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The findings of the UN Human Rights Council Inquiry into Israel's Flotilla attack: An illegal blockade, an illegal attack, unlawful executions and use of "extreme" and "unnecessary" violence against passengers

Irish Government must take meaningful action to end Israeli impunity

On September 22nd 2010 the UN Human Rights Council released its "**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**" (henceforth, *The Report*)¹.

The Report, based on interviews with over 100 witnesses (including 4 Irish nationals)² and other information received, represents a vindication of the position of those who participated in the May Freedom Flotilla, and indeed, the position of the Ireland-Palestine Solidarity Campaign (IPSC) in our discourses on the events at the time and subsequently. Crucially, the vindication comes from an independent international fact-finding mission set up by the United Nations Human Rights Council, an inter-governmental body within the UN system made up of 47 states responsible for strengthening the promotion and protection of human rights around the globe.

In summary, *The Report* found the following to be true: the blockade of Gaza is illegal and Israel's policies there are a form of collective punishment; the interception of the Flotilla was illegal and it represented no threat to Israel; live ammunition was fired from Israeli helicopters prior to the boarding of the *Mavi Marmara*; passengers did not carry or discharge firearms; at least six passengers were arbitrarily executed at sea (nine were killed in total); passengers (including Irish nationals) were subject to violence and torture, both at sea and during captivity.

This briefing document will give an overview of the main findings of *The Report*, and includes recommendations for actions the Irish Government should take to sanction Israel for its breaches of various international legal statutes, not least for those abuses carried out against Irish nationals for which An Taoiseach Brian Cowen promised the "most serious consequences".³

Israel has of course already rejected the findings of *The Report* as "biased" - presumably because they will not correlate with the upcoming verdict from Israel's own Turkel Inquiry into the Flotilla attack. Finally, it is worth noting that the impartiality of any conclusions drawn by the second UN commission of inquiry established by the office of UN General Secretary Ban Ki Moon must be seriously questioned for reasons outlined in a previous Ireland-Palestine Solidarity Campaign and Latin America Solidarity Centre briefing document issued in August 2010.⁴

Overview of *The Report's* most important findings

1. The Israeli blockade of Gaza is illegal and the interception of the Flotilla was therefore illegal.

"A blockade may not continue to be enforced where it inflicts disproportionate damage on the civilian population...the Mission is satisfied that the blockade was inflicting disproportionate damage upon

¹ Full report online at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf

² Mairead Corrigan Maguire, Fiachra Ó Luain, Shane Dillon and Ken O'Keefe

³ *Irish Times*, 2/06/10, <http://www.irishtimes.com/newspaper/ireland/2010/0602/1224271676571.html>

⁴ See: http://www.ipsc.ie/pdf/LASC_IPSC_Statement_on_Uribe_10-08-2010.pdf



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the civilian population in the Gaza strip and as such the interception could not be justified and therefore has to be considered illegal." (p.14)

2. There is no doubt that Israel's actions and policies in the Gaza Strip amount to collective punishment as defined by international law.

"The Mission considers that one of the principal motives behind the imposition of the blockade was a desire to punish the people of the Gaza Strip for having elected Hamas. The combination of this motive and the effect of the restrictions on the Gaza Strip leave no doubt that Israel's actions and policies amount to collective punishment as defined by international law." (14)

3. The Freedom Flotilla presented no imminent threat to Israel.

"[The Mission] is satisfied not only that the flotilla presented no imminent threat but that the interception was motivated by concerns about the possible propaganda victory that might be claimed by the organizers of the flotilla." (p.15)

4. Live ammunition was fired from helicopters onto the top deck of the *Mavi Marmara* prior to the descent of the commandos. There was no evidence that any of the passengers carried firearms.

"[The Mission] concludes that live ammunition was used from the helicopter onto the top deck prior to the descent of the soldiers The Mission has found no evidence to suggest that any of the passengers used firearms or that any firearms were taken on board the ship." (p.27)

5. Lethal force employed by the Israeli soldiers in a widespread and arbitrary manner.

"Throughout the operation to seize control of the *Mavi Marmara*, including before the live fire restriction was eased, lethal force was employed by the Israeli soldiers in a widespread and arbitrary manner which caused an unnecessarily large number of persons to be killed or seriously injured." (p.37)

6. At least six passengers were killed in a manner consistent with an extra-legal, arbitrary and summary execution.

"The circumstances of the killing of at least six of the passengers were in a manner consistent with an extra-legal, arbitrary and summary execution ... prohibited by international human rights law, specifically article 6 of the International Covenant on Civil and Political Rights" (p.38)

7. The actions of the Israeli soldiers on several of the boarded boats constituted torture.

"The Mission thus determines that the treatment of passengers on board the *Mavi Marmara* and in certain instances on board the *Challenger 1*, *Sfendoni* and the *Eleftheri Mesogios*, by the Israeli forces amounted to cruel, inhuman and degrading treatment and ... torture. [This was a violation] of the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." (p.41)

8. Some detainees – including Irish nationals - were subject to torture and incidents of extreme and unprovoked violence during their time in Israeli captivity.



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"Perhaps the most shocking testimony, after that relating to the violence on the Mavi Marmara, provided to the Mission was the consistent accounts of a number of incidents of extreme and unprovoked violence perpetrated by uniformed Israeli personnel upon certain passengers during the processing procedures inside the terminal at Ben Gurion International Airport on the day of deportation." (p.44)

"Some passengers in the passport checking area saw an older passenger being roughly treated after receiving what appeared to be a beating. When other passengers, including Irish and Turkish, protested at this treatment, they were charged by soldiers using batons. In the foray, around 30 passengers were beaten to the ground, kicked and punched in a sustained attack by soldiers. One Irish passenger was seen being particularly badly beaten around the head and held in a choke position to the point of near suffocation. He identified his attackers as police officers. He was taken to a holding cell." (p.44)

"In some cases, this violence seemed gratuitous; in other cases, it seemed aimed specifically at forcing compliance with particular procedures ... or punishing individuals for noncompliance. The Mission considers that acts of torture were committed by Israeli officials against passengers during their period of detention in Israel in violation of article 1 of the Convention against Torture and articles 7 and 10 of the International Covenant on Civil and Political Rights." (p.47)

Furthermore, in its conclusions, *The Report* clarifies the following issues:

1. The Israeli blockade of Gaza is clearly and unambiguously illegal.

"The Mission has come to the firm conclusion that a humanitarian crisis existed on the 31 May 2010 in Gaza. The preponderance of evidence from impeccable sources is far too overwhelming to come to a contrary opinion. Any denial that this is so cannot be supported on any rational grounds. One of the consequences flowing from this is that for this reason alone the blockade is unlawful and cannot be sustained in law. This is so regardless of the grounds on which it is sought to justify the legality of the blockade." (p.54)

9. The conduct of the Israeli personnel towards the flotilla passengers demonstrated levels of totally unnecessary and "incredible" violence that constituted grave violations of human rights law and international humanitarian law.

"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. It constituted grave violations of human rights law and international humanitarian law." (p.54)

10. There is clear evidence to support prosecution of multiple crimes within the terms of the Fourth Geneva Convention and international human rights law

"The Mission considers that several violations and offences have been committed. It is not satisfied that, in the time available, it can say that it has been able to compile a comprehensive list of all offences. However, there is clear evidence to support prosecutions of the following crimes within the terms of article 147 of the Fourth Geneva Convention:

- Wilful killing;
- Torture or inhuman treatment;
- Wilfully causing great suffering or serious injury to body or health



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The Mission also considers that a series of violations of Israel's obligations under international human rights law have taken place, including:

- Right to life (article 6, ICCPR);
- Torture and other cruel, inhuman or degrading treatment or punishment (article 7, ICCPR; CAT);
- Right to liberty and security of the person and freedom from arbitrary arrest or Detention (article 9, ICCPR);
- Right of detainees to be treated with humanity and respect for the inherent dignity of the human person (article 10, ICCPR);
- Freedom of expression (article 19, ICCPR)

The right to an effective remedy should be guaranteed to all victims. The mission must not be understood to be saying that this is a comprehensive list by any means." (pp. 54 – 55)

Recommendations for the Irish Government

The Ireland-Palestine Solidarity Campaign has consistently welcomed the Irish Government's statements condemning Israel's breaches of international law and human rights abuses against the Palestinian people over the years. Simultaneously we have always argued for the Irish Government to take meaningful action against the rogue state of Israel to sanction it for these crimes. We strongly believe that if Ireland were to implement sanctions it would serve as a wake-up call to Israel, showing that it cannot continue to commit human rights abuses, flaunt international legal norms and ignore UN Resolutions with complete impunity. Such a stance by Ireland would be a monumental setting of a precedent within the European Union and would represent an extremely positive development.

Furthermore, given that the *Report* outlines abuses and "unnecessary violence" carried out by Israeli forces against Irish nationals, it is all the more incumbent on the Irish Government to act on the words of An Taoiseach Brian Cowen when he stated on Wednesday 2nd June 2010 that "if any harm comes to any of our citizens, it will have the most serious consequences".⁵

The Ireland-Palestine Solidarity Campaign thus outlines below some of the actions which we believe the Irish Government should take to sanction Israel not only for its unlawful attack on the Freedom Flotilla and the abuses suffered by Irish nationals as part of that attack, but also for; the illegal Israeli blockade of Gaza and its responsibility for the ongoing humanitarian crisis there; the war-crimes committed during the 'Operation Cast Lead' assault on Gaza in Winter 2008/09 – as outlined in the *Goldstone Report*⁶; the ongoing Israeli military and illegal settler presence in the Occupied Palestinian Territories (OPT); the ongoing Israeli denial of human, civil, political and national rights to the Palestinian people.

The IPSC calls on the Irish Government to:

- Fully support any legal proceedings against those involved in the illegal attack on the Flotilla initiated by any of the Irish nationals on board.
- Cease all Irish arms purchases from Israeli companies and cancel those that have not yet been fully processed.

⁵ *Irish Times*, 2/06/10, <http://www.irishtimes.com/newspaper/ireland/2010/0602/1224271676571.html>

⁶ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>



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- Push at European Union level for Israel's suspension from the Euro-Med Agreement which grants Israel preferential trading status with the EU. Israel is flagrantly in breach of its human rights obligations under Article 2 of that agreement. **Note:** It is regularly argued that Ireland cannot "go it alone" on this issue. However the fact that Ireland, standing alone, could put a temporary halt the recent EU data-sharing with Israel process⁷ shows that Ireland can persuade Europe to listen to concerns about Israel's actions and that should Ireland seek the suspension of the Euro-Med agreement it could at the very least generate a far-reaching debate on the EU's relationship to Israel.
- Expel the Israeli Ambassador to Ireland, Boaz Modai, and recall the Irish Ambassador from Tel Aviv.
- Fully support the Irish Ship to Gaza Campaign⁸ and the sending of another Irish ship to participate in the Second Freedom Flotilla in October 2010.

⁷ See <http://www.rte.ie/news/2010/0902/israel.html>

⁸ <http://www.irishshiptogaza.org> – Dublin City Council pledged their support for this campaign on September 20th 2010 – see: <http://tinyurl.com/28lqpgs>
