

## GAZA FLOTILLA FOIA PRODUCTION GUIDE: U.S. Actions Related to International Organizations and Investigations

Last updated: September 2014

*This CCR-produced guide provides a summary of information gathered from documents released by the United States government pursuant to Freedom of Information requests being litigated in CCR v. Dep't of Defense, et al. Documents released by the United States agencies are referred to below by the name of the U.S. agency that produced the document and the Bates-number assigned to the relevant page; all documents are available [here](#). Note that over 1,000 pages of responsive records have been withheld to date. A compilation of some of the documents referenced herein can be accessed [here](#). An overview of the attack on the Flotilla and the FOIA case is available [here](#) and a legal analysis of the attack [here](#).*

### Introduction

In the immediate aftermath of the Israeli attack on the Free Gaza Flotilla, international institutions responded, issuing statements and resolutions condemning the attack and establishing fact-finding missions. Amidst these efforts, the U.S. government took actions to shield Israel from international scrutiny.

Although heavily redacted, the documents that have been released pursuant to CCR's FOIA litigation provide a unique perspective on the actions taken by the U.S. to address the incident.<sup>1</sup> Instead of supporting an independent international investigation, the U.S. backed Israel's internal inquiry, the Turkel Commission,<sup>2</sup> and helped form the UN Secretary General's panel of inquiry which relied on the Israeli inquiry and negotiations in reaching its conclusions. Internal records show that the U.S. was preoccupied with the possibility that an international investigation could hold Israel accountable; the U.S. sought to derail the UN Human Rights Council (UN HRC) Fact-Finding Mission (FFM) and related resolutions, engaged in diplomacy to limit UN follow up options, and supported a review of the attack which could make no independent findings of law or fact – and lead to no criminal responsibility or meaningful accountability.

In fact, the U.S. has never formally endorsed any independent international inquiry into the attack. CCR has engaged decision makers to request a U.S. investigation into the attacks and specifically into the murder of American teenager Furkan Doğan. Turkey remains the only country that has launched a criminal investigation into the killings.<sup>3</sup>

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<sup>1</sup> Documents referenced herein originated from the US Missions to the UN in New York, and Geneva, and Department of State (DOS) Offices in Washington, Israel, Turkey, Greece and Cyprus and the Department of Defense.

<sup>2</sup> The publically-available Report was released as a part of the DOS Production, See StateDept2664-2955.

<sup>3</sup> In May 2014, the Seventh High Criminal Court in Istanbul issued arrest warrants against four senior Israeli officials alleged to bear criminal responsibility for the crimes committed during the attack on the flotilla. See,

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<http://www.aljazeera.com/news/middleeast/2014/05/turkey-orders-arrests-over-gaza-flotilla-raid-201452623466643819.html>; the ICC Prosecutor has opened preliminary examinations into the case per a referral from Comoros, available at <http://www.icc-cpi.int/iccdocs/otp/Referral-from-Comoros.pdf>

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### U.S. involvement to limit initial Security Council reactions

The U.N. Security Council (UNSC) met on May 31, 2010 and June 1, 2010, in which the Council discussed the attacks, released press statements condemning them and produced a Presidential Statement condemning the actions and called for a “prompt, impartial, credible and transparent investigation conforming to international standards.” The UN Press Statement on the issue and full text of the Presidential Statement are available [here](#).

- In preparation for the UNSC meetings, which State Department officials anticipated would hold “much interest in legal issues focused on Israeli claims they were acting in self-defense and that the flotilla was violating international law,” U.S. State Department Principal Deputy Legal Adviser Joan Donoghue and Legal Adviser to USUN Mary McLeod asked whether the US had a position on the blockade, and whether the U.S. knew the facts.<sup>4</sup> *Commentary: The response to this question has not been made public. In fact, throughout the records produced, the U.S. fails to explicitly state its policy on the blockade and the international law issues relevant to it.*
- A June 2 Department of Defense memo in preparation for an internal meeting on the flotilla notes that the May 31, 2010 UNSC emergency session called for a transparent investigation, but not an independent one or condemnation of the attack, and the U.S. Mission to the UN “supports this approach.”<sup>5</sup>
- After this initial meeting, the UNSC retired for consultations, with the U.S. taking a lead role in the discussions.<sup>6</sup> Throughout the next thirteen hours the Turkish and U.S. delegations, at times joined by the Lebanese delegation, negotiated on the substance of a Presidential Statement.<sup>7</sup> A draft text was leaked to the Israelis and Palestinians purportedly “complicating negotiations.”<sup>8</sup> Through these discussions, Turkey eventually secured a Presidential Statement which condemned the attacks.
- Months after the PRST was issued, the State Department reported to the U.S. Congress that when the UNSC debated “Israel’s use of force on May 31 in turning back a flotilla attempting to reach Gaza, **the United States succeeded in limiting the Council’s action**

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<sup>4</sup>DOS, Email: RE: Humanitarian flotilla, May 31, 2010, StateDept3431.

<sup>5</sup> DOD, Memo: Principals Committee Meeting on Middle East/Flotilla Incident, Drafted June 2, 2010, DeptofDefense0034-37.

<sup>6</sup> 10 USUN New York 0337, *UNSC: Security Council adopts June 1 Presidential Statement on Gaza flotilla*, June 4, 2010, StateDept401-06.

<sup>7</sup> Id; MGZO1: Gaza Flotilla Monitoring Group (GFMG), Situation Report (SitRep) No. 2, July 1, 2010, StateDept1283-85.

<sup>8</sup> MGZO1: GFMG, SitRep No. 2, July 1, 2010, StateDept1283-85.

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to a presidential statement that condemned the actions which resulted in deaths and injuries, and deeply regretted the losses.”<sup>9</sup> *Commentary: Although the U.S. rhetoric during the immediate aftermath of the attack urged restraint due to a lack of verified facts on what occurred onboard the flotilla, the U.S. characterization of the deadly attack which killed a U.S. citizen months later as mere “use of force...in turning back” the flotilla and the note that the U.S. “succeeded in limiting the Council’s action” shed light on what must be understood as the true focus of the U.S. negotiations: protecting Israel. Moreover, the portion of the report discussing these negotiations falls under a paragraph beginning with “U.S. representatives continued to speak out vigorously in all UN organizations to ensure Israel was not excluded from meetings and conferences, and that Israeli interests were given fair consideration.”*<sup>10</sup>

**U.S. statements to the UN Human Rights Council in the aftermath of the attack were informed by Israeli talking points, and sought to protect Israel by omitting mention of international obligations and rejecting calls for international involvement**

The day after the flotilla attack, the UN HRC held a special convening to address the incident, at which over 60 members of the HRC, including the United States, as well as Israel, Palestine, and a number of organizations offered statements.<sup>11</sup> *Immediately upon learning of this session, the U.S. Mission to the UN and supporting offices in Washington and the Middle East took preparatory action.*<sup>12</sup>

- Copies of the Israeli statement to the HRC were circulated in State and note, in part, that “Israel regrets any loss of life. But all responsibility lies not upon Israel but rather upon the planners of this violent provocation.”<sup>13</sup> *Commentary: the position that the flotilla*

<sup>9</sup>Bureau of International Organization Affairs, US Participation in the UN 2010 Report, at <http://www.state.gov/p/io/rls/rpt/173803.htm>

<sup>10</sup> Report annex <http://www.state.gov/p/io/rls/rpt/173804.htm#political>

<sup>11</sup> Report of the Human Rights Council on its fourteenth session, U.N. Doc. A/HRC/14/37 (Oct. 23, 2012) at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/177/81/PDF/G1217781.pdf?OpenElement> (including a timeline of the HRC actions on the flotilla attack)

<sup>12</sup>DOS, Email: FW: URGENT!!! HRC Action re: Gaza Aid Flotilla, May 31, 2010, StateDept2618-20 DOS, Email: RE: URGENT – Clearance needed Monday afternoon, May 31, 2010, 8:29 PM< 02636-67 DOS, Email: Thomas Goldberger, RE: URGENT!!! HRC Action re: Gaza Aid Flotilla; DOS, Email: *Urgent – Clearance needed Monday afternoon, May 31, 2010, 2612-2614.*

<sup>13</sup> DOS, Email: FW: Israeli Rt of Reply at HRC today re: Gaza Aid Flotilla, StateDept2641-43, StateDept2638-40, StateDept3117-19, *Statement by H.E. Aharon Leshno Yaar, Permanent Representative of Israel to the United Nations, Geneva, Right of Reply, Item 2, Human Rights Council, May 31, 2010, StateDept02578-80.*

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*activists were provocateurs responsible for the tragic outcomes of the flotilla attack is a frequent talking point among both Israeli and U.S. officials.*

- An email from an Israeli source (name redacted) was sent to acting U.S. Permanent Representative to the UN Alex Wolff, which included the text, “speech.”<sup>14</sup> This email was later forwarded within the department with the text “Note Israeli legal justification” by Deputy Chief of Mission Goldberger. *Comment: due to redactions it is unclear whether this is solely a copy of public statements, such as the one to the HRC, or if other information is provided.*

*The final statement from the United States to the HRC was changed from earlier drafts to omit mention of international obligations, a call for international involvement in the investigation, and reflected some of the messaging that has been offered by Israel:*

- Undated draft versions of the statement call for an international component of the investigation into the flotilla attack. “We expect a credible and transparent investigation and strongly urge the Israeli government to investigate the incident fully, **with Quartet support. We urge all parties to behave responsibly and uphold their international obligations.**”<sup>15</sup> (emphasis added) In contrast, the final statement delivered by Amb. Donahoe included no reference to Quartet support or international obligations related to the investigation.<sup>16</sup>
- Whereas the draft made no reference to the flotilla outside of an expression of concern for the loss of life, the final statement alluded to the Gaza Freedom Flotilla in a negative way. The statement pointed out that “mechanisms are in place for the transfer of humanitarian assistance,” and that “[t]hese non-provocative and non-confrontational mechanisms should be the ones used for the benefit of all those in Gaza.”<sup>17</sup>
- The final statement, unlike the draft, included a more extensive reference to Israel’s security concerns, stating that Hamas’ “continued arms smuggling and commitment to terrorism undermines security and prosperity for Palestinians and Israelis alike.”<sup>18</sup>

### The U.S. took action to limit the mandate and strength of the HRC Fact Finding Mission

<sup>14</sup> FW: Fwd: Ship 310510 – 13-45; May 31, 2010, 3026.

<sup>15</sup> Statement by Ambassador Eileen Donahoe on the Flotilla Incident for the Human Rights Council special session, June 1, 2010, drafts of unknown date, StateDept3040, StateDept3396, StateDept3760.

<sup>16</sup> Statement by Ambassador Eileen Chamberlain Donahoe, General Debate of the HRC on the Recent Incident in the Eastern Mediterranean, June 1, 2010, *available at* <http://geneva.usmission.gov/2010/06/01/human-rights-council-us-statement-on-the-may-31-incident-aboard-the-gaza-bound-ships/>

<sup>17</sup> Id.

<sup>18</sup> Id.

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On June 2, 2010, Pakistan introduced a resolution on the flotilla attack to the HRC.<sup>19</sup> Even prior to the formal introduction of this resolution, the U.S. attempted to edit the working draft to mitigate the resolution's potential to impose accountability from Israel. The final resolution, in addition to condemning the attacks, included a commitment "to dispatch an independent, 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."<sup>20</sup> Once the content of the final resolution was clear, the USUN-NY, the National Security Council's staff for the Near East and North Africa, and various offices in the State Department began drafting an "explanation of the vote" (EOV) to be offered as the U.S. voted against the resolution.

*Note: The final mission report is available [here](#), and the U.S. position on the mission is detailed below.*

- Discussions among the U.S. officials on the draft resolution text and explanation of the vote have been substantially redacted, and some documents have been released with *all* of the substantive conversation on the resolution withheld from the public.<sup>21</sup>
- Even a day before the resolution was officially introduced, U.S. officials were operating under the assumption that "the HRC text does not get better, that we vote no, and that we read the attached statement at the time of the vote. This is the most likely scenario."<sup>22</sup>

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<sup>19</sup> Report of the Human Rights Council on its fourteenth session, U.N. Doc. A/HRC/14/37 (October 23, 2012)

<sup>20</sup> Resolution 14/1 The grave attacks by Israeli forces against the humanitarian boat convoy, session report <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/177/81/PDF/G1217781.pdf?OpenElement>

<sup>21</sup> DOS, Email: FW: HRC draft resolution, May 31, 2010, 3443-46; DOS, Email: RE: URGENT—clearance needed Monday afternoon, 3107-08, RE: Urgent Guidance Request RE Gaza Flotilla Resolution, June 1, 2010 6:35 AM, StateDept03270-71; DOS, Email: RE: Instruction and EOV for HRC vote – clearance by 10 AM EST, June 1, 2010, 10:14 AM, StateDept03437-42; RE: Instruction and EOV for HRC vote – clearance by 10 AM EST, June 1, 2010, 10:54 AM, StateDept03432-36; FW: HRC Gaza resolution – status of negotiations, June 1, 2010, StateDept02626-30 (in which one official asks, "Will we be able to get the Europeans to vote with us?"); FW: Final Clearance needed by 10 pm on [redacted], June 1, 2010 7:24 PM, StateDept2624-25; FW: Final Clearance needed by 10 pm on [redacted], June 1, 2010 8:08 PM, StateDept3080-81; RE: HRC Gaza resolution – status of negotiations, June 1, 2010 1:25 PM, StateDept03264-69; RE: Final Clearance needed by 10 PM on [redacted], June 1, 2010 9:02 PM, StateDept02601-03; RE: Final Clearance needed by 10 PM on [redacted], June 1, 2010 9:18 PM, StateDept02621-23; RE: Clearance Request: IO Guidance on the HRC Resolution on the Flotilla. *These documents have been redacted under FOIA exemption B5, which allows the government to withhold information which would be protected by privilege, such as deliberative process privilege, attorney-client and attorney work-product privilege. State has refused to identify which privilege it is claiming for these exemptions, and CCR continues to seek this information to ensure the Department properly justifies any withholdings.*

<sup>22</sup> DOS, Email: FW: Use this version. Instruction and EOV for HRC vote – clearance by 10 AM EST, June 1, 2010 9:42 AM, StateDept02631-35.

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- Linda Jacobson, State Department Assistant Legal Adviser for African and Near Eastern Affairs, rejected parts of the proposed text of the U.S. explanation in “redlines” which were “in reference to occupation re Gaza and Israel as occupier; a SYG [Secretary General] or other international investigation.”<sup>23</sup> *Note, the exact text which was cut has not been released to the public.*
- Additional concerns with the draft EOV included a reference to Israel’s stance on the application of the 4<sup>th</sup> Geneva Convention (GCIV). Here, Jacobson wrote that, “I don’t have the Israeli past statements on this so can’t remember whether they said they would apply as a matter of policy GCIV or rather customary IHL.”<sup>24</sup> *Note: the Fourth Geneva Convention relates to the protection of civilians in times of war. Although Israel rejects this conclusion, it is internationally accepted that the Fourth Convention—and the responsibilities outlined therein, applies to the situation in Gaza. Customary IHL refers to customary international humanitarian law, the law of armed conflict.*
- The final EOV was produced, as was an initial draft of the explanation:
  - Drafts of the EOV refer to the deceased as “civilians,”<sup>25</sup> whereas the final statement cuts this important descriptor.<sup>26</sup>
  - A draft of the EOV notes the U.S. “expectation for a prompt, impartial, credible and transparent investigation carried out in conformity with international standards. Only through such an investigation can the necessary facts be developed.”<sup>27</sup> In contrast, the final version of the draft calls for a “prompt, impartial credible and transparent investigation,” but focuses on Israel rather than international standards. The final statement notes, “Israel has a very strong interest in conducting such an investigation that meets international standards and exposes all the facts. There are, of course, a number of ways to ensure such an outcome.” *Commentary: this change reflects an ongoing preference of the U.S. to shift the conversation towards Israeli control of an investigation, and away from independent international mechanisms.*

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<sup>23</sup> DOS, Email: RE: FINAL CLEARANCE needed by 10 pm on [redacted] resolution at HRC, June 1, 2010, 8:25 PM, StateDept03105-06.

<sup>24</sup> Id.

<sup>25</sup> HRC 14 Explanation of Vote: The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy, draft of unknown date, StateDept2574-75

<sup>26</sup> Id.; HRC 14 Explanation of Vote: The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy, delivered June 2, StateDept1534-35.

<sup>27</sup> StateDept1534-35.

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- In closing, both drafts label the resolution a “rush” to judgment, and stress an “obligation to determine facts” which the U.S. argues is the responsibility of Israel to determine first through an internal investigation.<sup>28</sup>
- Following the HRC Resolution vote, the U.S. Mission to the HRC circulated a summary of the vote totals: 32 nations voted in favor, 3 opposed (US, Italy, Netherlands), and 9 abstentions (Belgium, Burkina Faso,<sup>29</sup> France, Hungary, Japan, Korea, Slovakia, Ukraine, UK).
- In an email to other State Department officials, Michael Posner, Assistant Secretary of State for Democracy, Human Rights, and Labor (DRL), described the vote, and commented that, “We have no doubt that our isolation on this issue will affect our other HRC priorities at the Council.”<sup>30</sup>
- Posner also noted that the Bureau of Population, Refugees and Migration “is drafting a memo with ideas for improving the humanitarian situation, which we welcome (and to which we have contributed ideas). I also plan to give some ideas to NEA/SEMEO on how to address the human rights situation in Gaza.”<sup>31</sup> *Commentary: Comments such as these suggest that the Free Gaza Flotilla helped spur U.S. diplomatic action to address the suffering of Palestinians in Gaza. Following the flotilla, Israel began to allow some additional goods to cross into Gaza, while maintaining the closure.*

### **The U.S. worked extensively with Israel in crafting its position on an investigation, and Israel’s own investigation by the Turkel Commission**

The U.S. maintained regular communication with Israel during the formation of Israel’s inquiry into the attack (the Turkel Commission). Documents show involvement in Israel’s decision-making process on an investigation prior to its formation, as well as internal discussions regarding possible methods of investigation. Although the U.S. did not support an international investigation, it appears the government did seek an international “component” to the Israeli inquiry.

- On June 1, 2010, the day after the attack on the flotilla, Daniel Taub, Principal Deputy Legal Adviser of Israel’s Ministry of Foreign Affairs wrote to State Department Legal Adviser Harold Koh, “thanks for your time and insights today...I will make sure you are

<sup>28</sup> StateDept2574-75; StateDept1534-35

<sup>29</sup> The U.N. reports that, “the Permanent Mission of Burkina Faso subsequently informed the Human Rights Council that Burkina Faso had intended to vote in favour of the resolution.”

<sup>30</sup> DOS, Email: *Israel*, June 2, 2010, StateDept01532.

<sup>31</sup> *Id.*

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copied on significant material as it becomes available.” Taub included multiple links to pro-Israel news stories, videos, announcements by the IDF spokesperson and the IDF Navy, and a “legal update” from the Ministry of Foreign Affairs.<sup>32</sup> *Comment: the text of the legal update is redacted.*

- Subsequent to his email to Koh, Taub and U.S. Deputy Legal Adviser Jonathan Schwartz make arrangements to speak, although the details of their interaction are redacted. These emails are forwarded to other members of the DOS legal adviser staff. Soon after, an email is sent from one of those recipients, Attorney Adviser JoAnn Dolan, to Schwartz with attachments titled “LEGAL-#196110-v11-Israel\_best\_practices\_IHL\_non-paper.doc” and “LEGAL-#195490-v2-Commission\_of\_Inquiry\_draft.doc.x”<sup>33</sup> Both attachments have been withheld.

*Commentary: The DOS defines a “non-paper” as “[a] written summary of a demarche or other verbal presentation to a foreign government. The non-paper should be drafted in the third person, and must not be directly attributable to the U.S. Government. It is prepared on plain paper (no letterhead or watermark).”<sup>34</sup> It is striking that what appears to be the U.S. position on International Humanitarian Law best practices would need to remain un-attributable. The other attachment, “Commission of Inquiry draft” might be a draft concept for Israel’s investigation into the attack, or a draft of the U.S. position on it.*

- On June 3, 2010, State Department officials were analyzing the potential investigation options for Israel, and noted reports that an investigation may include an American observer.<sup>35</sup>
- A DOD memo of an unknown date in June notes that the U.S. “will continue to support Israel’s internal investigation (as POTUS told Netanyahu), but will urge that international participation be included.” According to a National Security Adviser, the U.S. was to receive the proposed terms of reference for the inquiry and “we should push Israel to broaden international participation to [redacted]”<sup>36</sup> Another memo from the DOD also notes the U.S. intent to use the terms of reference discussion “urge them to broaden and raise the level of international participation in it, to possibly [redacted]”<sup>37</sup> *Comment: the*

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<sup>32</sup> DOS, Email: FW: Flotilla to Gaza Materials, June 2, 2010, StateDept03101-04.

<sup>33</sup> DOS, Email: FW: Flotilla to Gaza Materials, June 2, 2010, StateDept03101-04

<sup>34</sup> <http://www.state.gov/documents/organization/89308.pdf>.

<sup>35</sup> DOS, Email: RE: Israel Investigation Options Paper, June 3, 2010, StateDept3516-17.

<sup>36</sup> Department of Defense 00059

<sup>37</sup> Department of Defense00089

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*potential outcome of this international participation that the U.S. was seeking is notably redacted in both documents.*

- Talking points prepared in advance of a meeting with Israeli MFA Manor and Brigadier General Heymann for the U.S. Deputy Permanent Representative to the UN, noted the Israeli cabinet would decide on an investigation on June 13.<sup>38</sup> The Deputy Representative was directed to convey that the U.S. expects a “prompt, impartial, credible, and transparent investigations” and that “we are open to different ways of assuring a credible investigation, including international participation.”<sup>39</sup> *Comment: this openness to Israel’s investigation choices is re-iterated in talking points for the USUN delegation.*<sup>40</sup>
- Significant discussions related to the U.S. position on an Israeli investigation have been withheld or redacted heavily, yet the limited information that has been released points toward significant U.S. discussion on the investigation options available to Israel
  - An email between Legal Adviser Jacobson and NSS official Brian Egan has the subject line “‘credible investigation’ for flotilla incident.”<sup>41</sup>
  - An email between various members of the OLA staff is titled “including international participation.”<sup>42</sup>
  - A draft paper on a proposed Commission of Experts to investigate the flotilla attack was circulated in advance of a meeting on the subject; the paper and any comments on it were withheld.<sup>43</sup> *Note: this “Commission of Experts” is likely the Turkel Commission, which was formed by the Israeli government on June 14, 2010.*
  - An email including Assistant Legal Adviser for Diplomatic Law and Litigation Linda Jacobson and USUN officials noted that “Steve and I were just asked by Jim to pull some material together (due tonight) on ‘options’” related to the flotilla investigation.<sup>44</sup>

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<sup>38</sup> Memorandum: Meeting with Israeli MFA Deputy DG, IO, Eviatat Manor and BG Yossi Heymann, Friday, June 11, 4:00p m. USUN, StateDept04439-41.

<sup>39</sup> Id.

<sup>40</sup> Memorandum, Security Council Briefing/Consultations on the Middle East, June 15, 2010, June 11, 2010 StateDept4454-56.

<sup>41</sup> DOS, Email: June 2, 2010, StateDept3120

<sup>42</sup> DOS, Email: *including international participation*, StateDept3066-68

<sup>43</sup> Israeli proposed COE – considerations.DOC, June 8, 2010, StateDept01628, 3169, 01627,

<sup>44</sup> DOS, Email: *RE: Flotilla Investigation*, June 2, 2010, StateDept03274-75

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- An email with the subject “FW: Flotilla – International Standards for Investigation” was sent by Lisa Grosh (currently Deputy Assistant Legal Adviser for International Claims and Investment Disputes Office); the substantive text of the email is redacted.<sup>45</sup>
- A paper produced to brief President Barack Obama contains references to the flotilla; they are all redacted.<sup>46</sup>
- A June 7, 2010 Cable released by the National Geospatial Intelligence Agency notes the title of a document as “Israeli Army Chief Orders External Probe into Flotilla Op.; Gov’t Awaits US Consent”<sup>47</sup> Additional details on the “consent” are withheld.
- The Israeli Ambassador to the U.S., Michael Oren, and the U.S. Permanent Representative to the UN, Susan Rice, were scheduled to meet on June 13, 2010, as the Israeli cabinet decided on which investigation model to follow.<sup>48</sup> It is unclear if this meeting occurred as planned, however, talking points drafted for the meeting, which have been partially released, do not reference a U.S. position on which model to adopt.<sup>49</sup>
  - Ambassador Oren had previously stated that Israel rejected the idea of an international investigation.<sup>50</sup> The U.S. talking points for the meeting with Oren note that the U.S. will be voting against a follow up to the HRC fact finding mission, which seeks the Secretary General take into consideration the conclusion of the mission, and “drops positive language on the Palmer panel.”<sup>51</sup>
- On June 14, 2010, Israel established a Commission to study the incident, and appointed retired Israeli Supreme Court Justice Jacob Turkel to chair the commission.<sup>52</sup> The “Turkel Commission” also included the participation of two other members and two foreign observers.<sup>53</sup>

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<sup>45</sup> DOS, Email: June 10, 2010, StateDept3211-12.

<sup>46</sup> Department of State, Email: RE: Urgent Clearance: Revised POTUS paper on Israel=Related UN Issues, August 25, 2010, StateDept2524-27.

<sup>47</sup> DOD, Document, Gallagher/10-L-1242/NGA/000002

<sup>48</sup> Memorandum, Your meeting with Israeli ambassador to the United States, Michael Oren, June 13, your office, StateDept4462-65.

<sup>49</sup> Id.

<sup>50</sup> Email, Israel will reject int’l panel to study raid –ambassador, June 6, 2010, StateDept1405

<sup>51</sup>, StateDept4462-65.

<sup>52</sup> The Report & Findings of the Public Commission to Examine the Maritime Incident of 31 May 2010 (Part I), January 23, 2011, StateDept2664-2955.

<sup>53</sup> See StateDept4462-65.

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- Talking points drafted in preparation for a June 15, 2010 meeting between Israel Foreign Minister Lieberman and Ambassador Rice are partially redacted related to the U.S. policy on the Israeli investigation.<sup>54</sup> Preparatory materials show that FM Liberman would be travelling to New York to conduct briefings on the flotilla attack as well as address the “calls to review Israeli actions under international legal regimes—what Israel has termed a “lawfare” campaign.”<sup>55</sup>
  - In response to Israel’s concerns regarding the call for international investigations, the talking points document notes that the Swiss were seeking to convene a meeting of the High Contracting Parties of the Fourth Geneva Convention, in response to the Goldstone report’s recommendations.<sup>56</sup> The document notes that the U.S. has, “stood firmly against the counterproductive recommendation” to do so.<sup>57</sup> Further, it notes that the HRC resolution on the FFM called for its mandate to include investigating violations of international law.
  - The talking points for Ambassador Rice’s meeting with FM Liberman discussed the humanitarian situation in Gaza, noting that “it is important to show progress on addressing Gaza access,” and that the U.S. is working with Israel to expand access to Gaza. Further, the document notes that, “[w]henver there is a change in the status quo in the West Bank, Gaza, or Jerusalem, it reverberates in New York and often negatively affects the atmosphere.”<sup>58</sup>
- A June briefing noted that Turkel threatened to resign if the government refused to arm the panel with subpoena power, and State noted the Israeli government would be likely to “strengthen the panel to improve its reputation in the international community.”<sup>59</sup>
- While forwarding a July press article on the appointment of the two members to the Turkel Committee, a State official noted, “These were the names discussed and presented as a fait accompli a week ago. We need to pin down exactly what’s going on.”<sup>60</sup>
- While the Israeli investigation was underway, DRL’s Michael Posner participated in a call with an unnamed Israeli official. Notes from the call state that “the Israelis have put together a thorough report for the SYG on the status of their investigations and that

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<sup>54</sup> Mtg with Israeli Foreign Minister Avigdor Lieberman, Tuesday, June 15, 2:30pm, USUN, StateDept4478-84.

<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> DOS, Email: FW: Afternoon Brief 06/30/11 (SBU Version), June 30, 2010, StateDept4773-74.

<sup>60</sup> DOS, Email: FW: New Names on Turkel Committee – YNET, July 23, 2010, StateDept2566.

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changes to some of their military practices are being made.”<sup>61</sup> However, “[a]t the same time, it sounds like there continues to be an internal battle on how many changes to make and whether to make public some of their changes to operational orders for security reasons; Posner pressed hard during the conference call that the Israelis needed to make as good of a public defense as possible and that the overall operational changes were critical elements.”<sup>62</sup>

- The initial internal IDF review of the attack, the “Eiland Report” named after the Major General who chaired the Commission, was released within the Israeli government. Documents indicate the State Department might not have immediately received a copy of the report,<sup>63</sup> but do indicate significant monitoring of the Israeli statements on the report and its reception following release.<sup>64</sup>
- The U.S. continued to reiterate its support of the Turkel Commission report:
  - In June 2010, Egypt’s Minister of Foreign Affairs, Ahmed Aboul Gheit delivered a message to Secretary of State Clinton, noting that, “An International, independent, credible and transparent investigation as called for by the Human Rights Council remains, from our perspective, the only credible response for the International Community to the Israeli attack.”<sup>65</sup> Egypt dismissed the notion of an Israeli investigation with an international component as unable to meet the requirements for credibility and independence and supported the formation of an “Investigation Committee” by the UN Secretary General.

In response, Secretary Clinton repeats the public talking point of the administration, namely supporting an Israeli investigation, and stating that “We believe the proposed investigation can be conducted seriously and with credibility, as Israel’s military justice system meets international standards.”<sup>66</sup> However, Clinton did state that the U.S. will not “prejudge” the investigation and will only make conclusions at the completion of the investigation. This message is

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<sup>61</sup> DOS, Email: July 23 Weekly Update, July 26, 2010, StateDept4653-57.

<sup>62</sup> Id.

<sup>63</sup> Summary of Eiland Report, July 27, 2010, StateDept2465-77 (translation of press interview with Eiland).

<sup>64</sup> See, e.g., EILAND CTTEE: MISTAKES WERE MADE – YNET, July 12, 2010, StateDept3714-15; Email 1 of 2 on Eiland Report: MG Eiland Presents the chief of the General Staff with the Conclusions of his Examination Team, July 12, 2010, StateDept3716-18; IDF SPOKESPERSON ANNOUNCEMENT: Maj. Gen. (Res.) Eiland Presents the Chief of the General Staff with the Conclusions of his Examination Team, July 12, 2010, StateDpt3796-99.

<sup>65</sup> Id.

<sup>66</sup> *Reply from the Secretary to Ahmed Aboul Gheit, Minister of Foreign Affairs of the Arab Republic of Egypt*, StateDept314-15; StateDept316-17.

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conveyed with the note that “the Department does not plan to release the text of the Secretary’s message. There will be no signed original.”

- At Security Council Consultations on the Middle East in mid-September 2010, the U.S. reiterated its support for an Israeli investigation, noting that “Israel is capable of conducting a serious and credible investigation.”<sup>67</sup>
- A cable from the U.S. Embassy in Tel Aviv to various U.S. government recipients summarized the final Turkel report upon its release.<sup>68</sup> The summary of the report offers no guidance or commentary, but solely repeated the conclusions of the Israeli investigators, including the determination that “the IDF soldiers acted professionally and in a measured manner.”<sup>69</sup> Discussions surrounding the formal U.S. position on the Turkel Commission Report have been redacted, or their attachments withheld.<sup>70</sup>
- Although an email from December 20, 2010 indicated the Government of Israel informed the U.S. that, “further information regarding the circumstances of Mr. Dogan’s [death] would not be forthcoming until the Turkel commission has finished its overall inquiry into the incident.”<sup>71</sup> *The report included no information about how and under what circumstances Furkan was killed and no U.S. communications were released indicating the transfer of additional information following the report, nor attempts to gain that information. For more on the steps taken by the U.S. government to respond to Furkan’s death, see the related CCR production guide [here](#).*
- *Although in the months following the Gaza flotilla attack, the U.S. made repeated statements that the Government of Israel had the means to produce a credible and independent fact-finding report, the U.S. government later began referring to Palmer Commission of the UNSG as the primary investigation. No substantive review of the credibility of the Israeli report has been released.*

In contrast to the numerous communications, statements, and personal outreach by the Israelis evidenced in released FOIA records, the documents show relatively little attention paid to the Turkish investigation of the attack, in which all deaths occurred onboard the Turkish ship *Mavi*

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<sup>67</sup> Statement by Ambassador Brooke Anderson, U.S. alternate Representative for Special Political Affairs at Security Council Consultations on the Middle East, StateDept4528.

<sup>68</sup> Cable AE Tel Aviv to Secstate et al., 11 Tel Aviv 79, January 2011, StateDept534-38.

<sup>69</sup> Id.

<sup>70</sup> DOS, Emails: RE: For Clearance: Israel-Turkel Commission report, Jan. 24, 2011, StateDept2644-46, 3048-49, 3050-51, 3054, 3055-56, 3057, 3093, 3094-96, 3175-76, 3239-41; RE: For Clearance: Israel-Turkel Commission report, Jan. 24, 2011 1:18 PM; 1:27 PM StateDept03048-49; 1:27 PM 3054, 1:33 PM 3050-51; 1:45 PM StateDept03093-94; 1:52 PM, StateDept03057; 2:03 PM StateDept03055-56.

<sup>71</sup> DOS, Email: Subject: RE: Inquiry on Furkan Dogan/Possibly Rachel Corrie, Dec. 20, 2010, StateDept743-47.

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*Marmara*. Four months after the public release of the Turkish Inquiry report, a State Department official serving as a point person on flotilla issues, Sarah Johnston-Gardner of DRL, remarked that “I don’t think the USG has a copy of the Turkish [report], I’ve asked for it.”<sup>72</sup>

### U.S. officials concerned over the flotilla case’s potential referral to criminal tribunals

Amidst multiple debates in U.N. bodies, states, non-governmental organizations and individuals sought alternative means for seeking justice for the attacks. Accordingly, the U.S. studied and expressed concern over the potential for action from the International Criminal Court (ICC) or International Court of Justice (ICJ).

- Multiple emails circulated throughout State seeking analysis and guidance on claims that states were seeking action by the ICC or ICJ.
  - Deputy Chief of Mission Goldberger forwarded a news article titled “Turkey mulls legal action against Israel: report” to OLA officials, asking if they had seen anything “concrete” on the claim. In response, Attorney Adviser Dolan forwarded the email further in OLA, asking to “be alert to this ICC angle” and asking if others had seen more.<sup>73</sup>
  - A report of Malaysia’s plan to propose that the UN General Assembly request an advisory opinion from the ICJ was forwarded within State without comment.<sup>74</sup> Harold Koh sought information on whether the Malaysian effort was likely to proceed.<sup>75</sup>
- On October 14, after receiving a report that victims’ families were seeking ICC intervention, U.S. officials sought to learn “if there is any truth to the allegation that the ship was registered in Comoros.”<sup>76</sup> The concern over the flagging of the *Mavi Marmara* arose as the families of those killed in the attack were exploring using as their jurisdictional tie the fact that Comoros is a party to the Rome Statue (neither Turkey nor Israel are).<sup>77</sup> According to the ICC’s Rome Statute, an official writes, “there can be jurisdiction if the crimes occurred on a vessel where the state of registration is a Rome

<sup>72</sup> DOS, Email: RE: Turkel, Turkish investing? April 20, 2011, StateDept4826.

<sup>73</sup> DOS, Email: June 2, 2010, StateDept3014-16, 3121-23, 3060-62.

<sup>74</sup> DOS, Email: FW: Malaysia to propose an advisory opinion from the International Court of Justice on the flotilla incident, July 12, 2010, StateDept2569.

<sup>75</sup> DOS, Email: Malaysia ICJ/flotilla, July 12, 2010, StateDept4620.

<sup>76</sup> DOS, Email: RE: flotilla incident – Comoros-flagged vessel?, Oct. 14, 2010, StateDept3135-36, 3425-26; see also, Email: RE: Gaza Flotilla and the ICC, Oct. 15, 2010, StateDept4821; Email: RE: flotilla incident – Comoros-flagged vessel?, Oct. 16, 2010, StateDept4831.

<sup>77</sup> DOS, Email: RE: flotilla incident—Comoros-flagged vessel?, Oct. 16, 2010, StateDept3254-55; RE: Flotilla incident – Comoros-flagged vessel?, Oct. 14, 2010 6:38 PM, StateDept3421-24.

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Statute party.”<sup>78</sup> State Department officials confirmed that the vessel was indeed Comoros flagged.<sup>79</sup> Kevin Baumert, in turn, forwarded a clip of Article 94, duties of the flag State (7) of the UN Convention on the Law of the Sea<sup>80</sup>

- On October 15, an email was sent by the State’s Legal Adviser Harold Koh, “Turkey Flotilla ICC guidance.”<sup>81</sup> Koh noted that Deputy Secretary of State Jim Steinberg had called with a request for guidance, yet all other substantive text was redacted. Koh’s request was then forwarded as “URGENT.”<sup>82</sup> Guidance on the issue was drafted; the final document and substantive emails relating to the drafting have been redacted.<sup>83</sup> *Comment: on October 18 Steinberg met with Israeli Deputy Foreign Minister Ayalon for the U.S.-Israel Strategic Dialog, discussing a variety of issues. The State Department noted that, “The present discussions helped identify ways to improve our already strong cooperation in this regard for the benefit of all in the region.”*<sup>84</sup> *It is unclear what role, if any, the flotilla played in this dialog.*
- On October 19, Legal Adviser to the US Mission to the UN Geneva, Melanie Khanna sought any “memos or meeting outputs” related to the Turkish complaint with the ICC. Khanna notes that she and Amb. Donahoe had an upcoming meeting with the Israeli Ambassador, and was seeking information to prepare.<sup>85</sup> In response, Adviser Gorove noted that the Department drafted final press guidance for the issue; the attachment of that U.S. press guidance has been withheld from release.<sup>86</sup>
- In September 2011, State officials planned a conversation with Australian officials to discuss possible consequences of the recognition of Palestinian statehood at the UN, “including possible recourse to the ICJ against Israel.”<sup>87</sup> Deputy Legal Adviser Robert

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<sup>78</sup> DOS, Email: RE: flotilla incident – Comoros-flagged vessel?, Oct. 14, 2010, 5:03 PM, StateDept2649-51.

<sup>79</sup> DOS, Email: RE: flotilla incident – Comoros-flagged vessel?, Oct. 14, 2010 4:30PM, StateDept3011-13.

<sup>80</sup> RE: flotilla incident – Comoros-flagged vessel?, Oct. 14, 2010, 5:03 PM, StateDept2649-51; RE: Flotilla incident – Comoros-flagged vessel?, Oct. 14, 2010 6:38 PM, StateDept3421-24.

<sup>81</sup> DOS, Email: Turkey Flotilla ICC guidance, Oct. 15, 2010, StateDept03133-34; RE: urgent – flotilla – D question, Oct. 15, 2010, StateDept3232-33; RE: Clearance Request: IO Press Guidance on Turkish Complaint to ICC on Gaza Flotilla, Oct. 14, 2010, StateDept3137-39; FW: Clearance Request: IO Press Guidance on Turkish Complaint.

<sup>82</sup> DOS, Email: URGENT—SEE BELOW, Oct. 15, 2010, StateDept4865.

<sup>83</sup> DOS, Email: RE: Turkish complaint at ICC on Gaza Flotilla Guidance, Oct. 18, 2010, StateDept4845-47.

<sup>84</sup> State Department Office of the Spokesman, Joint Statement on the U.S.-Israel Strategic Dialogue, Oct. 18, 2010, available at <http://www.state.gov/r/pa/prs/ps/2010/10/149599.htm>.

<sup>85</sup> DOS, Email: Re: ap – Turks accuse Israel of war crimes at int’l court, Oct. 19, 2010, StateDept3189-90.

<sup>86</sup> Id.

<sup>87</sup> DOS, Email: RE: Meeting request – Palestinian statehood resolution (SEC=IN=CONFIDENCE), Sept. 6, 2011, StateDept4839-41.

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Harris asked whether the Australian officials were also interested in discussing Turkey's potential seeking of an ICJ proceeding on the flotilla attack.

**Following Israel's lead in diplomacy, the U.S. sought to "turn off" the HRC investigation, or at minimum shape the Mission's composition and scope**

Throughout the summer of 2010, as the HRC Fact-Finding Mission was staffed and conducted, the U.S. sought ways to limit its effect.

- Israel's Ambassador Yaar sent an email from his personal email address to Legal Adviser to the US Mission to the UN in Geneva, Melanie Khanna passing on Israel's press release on the launch of the FFM.<sup>88</sup>
- In June 2010, State Department was considering whether an investigation by "the Quartet," (made up of the UN, US, EU, and Russia) would be "feasible with the HRC [investigation]." <sup>89</sup>
- On June 7, Attorney Adviser Mariano Banos wrote to multiple State Department officials to update them on the developments related to the HRC investigation. According to Geneva, he writes, the timetable for an investigation would likely be delayed. "The President of the Council will not pick the members of the HRC mission for at least another week (And maybe until after the current President's term expires in a couple of weeks). Israel was hoping this would be the case."<sup>90</sup> This email also appears to indicate that an information memo was being prepared for Secretary Clinton on the issues; it is unclear if this memo has been released
- In July 2010, the HRC President gave advance notice to the U.S. of the members of the FFM. <sup>91</sup> Matthew Andris, of the IO Office of Human Rights asked the U.S. HRC staff in Geneva to: "Please approach Ambassador Yaar to find out if he has views on the currently proposed flotilla committee and whether he prefers that the U.S. engage or hang back on this? There was a push in the room to engage (if it's not too late) but we don't want to unknowingly step on Israel's toes."<sup>92</sup>

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<sup>88</sup> DOS, email: RE: Fwd: PRESS RELEASE – Gaza flotilla: International Independent Fact-finding Mission opens in Geneva StateDept2380.

<sup>89</sup> DOS, Email: RE: Is Quartet investig'n feasible with HRC investig'n?, June 3, 2010, StateDept3147-48, 3195-96, 3272-733193-94, 3145-46.

<sup>90</sup> DOS, Email: RE: HRC Gaza Flotilla Developments: Info Memo to S and Follow-Up Action, June 7, 2010, StateDept2647-48.

<sup>91</sup> DOS, Email: FYI: individuals to be named on Monday for the HRC Flotilla fact finding mission G, July 9, 2010, StateDept02487-88.

<sup>92</sup> DOS, Email: FW: Questions RE: Israel/Palestine Issues, July 21, 2010, StateDept2489-92.

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- An August 2010 cable to the Secretary of State, Human Rights Council Collective, National Security Council, US Mission to the UN-NY, US Embassy Ankara, Consul Jerusalem and Embassy Tel Aviv sought guidance on limiting the scope of the HRC FFM.
  - The cable noted that **the U.S. Mission has “explored ways to ‘turn off’ the flotilla fact finding mission”** and that “we very strongly favor having this fact finding mission (FFM) fall away.”<sup>93</sup> The Post sought guidance on “whether and how the United States should seek to shape the outcome.” Suggested considerations in making that decision are redacted.
  - According to an HRC official whose name is redacted, the OHCHR “had approached the UN in NY about the “complementarity” of the two flotilla investigations ... NY flatly ignored OHCHR’s queries.” The source stated that “NY wants nothing to do with Geneva process.”<sup>94</sup>
  - The U.S. representative in Geneva further suggested that “an approach that stresses abandonment of the HRC investigation as the only acceptable outcome to the U.S. will gain no traction, and only intensify the commitment of others to see the FFM move forward.” Therefore, **“engagement to shape the focus and outcomes appears the most effective way to potentially mitigate its impact.” (emphasis added)** Noting that the Mission’s mandate is to “investigate violations of international law,” the U.S. official expresses that “it will therefore be difficult for them not to orient their work towards alleged international law violations.” He or she recommends urging the UN FFM to not make any “assessments in regards to actual violations.”  
*Commentary: the goals the U.S. expressed here essentially seek the non-fulfillment of the HRC’s mandate and remove opportunity for accountability.*

**The U.S. Response to the HRC FFM Report focused on protecting Israel, rather than concern over Report’s conclusions, including the summary execution of U.S. teen Furkan Doğan**

In September 2010, the HRC FFM released its report on the attack on the Free Gaza Flotilla. The report found that the conduct of the IDF “was not only disproportionate to the occasion but demonstrated levels of totally unnecessary and incredible violence. It betrayed an unacceptable

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<sup>93</sup> Id.

<sup>94</sup> Id.

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level of brutality.”<sup>95</sup> It found that the American teenager Furkan Doğan was shot five times, including one shot in his face, at point blank range while lying injured.<sup>96</sup> As confirmed by the FFM, this violence occurred despite Israel’s duties as an occupying power to protect civilians.

The report was presented to the HRC. On September 29, 2010, the HRC passed resolution 15/1, which welcomed the report, “deeply regrets” the non-cooperation of Israel, endorses the conclusions of the report and “calls upon all parties to ensure their immediate implementation,” recommended the UN General Assembly consider the report, requested the UNHRC act on a conclusion and decided to follow up again in its next session.<sup>97</sup> The U.S. was the sole nation to vote to oppose the resolution, and fifteen states abstained.<sup>98</sup>

- A State Department briefer for the Secretary of State on the HRC session, from the heads of IO, DRL and Legal, includes a section on “top US priorities” which includes as a priority “(5) **Limitation of HRC action on Israel**”<sup>99</sup> (emphasis added)
- On September 20, 2010, Secretary Clinton received a formal communication from Turkish Foreign Minister Davutoglu, which provided an update on the Turkish report, and Turkish participation in the UN Panel of Inquiry.<sup>100</sup> The letter also requested the U.S. consider the inclusion of a reference to the flotilla in its statements to the UN General Assembly and express “the need for speed, impartiality, and transparency in the work” of the Panel.
- In late September 2010, just weeks before the report’s release talking points to be used for meetings with an unnamed Turkish official note that, “we remain opposed to the HRC flotilla fact-finding mission (FFM), which is mandated to investigate possible Israeli

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<sup>95</sup> UNITED NATIONS 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 29 (Sept. 27, 2010) para 264, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf) .

<sup>96</sup> Id. At Table - Deaths of flotilla participants.

<sup>97</sup> A/HRC/RES/15/1 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/05/PDF/G1016605.pdf?OpenElement>.

<sup>98</sup> Abstentions include Belgium, Cameroon, France, Hungary, Japan, Norway, Poland, Republic of Korea, Republic of Moldova, Slovakia, Spain, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zambia.

<sup>99</sup> DOS, Information Memo for the Secretary: UNHRC 15<sup>th</sup> Session Preview, Aug. 30, 2010, StateDept04649-52.

<sup>100</sup> DOS, State Letter to the Secretary, September 20, 2010, StateDept4107-09

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violations of international law related to the incident and oppose a renewal of its mandate in the September session.”<sup>101</sup>

- On September 22, 2010 State received outreach from the Israeli embassy regarding the HRC report, saying the report is “even worse than we thought—66 pages bashing us left, right, and center.”<sup>102</sup> The author notes that “Israelis expect the Turks to be very active in Geneva—not least because they know they don’t stand a chance in NY. They hope POTUS will tell [Turkish President] Gul to keep a low profile when they see each other tonight.”<sup>103</sup> Further, the Israel official noted that “Israel wants to keep the focus on the SYG panel” and planned calls to multiple high level U.S. officials that afternoon.<sup>104</sup>
- On September 22, 2010, State Department Attorney Adviser Katherine Gorove forwarded an advance copy of the HRC’s report to Dep. Legal Adviser Jonathan Schwartz and Assistant Legal Adviser for UN Affairs Todd Buchwald.<sup>105</sup> Gorove’s immediate response was, “It absolutely slams Israel, finding them to have committed grave violations of human rights law and international humanitarian law.” In response Schwartz writes, “which one is this? I’ve lost track, there are so many”
- September 23, 2010, drafts of the follow up resolution on the FFM begin to circulate. Matthew Andris, of the Bureau of International Organization Affairs, emailed a wide group of State Department and NSC officials in Washington, NY, and abroad that the draft resolution “is not as bad as we could have expected. But it does contain a **referral to UNGA and a follow-up mechanism.**”<sup>106</sup> (emphasis in original) **Similarly, in response to the addition of a follow up in March, one official notes the resolution is “getting worse.”** *Commentary: the U.S.’s apparent focus is on limiting opportunities for accountability for Israel’s human rights violations referenced in the FFM report. Here, a layer of further accountability in a follow up to the mission is, without question, considered “bad.”*
- A September 24, 2010 email forwarding the most recent resolution draft notes that the Israeli’s were “relieved that it’s not more inflammatory and that it doesn’t create a new

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<sup>101</sup> “The X Meeting with Turkish X, September 20-29<sup>th</sup> 2010 (NY/Geneva/Ankara)” Sept., 2010, StateDept01747-48.

<sup>102</sup> Department of State: Email: FYI: Turks on Geneva Issues (SBU), Sept. 23, 2010, StateDept4876-78.

<sup>103</sup> Id.

<sup>104</sup> Id.

<sup>105</sup> DOS, Email: RE: FYI – flotilla, Sept. 22, 2010 11:27 AM, StateDept2567; RE: FYI –flotilla, Sept. 22, 2010 11:31AM, StateDept2502.

<sup>106</sup> DOS, Email: FW: Draft FFM Resolution, Sept. 23, 2010, StateDept2495-96.

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follow up body... They've asked us to vote no and will approach London about voting no."<sup>107</sup>

- A USUN memo on the date of the report release, drafted for Amb. Rice notes that, **“Israel has asked for our help in keeping the HRC flotilla inquiry contained to Geneva and out of New York.”**<sup>108</sup> The memo characterizes the FFM report as, “blistering, including a strikingly harsh tone toward Israel.”<sup>109</sup>
- *Note: Documents directly relating to the view of the U.S. on the FFM, including a document titled, “Flotilla\_Intervention\_at\_HRC.docx” and an “update on Israel and the HRC” have been redacted or withheld.<sup>110</sup> Another document, providing U.S. opinion on potential talking points on the report has been significantly redacted, with the exception of a summary of the mission’s findings related to Furkan Doğan.<sup>111</sup> Other email chains similarly have all discussion redacted.<sup>112</sup> No opinions of the report’s findings on Furkan Doğan’s murder have been released.*
- A later Turkish resolution requesting follow up for the FFM’s report, with similar aims of the September resolution. Talking points released by State without a title or date note that “Turkey requests the support of the United States towards this resolution, or, should this not be viewed possible, abstention.”<sup>113</sup>
- Notes to prepare U.S. Ambassador to Turkey Ricciardone for a meeting with Turkish U/S Sinirlioglu note that the U.S. would not support the resolution, and that, “[t]he U.S. has consistently opposed HRC action on the flotilla issue” and reiterate that the S-G’s Palmer Commission is viewed by the U.S. “as the primary method for the international community to review this incident.”<sup>114</sup>

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<sup>107</sup> DOS, email: RE Revised flotilla res, Sept. 24, 2010, StateDept4842-44.

<sup>108</sup> Meeting with Israeli Foreign Minister Avigdor Lieberman, Wednesday, Sept. 29, 2010 4:00pm, Regency Hotel (Park & 61<sup>st</sup>), StateDept4510-14.

<sup>109</sup> Id.

<sup>110</sup> DOS, Email: Per your request: Update on Israel and the HRC, Sept. 27, 2010, StateDept2539.

<sup>111</sup> DOS, Email: RE: Press Guidance Clearance request: HRC FFM on Gaza Flotilla, Sept. 27, 2010, StateDept2594-2600.

<sup>112</sup> DOS, Email: RE: FFM Report Readout, Sept. 22, 2010, StateDept2589-91.

<sup>113</sup> DOS, Document: Talking Point of Unknown Origin, StateDept4110

<sup>114</sup> Ambassador Ricciardone Talking Points for U/S Sinirlioglu, Mar. 2011, StateDept1705-06.

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### **The U.S. backed international review of the flotilla attack, the Palmer Panel of Inquiry, had a limited mandate and conducted no independent investigation**

The Palmer Commission, more formally known as the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, was formed by the UN Secretary General on August 2, 2010 after months of negotiations. The Commission's main method of operation was to review the findings of the investigations undertaken by Israel and Turkey, as well as statements received from each; the Commission itself completed no fact-finding. The panel's mandate did not allow it to make binding findings of law or fact.<sup>115</sup> Despite this limited scope, which relied on a diplomatic, rather than investigative process, the U.S. supported the Commission as the primary method of reviewing the attack.

- Although the Panel was not publically announced until months later, as early as June 3, 2010, State Department officials were reviewing Terms of Reference for the Panel.<sup>116</sup> Multiple drafts of the Panel's terms of reference and method of work, some with markings and (redacted) edits, were released by the State Department.<sup>117</sup>
- On July 20, 2010, the Alternate Representative to for Special Political Affairs, Brooke Anderson, noted in an email to Daniel Shapiro, then Senior Director for the Middle East and North Africa for the National Security Council,<sup>118</sup> that new draft Terms of Reference and Method of Work had been provided by the UN to the Israelis.<sup>119</sup> The new text included a number of additions "reflecting conversations that the UN had with Turkey."<sup>120</sup> Anderson requested Shapiro advise her as Anderson would be talking with the Israeli Deputy Permanent Representative to the UN, who would "share with me the reaction from Jerusalem."<sup>121</sup>
- On August 2, 2010, Amb. Rice issued a statement on the formation of the Secretary General's Panel, stating that, "The focus of the Panel is appropriately on the future and on preventing such incidents from recurring" and that this "Review" obviates the need for

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<sup>115</sup> Summary of the Palmer report on the May 31, 2010 Flotilla incident, StateDept3173-74.

<sup>116</sup> RE: TOR for UN Investigation, June 3, 2010, StateDept4612.

<sup>117</sup> Method of Work of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, drafts of unknown date, StateDept4578, 4615, 4620; Terms of Reference of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, drafts of unknown date, 4579, 4613-14, 4616-17, 4618-19.

<sup>118</sup> Note, Shapiro is now the Ambassador of the United States to Israel.

<sup>119</sup> UN panel update. UN has given revised documents to Israelis, July 20, 2010, StateDept4595-96.

<sup>120</sup> Id.

<sup>121</sup> Id.

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any seemingly overlapping international inquiries.<sup>122</sup> *Commentary: the notion that the HRC FFM and the Palmer Commission overlap is flawed, as the Palmer Commission has a limited mandate which prevented it from completing direct fact finding, and was subject to diplomatic negotiations regarding its conclusions.*

- Shortly following the announcement of the panel, reporting indicates that the U.S. was supportive, “we welcomed UNSYG Ban’s establishment of—and Israel and Turkey’s participation in—a panel to receive and review the Israeli and Turkish investigations of the May 31 flotilla incident.”<sup>123</sup> Talking points provided to President Obama in preparation for a call with Turkish PM Erdogan, include “I was pleased that the UN established a panel to investigate the Gaza flotilla tragedy.”<sup>124</sup>
- Despite initial statements on the need for an Israeli investigation, press guidance notes that the Palmer Commission was soon considered “the primary method for the international community to review the incident.”<sup>125</sup> This phrase is echoed in multiple sets of talking points and in press briefings.<sup>126</sup>
- State Department officials deflected concerns over the U.S. response to the FFM by referencing the Palmer inquiry.<sup>127</sup> In its explanation of the vote in opposition to the HRC follow up resolution, Amb. Donahoe reiterated the U.S.’s talking points expressing concern for the situation in Gaza, and citing the Palmer Commission report as “the primary method for the international community to review the incident”<sup>128</sup>
- One cable from the U.S. Embassy Tel Aviv to Washington notes that an unnamed source believes “A Palmer Commission report that implicates both Israel and Turkey in the flotilla incident would [redacted] pave the way to rapprochement.”<sup>129</sup>

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<sup>122</sup> Department of State, Email: RE: For Clearance: Israel-Turkel Commission Report, January 24, 2011, StateDept03095-96 (forwarding text of the statement).

<sup>123</sup> Talking Points, The X Meeting with Turkish X, September 20-29, 2010, StateDept2376-77

<sup>124</sup> DOS, Email: RE: Potus Call to Erdogan, Aug. 5, 2010, StateDept1981-82.

<sup>125</sup> DOS, Email: Subject: Gaza Flotilla Guidance – as cleared, Jan. 23, 2011, StateDept1745-46.

<sup>126</sup> See Ambassador Ricciardone Talking Points for U/S Sinirlioglu, March 2011, StateDept1705-06; Statement, Remarks by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, At an Open Security Council Debate On the Middle East, Oct. 18, 2010, StateDept4470-71; Mtg with Israeli Foreign Minister Avigdor Lieberman, StateDept4510-14.

<sup>127</sup> Talking Points for Ambassador Brooke D. Anderson, U.S. Alternate representative for Special Political Affairs, at Security council Consultations on the Middle East, September 17, 2010, StateDept4515-18.

<sup>128</sup> Statement by the Delegation of the United States of America, Follow-up to the Report of the Independent International Fact-Finding Mission on the Incident of the Humanitarian Flotilla Resolution, Mar. 25, 2011, <http://geneva.usmission.gov/2011/03/25/flotilla-incident/>.

<sup>129</sup> DOS, Email: FW: Balanced Palmer Report Might Help Close Flotilla Rift, [redacted] (Forward of 11 Tel Aviv 495), Apr. 17, 2011, StateDept2082-84.

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- A September 27, 2010 memorandum for Amb. Rice noted that “[w]e understand Turkey is not satiated by the SYG panel and continues to demand compensation and an apology from Israel.”<sup>130</sup>
- A draft version of the Panel’s progress report to be submitted to the Secretary General shows that significant information was cut from the final progress report, relating to the initial meetings held by the Panel.<sup>131</sup> For example, the draft version includes descriptions and statements on the flotilla attack offered by Oscar Fernandez-Taranco, Assistant Secretary-General for Political Affairs, President of the Security Council, the UN Special Coordinator for the Middle East Peace Process, Robert Serry, and the Secretary-General. The draft progress report, unlike the final, also contained a description of the relationship between Israel and Turkey, as the relationship “make up an important part of the context in which the Panel’s work takes place.”<sup>132</sup>
- As both the draft and final version of the Palmer Panel’s progress report note bluntly, “It needs to be appreciated that the Panel’s method is the diplomatic method of obtaining information – not the adversarial method, or the inquisitorial method or independent fact-finding of the type that other United Nations panels have carried out.”<sup>133</sup>
- According to a memorandum from Acting Legal Adviser to the USUN Mark Simonoff, Turkey “attempted to build support for a Security Council press statement on the interim report of the SYG panel of inquiry...but after U.S. efforts demurred.”<sup>134</sup> Another document confirms that the U.S. “persuaded Turkey not to propose a Security Council press statement.”<sup>135</sup>

### **Even in UNGA Oceans Resolution and International Maritime Organization Council meetings, U.S. exerts pressure to limit discussion of the flotilla**

- In June 2010, the UN’s International Maritime Organization (IMO) released a statement on the flotilla attack. An email, with a redacted attachment, notes “attachment is a draft

<sup>130</sup> Mtg with Israeli Foreign Minister Avigdor Lieberman, StateDept4510-14.

<sup>131</sup> Compare Progress Report to the Secretary-General, Secretary General’s Panel of Inquiry t, Sept. 2010, StateDept4489-4506 to StateDept4520-4526.

<sup>132</sup> StateDept4489-4506.

<sup>133</sup> Compare StateDept4489-4506 to StateDept4520-4526.

<sup>134</sup> Memorandum, Sixth Committee: Administration of Justice, September 30, 2010, StateDept4508-09

<sup>135</sup> Mtg with Israeli Foreign Minister Avigdor Lieberman, StateDept4510-14.

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IMO press release negotiated tonight with the Turks by the Secretary-General and the Chair.”<sup>136</sup>

- The issue in dispute among parties in the IMO is redacted. But as of June 11, 2010 a State Department official writes that the “deal described below held together in its entirety” and “**The Israeli Embassy and Del expressed profuse thanks for USDEL assistance.**”<sup>137</sup> Language related to the “deal” is redacted, however it appears that the document does release agreed upon draft language.
- Turkey introduced language for the annual Law of the Sea resolution in the UN General Assembly, which according to the U.S., “covers a vast range of oceans issues” yet had not addressed “country-specific” issues except for piracy.<sup>138</sup> The proposed paragraph included an expression of “deep regrets for the loss of life and injuries” resulting from the attack, and “condemns those acts which resulted in the loss of 9 civilians.”<sup>139</sup> The U.S. responded by lobbying Turkey to withdraw the language. Acting Legal Adviser to the USUN Simonoff noted that Turkey was interested in whether the U.S. would consider **any** reference to the flotilla incident, and Simonoff responded “no.”<sup>140</sup> Simonoff also reported that the EU and Australia were planning to oppose the language, and that Simonoff was “coordinating with my Israeli counterpart.”<sup>141</sup> Although not substantive, one example of coordination is noted in emails, “Israel has asked that, when you make the flotilla intervention, you state that Israel cannot be present and cannot speak because of the religious holiday. Our front office has OK’d your doing this. So please do that.”<sup>142</sup>
- In November consultations, Simonoff “consulted separately with Turkey and Israel throughout the negotiations,” and reported that, “[e]veryone seemed eager to avoid an open confrontation on the issue.”<sup>143</sup> The language was eventually removed from the text of the resolution, “because there was no consensus on this flotilla paragraph.”<sup>144</sup>

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<sup>136</sup> IMO Council—Draft Press Release on Israel-Turkey Incident, June 10, 2010, StateDept2659-61. June 10, 3418-20

<sup>137</sup> Department of State, Email: RE: IMO Council—Probable Solution for Israel-Turkey Dispute, StateDept03244-47

<sup>138</sup> Memorandum, Sixth Committee: Administration of Justice, September 30, 2010, StateDept4508-09

<sup>139</sup> Id.

<sup>140</sup> Id.; see also, Re: tomorrow’s LOS session, Sept. 29, 2010, StateDept4590-94.

<sup>141</sup> Id.

<sup>142</sup> Re: Israel (update), Sept. 30, 2010, StateDept4583-84; see also, Re: Please advise—Re: LOS mtg today, Sept. 29, 2010, StateDept4585-89.

<sup>143</sup> Re: Weekly Report: Legal Section, November 13 2010, StateDept4535-36.

<sup>144</sup> Id.