelude to and retrospectively to justify a violent assault, and in order to obscure from potential witnesses its method of attack. In the planning of *such* an operation clearly there was “great advantage to operating under the cover of darkness.”

A premeditated decision to violently assault the *Mavi Marmara* would also explain the intricate and ramified preparations that engaged the gamut

48 Ibid., para. 230.

49 Ibid., para. 174.

50 Ibid., paras. 132, 180, 213, 243, 244, p. 149n518. The Turkel Report states that “in the strategic discussions prior to the operation, the possibility that firearms might be present was mentioned,” but it had no practical consequences (ibid., p. 247n863, para. 243).

of Israel's political, military and intelligence agencies, including the "Prime Minister and the Minister of Defense," the "senior political-security echelon and persons with experience in these fields," the "Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Public Security, the Ministry of Justice, IDF officers and public relations personnel";⁵¹ why it "decided that the command level would be very senior, including the Commander of the Navy himself";⁵² why it imposed a "communications blackout" on the flotilla;⁵³ and why it deployed the elite Special Forces unit Shayetet 13 trained for lethal combat rather than a routine police unit trained to quell civil resistance. The *Report* states that "Special Forces trained teams are often used when a boarding is anticipated to be 'opposed,' or 'non-compliant.'"⁵⁴ But surely anticipated "curses, spitting" of passengers didn't require deployment of Israel's elite fighting unit. It also states that Special Forces were used because of the "specialized training" needed "for fast-roping onto the deck of a ship at night,"⁵⁵ but that still leaves the question why the assault was launched at night.

It might be wondered why *ex post facto* Israel was so emphatic that it didn't anticipate violent resistance. Couldn't it just as easily have alleged that, although committed to a peaceful resolution of the crisis, it *did* expect violence, which was why the operation was launched before daybreak and so much planning was invested in it? The reason however is not hard to find. If the commandos had been primed for a violent confrontation, then what happened truly was, as Israeli commentators rued, a "disgraceful fiasco" and "national humiliation."⁵⁶ The only alibi they could fabricate was that the violence took them off guard. Indeed, one of the more entertaining aspects of the *Report* is the commandos' tales of derring-do plainly designed to restore the IDF's heroic image and elevate national morale:

- Soldier no. 1 tells how "ten people jumped onto me and began brutally beating me from every direction, using clubs, metal rods and fists"; how "a number of attackers grabbed me by my legs and my torso and threw

51 *Ibid.*, paras. 115-22.

52 *Ibid.*, para. 121.

53 *Ibid.*

54 *Ibid.*, para. 182.

55 *Ibid.*, para. 242.

56 See Epilogue.

me over the side to the deck below”; how “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”; how “I took an extremely harsh blow directly to my head from a metal rod....A lot of blood began streaming down my face from the wounds to my head”; how after his apprehension by passengers the “only thing” the ship’s medic did was to “wipe the blood from my forehead” although he had a “very deep scalp wound and a fractured skull” (that later required 14 stitches); and how—despite excruciating blows and gushing blood, fractured arm and fractured skull—he managed to break free of one of the guards, “I jabbed my elbow into his ribs and jumped into the water....As soon as I reached the water, I dove underneath, so that they would not be able to hit me from the ship. I took off my shirt while diving and swimming, and I intended to swim and dive rapidly in a ‘zigzag’ to escape from the enemy on the ship. After my first dive, I rose to the water’s surface and I saw a...speedboat” which rescued him after he swam “rapidly” towards it, and then “I picked up an M-16 rifle...and I began shooting...because I was concerned that the mob on the ship wanted to abduct soldier no. 4 back into the ship, and I wanted to deter them.”⁵⁷

- Soldier no. 3 tells how “I was struck with metal poles and rocks...I fel[t] a very strong blow to the neck from behind”; how “people...hit me with full force with poles and clubs”; how “a mob of people around me are hitting me with many blows, mainly towards my head”; how “I continue to take very strong blows to the abdomen”; how “I am fighting with all my strength until a certain stage when they manage to get me over the side of the boat. I am holding onto the side, with my hands, and hanging from the side....[T]he people from above me are hitting my hands and a second group of people is pulling me from below by grabbing my legs”; how “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...and I realize that I’ve been stabbed...during this stage I’m taking many blows, including from clubs”; how after his apprehension by passengers the only assistance he receives from the ship’s medic is a “gauze pad,” although “I am bleeding massively, that is, I am losing a lot of blood, and I can tell

57 Turkel Report, paras. 133, 135, 140.

that part of my intestines are protruding...I also notice a deep cut in my left arm, from which I'm also losing a great quantity of blood. I also feel blood flowing from my nose into my mouth"; how "they tied my hands and feet with rope. They station a person above me who is holding a wooden pole....He beats me with the wooden pole"; how "as a result of the loss of blood, I started to become groggy"; and how—despite excruciating blows (fracturing his nose and tearing a tendon in his finger) and gushing blood, stab wounds and protruding intestines—he manages to escape, "I run to the side of the ship, jump into the water from a height of 12 meters, and start swimming toward our boats."⁵⁸

Did Islamic “Activists” Plot and Arm Themselves to Murder Israelis?

The *Report* finds that passengers aboard the *Mavi Marmara*—the “hardcore group” of which consisted of about 40 “IHH activists”⁵⁹—had plotted “to resist with force,”⁶⁰ even to commit murder, before embarkation and that they sought out martyrdom. “I have no doubt,” an Israeli commander of the operation quoted by the *Report* avers, “that the terrorists on the vessel planned, organized, foresaw the events, and planned to kill a soldier.”⁶¹ “It is evident,” the *Report* concludes, “that the IHH organized and planned for a violent confrontation with the Israeli military forces,” “the IHH had a preexisting plan to violently oppose the Israeli boarding,” and that “a number of IHH activists took part in hostilities from a planning and logistical perspective well before the arrival of the Israeli armed forces.”⁶²

The *Report* finds that, unlike the overwhelming majority of “relatively moderate”⁶³ passengers, IHH activists “boarded the *Mavi Marmara* separately and without any security checks,” and thus were able to smuggle on an arsenal of weapons to execute their murderous plot.⁶⁴ Before proceeding, it should be noted that the Turkish government emphatically insists that not once but twice “all crew members and passengers were

58 *Ibid.*, paras. 133, 135, 140, p. 250n871.

59 *Ibid.*, paras. 165, 192.

60 *Ibid.*, para. 169.

61 *Ibid.*, para. 167.

62 *Ibid.*, paras. 196, 199, 201, 220.

63 *Ibid.*, para. 136.

64 *Ibid.*, paras. 165, 196.

subjected to...stringent x-ray checks as well as customs and passport controls....All personal belongings and cargo were also thoroughly inspected and cleared...[T]he cargo contained no arms, munitions or other material that would constitute a threat.”⁶⁵ The *Report*’s inventory of the “combat equipment apparently brought on board by the flotilla participants” included “150 protective ceramic vests..., 300 gas masks..., communication devices, optical devices (several night vision goggles and a few binoculars), 50 slingshots of various kinds, 200 knives, 20 axes, thousands of ball bearings and stones, disk saws, pepper sprays, and smoke flares.”⁶⁶ This cache of “combat equipment,” “concentration of weaponry” and “extensive equipment which was brought on board” to implement the plot⁶⁷ appears in a somewhat less sinister light when the *Report* notes elsewhere that the “kitchens and the cafeterias on the ship” contained “a total of about 200 knives,” and the ship’s “fire-extinguishing equipment” included “about 20 axes.”⁶⁸ It flabbergasts that the obvious correlations escaped—or did they?—the Commission’s notice.

The *Report* “did not find that the evidence point[s] conclusively to the fact” that the IHH activists brought firearms aboard the *Mavi Marmara*.⁶⁹ But, if they plotted a “violent confrontation” with one of the world’s most formidable military powers, and if they could freely carry on board the weapons of their choosing, it is cause for wonder why the most lethal implements they thought to bring along were slingshots and glass marbles. Truly, these *shaheeds* were *meschugge*. The *Report* notes that just before the Israeli operation began, the Islamic extremists “improvised” weapons such as iron rods and wooden clubs.⁷⁰ It apparently never occurred to the Commission to ask why the Islamists didn’t bring on board firearms and why they waited until the last minute before fabricating makeshift weapons

65 Turkish Report, pp. 15-16, 56, 113.

66 Turkel Report, para. 165. The Turkel Report states that “four bullet casings not used by the IDF were found on board” but “it cannot be said with complete certainty that these were bullets fired from a non-IDF weapon since it cannot be ruled out that these bullets somehow made their way into the IDF ammunition” (ibid., p. 207n718). The Report also cites but appears not to credit the testimony of one IDF officer that “he saw Molotov cocktails which had been placed in orderly stacks” (ibid., para. 145).

67 Ibid., p. 211nn735, 736, para. 169.

68 Ibid., para. 167.

69 Ibid., para. 221.

70 Ibid., para. 167.

if they were already hell-bent on committing bloody murder “well before the arrival of the Israeli armed forces.”

The U.N. Fact-Finding Mission “found no evidence that any of the passengers used firearms...at any stage.”⁷¹ But, whereas the *Report* finds no proof that the passengers brought firearms with them, it still concludes that “members of the IHH activists used firearms against Israeli forces”⁷²—presumably seized from the commandos—wounding two of them. Although stating that it consulted “medical documents regarding the injuries to the soldiers,”⁷³ the *Report* does not cite hospital records documenting the commandos’ alleged bullet wounds but instead cites a statement submitted by the IDF and the oral testimony of the Chief of Staff.⁷⁴ In the case of non-bullet wounds incurred by the commandos, however, the *Report* does cite hospital records.⁷⁵ Be that as it may, the alleged bullet wounds could just as easily have been inflicted by other Israeli commandos. Indeed the *Report* acknowledges that “the melee on board the *Mavi Marmara*, especially during the initial stages on the roof, was a situation of considerable confusion.”⁷⁶ In fact, one of the commandos allegedly hit by a bullet initially thought his wound resulted “from the Israeli forces.”⁷⁷ It might be recalled that almost half the Israeli combat fatalities during the Gaza invasion were caused by “friendly fire.”⁷⁸ The *Report* enumerates three grounds for its conclusion that passengers used firearms: “physical evidence of gunshot wounds”—which doesn’t speak to the point of origin of the gunshots; “statements of numerous soldiers”—which are as credible as their Rambo fantasies; and “the fact that IHH activists had access to captured IDF” weapons—which proves nothing.⁷⁹

It might be wondered why the *Report* finds on the basis of such flimsy evidence that the passengers used firearms against the commandos. The

71 Report of the Fact-Finding Mission, paras. 116, 165.

72 Turkel Report, para. 222.

73 *Ibid.*, para. 236.

74 *Ibid.*, pp. 155n529, 157n531, para. 221.

75 *Ibid.*, p. 250nn871, 873.

76 *Ibid.*, para. 222.

77 *Ibid.*, para. 221.

78 See Chapter 3.

79 Turkel Report, para. 222.

Report itself provides the answer. While it maintains that the commandos' resort to lethal force would have been justified even if the passengers did not shoot at them,⁸⁰ the *Report* goes on to say that "the use of firearms by IHH activists is an important factor" because it "significantly heightened the risk posed to the soldiers and their perception of that risk," and "establishing the level of threat that the Israeli soldiers believed they were facing is a factor in the assessment as to whether their response was proportionate."⁸¹ In other words, for the *Report* to definitively conclude that the commandos' resort to lethal force was legally justifiable, it had to find evidence that the passengers used firearms against them: the evidentiary finding followed perforce from the predetermined conclusion.

The *Report* quotes the harrowing accounts by the captured commandos of the Islamists' murderous ambitions. Soldier no. 1 testified that "the terrorist group wanted to attack me and kill me." Soldier no. 3 testified that they were "crazed" and "very eager to kill us. They tried to strangle me and soldier no. 4. The hate in their eyes was just burning," "This attempt to strangle me was made several times."⁸² The *Report* also highlights that the cadre of Islamic killers were "very large and strong men, approximately ages 20-40," "very big and heavy,"⁸³ and that "some of those activists also expressed their wish to be 'shaheeds.'"⁸⁴

The obvious question is why didn't this mob of burly homicidal *shaheeds* manage to kill any of the captured commandos? Quoting the commandos, the *Report's* unfazed response is that the peaceniks on board—"older men and women who showed restraint," "non-violent peace activists"—came to the commandos' rescue: "The terrorist group wanted to attack me and kill me, while the moderate group tried to protect me"; "There were two groups there, the one which tried to kill us and...the ones who prevented the extreme group from killing us."⁸⁵ In other words, the crazed *jihadists* were stopped dead in their tracks by Grannies for Peace and the Birkenstock Brigade.

80 Ibid., paras. 217-19.

81 Ibid., paras. 220, 223.

82 Ibid., paras. 135, 136, 140.

83 Ibid., paras. 136, 167.

84 Ibid., paras. 166, 168, 197.

85 Ibid., paras. 135, 136, 167, 190.

Did the Israeli Commandos Use Lethal Force Only as a Last Resort?

“The conduct of the Israeli military and other personnel towards the flotilla passengers was not only disproportionate to the occasion,” the U.N. Fact-Finding Mission concluded, “but demonstrated levels of totally unnecessary and incredible violence. It betrayed an unacceptable level of brutality.”⁸⁶ Contrariwise, the *Report* concludes that the commandos exercised maximum restraint and used lethal force only as a last resort.

The *Report* states that during Israeli preparations for the interception “special attention” was paid “to the value of human life,” and that “all of the persons involved” evinced a “high level of awareness...of the need to carry out the operation without any injuries to the participants of the flotilla”; that either the rules of engagement or operational orders, or both of them, stipulated that “if force had to be used, it had to be exercised gradually and in proportion to the resistance met, and only after examining alternatives to prevent deterioration of the situation,” that “the only case in which [use of] lethal weapons was permitted was in self-defense—to remove a real and imminent danger to life, when the danger cannot be removed by less harmful means,” and that “there should be no use of force at a person who has surrendered or has ceased to constitute a threat”; that “the training and preparation of the soldiers leading up to the operation was very thorough, with a particular emphasis on the use of less-lethal weapons,” and that “the default position was to use less-lethal weapons until an opposing threat forced the use of the lethal options”; that at an operational briefing it was stated that “‘opening fire should only take place in a life threatening situation, to neutralize the person presenting the danger,[?] but nonetheless, ‘where possible, the benefit of doubt should be given’”; that even after “shooting” could be heard on the *Mavi Marmara*, “the Shayetet 13 commander refused to give approval for shooting ‘in order to prevent deaths among the participants of the flotilla’”; and that “the IDF soldiers made considerable use of graduated force”—i.e., “firing at the legs and feet of a person”—“during the operation, with soldiers switching repeatedly between less-lethal and lethal weapons” even after passengers allegedly used firearms against them.⁸⁷

The Israeli commandos were so solicitous of the passengers’ well-

86 Report of the Fact-Finding Mission, para. 264 (see also *ibid.*, paras. 167, 169, 172).

87 Turkel Report, paras. 119, 121, 140, 206, 223, 228, 229, 245.

being, according to the *Report*, that following the bloody confrontation, “some IDF wounded only received treatment after the treatment of wounded flotilla participants,” while the Commander of the Takeover Force testified that he risked “danger to my people aboard the vessel” in order to “evacuate the wounded [passengers] from the vessel, despite their lack of desire to be evacuated, in order to save their lives.”⁸⁸ The *Report* concludes that “the IDF personnel acted professionally in the face of extensive and unanticipated violence” and did not “overreact.”⁸⁹

The manner of death of the nine passengers⁹⁰ aboard the *Mavi Marmara* appears to belie the *Report*’s version of what happened. The U.N. Fact-Finding Mission concluded that “the circumstances of the killing of at least six of the passengers were in a manner consistent with an extra-legal, arbitrary and summary execution.”⁹¹ The *Report* recounts the findings of an “external examination” by Israeli doctors according to which all of the passengers suffered multiple bullet wounds and five were shot in the neck or head; for example—quoting the Israeli examination—“Body no. 2” contained “bullet wounds on the right side of the head, on the right side of the back of the neck, on the right cheek, underneath the chin, on the right side of the back, on the thigh. A bullet was palpated on the left side of the chest,” while “Body no. 9” contained “bullet wounds in the area of the right temple/back of the neck, bullet wound in the left nipple, bullet wound in the area of the scalp-forehead on the left side, bullet wound on the face (nose), bullet wound on the left torso, bullet wound on the right side of the back, two bullet wounds in the left thigh, two bullet wounds as a result of the bullet passing through toes four and five on the left foot.”⁹²

The *Report* does not attempt to square the gruesome facts of these passengers’ deaths with its conclusion that the commandos exercised maximum restraint. The closest it comes is passing mention in another context, and not referring specifically to the dead passengers, that “in some instances, numerous rounds were fired either by one soldier or by more than one soldier to stop an IHH activist who was a threat to the lives of

88 *Ibid.*, paras. 141, 142.

89 *Ibid.*, paras. 239, 246.

90 One passenger has been in a coma since the attack as a result of the wounds he sustained.

91 Report of the Fact-Finding Mission, para. 170.

92 Turkel Report, para. 155.

themselves or other soldiers.”⁹³ In fact the *Report* is curiously uncurious about the passengers’ deaths, which are blandly dispatched in just two of the *Report*’s nearly 300 pages.⁹⁴ The *Report* cites the chilling testimony of Israeli commandos on every scratch they incurred, yet it includes not a single word on how, despite allegedly taking every possible precaution and exercising every conceivable restraint, the commandos came to kill nine passengers, shooting nearly all of them multiple times.⁹⁵ Perhaps the Commission forgot—“forgot”?—to request information on their deaths⁹⁶ or the commandos forgot—“forgot”?—to mention them in their statements. Neither possibility speaks very highly to the *Report*’s credibility.

The *Report* states that “the Commission has examined each instance of the use of force reported by the IDF soldiers in their testimonies,” but it doesn’t bother to mention whether these testimonies included the killings of any of the nine passengers.⁹⁷ It also states that “the Commission examined 133 incidents in which force was used...which were described by over 40 soldiers...[and] also includes a few incidents that were depicted on the available relevant magnetic media and that did not correspond to the soldiers’ testimonies,”⁹⁸ but it doesn’t bother to mention whether the magnetic media captured the killings of any of the passengers. In addition, whereas the U.N. Fact-Finding Mission requested the Turkish autopsy reports, the Turkel Commission apparently did not.⁹⁹ The bottom-line

93 Ibid., para. 230.

94 Ibid., para. 155. The Turkel Report contains a couple of other references to the nine deaths (ibid., paras. 143, 168).

95 The Turkish Report states (pp. 27-28) that two passengers were “killed by a single gunshot wound.” It perhaps omitted mention of their non-lethal bullet wounds. The Fact-Finding Mission stated that all but one of the nine deceased suffered multiple bullet wounds (see Epilogue).

96 In the section devoted to analyzing “the use of force by IDF soldiers during the takeover operations,” the Turkel Report states (para. 236) that “the Commission furnished written requests to IDF authorities seven times in order to deepen and expand the inquiries that were conducted.”

97 Ibid., para. 233. It notes that the “detailed testimonies of the soldiers as well as their analysis can be found in an annex to the report” that to date has not been released (ibid., para. 235).

98 Ibid., para. 239.

99 The Turkel Report states only that the Commission “did not have access to autopsy reports...because [of] the Turkish government’s request, immediately after the event, that the Israeli government would not perform autopsies on the bodies of the deceased”

is that, although it was the killings of the nine passengers on the *Mavi Marmara* that sparked the international outcry, the *Report* contains not a single syllable on how any of them died. The nearest it comes is a vague allusion buried in a footnote quoting a commando that he “fired 2-3 rounds to the center of mass and below and one round to the head (the soldier testified that after firing the last round the IHH personal [*sic*] fell and he ceased fire).”¹⁰⁰

It might finally be noticed an odd paradox in the *Report*’s central conclusions: the *shaheeds* plotted and armed themselves to kill Israelis but didn’t even manage to kill those in their custody, whereas the Israelis took every precaution and exercised every restraint not to kill anyone but ended up killing nine persons. Lest it be thought that Israel was unmoved by the passengers’ ordeal, the *Report* duly records that a military court sentenced a corporal to five months in prison for stealing a laptop computer, two camera lenses and a compass.¹⁰¹

In the preface to the *Report*, the members of the Turkel Commission—including a former Supreme Court justice, a former director-general of the Ministry of Foreign Affairs, a former president of a distinguished scientific institute, a respected professor of law, and a foreign observer who won the Nobel peace prize—state that “we took upon ourselves jointly and as individuals the difficult and agonizing task of ascertaining the truth.” The U.S. Department of State praised the investigation that culminated in the *Report* as “credible and impartial and transparent,” and the document itself as “independent.”¹⁰² Regrettably, neither the factual information nor the legal analysis in the *Report* casts illumination on what happened on the fateful morning of 31 May 2010 when Israel launched an assault on the Gaza Freedom Flotilla. But the *Report* does cause one to wonder how any self-respecting individual could have signed off on such rubbish.

(para. 237). The Turkish autopsy reports concluded that “five of the deceased were shot in the head at close range” (Turkish Report, pp. 26, 85, 114).

100 Turkel Report, p. 261n929.

101 *Ibid.*, para. 160.

102 U.S. Department of State, “Daily Press Briefing” (24 January 2011; <http://tinyurl.com/4ze4r2j>).

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