

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/13**

Date: **22 June 2015**

PRE-TRIAL CHAMBER I

Before: **Judge Joyce Alouch, Presiding Judge
Judge Cuno Tarfusser
Judge Péter Kovács**

**SITUATION ON REGISTERED VESSELS OF THE UNION OF THE
COMOROS, THE HELLENIC REPUBLIC OF GREECE AND THE KINGDOM
OF CAMBODIA**

Public Redacted Version

**Victim Observations pursuant to “Decision on Victims’ Participation” of 24
April 2015**

Source: **Sir Geoffrey Nice QC and Rodney Dixon QC, Legal
Representatives for Victims**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Victims of the attack on the Gaza Freedom Flotilla who are represented by the Legal Representatives, Sir Geoffrey Nice QC and Rodney Dixon QC, hereby submit their observations for the Article 53 review proceedings.
2. These observations are submitted in accordance with the “Decision on Victims’ Participation” of 24 April 2015 in which it was held that “victims should be allowed to present any observations deemed relevant to the Chamber’s review of the Prosecutor’s Decision.”¹ In accordance with this decision, these observations set out the Victims’ interests, concerns and submissions on the Article 53(3) proceedings, particularly in respect of the Prosecution’s “Article 53(1) Report” of 6 November 2014², the “Application for Review pursuant to Article 53(3)(a) of the Prosecutor’s Decision of 6 November 2014 not to initiate an investigation in the Situation” of 29 January 2015³, and the Prosecution “Response to the Application for Review of its Determination under article 53(1)(b) of the Rome Statute.”⁴
3. The Legal Representatives (LRs) who have submitted the present observations represent over 350 victims who have applied to participate in the ICC proceedings. Of these victims, 309 have at this stage been granted the right to participate in the present proceedings.⁵

¹ Decision on Victims’ Participation, ICC-01/13-18, 24 April 2015, para. 21.

² Situation on Registered Vessels of Comoros, Greece and Cambodia, Prosecution Article 53(1) Report, ICC-01/13-6-AnxA, 6 November 2014 (hereinafter “Prosecution Article 53(1) Report”).

³ Application for Review pursuant to Article 53(3)(a) of the Prosecutor’s Decision of 6 November 2014 not to initiate an investigation in the Situation, ICC-01/13-3-Red, 29 January 2015 (hereinafter “Comoros Request for Review”).

⁴ Public Redacted Version of Prosecution Response to the Application for Review of its Determination under article 53(1)(b) of the Rome Statute, ICC-01/13-14-Red, 30 March 2015 (hereinafter “Prosecution Response to Request for Review”).

⁵ The total number of victims granted the right to participate in the proceedings at this stage is 418. In addition to the 309 who the LRs represent (from this number), the LRs have since the Chamber’s deadline of 8 May 2015 for arranging representation, received powers of attorney to act on behalf of 17 of those victims who are currently represented by the OPCV (who at present total 109). On account of receiving powers of attorneys from them, these Victims have also been consulted by the LRs. To the extent that any information they provided is relevant, the LRs have included it in these observations so that it can be taken into account and does not get overlooked. Furthermore, the LRs have included relevant observations of persons they represent whose victim applications are still being considered (particularly where they are collaborated by victims whose applications have been granted) as they are

4. In order to prepare these observations, the LRs have contacted the Victims they represent to explain the Prosecution's decision not to investigate the attack on the Flotilla and the subsequent Article 53 proceedings, and to receive their observations for these proceedings. The LRs have met Victims in Istanbul and in Israel (where certain of the Palestinian Victims reside). The LRs have gathered written observations from the Victims, representative selections from which are cited in this submission.

II. OVERVIEW OF VICTIMS' INTERESTS AND CONCERNS

5. The Victims universally expressed that they were most disheartened and immensely frustrated by the Prosecutor's decision not even to open an investigation into the crimes committed against them and the harm they have suffered. They voiced a very strong desire to have investigated and held accountable those at the highest level for the violent and completely unjustified and unnecessary attack, the unlawful killings, and the gross and offensive mistreatment that were perpetrated by the Israeli Defence Force (IDF).
6. The Victims all stressed their plea for justice, for the rule of law to be upheld through impartial and fair investigations and prosecutions, and for the truth to be revealed so that they, and the international community, would know who was responsible. They were unanimously of the view that their interests are directly affected by the Prosecution's failure to open an investigation, and in particular expressed their deep concern that the perpetrators were not standing trial in any court. They want the ICC to put an end to the impunity in their case, as is proclaimed in the Preamble to the ICC's Statute.
7. Although some national jurisdictions had initiated investigations, the Victims noted that these proceedings have been dismissed or stopped (due to the accused not being present in any of the national jurisdictions), such as most recently in

clearly victims in the present Situation and it would be most unfortunate if their observations were not included at all at this vital stage of the proceedings.

Spain in which the court there has indicated that the ICC could take up the case.⁶ Even though there are proceedings underway in Turkey, none of the accused have surrendered to the court and no international arrest warrants have been issued.⁷ There are no proceedings taking place in Israel for these serious crimes⁸, and Israel has not provided the ICC with any assistance in the present Situation.

8. The Victims rightly regard the ICC as the appropriate forum to assure accountability and justice, and thus to safeguard their interests:

- *“As time has gone by it seems as if memories have faded of the outrage expressed about the attack on the flotilla by world leaders, the United Nations and the public at the time and we ask, where else if not the ICC should war crimes committed against an international group in international waters be taken when the State committing them refuses to investigate itself? Universal jurisdiction in individual countries of the victims is inconsistently available and politically vulnerable therefore access to justice is effectively denied.”*⁹

⁶ On 11 June 2015, a Spanish court closed the case with prosecutors requesting that the judges refer the matter to the ICC. See, Madrid court shelves 2010 Gaza flotilla investigation, Reuters 11 June 2015 (<http://uk.reuters.com/article/2015/06/11/uk-spain-israel-court-idUKKBN0OR2KU20150611>); Spanish court drops investigation on Israeli raid of Gaza-bound flotilla, Daily Sabbah, 11 June 2015 (<http://www.dailysabah.com/mideast/2015/06/11/spanish-court-drops-investigation-on-israeli-raid-of-gaza-bound-flotilla>); Madrid court shelves 2010 Gaza flotilla investigation, Zawya, 11 June 2015 (https://www.zawya.com/story/Madrid_court_shelves_2010_Gaza_flotilla_investigation-TR20150611nL5N0YX4DGX2/); Spain prosecutor requests ICC referral of case against Israel’s Netanyahu for 2010 flotilla attack, Electric Intifada, 17 January 2013, (<https://electronicintifada.net/blogs/ali-abunimah/spain-prosecutor-requests-icc-referral-case-against-israels-netanyahu-2010>). In addition, in September 2014, a German prosecutor closed an investigation and dismissed the criminal complaint made concerning the attack on the Flotilla. See, Israel praises German prosecutor for rejecting Mavi Marmara complaint, The Jerusalem Post, 29 January 2015 (<http://www.jpost.com/International/Israel-praises-German-prosecutor-for-rejecting-Mavi-Marmara-complaint-389390>). Also, in December 2014, a Swedish Prosecutor closed a national investigation stating that Sweden lacked jurisdiction to pursue the case. See, Sweden can’t sue Israel over Ship to Gaza raids, The Local, 10 December 2014 (<http://www.thelocal.se/20141210/sweden-cant-sue-israel-over-ship-to-gaza-raids>); Swedish prosecutor drops probe into IDF seizure of Gaza flotillas, Haaretz, 9 December 2014 (<http://www.haaretz.com/news/diplomacy-defense/1.630746#!>).

⁷ See for example, Turkish gov’t yet to issue Interpol Red Notice for Israeli officers, Today’s Zaman, 11 March 2015 (http://www.todayzaman.com/diplomacy_turkish-govt-yet-to-issue-interpol-red-notice-for-israeli-officers_374973.html); First official search of Mavi Marmara ship takes place 5 years after raid, Today’s Zaman, 25 May 2015 (http://www.todayzaman.com/anasayfa_first-official-search-of-mavi-marmara-ship-takes-place-5-years-after-raid_381726.html); Turkish court rejects Interpol Red Notice request for Israeli generals, 11 October 2013 (http://www.todayzaman.com/national_turkish-court-rejects-interpol-red-notice-request-for-israeli-generals_328777.html).

⁸ A few IDF soldiers have only ever been prosecuted for theft of certain belongings of passengers - see The Public Commission to Examine the Maritime Incident of 31 May 2010, The Turkel Commission, para. 160 (hereinafter “Turkel Report”).

⁹ Observations of ██████████.

- *“I strongly believe that the victims of the Israeli attack have not been accorded justice ... [and this] sends a signal globally that the actions of the Israeli government are above international law, that no international court will hold Israel accountable and Israel is free to terrorize any group that challenges it.”*¹⁰
 - *“It seems to me that we, members of the flotilla, were the victims of a crime against the very civilised values that the Western Democracies claim to uphold. It is hard to imagine a more serious case to put before the International Court. To brush such matters under the carpet would be to consign our civilisation to oblivion.”*¹¹
 - *“[T]here seems absolutely no way that any official body or State will hold Israel to account under International law. The feeling of depression and helplessness that ensues when you realise that there is a State that can behave with complete impunity and not be held to account is overwhelming. ... this makes me feel worthless as a human being because official bodies show that despite human beings with a conscience and a belief that there is such a thing as justice in reality there is no justice ... I feel there is no justice and no hope.”*¹²
 - *“We want to have justice and want those who have torture us to be punished in accordance with human rights laws.”*¹³
 - *“We don’t want to take revenge for what happened. We don’t want to kill the people that committed the crimes. We just want justice to be done and for them to be punished according to the law for what they did.”*¹⁴
9. The Victims are mystified by the Prosecutor’s finding that there is “uncertainty as a result of the conflicting accounts of the events” and an “overall lack of sufficient information”.¹⁵ There is in their view no confusion at all as to what happened and who was to blame. In any event, even if the Prosecutor has found that there are differing accounts, this is precisely why it is essential to initiate an investigation to determine the veracity of information received. The Victims say that it cannot be right that the crimes perpetrated against them are left uninvestigated on the basis that there is some “uncertainty” over “conflicting accounts”.

¹⁰ Observations of [REDACTED]

¹¹ Observations of [REDACTED].

¹² Observations of [REDACTED]

¹³ Observations of [REDACTED].

¹⁴ Observations of [REDACTED].

¹⁵ Prosecution Article 53(1) Report, para. 39. See also, Comoros Request for Review, paras. 34, 39.

10. The Victims are equally perplexed by the Prosecutor's ultimate conclusion that the crimes committed are not serious enough to warrant her attention.¹⁶ On every point that the Prosecutor could and should have relied to highlight the gravity of the case, the Prosecutor either overlooked the vital evidence or took the opposite view for no proper reason. It is as though she had determined that she was not going to investigate this case and thus needed to manipulate each finding that could expose the seriousness of this case, for the purpose of supporting her decision. There is no other reasonable explanation for the Prosecutor's irrational findings on each and every matter that reveal the genuine gravity of the criminal conduct.
11. There is no better illustration of this point than the Prosecutor's finding that there is no evidence that the Victims were the object of the IDF attack, and that somehow the IDF's only intention was merely to stop the vessels entering Israeli waters. This was certainly not the experience of the Victims. They have informed the LRs that they are in no doubt that in all of the circumstances they were deliberately attacked by the IDF with the intention of killing, injuring, detaining, punishing and mistreating them. The vessels were *stationary* when the IDF launched its attack - there was no imperative to attack the vessels to stop the Flotilla 'breaking the blockade'. It is likewise perverse for the Prosecutor to have ruled out torture and inhumane treatment as possible crimes - without having investigated the case - as if to make it easier for her to reject having to investigate the case at all. Were there sincerity in her final conclusion, that would at one stage have been a provisional conclusion in her and her staff's minds, then it would have been obviously essential as part of an investigation to obtain independent expert military and/or naval advice at the very highest level to deal with how properly to control (stationary) vessels and how to board and take control of vessels occupied by unarmed peaceful citizens such as the victims represented here who observe that there is no indication that the Prosecutor even considered obtaining or acting on such advice. They also observe that such expertise is readily available from retired Generals and

¹⁶ Prosecution Article 53(1) Report, para. 148.

Admirals in the way such experts have regularly been used in prosecutions at various international tribunals.

12. This overall misconception of the evidence is exacerbated by the Prosecutor's finding that there is no rational link between the attack on the Flotilla and the situation in Gaza, including the IDF's blockade of Gaza. Victims have explained that they were attacked and punished for supporting those in Gaza and Palestine for the same reasons and in the same way as those who are punished in Gaza by the blockade through policies of the Israeli authorities and the IDF that suppress and control the citizens of Gaza. The IDF sought to teach the passengers a lesson for seeking to break the blockade as they do on a regular basis in Gaza and elsewhere to all those who oppose the blockade and the control exercised by the IDF over Gaza. The passengers were labeled as 'terrorists' by the IDF, like those in Gaza, and treated as 'terrorists'.
13. Certain of the Victims were themselves Palestinians. They were singled out and abused in the same way as they have been mistreated in Palestine/Israel, and have as a result of participating in the Flotilla continued to be targeted. As set out below, there is also evidence (which the Prosecutor has ignored and/or not taken into account) that the IDF attempted to assassinate a prominent Palestinian cleric on board the Mavi Marmara. This event should be investigated specifically as an operation that is allegedly part of the IDF's general policy of targeted killing that is deployed in Gaza and Palestine, a policy that clearly formed part of the plan for the attack on the Mavi Marmara.
14. For all of these reasons, and those set out in these observations, all of the available evidence shows that there is a reasonable basis to believe that the crimes were of sufficient gravity to be investigated. The Victims submit that the Prosecutor's decision to refuse to investigate their case is so unreasonable that the Prosecutor must be directed to reconsider it and apply the correct legal standard for opening an investigation.

15. The words of one Victim reflect the sentiments of all those who have submitted their observations:

“It is hard to imagine a more serious case to put before the International Court.”¹⁷

III. THE TARGETING OF THE VICTIMS BY THE IDF

The passengers were the object of the attack

16. The Victims are most concerned by the Prosecutor’s finding that the passengers were not the “intended object of the attack” and that the attack “appears to have been solely directed at the vessels.”¹⁸ The evidence of the Victims themselves, to which the Prosecutor has wrongly given little if any weight, is that they were deliberately attacked by the IDF with overwhelming force and violence, which was neither justified nor necessary in the circumstances:

- *“The Israeli government official entered the Mavi Marmara ship to attack the passengers, not to stop the ship from sailing to Gaza.”¹⁹*
- *“I think the Israelis came with the full intention of attacking the passengers not the ship... I think they were trying to teach us a lesson not to try to do this again in the future.”²⁰*
- *The shouting was targeting all of us.”²¹*
- *“... the declaration of the army [was] that they would do anything to deter such activities. This means that it is not enough to stop the ship but they wanted to punish us. ... I assumed that their strategy was to kill some people and then to also take care of some so that it seems like they were just trying to help and they could control the narrative.”²²*
- *“I believe that the plan was to punish the passengers and teach us a lesson. I believe that this was a political decision to teach a lesson for those that were on the ship.”²³*

¹⁷ Observations of ██████████.

¹⁸ Prosecution Article 53(1) Report, para. 99.

¹⁹ Observations of ██████████.

²⁰ Observations of ██████████.

²¹ Statement of ██████████.

²² Observations of ██████████.

²³ Observations of ██████████.

- *“The main point of targeting the flotilla isn’t because of the ship or its supplies, they had arms to kill and murder and they did kill 10 of the on-board activists and many many others had critical and severe injuries.”²⁴*
- *If the Israeli soldiers were attacking the boat rather than the passengers as the Madame Prosecutor has said, then why were the passengers not warned and just attacked suddenly with bullets? ... That was not attacking the boat, there are a million ways to stop a boat without attacking and humiliating people on board. They meant to attack the passengers.”²⁵*

17. One Palestinian passenger said that the IDF made it clear that they “*would do anything to stop the Flotilla. There were also a lot of declarations saying that the aim is not to stop the ship but to stop others from doing the same, and to send a message to prevent others from doing this.*”²⁶ This would be wholly inconsistent with the Prosecutor’s proposition of the attack being solely directed at the vessel(s).

18. The Victims have highlighted details from their experiences that show that the crimes perpetrated against them could not have been merely an *incidental* consequence of an operation against the vessels (as asserted by the Prosecutor). Their evidence is consistent with a plan and policy to target those who were on board the Flotilla.

19. The Victims reiterated that the shooting with live ammunition at those on the Mavi Marmara began *before* any IDF soldier boarded the ship. The Victims were adamant that the IDF fired live ammunition from the zodiac boats and helicopters as the Mavi Marmara was first approached by the IDF and that this showed that the IDF “*came with the full intention of attacking the passengers not the ship.*”²⁷ The IDF soldiers were “*shooting from the helicopter before they came down.*”²⁸ There was firing from the boats surrounding the ship as they

²⁴ Observations of ██████████

²⁵ Observations of ██████████.

²⁶ Observations of ██████████.

²⁷ Observations of ██████████. See also, Observations of ██████████ ██████████.

²⁸ Observations of ██████████. See also, Statement of ██████████; Statement of ██████████ Testimony of ██████████ before the Istanbul 7th High Criminal Court

approached; with one Victim stating that “[t]he boats were 15 meters away and I could see the firing because it was night and I saw the flash of the fire from the boats.”²⁹ Another Victim said “I could see from above quite clearly from the MM lights that the zodiacs were jammed packed with heavily armed and equipped masked soldiers. ... I heard the sound of clacking. There were flashes.”³⁰ There were “instantly injured people”³¹ and one Victim noted that “the lazer of the Israeli sniper was pointed at my chest and I was trying to find where he is, and then I knew it was from a military ship cruising beside ours.”³² Another Victim stated that “I witnessed IDF helicopters and boats attacking the boat and heard IDF gunfire”³³ and that “It was still dark out and our ship was surrounded by the IDF zodiac boats. They started firing at us on the ship.”³⁴

20. An account is also given by a Victim who tried to help a man who had been shot in his stomach when the attack began (and no soldiers had yet boarded the ship).³⁵ He concluded that due to the direction of entry of the bullets into the man’s stomach, the shots must have been coming from another ship. They could not have been fired from the helicopters above or the zodiac boats below.

which stated “[w]ithin the first five to ten minutes as I was moving about the ship I came across the body of Cevdet Kiliclar. I came across his body with a bullet wound to his head within the first five to ten minutes. Yes no commandos were on the ship at the time his body was found so he must have been shot from a helicopter.”

²⁹ Observations of [REDACTED]. For example, see also, Observation of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED]; and Statement of [REDACTED], who stated that “I saw a raft manned by several commandos all dressed in black from head to toe carrying multiple weapons next to the ship below the point where I was standing. Almost immediately the commandos on board the raft began shooting up at the Mavi Marmara with their weapons.”

³⁰ Observations of [REDACTED]. See also, Statement of [REDACTED]; Statement of [REDACTED].

³¹ Observations of [REDACTED]. See also, Statement of [REDACTED]; Statement of [REDACTED]; Statement of [REDACTED], Testimony of [REDACTED], Istanbul 7th High Criminal Court.

³² Observations of [REDACTED]. See also, Statement of [REDACTED].

³³ Observations of [REDACTED]. See also, Statement of [REDACTED]; Observation of [REDACTED]; Observations of [REDACTED].

³⁴ Observations of [REDACTED]. See also, Observations of [REDACTED]; Observation of [REDACTED]. See also, Statement of [REDACTED], who stated that “I saw a raft manned by several commandos all dressed in black from head to toe carrying multiple weapons next to the ship below the point where I was standing. Almost immediately the commandos on board the raft began shooting up at the Mavi Marmara with their weapons.”

³⁵ Observations of [REDACTED].

21. Many of the Victims expressed utter disbelief that the Prosecution could conclude (without any investigation) that there was no intention to target the passengers considering the excessive force that was deployed by the IDF, and which they came prepared to unleash. At the time of the attack “[w]e were not moving or sailing because the Captain had decided not to move the ships until about 8am.”³⁶ The Victims have thus understandably asked why the IDF decided to use such aggressive and extreme means when they “could have stopped the flotilla using other means.”³⁷ It is inconceivable, the Victims say, that the IDF would have chosen such methods, when other, non-violent means were readily available, unless they were intending to make the passengers the focus and object of their attack. For example, Victims have observed:

- *The ship could have been stopped by jamming the propellers without injuring any passengers, this was discussed before the attack with people who understood boats. The Israelis attacked the passengers not the ship.* ”³⁸
- *“If they just wanted the ship they could have disabled the ship by hitting the propeller and then negotiated with the captain and passenger about what’s next.”*³⁹
- *“I thought that they might stop the boat by disabling the propeller, but I didn’t think they would shoot. ... There were so many other ways that they could have handled this. They could have surrounded the ship.”*⁴⁰
- *“If they wanted to, they could have boarded the ship and tried to stop us without the use of weapons, however, their aim was not to stop us from reaching Gaza, it was to attack us.”*⁴¹
- *“I thought that the Israeli navy would turn up, block the road, and shoot in the air, shoot into the water. Instead it was a direct crackdown.”*⁴²
- *“If it was just to stop the ship, why kill people, why refuse to give them treatment or give access to doctors, why take our cameras or any visual material. Why cut communications.”*⁴³

³⁶ Observations of [REDACTED].

³⁷ Observations of [REDACTED].

³⁸ Observations of [REDACTED].

³⁹ Observations of [REDACTED].

⁴⁰ Observations of [REDACTED].

⁴¹ Observations of [REDACTED].

⁴² Observations of [REDACTED].

⁴³ Observations of [REDACTED].

22. The sheer amount of shooting and its intensity was totally disproportionate to what was required to stop the Flotilla sailing any further:

“About the shooting, there was definitely shooting from everywhere. I remember there was a moment they were shooting from everywhere and I thought it must be the boats below shooting. The shooting was massive, it was too much shooting, it didn’t stop. You don’t need that much to stop a boat.”⁴⁴

23. The attack was unmistakably not simply directed at the vessels. For example, one Victim stated that *“the Israelis acted like Hollywood stars, there was something very rude about their behavior. Something happened very suddenly. People just finished the prayer of the morning, and they began to shot. It was very dramatic. ... They shot everywhere ... They just shot everywhere. There was nothing logical about [the soldiers’] thinking how we behave towards these civilians of the ship.”⁴⁵* The *“attack was unnecessarily violent”⁴⁶* ... *“[t]here were bullets everywhere. ... This seemed like a war scene.”⁴⁷*

24. As explained by the Victims, even after the ships were controlled by the IDF and the passengers had made clear that they were surrendering to the IDF, the passengers continued to be shot at and attacked.⁴⁸ There was no reason to escalate the use of violence and yet the IDF soldiers did exactly that, which is entirely consistent with an intention to attack and punish the passengers (and not just the vessels). Victims specifically noted that *“an Arab originated passenger who was an MP at the Israeli Parliament ... took off the white shirt she was wearing and started waving it at the Israeli soldiers required them to stop the war”⁴⁹* but that *“Although people had been surrendered by the IDF soldiers, they continued to fire live ammunition at the passengers on board the ship with the intention of kill.”⁵⁰* One Victim observed that the IDF’s *“aggression*

⁴⁴ Observations of [REDACTED]. See also, Observations of [REDACTED].

⁴⁵ Observations of [REDACTED]. See also, Observations of [REDACTED].

⁴⁶ Observations of [REDACTED]. See also, Observations of [REDACTED].

⁴⁷ Observations of [REDACTED].

⁴⁸ See for example, Statement of [REDACTED], who stated *“I was aware that an announcement was being made from the reception desk over the tannoy in several languages to ask the Israelis to stop shooting as we had casualties and we were unarmed civilians.”* See also, Observations of [REDACTED]; and Statement of [REDACTED].

⁴⁹ Observations of [REDACTED].

⁵⁰ Observations of [REDACTED].

continued even after they gained full control over the ship.”⁵¹ Another said “Although we had no weapons, they continued to shoot us with the intention to kill us.”⁵²

25. The killing of Cetin Topcuoglu is one example. His widow, who was also on the Mavi Marmara with him, asked *“Why after taking control of the ship did they kill my husband ... after the ship was taken control. After they injured many people, my husband was helping take injured people to the doctor, they knew that the ship was already under the control of the IDF, they shot him in the back.”*⁵³

Singling out Palestinian passengers

26. Furthermore, the direct targeting of the Palestinian passengers on the ships demonstrates that the IDF’s intentions were to focus on them as a group. They came prepared to do so, and executed the operation in accordance with a clear plan. As all of the Victims emphasised, this attack did not happen randomly, or by accident, it was planned from the outset and based on the existing policies of the Israeli authorities and the IDF to punish those who seek to break the blockade of Gaza and support the citizens of Gaza. As set out further below, this plainly shows a rational link to the situation in Gaza, which the Prosecutor refused to find in order to consider the wider context for her gravity assessment.
27. Palestinian passengers were summoned by name once the Mavi Marmara was under the control of the IDF.⁵⁴ IDF soldiers had a list with the names and pictures of several passengers which included most of the Palestinian passengers.⁵⁵ One passenger commented about the list that *“Some of the names*

⁵¹ Observations of ██████████

⁵² Observations of ██████████.

⁵³ Observations of ██████████

⁵⁴ Statement of ██████████ ██████████ ██████████; Observations of ██████████ ██████████ ██████████ ██████████; Observations of ██████████████████████; Observations of ██████████.

⁵⁵ Observations of ██ See also, Observations of ██████████; Observations of ██.

I recognised did make sense to me. It was clear to me that this was a list of special people who were to be treated specially.”⁵⁶

28. Other Victims recounted that they witnessed Palestinian passengers being singled out for abuse:

“I remember an English Palestinian passenger get kicked by an Israeli soldier for no reason other than because he was Palestinian – is this the Israelis attack the boat or attacking the passengers? ... They knew he was Palestinian and that’s why they chose to kick him.”⁵⁷

29. Another explained that *“When they found out who I was and that I’m Palestinian they started to shout at me and ... they took me to be interrogated for hours and shouted at me. They were very angry.”⁵⁸*

30. In addition, as noted above, there is evidence of a plan to assassinate the leader of the northern branch of the Islamic Movement in Israel, who was a passenger on the Mavi Marmara, which should be investigated by the Prosecutor. Several passengers believed on the basis of the available information that there was plan to kill Sheikh Raed during the attack: *“I definitely think that they wanted to get rid of Sheikh Raed.”⁵⁹* Victims say a sniper was assigned the task of assassinating Sheikh Raed during the attack.⁶⁰ An Israeli intelligence officer was overheard saying this.⁶¹ Victims highlighted that Ibrahim Bilgen - whose appearance is very similar to Sheikh Raed - was shot on the top deck of the boat. Victims recounted that the IDF *“thought that they had killed Sheikh Raed”⁶²* and they sought to confirm that the deceased was Sheikh Raed when they began *“asking in particular for Sheikh Raed Salah.”⁶³* Sheikh Raed himself explained that when he was handcuffed by the IDF, the soldiers were very surprised to see

⁵⁶ Observations of ██████████.

⁵⁷ Observations of ██████████. See also, Statement of ██████████, a English Palestinian passenger, who noted that before he was shot multiple times, including in the back of the head, *“one of the soldiers shouted in Hebrew ‘This is the leader’ about me (I understand Hebrew).”*

⁵⁸ Observations of ██████████.

⁵⁹ Observations of ██████████. Also see, Observations of ██████████;

Observations of ██████████.

⁶⁰ Observations of ██████████.

⁶¹ Observations of ██████████.

⁶² Observations of ██████████; Observations of ██████████.

⁶³ Observations of ██████████; Observations of ██████████.

him and took pictures of him.⁶⁴ Soon after, when he was taken on to the deck, he was approached more than once by soldiers who asked if he was Sheikh Raed. He was then escorted to a room where an Israeli official⁶⁵ asked for his identification: “*He looked at the passport and me several times, and then said ok and told me to go back. My conclusion is that this was someone from the intelligence service who had the task of confirming my assassination.*”⁶⁶ One Victim stated that in Ashdod “*Gabi Ashkenzi came on board the ship with 15 other people to where we were separated and I could tell that they were focused on Sheikh Raed.*”⁶⁷ In addition, the police in Israel took Sheikh Raed’s wife to the morgue to identify a deceased’s body to check finally if it was not her husband.⁶⁸ It is not known who, if anyone, of the deceased’s family was summoned to prove identity.

Denial of medical treatment

31. The Victims stressed that the way they were treated by the IDF clearly shows that it was their intention to abuse and mistreat them. They ask, why else would the soldiers have acted so aggressively and maliciously? Medical treatment was even withheld from injured and dying passengers, and in some cases the IDF soldiers actually assaulted and mistreated those who were injured. Such cruel behaviour is so obviously inconsistent with the findings made by the Prosecutor that there was no plan and policy to harm the passengers. The Victims stated that the intentional mistreatment of the passengers is both clear evidence of targeting and is an aggravating factor that underscores the gravity of the case. The manner of the attack in which the IDF soldiers killed 10 individuals, and injured and abused hundreds was consistently described by the Victims as deliberate, planned, cruel and excessive: “*They are very cruel, they are very tough, and very scary*”⁶⁹ ... “*they treated us as if we were in war with them ...*

⁶⁴ Observations of ██████████.

⁶⁵ Dressed in plain clothes and someone who may well have been flown to the Mavi Marmara after the initial attack specifically to check on whether the assassination had or had not been accomplished. See, Observations of ██████████; Observations of ██████████.

⁶⁶ Observations of ██████████.

⁶⁷ Observations of ██████████.

⁶⁸ Observations of ██████████.

⁶⁹ Observations of ██████████. See also, Observations of ██████████; Observations of ██████████; Observations of ██████████; Observations of ██████████; Observations of ██████████; Observations of ██████████.

they terrorized us.”⁷⁰ The Victims feel that the scale of the gratuitous violence that they experienced has simply not been taken into consideration by the Prosecutor.

32. In particular, the Victims were informed of the Prosecutor’s conclusion that “based on the information available at this stage, it is unclear whether the difficulties that some wounded passengers encountered in receiving medical treatment was due to the deliberate acts of the IDF or alternatively was an unintended consequence of the logistical and practical difficulties ... [and] there is not a reasonable basis to believe that the mistreatment of passengers also included deliberate denial of medical treatment.”⁷¹
33. In response, and based on what they witnessed first-hand, the Victims were most surprised that the Prosecutor could find (without any investigation) that it was “unclear” that medical treatment was deliberately denied to passengers. The lack of medical treatment could not be due to “logistical and practical difficulties faced by medical personnel in locating and treating the injured on board the vessel”⁷². The Victims explained that the IDF were in full control of the ship - they could do what they wanted⁷³ - and announcements and signs were made informing the IDF of the injured passengers. One Victim said that “*there was a constant stream of requests to the Israeli’s to stop attacking, medical assistance etc over the PA system.*”⁷⁴ One announcement was made “*to the*

Observations of ██████████ Statement of ██████████; ██████████; Statement of ██████████; Statement of ██████████.

⁷⁰ Observations of ██████████; ██████████.

⁷¹ Prosecution Article 53(1) Report, para. 68.

⁷² Prosecution Article 53(1) Report, para. 68. See for example, Statement of ██████████, who stated that he was kicked and abused after being shot in the back of the head. He was then handcuffed and soldiers stood over him waiting for him to die. His statement recounts that: “*I was at first shot at in the abdomen area ... Next I was shot in the back of my head using live ammunition ... after they shot me four or five soldier jumped on me and held me down on the floor. My hands were bound behind my back with cable ties and they started to kick my face. ... I understand Hebrew and one of his colleagues shoted ‘Oded he is dying’ and they left me bleeding on the floor in the middle of the roof between half an hour to one hour on the roof. Israeli soldiers were standing over me during this time ... A soldier come onto the roof and looked at me and said in Hebrew ‘that son of a whore is still alive.’”*

⁷³ The Israeli inquiry as recorded in the Turkel Report even noted that there were ample medical personnel provided for the operation (see para. 121).

⁷⁴ Observations of ██████████.

*Israeli soldiers who had boarded us asking them not to shoot at the doctors.*⁷⁵

Another Victim asked for help and informed the soldiers of critically injured passengers at her location: *“I wrote a sign in Hebrew saying that we have seriously injured passengers and need immediate medical assistance, and showed it on the window. I approached the soldiers and said in Hebrew that there are 5 seriously injured people that will die without help.”*⁷⁶ The Victim explained that all of them died while she was there.

34. Furthermore, “logistical and practical difficulties” could not explain why medically trained doctors and nurses who were passengers on the ships were actively prevented from accessing or assisting injured passengers. One Victim recounted that *“there was a long heated conversation with the IDF doctor about letting the doctors enter the room to give treatment to the injured. This took about 40 minutes to argue about letting the Turkish doctors in. The IDF doctor didn’t do anything.”*⁷⁷ Another passenger, who is a trained nurse, explained that *“The Israeli soldiers didn’t help any of our wounded especially the ones who received deadly injuries leaving them to die ... they were shouting at us everytime we try to help any of the wounded activists, and they didn’t allow me to enter the room which we used to gather the wounded to help them.”*⁷⁸ In contrast, two Israeli soldiers who were not seriously injured when they boarded the Mavi Marmara were looked after and well-treated on board by medical staff and the passengers.⁷⁹

35. Medical treatment was actively denied to one passenger who was *“in shock, cold and shaking after being shot in the legs”* when a saline drip with pain killers was removed by a soldier. When another saline drip did not work *“they*

⁷⁵ Observations of ██████████.

⁷⁶ Observations of ██████████. See also, Statement of ██████████, who stated *“I was aware that an announcement was being made from the reception desk over the tannoy in several languages to ask the Israelis to stop shooting as we had casualties and we were unarmed civilians.”* See also, Statement of ██████████; and Statement of ██████████.

⁷⁷ Observations of ██████████. See also, Statement of ██████████; Statement of ██████████; Statement of ██████████.

⁷⁸ Observations of ██████████. See also, Observations of ██████████; Statement of ██████████.

⁷⁹ See for example, Statement of ██████████.

*pulled it out and said 'he doesn't need it.'*⁸⁰ Another Victim with diabetes was prevented from taking prescribed medicine and suffered a reaction as a result.⁸¹

36. Passengers who attempted to assist and comfort the injured were shouted at and punished for helping injured passengers:

- *"No medical help was offered."*⁸²
- *"A number of the male passengers in front of me were suffering so I requested calmly from the Israelis to release their cuffs as they were losing circulation in their hands, had a medical condition or were elderly. I was told to shut up and threatened with being taken away somewhere. ... Eventually I was taken away for helping fellow passengers."*⁸³
- *"They were shouting at us every time we try to help any of the wounded activists ... No water, no food, no use of toilets, no medication ... we weren't allowed to help the wounded while we were seeing their blood flowing out of their wounds spreading everywhere on the ship."*⁸⁴

37. It is most noteworthy that Cetin Topcuoglu was shot in the back while *"helping take injured people to the doctor"*.⁸⁵ This is the clearest indication of the IDF soldiers' deliberate aggression towards any passenger who attempted to assist the wounded.

38. In addition, the IDF soldiers' treatment of injured passengers waiting to be transported for medical treatment demonstrates the IDF's motivation and intention to assault and harm the passengers on the ship.⁸⁶ Several Victims witnessed IDF soldiers abusing injured passengers on stretchers:

- *"They kicked the injured people on the stretchers ... They treated us in a way not even animals should be treated."*⁸⁷

⁸⁰ Observations of [REDACTED].

⁸¹ Observations of [REDACTED].

⁸² Observations of [REDACTED].

⁸³ Observations of [REDACTED].

⁸⁴ Observations of [REDACTED].

⁸⁵ Observations of [REDACTED].

⁸⁶ See, Statement of [REDACTED].

⁸⁷ Observations of [REDACTED]. See also, Statement of [REDACTED].

not have been examined by the Prosecutor, and ask that the Prosecutor be directed to do so by the Chamber.

42. The Victims submit that there is *at least* a reasonable basis to find that their treatment comes within the definition of torture given the severe pain and suffering that was inflicted on them to punish and intimidate them, and the manner in which they were detained and interrogated (on the ships and thereafter):⁹¹

⁹¹ For example, see also, Observations of ██████████, who stated “How could a human being attack another so brutally. I am 52 years old. IDF soldiers did not have any respect to my age. I was shot in the left shoulder. ... All the activists on board were in pain and suffering.” See also, Observations of ██████████ who stated that “Directly in front of me on the floor kneeling were rows of Arab and Turkish male passengers who were cuffed behind their backs. They told me they had been held in that position for sometime. Several to my left about 10 feet away had hoods on their heads. I witnessed Israeli’s periodically going up leaning over the hooded passengers and yelling at them and prodding them.” See also, ██████████, who stated that “Many were cuffed and on their knees even though they had gunshot wounds. I saw one who was shot in the shoulder and were bleeding. They took people who were cared for by the passenger medics, people with intravenous drip, and placed them out there in the burning sun, storm wind, and water splashing. Other people were visibly injured, sometimes seriously injured but were still forced to sit on their knees all the time. ... Some could go to the bathroom, and some were denied to go to the bathroom which forced them to urinate on themselves, which was very degrading. The helicopter remained like this for several hours, obviously to torture us.” See also, Statement of ██████████, who stated that IDF soldiers were “kicking me and he was using the end of his gun and hit me on my head and shoulder” and “[t]hey tied my two small fingers as well from behind and the straps are very very tight and I couldn’t feel my small fingers. They put me down onto my knees by kicking me, they started to search my pockets and I know they took all my belonging.” See also, Statement of ██████████, who stated that “I took him to first aid place and saw another one was laying on the floor covered with blood and unconscious ... then we surrounded ourselves to Israeli soldiers and one of the soldiers started to hitting and kicking me in my back and I told him I did not do anything ... he did not believe me and then he and another soldier attacked me in a vicious way and I was fell unconscious and when I woke up I found that my hands were handcuffed and was laying on the floor could hardly standup or move.” See also, Statement of ██████████ who stated that “three bullets in all had shot my body ...I laid on the floor. They didn’t step in at all, on the contrary they came and handcuffed me. The handcuffs were so tight that my hands were swollen, my arms were numb. I thought that even if I don’t die, my arm would become gangrenous and get cut. On top of that, they walked over me, kicked at us, a soldier kicked at me and my mouth and nose had bled. Meanwhile, they were continuously swearing us in English, insulting us.” See also, Statement of ██████████ who stated “Then three soldiers carried me to an empty tent and ordered me to get undressed. They searched me while I was completely naked. They searched me this way at least 13 times within five hours. During the search, they talked and laughed, which made me feel utterly insulted.” See also, Observations of ██████████ who stated that “We were sitting there with the fright of death for several hours. I leave you to understand the psychological distress we had suffered. ... Once the Israeli soldiers took full control of the ship, my hands were cuffed behind my back. They did not take my handcuff of even to go the toilet. They let me go the toilet a few hours after I request to go toilet, however, they did not take my handcuffs off even when I went to the toilet. This treatment was nothing but degrading to humanity ... I was abused physically and verbally.” See also, Observations of ██████████ “They wanted to handcuff me, however, when I refused, one of the soldiers hit my left foot harshly with his fun and consequently, two of my toes have been fractured.” See also, Observations of ██████████; Observations of ██████████; Observations of ██████████; Observations of ██████████; Observations of ██████████; Observations of ██████████

- *“ [REDACTED] shouted ‘Don’t sign any papers giving by the Israelis to drop our rights because we’re going to confront them later at the international court for violating the international waters’ even before reaching the Palestinian waters, so they attacked and blind-folded him with a black plastic bag, then they got him away which he was brutally tortured, ”⁹²*
- *“They came very close and said ‘now we have you, and we shall take you, and we shall kill you, we will remove you from the others. The others may go home but you will remain here you are not going not live.’ It was a stretched atmosphere the space was very small behind some kind of corner and they started punching me in the stomach... The military personnel who beat me told me that the buses were there for those who would be deported but that it wasn’t for me ... They said ‘you are not leaving’ . ”⁹³*
- *“Several to my left about 10 feet away had hoods on their heads. I witnessed Israeli’s periodically going up leaning over the hooded passengers and yelling at them and prodding them. ”⁹⁴*
- *“They tortured us while they were on the ship before taking us to custody even they’ve unleashed their police dogs to terrorize us and to sabotage our belongings, and we were all handcuffed by plastic bands and made all men bow down to their knees for a period of seven hours, and as the ship was shaking because of the heavy air pressure generated by the military helicopters right above the it. ”⁹⁵*
- *“At the airport I saw [REDACTED] and [REDACTED] badly beaten with blood streaming down their heads. ”⁹⁶*
- *“At the airport on our way back to Turkey, I witnessed one of the passengers that was on board the Mavi Marmara ship with us being beaten up brutally by the Israeli soldiers, but I was not able to do anything to help the situation. ”⁹⁷*

43. The IDF’s treatment of the dead is very revealing. The widow of one deceased reported that when the family was allowed to see her husband’s body after he died beside her from a gunshot wound on the ship, there were bite marks from dogs on his body, and his body was beaten and swollen: *“the dogs were indeed*

⁹² Observations of [REDACTED]

⁹³ Observations of [REDACTED].

⁹⁴ Observations of [REDACTED].

⁹⁵ Observations of [REDACTED].

⁹⁶ Observations of [REDACTED] See also, Statement of [REDACTED];

Statement of [REDACTED].

⁹⁷ Observations of [REDACTED]

allowed to bite her husband's body who didn't have any bites at the time he died."⁹⁸ Furthermore, *"witnesses told me that when the soldiers passed his body before and after he died on the ship on the journey to Israel, the soldiers would kick and beat him. They also urinated on him."*⁹⁹

44. The Victims also provided evidence that they were subjected to sexual and racial humiliation by the IDF soldiers; for example:

*"When they spoke in Hebrew they had very sexual connotation and were making comments. They didn't know that I spoke Hebrew. It was lots of bad things. It was both racist and about women as well. They were commenting on women and their race and religion."*¹⁰⁰

45. One woman reported being strip searched in the presence of men. When she resisted she was beaten. Although the man was told to leave, she found that he was watching from an up level viewing area, taking pictures and laughing. She was searched completely naked, including in her private parts, while he watched and laughed.¹⁰¹ [REDACTED]

[REDACTED]. Such egregious behaviour can only be indicative of the gravest crimes that should be investigated.

46. It is clear that the soldiers came prepared to act in this manner, with hundreds of pairs of handcuffs, lists of passengers, and dogs. The hundreds of identical handcuffs with which the IDF came equipped showed an intention to detain hundreds of blameless civilians who - even on the Prosecutor's own findings - had no ill will but a desire to help those they genuinely feared to be grievously afflicted by a blockade policy already declared unlawful by leading world organisations. Those handcuffs - applied tightly often too tightly and so as to cause lasting injury - permitted the most obvious, foreseeable and experienced

⁹⁸ Observations of [REDACTED]. See also, Observations of [REDACTED]; Observations of [REDACTED].

⁹⁹ Observations of [REDACTED].

¹⁰⁰ Observations of [REDACTED]. See also, Statement of [REDACTED], who stated that soldiers were *"winking, smiling, laughing, and making kissing gestures with their mouths. It was humiliating as the female soldier touched my body to search me they laughed and were making comments in Hebrew that I could not understand. I got the impression they were of a sexual nature."*

¹⁰¹ Observations of [REDACTED].

degradation and humiliation that comes with natural bodily functions, the passage of time and the determination of the IDF to punish the innocent. Stories of efforts to use lavatories and the consequences of not being allowed to do so make unappealing, distressing reading. It was always the IDF's intention to detain these unhappy victims and to take them - bowed, humiliated, distressed, degraded - into custody in Israel, where they would be further humiliated and interrogated. The Israeli authorities had tents erected at Ashdod for the interrogation, with translators present. They had written 'confession' documents and criminal charges prepared.¹⁰² Civilians had come to witness the passengers being taken off the ships and they jeered at them when the passengers arrived.¹⁰³ It was a well-planned operation from start to finish.¹⁰⁴

47. It should also be taken into account that passengers on board the other ships (not only the Mavi Marmara) were abused in similar ways.¹⁰⁵ It was not only one ship that was targeted, but all seven ships in the Flotilla which in total were

¹⁰² Observations of ██████████; Statement of ██████████; Observations of ██████████.

¹⁰³ Observations of ██████████; Observations of ██████████. Observations of ██████████.

¹⁰⁴ Even the Turkel Report acknowledges extensive pre-planning between the Ministries, see para. 117-119.

¹⁰⁵ See for example, ██████████, a passenger on the Challenger I, stated that "was tasered by IDF forces when they forcefully boarded our ship. The IDF shot an explosive device into the cabin of the Challenger I which blew out the windows. IDF soldiers brutally attacked five passengers on the Challenger I, throwing them down into the glass on the deck of the ship and then handcuffing and hooding them. I was inside the cabin when the IDF threw a stun grenade through the double glass door on the stern of the ship. When the grenade exploded it blew the double glass doors and some window into pieces that flew throughout the cabin." She also stated that "I suffered mental trauma from the following: absorbing the blast of the IDF stun grenade that blew out the glass door and some windows in the ship; witnessing ship passengers being assaulted by IDF soldier-thrown into the glass on the deck, handcuffed and hooded; spending hours in handcuffs on the ship until the ship was docked in Israel; being paraded and subjected to harsh words from the lines of IDF, port security and Israeli police on the docks of Ashkelon as the IDF took us off the ship; being imprisoned for three days in an unfinished Israeli prison and subjected to Israeli government interrogation; ... being held for 6 hours in a small van without air conditioning, water or toilet facilities on the hot airport tarmac; witnessing attacks by Israeli police and airport security staff on fellow passengers, both male and female, in the Ben Gurion airport on the day we were deported from Israel." See also, ██████████, a passenger on the Challenger I, stated that "Several women stayed on the deck of the Challenger I yelling to the IDF to stay away. After the boarding they were beaten and then bound and hooded. One of the women's noses was broken. As I approached the cabin a stun grenade exploded within a foot of my face. I lost a significant amount of vision in my right eye and continue 5 years later to receive medication by means of a needle stuck into my eyeball." See also, ██████████, a passenger on the Defne Y who stated that "The ship was attacked physically and psychologically by the IDF soldiers for approximately 8 hours. ... The Defne Y ship was wrecked by the IDF soldiers with the excuse that they were searching the ship." See also, ██████████, a passenger on the Sofia, who stated "I saw how they shot some of the men on board with electroshock guns and how they fell down in pain from the electroshocks after being shot and how the soldiers then shot one man again with some kind of a paint ball gun."

carrying over 700 passengers. The Prosecutor has erroneously only found that those on the Mavi Marmara were mistreated. This is another error which the Victims ask the Chamber to identify and direct the Prosecutor to rectify.

48. Certain of these Victims were on ships other than those three registered to the Comoros, Cambodia and Greece. They were however recognised as Victims who may participate in the present proceedings because they suffered indirect harm as a result of the crimes committed on the ships that come within the territorial jurisdiction of the Court.¹⁰⁶ Their observations should therefore be taken into account, particularly for the purposes of assessing gravity, as they demonstrate the widespread nature of the harm suffered on all of the ships and the coordinated and planned manner of the IDF attack on the Flotilla as a whole.

IV. CRIMES RATIONALLY LINKED TO BLOCKADE AND GAZA

49. The Victims submit that the Prosecutor's finding that the crimes were not part of a broad operation - in existence for several years - to enforce the Gaza blockade and thus to find that they were not connected to events in Gaza itself is manifestly unreasonable. As a result of this finding the Prosecutor has been able to avoid consideration of any events beyond the *immediate* territorial

¹⁰⁶ See for example, ██████████, a passenger on the Challenger I, who stated that “I witnessed at close range the Israeli Defense Force (IDF) lethal attack on the Mavi Marmara. I witnessed IDF helicopters and boats attacking the boat and heard IDF gunfire ... I saw in myself, and others told me, I showed symptoms of post traumatic stress by my constant reliving of the harrowing experiences.” She further stated that “I suffered mental trauma from ... listening to the stories of women from the other ships as they were brought into the prison, stories of passengers being executed or wounded, passengers handcuffed for 18 hours and left on the deck in the hot sun without water or toilet facilities,” and she was “deeply affected by the description by the wife of one of those executed of what she went through trying to save her husband's life, then being denied access to his body by the IDF.” See also, ██████████, a passenger on the Sfendonh, who stated that “I did suffer indirect psychiatric harm and distress as a result of the attack on the Sfendonh and then in the Israeli prison with all the other female passengers, one of whom was mourning her husband's death on the Mavi Marmara. When I got home I spent \$2,300 on Trauma Therapy from June 2010 to December 2010.” See also, ██████████, a passenger on the Challenger I who stated that “Although I had left the Mavi Marmara a few hours before that attack to join the Challenger I did know several passengers who stayed including one who was killed and others wounded. The Challenger I passed close to the Mavi after the attack began and we could clearly see the IDF firing from the inflatables as they prepared to board.” See also, ██████████, a passenger on the Defne Y who stated that “They were being abused by the soldiers for approximately 8 hours. From where we were positioned, we could see the attack on the Mavi Marmara ship clearly.” See also ██████████, a passenger on the Gazze I, stated that “[s]uddenly two helicopters, whose lights were off, started hovering above the Mavi Marmara. We heard weapons being fired followed by the sound of bombs. I was shocked by what I saw through my binoculars. They were firing at people.”

jurisdiction. Thus she has freed herself from determining whether the crimes were committed as part of a policy that may have constituted crimes against humanity. In consequence, and perhaps most importantly in the present review, this allowed her to narrow and minimise the criminality behind the attack on the vessels in deciding whether the crimes were serious enough for her to investigate.

50. The position taken by the Prosecutor, say the Victims, is contrived. Much like the artificial and manipulated separation the Prosecutor sought to draw between the attack on the vessels and that on the passengers, it is adopted solely to avoid having to acknowledge the gravity of the case and to investigate the IDF. It is contrary to what the Victims saw and heard happening and the very obvious reason why they were attacked. The Victims submit that the Prosecutor has been blind to the obvious. The passengers were victimised to punish them for supporting the citizens of Gaza. The policy of collective punishment perpetrated against those living in Gaza was being extended to those who sought to highlight the plight of those in Gaza. The Israeli authorities and the IDF have consistently had a policy of targeting those from the international community who seek to oppose the blockade of Gaza and bring aid to those in Gaza, all as part of their policy to suppress and control Gaza.
51. These views of the Victims constitute *at the very least* a reasonable basis to investigate the links between the attack on the Flotilla and the situation in Gaza. Instead of acting in accordance with her duty, the Prosecutor has prematurely and irrationally concluded that there is no connection and has thus been able to dispose of the case.
52. When it was explained to the Victims that as part of the Prosecutor's conclusion on gravity, she found that "the available facts show that the apparent war crimes were neither sufficiently proximate to, nor aggravated by, the events in Gaza"¹⁰⁷, they unanimously regarded this finding as illogical and inherently unreasonable:

¹⁰⁷ Prosecution Response to Request for Review, para. 55.

- *“These crimes are an extension of the war crimes systematically being perpetrated against 1.8 million people in Gaza.”*¹⁰⁸
- *“The Israeli military, on behalf of the state of Israel, carried out this violent interception as part of a clear plan and policy not only designed to prevent access to Gaza by sea but also as part of the wider siege and occupation of the air, land and minds of the Palestinians. ... The policy against volunteers is also well known and well documented.”*¹⁰⁹
- *“[T]hey treated us as if we were in war with them.”*¹¹⁰

53. The Victims stressed that *“the plan was to punish the passengers and teach us a lesson. I believe that this was a political decision to teach a lesson for those that were on the ship.”*¹¹¹ It was a form of collective punishment, as is perpetrated against the civilians of Gaza, and it cannot, as a matter of common sense, be separated from the wider context. One passenger highlighted the announcement of Israeli officials in the days before the Flotilla which conveyed that *“they would do anything to stop the Flotilla ... there were also a lot of declarations saying that the aim is not to stop the ship but to stop others from doing the same, and to send a message to prevent others from doing this”*¹¹². The Victim observed that *“This means that it is not enough to stop the ship but they wanted to punish us.”*¹¹³

54. The Prosecutor has, since her Decision, noted that she could consider the wider context, if there was a rational link between the crimes on the Flotilla and the situation in Gaza.¹¹⁴ The Prosecution has stated that *“in conducting its gravity analysis on the facts of this situation, such a rational link would have been constituted, either, by: information suggesting a reasonable basis to believe that the Identified Crimes were intended to be part of the operation to enforce the blockade (and thus that the Identified Crimes intentionally connected with IDF policy towards the object of the blockade, which was Gaza), or some other*

¹⁰⁸ Observations of ██████████.

¹⁰⁹ Observations of ██████████

¹¹⁰ Observations of ██████████.

¹¹¹ Observations of ██████████.

¹¹² Observations of ██████████.

¹¹³ Observations of ██████████. See also, Observations of ██████████.

¹¹⁴ Prosecution Response to Request for Review, paras. 53-55.

information sufficiently linking the perpetrators, victims, or circumstances of the Identified Crimes aboard the Mavi Marmara and other events in Gaza.”¹¹⁵

55. The Victims state that on the basis of what they witnessed first-hand and all of the circumstances, there is unquestionably at the very least a reasonable basis to believe a rational link exists and that the test as set out by the Prosecutor is met. The Prosecutor should be directed to reconsider all of the relevant evidence which shows the connection between the events on the Flotilla and those in Gaza and Palestine/Israel. For example, the Victims state:

- *“The behaviour of the commandos and the operation against the Freedom Flotilla on May 30th 2010 was so similar in nature to the commonplace killing and injury of those defending Palestinian rights, both previously and since, that they are recognisable as large scale and long-term, a continuation of behavior characterised by excessive use of force, stifling of the right to peaceful protest and involving forceful security searches.”¹¹⁶*
- *“The army behaviour that is happening in Palestine for ages was the same behaviour that happened on the MM, it was just shocking because it was international.”¹¹⁷*
- *“I can only believe that they are used to this level of violence when they are humiliating Palestinian civilians.”¹¹⁸*

56. In particular, the targeting of the Palestinian passengers, as noted above, shows that crimes were plainly linked to the conflict in Gaza. Victims pointed to the fact that there was a list of certain passengers’ names and pictures carried by IDF soldiers that identified most of the Palestinian passengers - including a Palestinian member of the Knesset and a leading Palestinian cleric.¹¹⁹ One Palestinian passenger noted that *“there were special threats in the media against the 5 of us that were Palestinian on the Flotilla. ... They knew we were on the ship”*,¹²⁰ and after the ship was controlled the Palestinian passengers were

¹¹⁵ Prosecution Response to Request for Review, para. 54.

¹¹⁶ Observations of ██████████.

¹¹⁷ Observations of ██████████.

¹¹⁸ Observations of ██████████.

¹¹⁹ Observations of ██████████; Observations of ██████████

█████████; Observations of █████ █████ █████ █████ Observations of █████ █████

█████████

¹²⁰ Observations of ██████████. See also, Statement of ██████████

specifically sought by IDF soldiers on the ship.¹²¹ One Victim stated that *“The young Palestinian was being kicked is my answer of it ... being linked. They knew he was Palestinian and that’s why they chose to kick him.”*¹²²

57. Victims also drew attention to the alleged assassination attempt of Sheikh Raed as clear evidence that the attack was linked to the wider conflict, and thus aggravated by being part of the IDF’s policies of targeted killings and suppression of opposition.

58. These are all “available facts” which the Prosecutor has ignored that demonstrate the rational link. The Prosecutor’s attempt to distinguish the present facts from the example of President Mandela is specious.¹²³ Those on board the Flotilla, in particular the Palestinians, are related to the conflict and occupation in Gaza through their nationality, affiliations, and/or actions as well as on account of the perpetrators and their conduct and methods.

59. The Victims wish to highlight for the Chamber that they were told by the IDF soldiers and Israeli officials that they were ‘terrorists’ connected to the conflict and that, as passengers, their aim was to attack Israel and its people:

- *“They knew that we were activists with the intention of helping the Gazan people. They were treating us as though we were criminals.”*¹²⁴
- *“Also the extensive use of the word terrorist, so they didn’t treat us like activists but terrorists.”*¹²⁵
- *“[T]hey treated us as if we were in war with them.”*¹²⁶
- *They treated us as terrorists.*¹²⁷

¹²¹ Statement of ██████████; Observations of ██████████; Observations of ██████████

██████████; Observations of ██████████.

¹²² Observations of ██████████. See, Statement of ██████████.

¹²³ Prosecution Response to Request for Review, note 231.

¹²⁴ Observations of ██████████.

¹²⁵ Observations of ██████████.

¹²⁶ Observations of ██████████.

¹²⁷ Statement of ██████████.

60. Passengers also reported being called and treated like ‘terrorists’, and questioned extensively about whether they were aiming to ‘attack’ Israel:

- *“They asked if I had personally attacked or was violent against any of the soldiers. They accused me of acting as a terrorist to break the blockade and that I acted violently against the soldiers.”*¹²⁸
- *“They asked me detailed questions from how we were chosen to board the Mavi Marmara ship to where we did the army.”*¹²⁹
- *“At the second stop they asked me what I think about Israel ... They asked me ‘why do you not like Israel?’”*¹³⁰

61. One of the prominent Palestinian passengers stated that her participation in the Flotilla continued negatively to impact her life and reputation as she was branding as a ‘terrorist’: *They used this word [terrorist] especially when I got back and it was in the media. In the Knesset they called me a terrorist. It was demonizing the activists in order to justify and legitimate in Israel and internationally that we deserved to be killed.*¹³¹

62. Victims observed that their treatment matched the statements made by Israeli officials before and after the attack in which the passengers were labeled as provocateurs and terrorists. Israeli officials made declarations *“saying that the aim is not to stop the ship but to stop others from doing the same, and to send a message to prevent others from doing this.”*¹³² Given the blockade’s established unlawful character¹³³ and that authorities in Gaza welcomed the arrival of the Flotilla within their own territorial sea limits, these declarations - and others like them - were clearly designed to justify to Israeli citizens and soldiers (often

¹²⁸ Observations of [REDACTED].

¹²⁹ Observations of [REDACTED].

¹³⁰ Observations of [REDACTED].

¹³¹ Observations of [REDACTED].

¹³² Observations of [REDACTED].

¹³³ 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, UN Human Rights Council, A/HRC/15/21, 27 September 2010, paras. 38, 54 (hereinafter “UNHRC Report”). See also, John Dugard, Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled “Human Rights Council”, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/4/17 29 January 2007 (<http://unispal.un.org/UNISPAL.NSF/0/B59FE224D4A4587D8525728B00697DAA>). See also, Gaza closure: not another year!, ICRC Resource Centre, 14 June 2010 (<https://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm>).

young and no doubt impressionable) that there could be legal justification in what was a clear, brazen, determined breach of international law. It was repeatedly asserted by the authorities that *“The goal of the flotilla was not peace but rather to continue the terrorism and to strengthen the waning status of Hamas.”*¹³⁴

63. The Victims noted that Israeli officials were also recorded in the days before the attack making clear links between the Flotilla and events in Gaza/Israel:

- On 28 May 2010, Deputy Prime Minister and Minister of Foreign Affairs Avigdor Liberman stated that *“the flotilla is a violent attempt to provoke Israel. Israel will not permit any infringement of its sovereignty, on land, in the air and at sea.”*¹³⁵
- On 30 May 2010, Deputy Foreign Minister Danny Ayalon called the organisers of the Flotilla *“an extremist Islamic organization with ties to Hamas and global Jihad”* and stated that *“many [of the participants] are not against a particular policy of the Israeli government, but have very real and dangerous hatred for Jews and the Jewish state.”*¹³⁶
- There are also public records from Israeli intelligence which show that the passengers were regarded as enemies in the conflict with Israel and should be treated as such. It is claimed that the IHH members on board the Flotilla were a ‘hardcore’ terrorist group who supported Hamas, and that many of those killed on the Mavi Marmara belonged to the IHH.¹³⁷

¹³⁴ DFM Ayalon holds conference call with US Jewish leaders, Israel Ministry of Foreign Affairs, 1 June 2010 (http://mfa.gov.il/MFA/PressRoom/2010/Pages/DFM_Ayalon_conference_call_US_Jewish_leaders_1-Jun-2010.aspx).

¹³⁵ FM Liberman: MFA is following the course of the flotilla to Gaza, Israeli Ministry of Foreign Affairs, 28 May 2010 (<http://mfa.gov.il/MFA/PressRoom/2010/Pages/The-MFA-is-following-the-course-of-the-flotilla-to-Gaza-28-May-2010.aspx>).

¹³⁶ Dep FM Ayalon condemns anti-Semitic chants heard on flotilla, Israeli Ministry of Foreign Affairs, 30 May 2010 (http://mfa.gov.il/MFA/PressRoom/2010/Pages/DepFM_Ayalon_condemns_anti-Semitic_chants_flotilla_30-May-2010.aspx).

¹³⁷ See <http://www.terrorism-info.org.il/en/index.aspx> and <http://nsc.gov.il/he/Pages/Home.aspx>. For example, The Hamas administration in the Gaza Strip and pro-Palestinian organizations in Europe are planning a flotilla of aid to the Gaza Strip, The Meir Amit Intelligence and Terrorism Information Center, 12 April 2010 (<http://www.terrorism-info.org.il/en/article/18128>) which states that *“In the past*

64. On the day of the attack, Israeli officials made further statements calling the passengers ‘terrorists’ and enemies of Israel. For example:

- On the day of the attack, Deputy Prime Minister and Minister of Foreign Affairs Avigdor Liberman said *“I want to express my admiration for the IDF soldiers, who showed responsibility, restraint, and great courage in impossible conditions, under the brutal attack of a bunch of anarchists, hooligans and terror-supporters.”*¹³⁸
- Deputy Prime Minister and Minister of Foreign Affairs Avigdor Liberman further stated on 31 May 2010 that *“What happened this morning was pre-planned violence and Israeli does not intend to allow any attack on its sovereignty by groups of terror-supporters and anarchists.”*¹³⁹
- Deputy Foreign Minister Danny Ayalon stated: *“I want to report this morning that the armada of hate and violence in support of the Hamas terror organization was a premeditated and outrageous provocation. The organizers are well-known for their ties to Global Jihad, Al-Qaeda and Hamas. Also, we know that the entire campaign was not humanitarian in nature but a provocation trying to aid and abet and*

several months, preparations are being made for a large-scale naval shipment of aid to be transferred to the Hamas administration in the Gaza Strip” ... and “The Hamas administration in the Gaza Strip, which is involved in organizing the flotilla, is preparing to make the most out of it in terms of propaganda and political profits.” See also, News of Terrorism and the Israeli-Palestinian Conflict (April 27-May 4, 2010), The Meir Amit Intelligence and Terrorism Information Center, 4 May 2010 (<http://www.terrorism-info.org.il/en/article/18120>) which stated that *“Preparations continue for a flotilla of aid to the Gaza Strip, which is supposed to include at least eight ships. The Hamas administration is repairing the Gaza port for the arrival of the flotilla and plans to send over 100 boats for a welcome ceremony.”* See also, The Flotilla to the Gaza Strip – Update (As of 1400 hours, May 30, 2010), The Meir Amit Intelligence and Terrorism Information Center, 30 May 2010 (<http://www.terrorism-info.org.il/en/article/18104>) which stated that *“In the Gaza Strip, Hamas continues its preparations to receive the flotilla.”*

¹³⁸ FM Liberman comments on flotilla events, Israel Ministry of Foreign Affairs, 31 May 2010 (http://mfa.gov.il/MFA/PressRoom/2010/Pages/FM_Liberman_flotilla_31_May_2010.aspx).

¹³⁹ FM Liberman speaks with counterparts about flotilla to Gaza, Israel Ministry of Foreign Affairs, 31 May 2010 (http://mfa.gov.il/MFA/PressRoom/2010/Pages/FM_Liberman_talks_counterparts_Gaza_flotilla_31_May_2010.aspx).

*support Hamas terror organizations and indeed to try to create a free corridor of terrorist supplies to Gaza and Hamas.*¹⁴⁰

65. It should be borne in mind that grossly inflammatory observations by the Israeli authorities (above and to follow) are not to be taken at face value by a Prosecutor (as she may have done) when charged with considering this referral. They constitute material that show the Situation cries out for proper investigation to discover what a proper trial of what may be very grave crimes would reveal.
66. On 31 May 2010, Israeli Prime Minister Benjamin Netanyahu called the passengers of the Flotilla ‘terrorists’ and connected them to Hamas and the conflict in Gaza, stating:

*“This incident was the result of an intentional provocation of forces which support Iran and its terrorist enclave, Hamas, in the Gaza Strip. This enclave, Hamas, has fired thousands of missiles at the State of Israel, and it is amassing thousands more.”*¹⁴¹

67. On 1 June 2010, following the attack, the Israeli cabinet concluded in light of what happened on the Flotilla that *“Israel will continue to defend its citizens from the Hamas terrorist base. The security of our communities and our citizens outweighs all other considerations.”*¹⁴²
68. On 2 June 2010, Prime Minister Netanyahu maintained Israeli’s position that *“They [the passengers] were members of an extremist group that has supported international terrorist organizations and today support the terrorist*

¹⁴⁰ Seizure of the Gaza flotilla: Press conference with Dep FM Ayalon, Israel Ministry of Foreign Affairs, 31 May 2010 (http://mfa.gov.il/MFA/PressRoom/2010/Pages/Gaza_flotilla_Press_conference_DepFM_Ayalon_31-May-2010.aspx).

¹⁴¹ Gaza flotilla: Statement by PM Netanyahu, Israel Ministry of Foreign Affairs, 31 May 2010 (http://mfa.gov.il/MFA/PressRoom/2010/Pages/Gaza_flotilla-Statement_PM_Netanyahu_31-May-2010.aspx).

¹⁴² Security Cabinet discusses the Gaza flotilla, Israel Ministry of Foreign Affairs, 1 June 2010 (http://mfa.gov.il/MFA/PressRoom/2010/Pages/Security_Cabinet_discusses_Gaza_flotilla_1-Jun-2010.aspx).

organization called Hamas” ... “This was not a love boat. This was a hate boat. These weren't pacifists. These weren't peace activists. These were violent supporters of terrorism.”¹⁴³

69. These arguments were also put forward in the court cases that followed in which the IDF advanced the position that it was necessary to use force to protect the IDF soldiers and Israeli citizens.¹⁴⁴ There can be no doubt that the IDF and the Israeli authorities regarded the Flotilla as part of the conflict and directly related to events in Gaza and Palestine/Israel. It was not an isolated and discrete event.
70. In all of the circumstances and given all of the available evidence, the Victims stress that it would be a shameful sham by the Prosecutor to allow the ICC's record at this first stage of non-investigation to show that the attack on Flotilla was not rationally linked to the blockade and the situation in Gaza. As acknowledged even by the Prosecutor, consideration of this wider context would add to the gravity of the crimes. The Victims submit that when viewed in their proper context, the crimes on the Flotilla are in their own right and because of the conflict and policies of which they form a part, undeniably serious enough to be investigated by the ICC.
71. It is not that the Victims merely disagree with the Prosecutor; her findings are palpably unreasonable and unlawful in the sense of not having applied the correct legal standard for opening an investigation. The Prosecutor has overlooked vital evidence in reaching her decision. It is of no force for her to claim in general terms that she has reviewed all the evidence when she simply could not have done so genuinely and applied her mind properly to its import and still have reached the conclusion she did.

¹⁴³ Statement by Prime Minister Netanyahu: "No Love Boat", Israel Ministry of Foreign Affairs, 2 June 2010 (http://mfa.gov.il/MFA/PressRoom/2010/Pages/Statement_PM_Netanyahu_2-Jun-2010.aspx).

¹⁴⁴ See for example, Decision of Israeli Supreme Court, 2 June 2010 (http://elyon1.court.gov.il/files_eng/10/690/041/n04/10041690.n04.pdf).

V. CONCLUSION

72. For all of the reasons submitted in these observations, the Legal Representatives respectfully urge the Chamber on behalf of the Victims to direct the Prosecutor to reconsider her Decision and to apply the correct legal standard for opening an investigation to all of the available, relevant evidence of the attack and the wider context. It is imperative for the interests of the Victims, of justice and of the integrity of the Court that the Prosecutor should reconsider her Decision and initiate an investigation to put an end to impunity and hold those responsible to account before the ICC.



Sir Geoffrey Nice QC

Rodney Dixon QC

Legal Representatives for Victims

Dated 22 June 2015
London
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