

# THE MAVI MARMARA CASE

LEGAL ACTIONS TAKEN AGAINST

THE ISRAELI ATTACK ON THE GAZA

FREEDOM FLOTILLA ON 31.05.2010



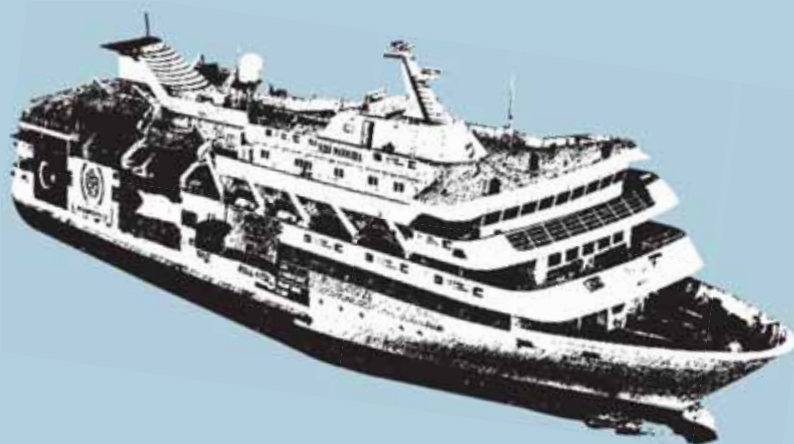
IHH HUMANITARIAN RELIEF FOUNDATION  
COMMISSION ON HUMAN RIGHTS AND LAW

DECEMBER 10, 2012



**İNİNSAN** THE FOUNDATION FOR  
**YARDIM VAKFI** HUMAN RIGHTS AND  
FREEDOMS AND  
HUMANITARIAN RELIEF





*The Mavi Marmara vessel was carrying FREEDOM and HUMANITARIAN AID to Gaza.*

*We wholeheartedly believe that the Mavi Marmara lawsuits will bring RIGHTS and JUSTICE to the world...*

**IHH HUMANITARIAN RELIEF FOUNDATION  
COMMISSION ON HUMAN RIGHTS AND LAW**





## INTRODUCTION

The Gaza Freedom Flotilla, comprising the ships Mavi Marmara, Sfondoni, Challenger I, Eleftheri Mesogios, Gazze I and Defne-Y and carrying only humanitarian volunteers and humanitarian aid, which set sail to bring essential humanitarian supplies to Gaza, faced an armed attack and unlawful intervention from the Israeli military forces on 31<sup>st</sup> May 2010. An actual armed attack was launched against the foregoing ships. Nine humanitarian aid volunteers lost their lives during the attack and in the aftermath, while 156 volunteers were wounded, with 52 of them seriously. The Flotilla participants were imprisoned without any legal grounds, the wounded activists were handcuffed, a number of wounded activists were held in solitary confinement cells for days and subjected to torture and ill-treatment. Additionally, many tortuous acts were committed, such as confiscating the personal belongings of the Flotilla participants and damaging the vessels.

Various attempts through natural and legal persons have been made to put both national and international relevant legal authorities into action following the event. In this context, several investigations at the UN Human Rights Council and lawsuits with the International Criminal Court and countries exercising universal jurisdiction including Turkey (Belgium, Spain, Italy and South Africa) were initiated.

This report provides summary information relevant to the legal struggle against the armed attack conducted by the Israeli military forces on the Gaza Freedom Flotilla, an aid organization representing the common conscience of humanity.

## MAVI MARMARA CRIMINAL CASE CARRIED OUT IN TURKEY

<b>TRIAL COURT:</b>	T.R. Istanbul 7 <sup>th</sup> High Criminal Court- Docket number 2012/264
<b>PLAINTIFF:</b>	On behalf of the people
<b>DEFENDANT:</b>	1- Former Israeli Chief of Staff Lieutenant General Gavriel Ashkenazi 2- Naval Forces Commander Vice Admiral Eliezer Marom 3- Air Forces Intelligence Director Brigadier General Avishai Levi 4- Head of the IDF Military Intelligence Directorate Major General Amos Yadlin
<b>COMPLAINANT/VICTIM:</b>	Relatives of the martyrs, flotilla passengers from 37 countries and other aggrieved parties
<b>CRIMES:</b>	Willful killing, attempt of willful killing, intentionally causing serious injury to body or health, plundering, hijacking or seizing maritime vessels, intentionally causing damage to property, restriction of freedom of expression and instigating violent crime

### Initiation of the Investigation by the Istanbul Public Prosecutor's Office in Turkey



Immediately after the incident, criminal complaints concerning the investigation of crimes committed during the attack by the Israeli armed forces on 31.05.2010 and the demands relevant to the punishment of the perpetrators were filed with the Istanbul Public Prosecutor's Office and public prosecutors of different cities where the relatives of victims reside. Preparations for the file, investigation of which was conducted through the Attorney General's office, continued following the transfer of all victims to the Institute of Forensic Medicine subsequent to the landing of the Turkish planes bringing Flotilla passengers from Israel to Istanbul Atatürk Airport. The first physical examination of the victims was carried out by the Institute of Forensic Medicine. Seriously wounded flotilla participants were transferred to hospitals for treatment. Meanwhile,

medical diagnosis and autopsy of the martyrs were carried out in the morgue of Forensic Medicine. Statements were taken from almost every victim. The Forensic Medicine Reports of the martyred, wounded and other flotilla victims were received within the framework of "Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". A detailed examination in the presence of the public prosecutor's office primarily was carried out by the public prosecutor and the crime scene investigation teams who boarded the vessels upon the arrival of Mavi Marmara Defne Y and Gazze I in Turkey. Despite all the spoliation of evidence by Israeli authorities, several new pieces of evidence were obtained in the investigations conducted on the ships and the prepared investigation report was included in the investigation file. All videos and photos that were secretly saved from confiscation by Israel immediately after the assault as well as those that could be broadcasted live were also included in the investigation file. In addition, all information covering the period from the stage of decision until the Gaza Freedom Flotilla's start of journey were submitted to the prosecution office by all Freedom Flotilla organizers, including IHH Humanitarian Relief Foundation. An investigation vis-à-vis suspects was initiated subsequent to inclusion of all the information and documents obtained by the prosecution office.

## Completion of the Investigation of the Four Defendants and Preparation of the Indictment

Following the foregoing processes, the indictment was prepared on May 29, 2012 and it was requested to charge the perpetrators of the attack on the Mavi Marmara for the crimes of willful killing, attempt of willful killing, intentionally causing serious injury to body or health, plundering, hijacking or seizing maritime, railway or air vehicles, intentionally causing damage to property, restriction of freedom of expression and instigating violent crime and punish them with imprisonment of thousands of years for each victim separately.

## Filing of the Case

A case was filed at the Istanbul 7<sup>th</sup> High Criminal Court (Docket number 2012/264) against four senior ranking Israeli commanders on the grounds that first and above all they were well known people and because there was strong evidence they had “by personally ordered the operation which instigated these crimes”. Accordingly, Former Israeli Chief of General Staff Gavriel Ashkenazi, Naval Forces Commander Eliezer Marom, Air Forces Intelligence Director Avishai Levi and Head of the IDF Military Intelligence Directorate Amos Yadlin are tried as fugitive defendants in this case.

**Investigation concerning other responsible military or civilian persons continues and these responsible shall be included in the trial subsequent to completion of the procedures.**

IHH Humanitarian Relief Foundation and attorneys of the Mavi Marmara case continue to receive notification letters containing information about other Israeli commanders and soldiers who have participated in the Flotilla assault. Acquired facts are also shared with the Investigating Prosecutor being subject to review and included in the case file. The Israeli military forces carried out the attack on the Mavi Marmara and other vessels of the Gaza Freedom Flotilla approximately 72 miles from the coast of Israel on the high seas. According to Article 51 of the Charter of the United Nations, countries have the right of self-defense if an armed attack occurs against them, or can prove they are faced with an imminent threat. The International Court of Justice especially requires the condition of an armed attack in its decisions for the right of self-defence to be exercised. Ignoring the proportionality principle, the basic rule of the right to self-defense in cited case -it was decisively specified in international reports that the complainant victims on board did not have any weapons- clearly reveals that no legal grounds existed for invoking the right to anticipatory self-defense. In total, 39 bullets were taken out of 9 humanitarian aid volunteers who were killed on board the ship. Two humanitarian aid volunteers

## The defendants



*Gavriel Ashkenazi*



*Eliezer Marom*



*Amos Yadlin*



*Avishai Levi*

# İSTANBUL ADALET SARAYI



had already been killed by open fire from the aircraft before the soldiers landed on the ship. For instance, 19-years-old USA citizen Furkan Doğan was shot at first when he was filming with his little video camera in the middle of the upper deck. Furkan Dogan received in total five bullet wounds, to the face, head, back thorax, left leg and foot. Except for the gunshot wounds on his

face Furkan received all his wounds on the back of his body. According to the autopsy report, tattooing around the wound on his face indicates that he was shot at point blank range. Furthermore, the trajectory of the bullet, fired from the bottom to top together with the exit point indicate that Furkan was shot while he was lying on his back on the ground. Thus, while lying indefensible on the ground, injured and waiting for help, Furkan was brutally killed by a bullet shot from point blank range on purpose.

The autopsy reports reveal that İbrahim Bilgen was at first injured by a gunshot from the aircraft and died from a gunshot to his head from close range while he was lying injured on the floor. According to the pathology report, press member Cevdet Kılıçlar was killed by a single distant shot to the middle of the forehead while taking photographs of the Israeli commandos. All reports and evidence related to the aforesaid deaths refute the self-defense arguments of the Israeli forces, and reveal the unlawfulness of the act.





### The ships in the flotilla\*

Name	Flag State	No. of passengers with nationalities	No. of Crew with nationalities	Total	Type	Organizer	Owner
<b>Mavi Marmara</b>	Comoros	546 (353 Turkish nationals and 193 others) Fifteen passengers from Challenger II joined later. Algeria, Australia, Bahrain, Belgium, Bosnia and Herzegovina, Canada, Egypt, France, Germany, Kosovo <sup>a</sup> , Kuwait, Indonesia, Ireland, Israel, Jordan, Lebanon, FYR Macedonia, Malaysia, Mauritania, Morocco, New Zealand, Oman, Palestine, Pakistan, South Africa, Spain, Sweden, Syria, Turkey, United Kingdom, United States, Yemen.	29; Turkey	575 (589)	Passenger ship	IHH	IHH
<b>Defne Y</b>	Kiribati	7; Turkey	13; Turkey, Azerbaijan	20	Cargo ship	IHH	IHH
<b>Gazze I</b>	Turkey	13; Turkey	5; Turkey	18	Cargo ship	IHH	IHH
<b>Eleftheri Mesogios or Sofia</b>	Greece	Greece, Sweden	Greece	30	Cargo ship	Ship to Gaza (Greece), Ship to Gaza (Sweden)	Eleftheri Mesogios Marine Company
<b>Sfendoni or Boat 8000</b>	Togo	Bulgaria, Czech Republic, Greece, Sweden, United Kingdom, USA	Greece	43	Passenger ship	Ship to Gaza (Greece), Ship to Gaza (Sweden)	Sfendonh SA
<b>Challenger I</b>	USA	13; Belgium, Germany, Netherlands, Poland, United Kingdom, USA	4 <sup>b</sup> ; Ireland, United Kingdom	17	Passenger ship	Free Gaza Movement	Free Gaza Movement
<b>Challenger II</b>	USA	19; Australia, Canada, Germany, Greece, Ireland, Malaysia, Norway, Serbia, United Kingdom, USA	1; USA	20	Passenger ship <sup>c</sup>	Free Gaza Movement	Free Gaza Movement
<b>Rachel Corrie</b>	Cambodia	8; Ireland; Malaysia	11 <sup>d</sup> ; United Kingdom, Philippines, Cuba	19	Cargo ship	Free Gaza Movement	Free Gaza Movement

\*The table is taken from the report by the International Fact Finding Commission, which was dispatched by the UN Human Rights Council to investigate the assault by Israeli forces on the "Gaza Freedom Flotilla" bound for Gaza on 31 May 2010. The report in English can be seen 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). 27.09.2010 (English) and for Turkish report please go to <http://www.freedomflotilla-facts.com/tr/rapor>.

<sup>a</sup> Self-identified nationality

<sup>b</sup> Including crew. Some of the crew were also committed activists.

<sup>c</sup> Due to breakdown, passengers transferred to Mavi Mamara.

<sup>d</sup> Two Irish passengers are listed in the official manifest as crew members.





## Legislation in Turkey on Which the Trial is Based

In accordance with the principle of territoriality of the Turkish Criminal Code No. 5237, (application in terms of location/TCC Art.8) Turkey has the right to try every crime committed in Turkey. In the event of an attack against a Turkish ship or aircraft takes place in international waters or airspace it is treated as an attack in Turkey. Accordingly, since the Mavi Marmara attack took place in international waters and against a Turkish ship, it is treated as an attack that took place in Turkey, and there is the obligation of a trial by Turkish criminal courts. The trial of Israeli

military personnel by Turkish Criminal Courts is for this reason an obligation according to Turkish legislation. Moreover, the Chief Public Prosecutor's office should initiate an investigation *ex proprio motu* without the need for any application from the victims.

In addition, the Turkish laws are also applied in case of commitment of offences listed under Article 13 of the Turkish Criminal Code Nr. 5237, by the citizens or foreigners in a foreign country. One of the offences listed in the aforesaid article is clause (c) "Torture" and another is clause (i) reading "confiscation or hijacking of aircraft, vehicles or vessels." Within this scope, the event in question took place in the form of the confiscation and hijacking of a Turkish vessel by the Israeli State on high seas. Additionally, because inhumane treatment and torture was applied to defenseless people, it is subject to the provisions of the Turkish law as a result of the application of the "universal jurisdiction principle". According to this principle, foreign citizens within the vessel may also be included in the case filed in Turkey, even if they are not able to file a criminal complaint regarding the event in their own countries.





## Right to Defend and Establishment of a Fair Trial for All Parties

In the criminal case at Istanbul 7<sup>th</sup> High Criminal Court, first of all the necessary diplomatic process was started in order to inform the Israeli commanders at a formal level by sending indictments via the International Law and Foreign Relations Directorate of the Ministry of Justice. At the end of the hearings on the 6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> of November 2012 a procedural decision was taken by the Court, ordering finalization of this notification process and requiring the Israeli commanders to attend the hearings of the trial in Istanbul on February 21, 2013. According to the statements appearing in the media the State authorities of Israel do not recognize the trial ongoing in Turkey and they are trying to divert the case to political grounds by their statements for that purpose. In addition, considering the statements made by Israel on the issue, it is understood that these commanders will not attend the hearings. However, at this stage the Court has not found the media reports alone to be sufficient in determining the defendants as “fugitives” inasmuch as the process of sending notifications to commanders has not yet been completed and an official written statement

to this effect from the State of Israel has not been received. Consequently, notification to the State of Israel will be ensured firstly and the Court will wait for a reasonable period of time to receive the official answers from the defendants themselves or the State of Israel relating to the case. The court, following this process, shall adjudicate the application of determining the defendants as “fugitives” as per the Code of Criminal Procedure (CCP) Article 247 should the same not attend the hearings or if an official reply is not received.





The defendants did not attend the hearings carried out on November 6, 2012, or the following days. However, the defense lawyers assigned by the Istanbul Bar Association attended in lieu. Maximum attention has been paid to ensure the rights of the defendants and the realization of a fair trial. In addition, the provisions of CCP Article 193/1 state: "The main hearing shall not be conducted about the accused who fails to appear; the legal exceptions are reserved. If the accused fails to establish sufficient grounds for his absence, he shall be ordered to appear by subpoena." The court - disregarding the news in the Israeli media concerning the defendants - is waiting to determine that the defendants will not attend the hearings by receipt of an official letter or by waiting

for a reasonable time after the notifications. Then it is expected that the decisions of the court will be in the form of "bringing by force" and "arresting" to ensure the presence of defendants before the court. Moreover, in accordance with the provisions of CCP Article 206/1 which state: "After the accused has been interrogated, presentation of evidence shall start. However, the absence of the accused shall not bar the presentation of evidence, if he had been notified and did not come without an excuse. The accused who appears later, shall be informed about the presented evidence." There is no impediment regarding the continuation of the trial and carrying out of the hearings. Because the Turkish and foreign complainants/victims participating in the hearings have seen and experienced all of these events during the attack, they are the witnesses of human rights violations and the crimes subject of this case. Although the video cameras, cameras of the victims and the recording devices on the ship have been seized by Israeli soldiers, it is extremely important for the realization of a fair trial that the statements of those who have made these records are received immediately while they are still alive, and that all the evidence of the event is collected with all the details thereof and brought before the legal authorities.





## Hearing of the Complainant Victims by the Court

A total of 39 foreign victims from the United States, Bahrain, Belgium, Algeria, Indonesia, South Africa, the Netherlands, the United Kingdom, Spain, Sweden, Italy, Canada, Qatar, Kuwait, Lebanon, Macedonia, Pakistan, Jordan, Yemen, Syria and Greece and 34 Turkish victims were heard in the hearings on November 6, 7 and 9, 2012. Each and every foreign participant, through their statements has made clear that the importance of this trial will cross the borders of the Republic of Turkey and the same is incident to the “principle of universal jurisdiction” of the TCC. Additionally, 34 Turkish victims of the attack and the martyrs’ relatives were also heard during the trial. The dimensions of the violence suffered and the continuity of its impact was more clearly understood as the victims gave their individual statements. During the witness hearings, the flotilla participants and the audience once again recalled the events and the spectators in the hall felt the fear, anxiety and concern of those days. However, the biggest loss undoubtedly belonged to the relatives of the nine humanitarian aid volunteers killed in

the attack. Israeli soldiers killed the children, spouses and brothers of these people in the attack. As such, their statements are of great importance for this case. Refika Yıldırım, one of the plaintiffs and the widow of Necdet Yıldırım said, “He was my and our little daughter’s only haven. My daughter shows her love for her father by taking stones from his grave.” While Refika was testifying in tears “Israel has taken such a valuable thing from us that I want them to be executed”, her cry was truly representing all the orphans of Gaza, and everyone in the courtroom was brought to tears. Very special





moments were experienced when Ahmet Doğan spoke about his son Furkan Doğan; Derya Kılıçlar read her husband Cevdet Kılıçlar's poem written in his diary just before the journey;

### Examples of Similar Cases

Some parties have asserted that it is impossible for the case to “be influential in the international arena” or that the case “can not be filed against the Israeli authorities” with the aim of showing the trial as a formality case without a legal basis. Jurisdiction of Turkish courts against illegal actions committed on high seas dates back to the early years of the republic. The trial concerning the vessel collision between the French-flagged ship Lotus and the Turkish-flagged ship Bozkurt causing the death of some of the mariners of the Turkish ship was heard in Turkish courts and the



Fahri Yıldız's mother talked about her son's journey for orphans in Gaza because he also lost his father at the age of eight; and Saniye Bengi, wife of Ali Haydar Bengi, showed great efforts keeping her head up just like her husband.

Flotilla participants who came from all four corners of the world to Çağlayan Court-house where the Mavi Marmara case was held have highlighted the fact that they are supporting this case with a sense of responsibility they feel for those killed on the Mavi Marmara, for Uğur Süleyman Söylemez who has been in coma since the attack and the people of Palestine. They have stated the importance of this trial for the establishment of justice and therefore their gratitude to the judicial authorities of the Republic of Turkey for this.

French captain's conviction was decided. This example indisputably reveals the fact that Turkish courts have jurisdiction in the crimes committed against vessels that are within the sovereignty of Turkey, regardless of the nationality of the perpetrators of such a crime.

Given the applications of other countries one can see that foreign government officials are judged in similar legal violations. Another remarkable example is a case heard in the USA in 1988 against Manuel Antonio Noriega Moreno, the President of the State of Panama where the same had been accused of drug trafficking, racketeering and money laundering, and was prosecuted. Moreno was arrested in Panama after an operation and brought to the USA.

Similar cases were filed for crimes against senior Israeli officials also in other countries. In Belgium, subsequent to the adoption of a law allowing non-residents to file lawsuits against foreign officials concerning “crimes against humanity”, 23 survivors of the massacre at Sabra and Shatila during Israel's invasion of Lebanon in 1982 sued Israeli Prime Minister Ariel Sharon in Belgium due to his responsibility for the massacre and the case had led to a crisis between Israel and Belgium. More examples in the international field can be given in this regard.



## Developments expected to occur in the near future

As a subsequent process, the Istanbul 7<sup>th</sup> High Criminal Court is expected to issue arrest warrants for the suspects. These warrants will be binding for Israel as per the provisions of the international "Extradition" agreement because both Turkey and Israel are parties to the "European Convention on Extradition (No. 24)". In this context, when Turkey issues capture warrants for these suspects or convicts them, Israel has the obligation to extradite them to Turkey in accordance with the convention.

In addition to this, the Istanbul 7<sup>th</sup> High Criminal Court will be able to ask the Turkish unit of the International Criminal Police Organization (INTERPOL) General-Secretariat to issue red notices for these suspects for the implementation of its arrest warrants or convictions. In this case, Israel will have to extradite the perpetrators.

Although these steps have not yet been taken, in case the indicted Israeli commanders

leave Israel and go to another country, it will be possible to make an application at the prosecutor's offices of that country to make their arrest and extradition to Turkey possible.



The next hearing date of the case will be on 21.02.2013, 09.30 a.m.

## COMPENSATION CASES CURRENTLY FILED OR TO BE FILED IN TURKEY

The unjust and illegal attack of the Israeli armed forces on the Gaza Freedom Flotilla, committed on 31.05.2010, has led to the violation of both fundamental and civil rights of the victims. Demanding compensation for emotional and material damage is a right that should be requested in person by those who have suffered the losses in the legal sense. The relatives of the deceased, injured humanitarian aid volunteers and all other participants have the right to file compensation lawsuits for all material and immaterial damages and losses against Israeli authorities.

The issue of the compensation cases against Israel is technically an independent process from the Mavi Marmara Criminal Case against the four commanders. All the crimes committed by Israeli soldiers during the attack can also be defined as tortuous acts

committed against the victims in terms of private law. So, in accordance with Article 49 of the Turkish Code of Obligations numbered 6098, which says: "A person who gives harm to another person in a faulty and illegitimate way is obliged to compensate for the harm," all Israeli authorities and military personnel who gave orders for the attack, administered or took part in it have criminal liability for all the illegalities and human rights violations, and as a legal entity the State of Israel has a responsibility to pay compensation to the victims. The state of Israel is at this point liable for all actions of its personnel.

For these reasons, each of the victims of the Mavi Marmara attack will file compensation cases through the Turkish courts due to damages they suffered through seizure of their personal belongings, labor loss caused by physical injury, loss of support from their relatives who were killed in the attack and emotional damage caused by insults and maltreatment. The amount of each compensation payment will depend on the degree each victim was emotionally and financially affected. The total amount of compensation demanded from Israel in 40 cases filed at Istanbul, Diyarbakır and Kayseri is initially 15,000,000 Turkish Liras. It will be possible to collect this compensation at the end of the trials over the real property owned by Israel in Turkey or through a progress billing which is or will be a result of a mutual agreement with Turkey.

The emotional and material compensation claims started to be filed by approximately 40 victims, as of October 2012, and will continue to be filed by others in each city of Turkey where the Flotilla participants reside, and thus the injustice of Israel in the Mavi Marmara attack will be registered with each decision to be taken from every possible platform.







## APPLICATION TO THE INTERNATIONAL CRIMINAL COURT

On October 14, 2010, a criminal complaint was filed at the International Criminal Court (ICC) concerning the attack by Israel on behalf of the victims of the Gaza Freedom Flotilla. The criminal complaint was prepared as a comprehensive file including additional pieces of evidence and documents and was submitted by hand with a petition to the ICC Office of the Prosecutor. The prepared file consists pieces of evidence (witnesses, victim statements, videos and photos, autopsy reports, forensic reports and etc.), expert reports and the report of the United Nations Fact Finding Mission accepted at the UN Human Rights Council.

UN and international criminal law expert, Prof. Cheriff Bassiouni, an Egyptian-born member of the academic committee that founded the ICC and South African-born Prof. John Dugard another international criminal law expert, (who was also Nelson Mandela's former lawyer), have provided full support in the preparation of the criminal complaint and the file submitted to the Office of the Prosecutor. A criminal complaint file prepared by the victims and relatives of the deceaseds and lawyers was submitted to the court in the Hague on October 14,

2010. The criminal complaint has been filed at the Office requesting the Prosecutor to exercise his proprio motu powers under Article 15 of the Rome Statute. In the petition, it has been stated that the ICC has jurisdiction with respect to crimes committed during the attack on the Gaza Freedom Flotilla and that the Office of Prosecution should immediately launch an investigation. These crimes committed during the attack fall under the scope of jurisdiction of the ICC and are war crimes and crimes against humanity.





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## UNITED NATIONS HUMAN RIGHTS COUNCIL

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The UN Human Rights Council is an inter-governmental body comprising 15 members of the African countries, 12 members of the Asian countries, 5 members of the Eastern European countries, 11 members of the Latin American and the Caribbean countries and 10 members of the Western European countries and representatives from other countries. The Council is the UN's most authoritative institution on human rights. The Council has the authority to conduct research on issues of human rights in different countries, make observations and prepare reports on these issues.

A related process took place regarding the attack on the Gaza Freedom Flotilla and a United Nations Fact Finding Mission was established by the decision of the UN Human Rights Council dated June 2, 2010, numbered A/HRC/RES/14/1. The Mission started to operate as a three-person independent expert team, on July 23, 2010 under the presidency of Karl T. Hudson-Phillips, an International Criminal Court prosecutor together with the other members Sir Desmond de Silva, former International Criminal Court Chief Prosecutor for Sierra Leone and Mary Shanthi Dairiam, a former member of the Committee on the Elimination of Discrimination



Against Women. After an independent and impartial investigation the mission has reached the conclusion that the attack of the State of Israel and the authorities thereof on the Gaza Freedom Flotilla, which aimed to transport humanitarian aid to Gaza in international waters, was a severe violation of International Humanitarian Law and Human Rights Law. The report number A/HRC/15/21 has been completed as of September 22, 2010, by the United Nations to

be presented to the UN Human Rights Council in Geneva. The report not only examined the violations committed during the attack but also violations of international humanitarian law and human rights law after the attack. The Mission interviewed victims in Geneva, London, Istanbul and

Amman to investigate the Israeli attack and collect evidence. In addition, the Mission has examined the Mavi Marmara, GAZEL and Defne-Y vessels at the Port of Iskenderun in Turkey. At the conclusion of the report, the Mission stated: "The conduct of the Israeli military and other personnel towards the flotilla passengers was not only disproportionate to the occasion but demonstrated levels of totally unnecessary and incredible violence. It betrayed an unacceptable

level of brutality. Such conduct cannot be justified or condoned on security or any other grounds.”

More importantly, the Mission, in the report has concluded that “there is clear evidence to support prosecutions of the following crimes within the terms of article 147 of the Fourth Geneva Convention:

- *Willful killing*
- *Torture or inhuman treatment*
- *Willfully causing great suffering or serious injury to body or health”*

In our opinion, the Mission, by listing the above-mentioned crimes, has actually urged the ICC to try those responsible for the attack. In addition, Sir Desmond De Silva, former International Criminal Court Chief Prosecutor for Sierra Leone and a member of the United Nations Fact Finding Mission later expressed that the attack should be tried by the ICC when he announced the case.

The Mission is also of the opinion that Israel has violated rules of international human rights law. These are:

- The right to life (International Covenant on Civil and Political Rights, Article 6)
- Torture and other cruel, inhuman or degrading

treatment or punishment (International Covenant on Civil and Political Rights, Article 7, of the Convention against Torture)

- The right to liberty and security of person, the prohibition of arbitrary arrest and detention (International Covenant on Civil and Political Rights, Article 9)
- Humane treatment to detained persons and right of respect for human dignity possessed as an innate quality (International Covenant on Civil and Political Rights, Article 10)
- Freedom of Expression (International Covenant on Civil and Political Rights, Article 19)

As a result, the United Nations Fact Finding Mission has submitted the above-mentioned report at the UN Human Rights Council on September 27, 2010, and this report has been formally adopted. Several EU countries had abstained in the voting session on the report while only the U.S. gave negative vote. Ultimately the report was adopted with the support of 30 countries out of the 47 that voted. The cited report, after being voted in a session held on June 17, 2011 had received 36 affirmative votes, 1 negative vote and 8 abstentions and a decision to “follow-up and taking necessary actions” was taken.

## Mavi Marmara Report, Process and the Voting Results in the UN Human Rights Council (UNHRC)

June 2, 2010	UNHRC resolved to establish a research committee for the attack on the Gaza Freedom Flotilla.
July 23, 2010	The report committee began working. Israel refused interviews with the concerned persons in Israel.
September 22, 2010	The report was published.
September 29, 2010	The report was voted in the UNHRC. There were 30 affirmative votes from the 47 participating countries while 15 countries abstained (including EU countries). One country voted against it (United States). <b>Affirmative votes:</b> Angola, Argentina, Bahrain, Bangladesh, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Ecuador, Gabon, Guatemala, Jordan, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Pakistan, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, Uganda, Uruguay. <b>Abstention:</b> Belgium, Cameroon, France, Hungary, Japan, Norway, Poland, South Korea, Moldova, Slovakia, Spain, Switzerland, Ukraine, United Kingdom, Zambia. <b>Negative votes:</b> USA
June 17, 2011 (Session 34)	Voting for follow-up of the UNHRC report and further actions was made Affirmative votes: 36, Negative votes: 1, Abstentions: 8 <b>Affirmative votes:</b> Angola, Argentina, Bahrain, Bangladesh, Belgium, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Ecuador, France, Ghana, Guatemala, Japan, Jordan, Kyrgyzstan, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Pakistan, Qatar, Russian Federation, Saudi Arabia, Senegal, Spain, Switzerland, Thailand, Uganda, United Kingdom and Northern Ireland, Uruguay. <b>Abstention:</b> Cameroon, Hungary, Poland, South Korea, Moldova, Slovakia, Ukraine, Zambia. <b>Negative votes:</b> USA



## LEGAL PROCESS CARRIED OUT IN THE UNITED STATES FOR FURKAN DOĞAN KILLED IN THE ATTACK

Legal and administrative actions have been taken for Furkan Doğan, a 19-year-old high school student, through his family's lawyers in the United States.

The evaluation made on the basis of the autopsy report and other pieces of evidence in the UNHRC International Fact-Finding Mission Report in paragraph 128 states the following:

### Furkan Doğan

Furkan Doğan, a nineteen-year old with dual Turkish and United States citizenship, was on the central area of the top deck filming with a small video camera when he was first hit with live fire. It appears that he was lying on the deck in a conscious or semi-conscious state for some time. In total, Furkan received five bullet wounds to the face, head, back thorax, left leg and foot. All of the entry wounds were on the back of his body, except for the face wound he sustained, which entered to the right of his nose. According to forensic analysis, tattooing around the wound in his face indicates that the shot was delivered at point blank range. Furthermore, the trajectory of the wound, from bottom to top, together with a vital abrasion to the left shoulder that could be consistent with the bullet exit point, is compatible with the shot received while he was lying on the ground on his back. The other wounds were not the result of firing in contact, near contact or close range, but it is not otherwise possible to determine the exact firing range. The wounds to the leg and foot were most likely received in a standing position.



Ahmet Doğan, father of Furkan, has applied to various authorities in Turkey and the United States with the aim of ensuring the punishment of the murderers of his son. To this aim he has conducted various interviews in Washington and New York with his Attorney Ramazan Artürk in February and April, 2011. They have had meetings with U.S. State Department officials as well as officials of the Department of Justice in Washington. They have also contacted the UN Secretary General for Political Affairs, the Permanent Mission of Turkey to the United Nations and offices of Members of Congress. They have observed that Congress members and their advisers were either barely informed or misinformed about the issue. Ahmet Doğan has briefly requested the following from the members of the U.S. Congress:

- Initiation of a significant, independent, transparent and rapid investigation on the death of Furkan Doğan.
- Acknowledgement of the fact that it was not a case of self-defense for Israel and ensuring the individual punishment of those who caused the death of Furkan Doğan.
- Request for the delivery of the pieces of evidence seized by Israel, including the camera which Furkan Doğan used for filming prior to the murder and evaluation and investigation as to changes of all the pieces of evidence.
- Mentioning the name of Furkan Doğan in the U.S. Human Rights Report (Country Report), prepared for each country every year in the section on Israel, as a requirement of the normal procedure. (It was expressed with sorrow that in the report the name of Furkan Doğan, who died as a result of Israeli attack, was not mentioned as it should have been. Accordingly a request was made to take the necessary step to remedy the situation and mention his name.)



Lawyers working with the New York-based U.S. organization Center for Constitutional Rights/CCR have requested information relevant to the events before, during and after the attack from several U.S. government agencies including the U.S. Department of State, Justice, Homeland Security and Defense ministries within the framework of the Freedom of Information Act/FOIA. Some institutions did not respond at all to this request while some have provided limited information and some have reported that they could not give details for security reasons. Inasmuch as the information requested was not provided within the framework of the foregoing, lawsuits were



filed against a total of eight U.S. government agencies on June 30, 2011, including U.S. Secretary of State, Defense, Justice and Homeland Security Departments, the Coast Guard, Navy, Central Command and European Command, to receive this information. Some information and correspondence, albeit very limited, have been sent from some of these institutions following the opening of the case. Neither any lawsuits have been filed nor has any political or legal action been taken until the present time in the United States for the murder of Furkan Doğan. Furkan Doğan, had been on this journey

to defend the main principles of the U.S. Constitution, the most supreme legal document of the United States, contrary to which no legal regulations can be adopted such as “the people’s right to life,” “the right to liberty,” “equality demand” and “the pursuit of happiness and the right of access”, for the Palestinians in Gaza. Now the U.S. judicial authorities and administrators are challenged with an important test in the case regarding Furkan Doğan against Israel considering the unchangeable basic principles of the U.S. Constitution.

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## THE LEGAL PROCESS CARRIED OUT IN THE REPUBLIC OF SOUTH AFRICA

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In addition to the investigations launched in Spain and Belgium, an investigation against Israel has been initiated in the Republic of South Africa to examine the attack on the Gaza Freedom Flotilla by the National Presidency of the Attorney General.

Lawyers of Gadija Davids, a citizen of the Republic of South Africa, residing in Cape Town and one of the passengers of Mavi Marmara have announced that South Africa’s Priority Crimes Litigation Unit (PCLU), National Presidency of the Attorney General of South Africa and the South African Police Service (SAPS) have taken the decision to examine and investigate the event officially as well as reporting the importance of the occurrence to the ICC. Attorney Ziyaad Patel has stated the following: “Gadija Davids and other accompanying civilians on the Mavi Marmara aid ship have been subjected to ‘inhumane treatment’ by Israel and this is a violation of human rights and a crime against humanity according to Schedule 1 of the Rome Statute and a war crime according

to Schedule 3 of the Rome Statute. Ms. Davids’ hands were tied with plastic cable, she was made to sit under the sun for hours, thrown into prison and was prevented from receiving support from the South African consulate in Israel.”

The legal representatives of Gadija Davids also referred to the Report of the UN Fact-Finding Mission of September 27, 2010 concerning Israel’s attack on the Mavi Marmara aid flotilla. Four months later, in January 2011, Davids and her legal representatives requested the South African Police Services and South Africa’s National Directorate of Public Prosecution to launch a criminal investigation into the Israeli responsible parties who committed international crimes during the assault. These offices made the following statement in a letter prepared upon the application of the legal representatives of Davids: “After due consultation with the South African Police Services (SAPS) we are of the opinion that reasonable grounds exist for an investigation into this matter and



**Gadija Davids**

therefore have opened a case docket. The jurisdictional requirements contained in the Implementation of the Rome Statute of the Criminal Court Act 27 of 2002 and our law in general (especially our criminal procedure) are met”.

Ms. Davids welcomed the decision and said: “It instills my faith and credibility in South Africa’s commitment to the protection of human rights”.

Davids’ legal representative also welcomed the decision and stated: “It enforces the rule of law, respect for human rights and South Africa’s responsibility in meeting its international obligations. The South African Police Services and [South Africa’s] National Directorate of Public Prosecutions should therefore be commended and supported for this decision.”

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## **SUPPORT FOR THE MAVI MARMARA CASE FROM LAWYERS AROUND THE WORLD**

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Lawyers from all around the world are actively involved in the legal process carried regarding the attack on the Gaza Freedom Flotilla. Attorneys and academics come together from time to time and offer contributions aiming to serve justice. Finally, the lawyers who met in Istanbul for the hearing of the Mavi Marmara criminal case organized a meeting just prior to the hearing. At the meeting information vis-à-vis all legal actions taken in this case were provided and ideas and suggestions related to legal proceedings were shared. Support of more lawyers is needed at the current stage of the case for the next period. We would like to express our sincere gratitude and appreciation to all



the lawyers and academics who support this fight for justice of historical significance and act in solidarity with the victims.



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## CONCLUSION

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The organizers and participants of the Gaza Freedom Flotilla are taking action in a determined manner in this legal struggle, just as they did during the preparation process of the Flotilla and the course of the journey. However, Israel, as published many times in the world media, has been trying to prevent this legal struggle and keep it under pressure in many ways. Israel firstly launched defamation campaigns against IHH Humanitarian Relief Foundation which has been working for 20 years and operating in 135 countries and regions in different parts of the world, with accusations such as supporting terrorism, which in recent times has become a much abused term. The pressure applied to the U.S. government in this respect can clearly be observed. Efforts to create false evidence in order to subdue IHH Humanitarian Relief Foundation executives by various accusations, libel and slander have been evident in this process. Upon failure to get a favourable result from all the foregoing actions they have offered high amounts of money in return for the lawsuits to be withdrawn.

The Gaza Freedom Flotilla organizers, participants and the relatives of the deceased who have never given up their demand for punishment of those

responsible for the assault have stated that the political attempts of Israel outside the area of law have no binding effect nor any meaning for them. Israel, aiming to cover this lawlessness only by apology and compensation, has to cover all the damages by paying compensation to all harmed natural and legal persons in line with the judgment to be given through the legal authorities and ensure that all responsible who made the decision and gave the order to launch the assault and all perpetrators involved in the attack be punished. Indeed, the legal solution for the crimes as also determined by the UN is criminal punishment of those responsible as well as compensation. All participants and organizers of the Gaza Freedom Flotilla demand:

- The complete lifting of ongoing -especially the sea- blockade of Gaza,
- Criminal punishment of all the defendants with other responsible parties to be added in the ongoing criminal case in The Istanbul 7th High Criminal Court,
- Compensation for all material and emotional damage caused by all involved parties, and
- A fair trial before all judicial authorities with jurisdiction.







Israel considers itself immune for prosecution and accountability for committing illegalities and human rights violations. What's more, they defend that no one can call them to account by any means or under any circumstances, regardless of the level of persecution, or threaten those who try to. The Israeli side has a serious feeling of discomfort, especially due to legal actions taken in relation to the attack on the Gaza Freedom Flotilla - because this is seen as a severe breakdown of this legal immunity shield it had created. Israel's efforts to prevent, in particular the investigation from the beginning and their struggle to try to stop the criminal case opened in Turkey where the Israeli commanders are being tried reveals the importance of this case due to the discomfort and anxiety felt in Israel incident to the trial.

The Gaza Freedom Flotilla was an aid organization that represented the common conscience of humanity. Therefore, the attack on the flotilla is considered as an assault made all mankind. As such, the legal steps taken in these trials against those responsible for this attack are consequently the common causes that join of the family of humanity with different religious, ethnic, and cultural identities just like the people were united aboard at the Mavi Marmara vessel. The crimes committed were not only against the passengers of the flotilla but also against the collective conscience of

humanity with regards to all conscientious people and nations, as were represented in the Freedom Flotilla. Israeli perpetrators have violated the fundamental universal rights of humanity. Those responsible should be tried and punished before the presence of the public in a fair trial.

For these reasons, we request your esteemed side to kindly

- support the MAVI MARMARA CASE which actually is a common case of humanity and of historical importance,
- follow up and support the case on behalf of the nine murdered humanitarian aid activists, and Uğur Süleyman Söylemez, father of three children who was gravely wounded by a bullet shot in his head and who has been in a coma for 2.5 years,
- follow up and support it on behalf of the deceased's relatives and victims from 37 countries who wanted freedom and justice for everyone and,
- be on the side of justice in the name of human dignity and for all the innocent people of Palestine who were murdered.

**The Mavi Marmara vessel was carrying FREEDOM and HUMANITARIAN AID to Gaza. And we wholeheartedly believe that the Mavi Marmara lawsuits will bring RIGHTS and JUSTICE to the world...**



ALİ HAYDAR BENGİ



CENGİZ SONGÜR



ÇETİN TOPÇUOĞLU



NECDET YILDIRIM



İBRAHİM BİLGEN



FAHRİ YALDIZ



FURKAN DOĞAN



CEVDET KILIÇLAR



CENGİZ AKYÜZ

*We remember with utmost gratitude nine humanitarian volunteers who were martyred by Israeli attack to the Gaza Freedom Flotilla in May 31, 2010.*





THE FOUNDATION FOR  
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FREEDOMS AND  
HUMANITARIAN RELIEF  
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