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RELEASE IN FULL

ConfidentialJoint Statement of the Chairman and Vice-Chairman
Concluding the work of the United Nations Panel of Inquiry
on the 31 May 2010 Flotilla Incident

On 2 August 2010 the Secretary General of the United Nations established a Panel of Inquiry regarding the flotilla incident that occurred on 31 May 2010. In the course of its work, the Panel reviewed the comprehensive national investigation reports submitted by Israel and Turkey, as well as additional information presented by both countries in response to a series of questions addressed by the Panel to each country, where further information or clarifications were required. The Panel convened a number of sessions, in the course of which, *inter alia*, the Panel met with Points of Contact on behalf of the two sides, each of whom provided the Panel with additional necessary information. After long deliberations we arrived at certain conclusions. They are outlined in the attached "Conclusions of the Chair" (Annex I).

A few days ago, the Panel was presented with the text of two Agreements (Annex II and Annex III) between the Republic of Turkey and the State of Israel concerning the incident, which had been reached on the basis of understandings arrived at by the parties in the course of the Panel's work. We warmly welcome this development and consider that the terms of these Agreements and the "Conclusions of the Chair" complete and conclude the work of the Panel. We are grateful for the participation and full cooperation of the two sides with the work of the Panel and are pleased that this process contributed to the successful resolution of the matter between the two countries.

[Signatures of Palmer and Uribe]

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Annex I: Conclusions of the Chair (Summary Part of the Report of the Secretary General's Panel of Inquiry on the 31 May 2010 Flotilla Incident.)

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.

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. It therefore provided an exception to the fundamental principle of the freedom of navigation.
- iii. The flotilla was a non-governmental endeavour, involving vessels and participants from a number of countries.

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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 so as to minimize casualties.

boarding attempt became apparent so as to minimize casualties.

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:

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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 at all times 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 pro-active 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

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- 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 roundtable as a forum for exchanging views could assist to this end.

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Annex II: Agreement between the Government of the Republic of Turkey and the Government of the State of Israel Concerning the Flotilla Incident

Israel and Turkey cherish the shared history and centuries old ties of strong friendship and cooperation between the Jewish and Turkish peoples. Both countries view their relationship as having vital strategic importance for the peace and stability of the region and regret its recent deterioration. Both countries are committed to overcoming their differences and to working together to strengthen Turkish-Israel relations and to advance peace and stability in the region.

It is in this spirit and in an effort to resolve the issues that relate to the unfortunate events surrounding the flotilla's departure, its interception, and its outcome on May 31st, 2010 (the "incident") that the parties have agreed to the following:

- 1) In light of Israel's investigation into the incident which pointed to a number of operational mistakes, Israel expresses its apology to the Turkish people for any mistakes that might have led to the loss of life or injury.
- 2) A procedural agreement is included as an annex to this agreement and forms an integral part of this agreement. Turkey agrees that the payment will be a fulfillment of any and all claims against Israel, and there will be no further demands from Israel by Turkey, its citizens or legal persons, with respect to the incident.
- 3) Israel and Turkey pledge to immediately resume the good diplomatic and other relations that existed between them.
- 4) Israel and Turkey agree that this understanding will be considered as covering and terminating all outstanding issues relating to the events surrounding the flotilla incident, its outcomes and consequences. Israel and Turkey agree that they do not attribute legal or other liability to the other side or its agents, and agree that this understanding will not be construed as admittance of or the placing of criminal or civil liability on any side.
- 5) Each country shall have the exclusive jurisdiction to investigate, and where appropriate prosecute, allegations of criminal activity by its nationals or citizens relating to the incident.
- 6) Israel and Turkey agree not to bring or support any legal or diplomatic action relating to this incident against each other or each other's citizens, in any domestic or international fora.
- 7) This agreement will be submitted by the parties to the UN Secretary General and to the UN Panel of Inquiry, and will come into force after it is adopted by the UN Panel and serves as a completion of the Panel's work.

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Done in on..... in two original copies in English language.

For the Government of
the Republic of Turkey

For the Government
of the State of Israel

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Annex III: Procedural Agreement Concerning the Flotilla Incident

PROCEDURAL AGREEMENT

In furtherance of their other agreement and in the spirit of cooperation, Israel and Turkey have agreed to the following:

1. The Government of Israel agrees to pay [..... (US dollars)] to a Trust Fund established by the Government of Turkey to compensate the bereaved families and injured individuals during the flotilla incident that took place on 31 May 2010.
2. This payment is not and will not be construed or considered as the placing on or the admission of any legal liability by Israel under international law, or any domestic law.
3. The above amount shall be provided in lump sum, at the latest by [...(date)]. The Government of Turkey shall inform the Government of Israel through diplomatic channels, of the bank account to which the amount shall be transferred.
4. The distribution of the above amount falls within the exclusive competence of the Government of Turkey in accordance with such methods of distribution as it may choose to adopt, without any responsibility arising therefrom for the Government of Israel.
5. Israel and Turkey agree that they do not attribute legal or other liability to the other side or its agents, and agree that this understanding will not be construed as admittance of or the placing of criminal or civil liability on any side. In any event, should any claims be made, this agreement will constitute full release from any liability of Israel, its agents and citizens with respect to any and all claims against them, direct or indirect, by the Republic of Turkey or Turkish real and legal persons, in relation to the flotilla incident.
6. Should any claim against the Government of Israel or its natural or juridical persons be advanced or maintained by or on behalf of any Turkish natural or juridical person,

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notwithstanding the aforesaid provisions, the Government of Israel, its agents and/or citizens, shall be indemnified by the Government of Turkey against all loss, costs, damages, and/or expenses.

7. This Agreement shall enter into force on the date of last notification by the Contracting Parties, in writing and through diplomatic channels, of the completion of the respective internal legal procedures necessary to that effect.

Done in on in two original copies in English language.

For the Government of
the Republic of Turkey

For the Government
of the State of Israel