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Israeli inquiry into Gaza flotilla deaths no more than a “whitewash”

Amnesty International has condemned the findings of an Israeli inquiry into last year’s raid on a Gaza-bound aid flotilla as a “whitewash” which failed to account for the deaths of nine Turkish nationals.

In a report published on 23 January, the Turkel Commission concluded that the Israel Defense Forces (IDF) acted lawfully when they captured the *Mavi Mamara* on 31 May 2010, killing nine activists on board, and intercepted five other ships. Despite being nearly 300 pages long, the report crucially fails to explain how the activists died and what conclusions the Commission reached regarding the IDF’s specific actions in each case.

The Commission’s failure to account for the deaths reinforces the view that the Israeli authorities are unwilling or incapable of delivering accountability for abuses of international law committed by Israeli forces. It also highlights the need for follow-up to ensure that the sharply contrasting conclusions of the International Fact-Finding Mission appointed by the UN Human Rights Council, which were issued on 22 September 2010, but not even mentioned by the Commission, are addressed and that the rights of victims to an effective remedy are upheld.

The Turkel Commission concluded that, of the 133 incidents of force used by the IDF during the raid on the *Mavi Marmara* that it examined, 127 were in conformity with international law, while it had “insufficient information” to make a determination on the other six, three of which involved the use of live fire. Significantly, it chose to base its analysis of the lawfulness of the actions taken against those who resisted the boarding of the ship on international humanitarian law, which governs armed conflict and allows much greater latitude for the use of lethal force. Amnesty International categorically rejects the application of this legal framework to the events concerned.

The Commission does not indicate which of the incidents of force resulted in deaths or even if it has this information. However, it states that a detailed analysis of each incident, as well as the Israeli soldiers’ written testimonies on which this analysis was based, are contained in an unpublished annex to the report, which it recommends that the Israeli government “examine the possibility of making... public”. Amnesty International calls on the Israeli authorities to do so without delay, so that it can be read by independent parties.

The September 2010 report of the International Fact-Finding Mission concluded that IDF use of force during the raid on the *Mavi Mamara* was “unnecessary, disproportionate, excessive and inappropriate and resulted in the wholly avoidable killing and maiming of a large number of civilian passengers”. Based on forensic and firearm evidence, it said that “at least six of the killings can be characterised as extra-legal, arbitrary and summary executions”.

The Mission also found that at least 24 passengers on the *Mavi Mamara* were seriously injured by live ammunition fired by Israeli forces, while other passengers on the flotilla who were posing no threat to Israeli soldiers were injured by electroshock weapons, plastic bullets, soft-baton charges fired at close range, stun grenades, and physical force. It concluded that the IDF also used excessive force in intercepting three other vessels in the flotilla, the *Challenger 1*, *Sfendoni* and *Eleftheri Mesogios*.

The Turkel Commission claimed that activists on the *Mavi Mamara* used firearms against Israeli forces, even though it could not establish that activists had brought firearms on board, despite previous IDF allegations to this effect. This assessment was based on written statements, which the Commission acknowledged reflected “a situation of considerable confusion”, submitted by soldiers who were not subjected to cross-examination, as well as the fact that two IDF soldiers were treated for bullet wounds. However, there is no indication in the report that medical professionals who treated the soldiers were questioned or that ballistics tests were conducted to determine the source of the wounds.

By contrast, the International Fact-Finding Mission “found no evidence to suggest that any of the passengers used firearms or that any firearms were taken on board the ship”, and noted that Israeli authorities refused to provide medical records or other evidence substantiating the allegations of firearm use by activists.

The Commission’s report notes the limitations of the evidence on which its analysis was based, but it is far from clear that it made sufficient efforts to obtain additional evidence and testimonies during its seven-month investigation. It did not have the power to question Israeli soldiers, relying instead on their written testimonies, as well as written and oral testimonies of senior IDF officials and Israeli political leaders, much of which has not been made public.

The Commission heard testimony from only two of the more than 700 passengers and crew on the flotilla. While the vast majority of passengers live outside of Israel, and 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, with which Israel refused to co-operate.

The Commission noted that it did not have access to autopsy reports for those killed during the raid, claiming that this was due to the Turkish government’s request that the Israeli authorities not perform autopsies before returning the bodies to Turkey. However, the Turkish authorities subsequently performed autopsies on those killed during the raid, and there is no indication that the Commission requested the autopsy reports, as the International Fact-Finding Mission did.

Highly contentious legal arguments were used by the Commission to argue for the applicability of international humanitarian law to the raid, rather than international human rights law or law enforcement standards. The Commission viewed the events on the *Mavi Mamara* as armed hostilities between activists engaged in violent conduct and the IDF, and argued that these activists “lost the protection of their civilian status for such time as they directly participated in the hostilities”. Effectively, the Commission argued that these activists could be shot dead lawfully whether or not they were posing a direct threat to the lives of IDF soldiers.

Amnesty International rejects this interpretation, and believes that Israel’s interception of the Gaza aid flotilla and the resistance it encountered from some of those on board the *Mavi Marmara* did not form part of an armed conflict. International human rights law and law enforcement norms should have been applied. As such, the use of force – and especially lethal force – should have been an act of last resort.

Amnesty International also rejects the Commission’s conclusions regarding the status of the Gaza Strip, the nature of Israeli control over Gaza, and the Israeli closure of Gaza.

Citing an Israeli Supreme Court ruling, *Al-Bassiouni v. Prime Minister*, the Commission argued that Israel’s “effective control” of the Gaza Strip ended following the withdrawal of Israeli forces based in Gaza and the dismantling of illegal Israeli settlements in the Strip during the “disengagement” of 2005. Amnesty International has repeatedly highlighted that Israel remains the occupying power in the Gaza Strip, due to its continuing control of Gaza’s land crossings, air space, and territorial waters, as well as the “buffer zone” inside the Gaza Strip.

Amnesty International also contests the Commission's findings that the purpose of Israel's naval blockade on Gaza was "primarily a military-security one". Israeli officials have repeatedly justified the blockade as an economic sanction against an "enemy entity", including in the *Al-Bassiouni* case cited by the Commission. The naval blockade must be assessed in the context of the closure policy implemented by the Israeli government since June 2007 – a siege that constitutes collective punishment and violates the Fourth Geneva Convention.

Finally, Amnesty International rejects the Turkel Commission's conclusion that the closure policy is lawful. The siege of Gaza has been punishing its entire population of 1.5 million people, half of whom are children, since June 2007. Israel's "easing" of the blockade in June 2010, following the raid on the Gaza flotilla, and its announcement in December 2010 that certain limited exports would be permitted, have failed to end the humanitarian crisis in Gaza, where 80 per cent of the population depend on international assistance to meet basic food needs.

The Public Commission to Examine the Maritime Incident of 31 May 2010 was established by an Israeli government resolution on 14 June 2010. The Commission was chaired by former Israeli Supreme Court Justice Jacob Turkel, and its other members included General Amos Horev; Professor Shabtai Rosenne, who died on 21 September 2010; Ambassador Reuven Merhav; and Professor Miguel Deutsch. Two international observers, David Trimble, former First Minister of Northern Ireland, and Ken Watkin, former head of Canada's military judiciary, participated in the Commission's hearings and concurred with its findings. The Commission's report is available at www.turkel-committee.gov.il/content-107.html.

The International Fact-Finding Mission was set up after the President of the UN Human Rights Council appointed Judge Karl T. Hudson-Phillips, retired Judge of the International Criminal Court and former Attorney General of Trinidad and Tobago, to be its chairman. The other appointed members were Sir Desmond de Silva, of the United Kingdom, former Chief Prosecutor of the UN-backed Special Court for Sierra Leone, and Mary Shanthi Dairiam of Malaysia, founding member of the Board of Directors of the International Women's Rights Action Watch Asia Pacific and former member of the Committee on the Elimination of Discrimination against Women. On 29 September 2010, the Human Rights Council adopted a resolution endorsing the conclusions of the Fact-Finding Mission's report published on 22 September (www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf) and calling for their implementation. It also requested that the UN High Commissioner for Human Rights report on the status of implementation at the Council's 16th session in March 2011, and recommended that the UN General Assembly consider the report.

In its report, the Fact-Finding Mission concluded that "the right to an effective remedy should be guaranteed to all victims" and that victims should be "compensated adequately and promptly". It also called upon the Israeli authorities to return unlawfully seized property and assist in the identification of perpetrators of serious violations with a view to "prosecuting the culpable and bringing closure to the situation". Finally, the Fact-Finding Mission noted the urgent need for a solution to the "deplorable" and "unsustainable" humanitarian situation in Gaza resulting from the Israeli blockade, which it found "amounts to collective punishment in violation of Israel's obligations under international humanitarian law".

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