

**The Public Commission For Examining The Naval Incident Of 31 May
2 010 (The Turkel Commission) Session Number Three, On 10.08.2010**

Participants: The Chairman Justice (Ret.) Jacob Turkel

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Observers: Lord David Trimble

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Witness: Defense Minister Ehud Barak

Hosea Gottlieb, Secretary to the Commission: The Public Commission for Examining the Naval Incident of 31 May 2010, Session Number Three

The Chairman, Justice (Ret.) Jacob Turkel: Good morning, in today's session of the commission we will hear the public testimony of the defense minister. The defense minister will respond to questions directed to him. What cannot be heard publicly, the defense minister will respond, should he so desire, behind closed doors. The protocols of the open deliberation will be made public. To the extent that we believe that it will not damage vital interests, we will also publicize parts of the protocol from the confidential deliberation. The testimony of the defense minister will commence now, and will continue up to the afternoon hours. During the deliberation we will go out for recess. To the extent that it will be considered proper, the commission will allow the defense minister to complete his testimony orally or in writing. Here I want to note, that a supplement will be apparently be needed simply for the reason that we received the materials from

the defense ministry only last night. And of course we could not read this by now. Mr. Defense Minister, by law you are cautioned to say the truth. In your testimony I would like you to address the main issues before the commission-in other words, was the closure imposed on the Gaza Strip in accordance with the rules of international law, were the activities taken to enforce it consonant with the rules of international law, if you handled the matter, we will also address an additional question, is the IDF's internal examination and investigative mechanism in accordance with the rules of international law. Perhaps you sir do not handle the matter, but it is handled by bodies within the IDF. Later on, to the extent required, I will refer to specific questions. Please sir.

Defense Minister, Ehud Barak: Mr. Chairman of the commission, Your Honor Justice Turkel, distinguished members of the commission, with your permission I would first like to present in brief the manner in which I perceive the background and circumstances that brought about the imposition of the closure and the how the events that preceded the halt of the Turkish flotilla on 31.05.10 developed. I am of course aware of the questions that were presented me in the letter from the commission's secretary on 21.07 of this year, I will attempt to the utmost of my ability to address and respond to the questions in the framework of my statement. It is superfluous to say that in the event that matters will remain unclear, you will ask to present me with additional questions, I am at your disposal for any response and clarification, and I will try to answer to the best of my ability. I would like to direct your attention to three documents that were submitted to you by the defense establishment. I regret the fact that as mentioned here, tardily, but they can help provide answers to the committee's questions on the main issues for whose purpose it was appointed. The letter of General (Ret.) Amos Gilad, the head of the diplomatic security branch in the Defense Ministry that surveys the security circumstances that led to the

imposition of the naval closure over the Gaza Strip, and refers also to the identity of the flotilla organizers, the participants and their activities. There is a long letter; any such letter looks like a booklet, by attorney Ahaz Ben Ari that surveys the legal infrastructure that underpins the imposition of the maritime closure, the conformity of the naval closure to the rules of international law, and the legality of the military action for halting the flotilla from the perspective of international law. And the third, is the letter of Maj. Gen. Eitan Dangoth, the Coordinator of Government Activities in the Territories, that surveys the civil situation in the Gaza Strip given the government and defense establishment decisions, to impose limitations on the passage of men and goods in the international crossings between Israel and the Gaza Strip, but to allow the transit of all supplies required to prevent a humanitarian crisis in the Gaza Strip. My testimony before you, may also necessitate reference to the considerations, details and secret operations documents, which are unfit for public disclosure, and I, in order to provide the commission with a full picture to the extent possible, of all aspects, circumstances and relevant considerations, I wish to avail myself of the option that you have provided me, and submit to you subsequently a memorandum in writing that sums up my position on the topic, with a systematic attachment of all the support documents that can complete the factual description of the sequence of events. Israel is fighting for its right to a normal life of security and peace in one of the most difficult corners of the world. Israel during the last decades is in the forefront of the struggle, precisely in the eye of the storm, of a global struggle against a triangle of threats that is inherent in radical Muslim terror, and failed and recalcitrant states and districts and the proliferation of military nuclear technologies. This is a complex environment, where security challenges and diplomatic opportunities mingle and collide with each other. This is neither Western Europe nor North America;

this is an environment that shows no pity to the weak, there is no second chance for those who cannot defend themselves. Here, from this city issued the call that in the end of the days we will see the leopard lie down with the kid, but as long as in practice one has to replace the kid every few days, we have to be aware of the realities surrounding us. On the other hand, there is no one who can make peace, save for us and our neighbors, our adversaries, by dint of the courageous decisions of the leaders, and occasionally counter to the temporary sentiments of the peoples. Concretely on the balance scales of the challenges, we have Iran, Hezbollah in Lebanon with Syrian and Iranian backing, and Hamas in the Gaza Strip, and on the balance of opportunities the prospects for diplomatic agreements with the Palestinian Authority, with the Syrians, and inshallah with Lebanon. There is a possibility for a broad regional deployment against the terror threats and the hegemonistic intentions of Iran. In the Middle East, in this our region we require a combination of leadership prepared for bold diplomatic steps, coupled with security sobriety, responsibility and stability in the face of pressures. In this constantly changing nettle of balances of forces and maneuver, consistency in policy and direction is required as long as conditions have not changed together with flexibility when a substantial change has been created. One must project strength alongside a readiness to make confidence building steps from a position of strength. [We need] resilience and action, even in the face of difficulties, even in the face of developments that are not exactly what we would have desired and expected. The Gaza Strip embodies in its identity and its history some of the most prominent aspects described here. In the last decade Gaza with its 1.5 million inhabitants, has constituted a center of radical Muslim terror, the launching of rockets into Israel, a severe challenge to the Palestinian Authority, and a Hamas terrorist entity with grave intentions and actions from Israel's standpoint. All this is accompanied by the widening

backing of the radical axis, with Iran at its hub.

It is within this background that one should examine the flotillas, the naval closure and the incident of 31.05.2010. I would like to review before you the background to the current reality in Gaza and the development of the Hamas entity and the threats from their direction, and first and foremost the need to prevent the buildup of the Hamas entity with arsenals of rockets and missiles, and the connection between all these and the limitations that Israel imposed on the transfer of merchandise and the movement of people in the territorial crossings, between Israel and the Gaza Strip, and with the maritime closure that was imposed on the coast of Gaza. Likewise, I will review before you the sequence of events in connection with the Turkish flotilla, of 31.05.10, and subsequently I will refer to the decision making process and the division of authority and roles between the political echelon and the military echelon, in the context of this activity. I will try to persuade you, that our actions against the, terrorist Hamas entity in Gaza, were the correct ones. That we are compelled to adopt them given concrete security threats, and we do this in proportion, according to international law, and where the objective is to minimize to the extent possible injury to the civilian population. In this framework as long as the security situation has not fundamentally changed, I would like to make clear that the maritime closure is a necessity mandated by our responsibility for the security of Israel's residents and there is no room to rescind it. Substantively I will refer to the actions that were adopted by Israel on 31.05.10 as deriving from Israel's right and obligation to defend its inhabitants. These actions were in conformity with international law and they were adopted only after all efforts to prevent the departure of the flotilla did not bear fruit. The preparations and deployment for the incidents of the Turkish flotilla, Operation "Heavenly Winds 7", as it is dubbed in military parlance, began with the receipt of intelligence

information about the organizing of the flotilla. This was due to the very existence of a maritime closure, and the previously existing procedure in the Army for handling the protest flotillas, and while paying attention to the fact that we were dealing with a flotilla differing in size and also in the determination of its organizers to reach a clash. The preparations took place in three major dimensions: A. diplomatic efforts were made in order to persuade the countries whose citizens had organized to set out on the flotilla or the states from whose ports they were to set sail to prevent their departure. B. The intelligence dimension and examining methods for covert interdiction C. The military plane, proceeded according to the graduated levels of "Heavenly Winds" that included in the end result, and in the absence of other options, a takeover of the vessels, in case the flotilla had to be halted physically. As Defense Minister, I bear a comprehensive responsibility for everything that took place in the systems subordinate to me, including the IDF. I take full responsibility as Defense Minister, for the directives of the political echelon, to the military echelon, as they were given also on the subject of the flotilla. In a series of discussions in the IDF and the Defense Ministry, matters that had to be performed and the method to perform them took shape, in coordination with all the relevant government ministries, that were all parties to the preparation and deployment, the Foreign Ministry, the Ministry of Justice, the Ministry of Interior and the Ministry of Internal Security. We have an army with an excellent chief of staff, soldiers and commanders, who prepared upon the receipt of the first information regarding the flotilla to implement the decisions of the political echelon, and acted in coordination with the government ministries mentioned above. The decision to halt the flotilla that was taken by me, by the Prime Minister and by the seven ministers of the inner cabinet in a discussion on 26.05.10 pursuant to all the deliberations on the activity that had

already taken place on the subject, was taken after the dilemma between the option of letting the flotilla pass on to Gaza at the cost of breaking the maritime closure, with all the repercussions of this measure on Hamas' empowerment versus the option of stopping the flotilla at sea, despite the possible media and diplomatic damages given the high probability that violent friction would occur with coverage and photographs in the world media, was examined in depth. In the aforementioned discussion on 26.05.10 in Jerusalem chaired by the prime minister an intelligence picture was presented in succinct fashion by the head of the Research Division, the contour of the planned action was presented by the chief of staff, and there was reference as well to extreme situations that could develop during the course of the incident. Likewise in this deliberation of the septet ideas with regards to alternative measures that would result in Israel's exposure to positive media coverage, a proposal to consider a hiatus in the closure but not its cessation arose; aspects of media and public relations were discussed, the messages that one had to convey were discussed, the import of the limitations in the land crossing and the considerations that led to their imposition was discussed. The measures that had hitherto been taken in the diplomatic field were presented and the planned deployment by the Ministry of Interior and other bodies was examined – all as reflected in the protocol of the discussion that comprises many scores of pages. The chief of staff who reiterated in the course of discussion on numerous occasions his concern for the resulting public media repercussions if force was employed to halt the flotilla, emphasized to the septet in the final account: "It won't be simple, but we will do it." At the end of the aforementioned deliberation the political echelon unanimously, aside from a marginal reservation by one of the members, that you will be able to see in the protocol took the decision to stop the flotilla, and in this fashion authorized the IDF to act and take over the flotilla in the event

that no response would be forthcoming to a call to accompany Israeli naval vessels to Ashdod. In this fashion the political echelon defined the "what" and the mission required of the IDF, while the IDF is the one that formulates the "how" and carries it out. I will expand on this further. Given questions that arose in the public discourse on this matter, I will subsequently make clear the situation regarding the area of authority and responsibility of the political echelon and the military echelon, and the line that separates between them, and I will also refer to the decision-making process in connection with the flotilla incident of 31.05.10. The Turkish flotilla of 31.05.10 was a planned provocation that was designed to embarrass the State of Israel and break the maritime closure that was implemented in the framework of Israeli security policy. I want to tell you that even these days, after the events of the Turkish flotilla, and after the government decided on certain alleviations with regards to the passage of supplies to Gaza via the land crossings, all the time additional protest flotillas are getting organized. We are in a state of continuous fighting and only recently a Grad missile was fired on Ashkelon, Katyushas were fired on the city of Eilat, on Aqaba and Egyptian territory, at the initiative, apparently of the Hamas movement. The efforts to smuggle missiles, Katyushas, Qassams and other war materiel to Gaza continues all the time. What results in the absence of effective supervision on the introduction of war materiel and its supply to terrorist organizations, we experienced full well in Lebanon. When I as prime minister directed 10 years ago, in May 2000, the Israeli withdrawal from Lebanon, the quantity of missiles that Hezbollah possessed totaled about 7000 missiles, of which about 100 could reach Hadera. Six years later, in 2006, the total stood already at 14,000 missiles, when many hundreds could reach the region of Hadera-Netanya. Still later, currently, according to various evaluations the number of missiles totals over 44,000 when we are dealing with missiles of

improved quality, with much heavier warheads and possessing a greater range that constitutes a threat to the entire territory of the State of Israel. This emphasizes the fact that even when supervision exists via decisions of the supreme bodies of the international community, in this case the Security Council, and decisions 1559 and 1701 when there is no effectiveness to the actual closure, a threat materializes that as we have already seen, both from Lebanon and from Gaza, is consummated in the end result. In the Gaza Strip the Hamas organization itself is in a process of continuous buildup. In June 2007, after the violent revolution carried out by Hamas and its takeover of the Gaza Strip, it had a few hundred rockets of various categories. In December 2008, a total of 15 months later, on the eve of Operation Cast Lead, Hamas had about 2000 rockets. Currently according to the various evaluations [it has] about 5000 that cover up to the margins of the Dan region. The maritime closure was and remains therefore vital to the security of the state in order to prevent the transformation of Gaza into a giant arms warehouse, directed towards shooting and terror activities against citizens of Israel. We in the political echelon had decided already in January 2008, in a process that I will describe later, at the request and recommendations of the IDF and the Israeli Navy, and upon the instruction of the current prime minister and with the backing of the legal advisers, that a maritime closure would be imposed on the Gaza Strip and the closure would be enforced completely and hermetically, as required as you know according to the laws of international law. On the date 26.05.10, we authorized the IDF action after we were persuaded that one should not allow the maritime closure to be breached, after the chief of staff determined aside from describing all the difficulties, that it would not be an easy thing but we will do, and only after all the diplomatic efforts that were adopted to stop the flotilla, had not yet borne fruit. A few words about Gaza: The comprehensive reality

regarding Gaza, after the Hamas takeover and the designation of Gaza as a hostile region, is a reality where we have diplomatic objectives agreed to by most of the previous cabinet in the Olmert government, and most of the present cabinet of the Netanyahu government. The isolation and weakening of Hamas, as compared with the Palestinian Authority, is objective number one. Objective number two: The reduction and prevention of terror and high trajectory fire from Gaza against Israeli citizens, and slowing down the buildup and the activity. And three: Exploring all the ways and levers to accelerate the return of Gilad Shalit. In Gaza following the disengagement, after 2005, and after the Hamas takeover in 2007, the division of labor is as follows: in Israel the land crossings have a limitation on goods, also security limitations, and a restriction on the movement of people. The Egyptians are engaged in fighting smuggling and building the barrier at Philadelphi, and they handle the crossings, they also have a crossing of their own at Rafah, that I assume that you're all familiar with according to the Egyptian Border(?) Agreements, the EUBAM and the Agreement on Movement and Access and they pay attention from their standpoint as well with some modicum of sensitivity to the humanitarian issues, just like us of course. The maritime dimension in contradistinction is evaluated strictly according to security considerations. In other words a maritime closure must be something consistent. It is intended to prevent a buildup in rockets, arms and munitions, prevent a buildup, prevent contraband prevent the importation of war materiel, prevent the smuggling of arms and war materiel. It was implemented in stages, as we shall see subsequently. First of all a combat zone was declared and by a Notice to Mariners and afterwards by an actual closure by a marine blockade or a naval blockade. The objective of the struggle against the flotillas is preventing the creation of an open route that will necessarily lead to the port and to a continuous movement in volume and

activity that will not be controllable, neither within the compound of the Search and Visit which I assume that you are familiar with. And it is predicated all time on the fact that the closure rests not on the distinction between the population's needs and the capability of receiving these needs, because it's always possible to bring the products or the things, any product that they want to introduce into the Gaza Strip via Ashdod following inspections to establish that there are no materials that are contraband or war materials or similar things and transfer them to Gaza. By the way something similar obtains with Ramallah and Nablus, and to a certain degree, what we are trying to preserve via a maritime closure is the same thing that obtains in any case with regards to Ramallah and Nablus as well. Any product or container, that arrives from abroad, goes to Ashdod. It is inspected and travels on to Ramallah or Nablus, unless it arrives from Jordan, just like something to Gaza can come via Ashdod and be inspected, or alternatively, if it is agreed upon via Egypt. And therefore it is necessary to understand that the maritime closure has no economic connection. Because it is possible to transfer everything one wants after inspection via Ashdod. There is only the security dimension. On the way to my making a distinction about the responsibility of the political echelon and the military echelon, I would like to say some things about operations. I spent most of my life in operations. I participated in scores of them. I commanded many actions, similar to this and others. Some were successful some less successful and there were those that failed. And I say to you in total responsibility there is never perfect intelligence for an operation. And almost no operation develops exactly as it was foreseen. Always the advance evaluation is not perfect. And the difference between success and entanglement, or heaven forbid failure is by a hair's breadth. Here in the case at hand despite the difficulties that developed beyond what was estimated during the planning stages, the objective of stopping was obtained.

We are sorry about the loss of life. In my humble opinion without exemplary self-control and bravery and professional skill, from the moment conditions of immediate danger to life were created and the necessity arose to use arms, we would have been in a reality with a much higher number of wounded, not only amongst the rioters. I salute the fighters, the IDF commanders, the Air Force, Flotilla 13, and I still of course expect that they will know how to learn the lessons from the debriefings, and investigate themselves to the extent that shall be required subsequently. We have an excellent army and an excellent chief of staff and amazing, excellent brave and devoted fighters, who have proven themselves at times when they were put to the test, both in this action as well as prior to it and subsequent to it. But in public discourse, as well as in the Eiland Report and in some of the interviews that followed, a degree of confusion was created regarding the authority of the military and political echelons and I would like to clarify this. The dividing line between the spheres of responsibility of the political and military echelon is sharp and clear-cut and this was the case from time immemorial, as anybody who put on a uniform knows. The political echelon determines what has to be done, and it bears responsibility for this. The military echelon determines how to do this, and it bears responsibility for this. It is clear that in reality things are somewhat more complicated, but the location of this dividing line, the principle behind it and its logic are valid and necessary. It is clear for example that the political echelon is not intended to impose missions that cannot be carried out, and it is its responsibility not to impose missions that cannot be carried out. The military echelon must say, if this is the case, we cannot perform it. Or, we don't know how to perform this mission. And I will give examples in the closed deliberation, both from bygone days as well as from the current era, for the two situations. The military echelon has to be capable of saying, we can carry it out,

but the damage outweighs the benefit, and we advise you not to give instructions to perform the mission. In the case at hand, this is not what they said. To a certain extent it was the reverse. They honestly and professionally described the difficulties, but summed up on more than one occasion, "Even if it will not be simple we are going to carry this out". It's clear that it is essential that the military echelon should make clear to the political echelon to the best of its evaluation, what are the accompanying repercussions to the mission as presented and to be performed. And here they said, and again correctly there will be friction, harsh scenes, violence, perhaps wounded, they did not say there's no way of carrying it out and justifiably so. And the political echelon was the one that decided to stop the flotilla, and justifiably. It's also permissible for the military echelon to propose a deliberation or make comments in a deliberation, outside the framework of its formal role, concerning a judgment that it has as an observer on the design of the mission, on its connection with diplomatic measures and the like. But this is not the main thing and cannot provide a substitute for the military echelon's duty to concentrate on the "how", on the most proper way to fully attain the mission. This is the ABC and nothing can exist without it, and this is also what anyone who has ever donned a uniform knows. Even brainstorming which is something fundamentally positive, with the participation of representatives from the political echelon and the military echelon is feasible, and can occasionally make a contribution. Provided that in the end when the political echelon has made its determination responsibly on what is to be done this is a binding determination and the military echelon is responsible for planning the how for implementing it, even if not always, as I mentioned, it will be simple or perfect just like we wanted it to be. The political echelon also must internalize this as well, and realize that even if we have the best commanders and fighters, whom we all respect and love, the

operations won't always conclude the way we wanted them to. They must together with the public know what to expect. This too is part of life. What will stand in our behalf the next time around is a systematic drawing of the lessons, debriefings and constructive criticism rather than ignoring the unpleasant reality. A few words about the decision-making process: The central question regarding the decision-making on stopping the flotilla and the decision-making process in general, and especially in an event where we are not entirely satisfied with the results, was whether the decision that was taken in the end result was the correct one. If the decision was correct, then the source of the gap between what we wanted and what turned out, is not in the decision but in the details of the planning or implementation. Even if someone will argue that in his opinion some defect whatsoever occurred in the decision-making process, we cannot connect the mishap to the process, to the gap between the desirable and obtainable, and to the result. In the case at hand the decision to stop the flotilla was taken after a prolonged deliberation on the subject, where explicitly and in colorful and flexible fashion the alternatives were raised. I told a story there about one of the veterans from the Haganah and Palmach, I don't know to which of the two organizations he belonged, who wrote me a letter, I told members of the commission, that he wrote a letter to me and said "aside from you". I am the oldest member of the septet and the others probably don't remember perhaps you don't remember the Exodus but remember the Exodus, when destroyers stopped this ship here nothing happened. They brought it to Hamburg and they tried to [have people] go down. They did not go down. When they brought it to Germany the pictures that were photographed on deck sounded the death knell for the attempt to stop illegal immigration and also perhaps for the British Mandate itself." Other members in the forum including people such as civil service personnel, I don't want to mention their names, you'll find them in the

protocol, were given the right to speak, presented in a malleable fashion the alternatives including a person who proposed making a 180° turn by not stopping the flotilla and allowing it to enter. The alternative, I note this because in such a discussion if the alternatives do not surface if we have not unfurled the entire spectrum, if there is no practical description of everything that happens in this case and what happens in the alternative case, then it's possible that one of those present when he expresses his opinion in the end result did not understand what awaited him. And I will tell you such was not the case in this deliberation. Furthermore, some of the ministers, ministers without portfolio but with a lot of common sense, also raised questions after the description that was received about the reality that was going to be created there and the action as it was planned, as succinct a description as could be, these ministers asked, what happens, could a situation be created that you will be in the minority and out of weakness, because of crowding on the deck, you will find yourselves in the position that you will have to open fire. And one other minister asked, what happens if 30 of the rioters will block your way to the bridge, and it won't be possible to get there easily. That should teach you, that there is no danger that they didn't understand what we were dealing with. And I can tell you the decision to stop the flotilla was taken after a long deliberation by the septet, where explicitly and in a colorful and flexible manner the alternatives were raised. And this included the alternative of allowing the flotilla to enter, at the cost of breaking the closure, with all its consequences. There were of course other people including ministers including also the director general of the Foreign Ministry, who represented the Foreign Minister that sharply raised the irrevocable security and international consequences of breaching the closure. After they heard the chief of staff and all those present all the ministers except again for one marginal comment by one of them, that you'll find in the protocol

supported the position that one had to stop the flotilla, with all the attendant risks and developments that were also clearly presented by the chief of staff and by others. Even post factum, when they knew the unsatisfactory result, members of the septet forum as well as additional cabinet members say that the decision was a correct one. Furthermore, at a closed meeting of the Knesset Foreign affairs and Defense Committee on the day of the flotilla itself, 31.05.10, under the fresh impression of the activity including an awareness of the results and the price, former decision makers from the ranks of the opposition, and I won't detail their names, you can find them in the protocol backed the determination that the decision to stop the ships was a correct one. They had criticism over the fact that there was no aggressive diplomatic process that could have in their opinion changed the situation fundamentally but this departs from the immediate deliberation on the flotilla, despite the fact that this comment was not illogical or baseless. In these conditions I would say, it is clear that the that the decision-making process in the political echelon with relevance to the flotilla is not, even post factum, the direct reason of the situation which we are discussing, or of the reality that was created at the close of the operation, as we are discussing it. And I want to add a note, that in any event, we are dealing with a plausible decision that a senior group of ministers, on an issue that is its main responsibility should decide according to its calculation, when the decision is made without any extraneous considerations, and this after it had heard in succinct form from the chief of staff and the head of the Research Division all the required information that was put before it. Nevertheless, I would like to note and on this it is also important to be precise that from a formal standpoint the septet is not a body defined by law. It is a restricted team of ministers, that serves as an advisory body to the prime minister and therefore to someone who is going to be fussy and say something

then let it be said that the decision was received and taken by me and by the prime minister, with the support of a group of ministers that is the septet that took part in the deliberations. Let us move to the process where Hamas took over the Gaza Strip. And I would like with your permission to begin further back, because there's a sort of continuum here, primarily from the perspective of the legal logic, of where we are and what territory we are encamped upon. In June 67, the Gaza Strip was conquered by IDF forces. A military government arose that operated in accordance with the international laws of belligerent occupation. In this framework of course we were faced with the needs to fulfill the humanitarian directives of the Fourth Geneva Convention and the Fourth Hague Convention, and you know these things, and the customary law of land warfare. As obligated by these directives, the military government once it came into existence immediately after 67, it filled the shoes of the sovereign and assumed the full prerogatives and responsibility that derive from this. During the 1990s negotiations took place between the PLO as representative of the Palestinian people and the State of Israel. An agreement was signed on 04.05.94 regarding Gaza and Jericho first, as the Cairo agreement was called. In its wake IDF forces withdrew from most of the areas of the Gaza Strip, save for the Israeli communities, the access roads to them, and the Philadelphi corridor, that borders the Gaza Strip from Egypt. Together with this most of the powers and responsibilities were transferred from the military government to the autonomous governing entity the PA that was established by virtue of the Cairo Agreement. A short time prior to the signing of the Cairo Agreement, a protocol regarding economic relations was signed between the parties on 29.04.94 that was called the Paris Protocol, that regulated a variety of economic issues in the relations between the State of Israel and the PA, such as tax arrangements and the movement of workers and merchandise. A short time later on 28.09.95 an

interim Israeli-Palestinian accord was signed between the parties regarding the West Bank and Gaza Strip that assimilated the previous agreements that were signed in the framework of the diplomatic process, including the Cairo Agreement and the Paris Protocol, regarding economic relations. I'm going backwards, almost ever since the establishment of the military government in the Gaza Strip, the IDF was compelled to contend with hostile parties that operated amongst the civilian population and from within it. Between the end of the 1980s and the start of 1990s the First Intifada took place. In the first half of the 1990s, alongside progress in the diplomatic process and parallel to that progress, Israel was flooded by a wave of murderous suicide attacks. However at the close of the year 2000, a change occurred after Camp David, with the outbreak of the intifada, a substantial change took place in the characteristics of Palestinian terror. Palestinian terror organizations opened a wide ranging attack against Israeli citizens, against IDF forces, etc. a campaign in every sense of the word. Ever since the eruption of the aforementioned terror incidents and violence in October 2000, Israel is in a state of armed conflict with the Hamas organization and Palestinian terror organizations. There are terror attacks and suicide bombings in the heart of Israel, shooting attacks against citizens, incessant shooting and targeted shooting from the Gaza Strip against the Israeli civilian population in southern Israel in ever-increasing ranges. From the year 2000 up to Cast Lead at the close of 2008, a period of seven years, over 12,000 rockets and mortar shells were fired from the Gaza Strip towards Israeli citizens, with the goal of waging a war of attrition against the State of Israel, and to sow terror amongst the citizenry. The Hamas organization conducted and managed the terror activities, to promote its objectives. During the entire length of this era the security policy vis-a-vis the terror organizations was examined on a constant basis while various measures were adopted. The legal system also

tried to examine itself, with a view towards adjusting the diplomatic and military measures to the laws of war and the principles of international law, and as happens with us, this frequently reached the threshold of the High Court of Justice, as a result of petitions and the High Court of Justice - the Supreme Court - expressed its opinion as well on these matters. In August 2005 Israel at its own initiative evacuated unilaterally the entire Gaza Strip until the very last centimeter, in the framework of implementing the Disengagement Plan. After the disengagement Israel continues to maintain the policy of preventing the entry of civilian vessels to Gaza. This is in reliance on the interim accord between Israel and the Palestinian Authority from 1995, that left exclusive authority over the maritime area in a range of 20 miles from the shore in Israeli hands and prohibited the entry of ships in a range of 20 miles from the coast, with the directive that entry into the area would be effected only via Israeli ports. I'm not going into the aspects of the changes in the situation and the laws that apply to our relations with Hamas in Gaza, following the disengagement, from the standpoint of all the laws, you will find this in a detailed analysis, including the decisions of the High Court of Justice, including questions that require study, that are not totally clear cut as well as the decisions by the government regarding what line it was adopting and what it presented to the Supreme Court as its position, that in most cases was also upheld. I'm concentrating from here on more on the maritime issue. In the Gaza Strip during this entire time combat activity by Hamas took place despite the implementation of disengagement, and therefore according to the laws of naval combat in international law at that junction, Israel also enjoyed the right to stop civilian ships, perform the inspection that's called Visit and Search. As stated, despite the disengagement terror actions continued from within the Gaza Strip, as well as the launching of missiles and the initiation of terror attacks. On 25.06.2006, a

squad of terrorists attacked an IDF post, while using a tunnel. It killed two soldiers, wounded an additional four, and kidnapped Gilad Shalit to the area of the Gaza Strip. In June 2007, a year later, Hamas forcibly took control over the Gaza Strip, while implementing a violent and bloody military coup, removing the Palestinian Authority and killing many of its senior people and Fatah operatives. After completing the violent revolution, Hamas installed a reign of extreme and zealous religious terror. On the date of 19.09.07-i.e. two months after the Hamas takeover of the Gaza Strip, the diplomatic security cabinet of the previous government - the Olmert government - decided to declare -- in which I also was minister of defense to declare the Gaza Strip hostile territory, identical in every respect to an enemy state with whom a state of war obtains, and impose limitations on the transfer of goods to the Gaza Strip, reduce the supply of fuel and electricity, and restrict the movement of persons from the Gaza Strip and to it. Pursuant to the aforementioned cabinet decision of 19.09.07 Israel hardened the conditions for the passage of persons and merchandise in the territorial border crossings with Gaza, with a view to preventing the introduction of arms and war materiel, and with a view to prevent firing in the direction of Israel and with the objective of indeed working to weaken Hamas, but even under this policy a humanitarian or sanitary crisis would still be prevented. Vital humanitarian needs were transferred including sanitation needs, fuel, electricity, money to finance the banking infrastructure were passed through. The sanctions were made more severe subsequently as a response to the firing of Qassam missiles on the southern communities. Intermittently the passages were closed in order to conserve them and improve their security, after the Palestinians found themselves sabotaging the crossings that supplied them with the equipment. A number of violent incidents occurred at the crossings, where the conveyor worked and the trucks worked back to back

in order to transfer produce and merchandise to Gaza while Hamas was organizing an attack on this very same thing. For example there was firing upon the power station in Ashkelon that provided electricity or some of the electricity to Gaza. In our bizarre region there is nothing that is impossible. The consideration behind the assignments on the limitation was and remained primarily a security consideration. Alongside the security consideration there were other considerations, including the need to isolate Hamas, as well as additional considerations and this is not the place to expand on them, perhaps in a closed room I will go into slightly more detail. Due to the Hamas takeover of the Gaza Strip, the firing of high trajectory rockets dramatically increased, in the course of the year 2008 alone nearly 3000 rockets were fired towards civilian population centers, this despite the fact that during half of the year this was in the framework of a *Tahdiya* or a certain arrangement that minimized the extent. To the best of my understanding, no normal state would have agreed to this. I recall a tour in which I accompanied the current president of the United States, when he was still a candidate, and there opposite the museum of the rockets or the remains or sections of the rockets that were fired at Sderot, he said facing the global media, that if his two daughters Sasha and Malia – I think that's how they are called - were living here, he would do whatever had to be done to get this thing to stop. In order to arm itself and build up Hamas made widespread use of a variety of smuggling arteries. Inter alia attempts were made to smuggle via the sea. The intensified risk in smuggling via the sea consists in the vast amounts of war materiel that one can smuggle in a single successful measure. In order to exemplify the danger of introducing weapons via the sea, I would like to refer to four examples which we experienced in the past, not all of them tied to Gaza. On 07.05.01 nearly 10 years ago we captured the ship Santorini that was on its way from the shores of Lebanon to the Gaza Strip, near

Haifa when on board there were huge quantities of arms. The ship Karin A' was seized by the Israeli navy in the Red Sea on 03.01.02, when on board there were 50 tons of war materiel that were sent from Iran and were intended to reach Gaza via the Suez Canal. The ship Monchegorsk was seized by the Israeli Navy in January 2009, on its way from Iran to Syria with weapons that were intended apparently for Hezbollah in Lebanon, in a flagrant violation of Security Council Resolution 1747 and on board there was a huge quantity of arms of various categories. The ship Franco P. was seized on 03.11.09 on its way from Iran to transfer weapons again to Hezbollah in Lebanon, in a flagrant violation of 1701, and on board were about 500 tons of missiles and ammunition. These examples and the security necessity to interdict the smuggling of war materiel to Hamas via the sea, exemplify the supreme importance of a systematic inspection of vessels that attempt to reach Gaza. Beginning with the latter half of 2008, there began to appear various flotillas of ships sailing in the direction of Gaza at the initiative of pro-Palestinian organizations, who are in contact with the Hamas organization under the heading of protest flotillas, that were intended presumably to break the siege that was imposed on the Gaza Strip. The ships' sailing made their inspection mandatory given the severe apprehension that these flotillas would be exploited to introduce war materiel. The Israeli navy has relatively limited options to seize them. With a view to contending with this phenomenon in a proportional manner and in accordance with the rules of law, the Shipping Authority in the Ministry of Transport published on 11.08.08, at the request of the Israeli Navy a Notice to Mariners. This defines in practice the maritime region adjacent to Gaza, as a combat zone and is intended to allow the Israeli Navy to act against vessels that attempt to reach the region with greater efficiency. In the aforementioned announcement it was noted that the transfer of humanitarian equipment to the Gaza Strip would be facilitated via the land

crossings between Israel and the Gaza Strip, subject to inspection by Israeli authorities. It turns out that despite this the ships continue to arrive and these things gradually made it necessary to proceed to more efficient measures. One must note that the first vessels that arrived were small yachts that could not contain the quantities of arms that I described previously, but they were intended in our opinion to facilitate the opening move. The first of them we let pass, both due to the absence a genuine way to check them and also because of the problematic nature of Search and Visit from an operational standpoint. But in the hope that this business would calm down, or that if one let them get in they would lose interest in the matter. It turned out that we realized that this is not what was happening and they were continuing on a systematic basis. Pursuantly, on 18.02.09, already after Cast Lead a decision was taken by the diplomatic security cabinet that dealt with the matter of the kidnapped soldier Gilad Shalit. And this decision determined that Israel would continue with widespread humanitarian efforts in order to provide the immediate and basic needs of the Palestinian population when for this purpose Israel would allow the activity of the crossings on a partial basis; however an expansion of activity in the crossings would be discussed upon the release of Gilad Shalit. I suggest studying not only the decision that was formulated very carefully due to the need to meet all tests of international law, but also the protocol of the deliberation, from which it will be possible to comprehend the finer points. Let it be emphasized that throughout the period that preceded the flotilla on 31.05.10, and in accordance with diplomatic needs, alleviations to the land closure were initiated, given our understanding following Cast Lead that there was no logic to maintain a maximal closure. The land closure was deliberately not a land closure but limitations on the passage of goods by land. Here the limitations I would say were breathing ones they would expand and contract.

When they fired upon us we would stop or reduce occasionally when there was greater tranquility we would expand but primarily we would give our attention to the requests that were raised by global NGOs, by the United Nations to assist following Cast Lead boosting the restoration of normal life in Gaza. In April this year I received a letter from UN Secretary-General Ban Ki Moon gratefully acknowledging inter alia the assistance that we were rendering to expand UN projects and we are in continuous contact with, and if you so desire we will go into detail, with Tony Blair, with the Quartet, with world leaders with the United Nations, on the need to gradually expand the supply of merchandise to the Gaza Strip, already prior to the flotilla of 31.05.

The Imposition of the Maritime Closure

In order to handle the prevention of protest flotillas from arriving in the Gaza Strip, a procedure was formulated during 2008, still prior to the imposition of the maritime closure, a procedure that included a number of graduated actions. The aforesaid procedure was formulated in the deliberations that took place in my office on this matter on the dates - you will receive the material - 31.07.08, 07.08.08, 14.08.08 and 04.12.08 that is already close to Cast Lead. The procedure included three levels of action in the following order of priorities: making a diplomatic effort to prevent the flotilla, preventing the ships from sailing and leaving them in the ports of origin by various means and here is not the place to detail them, and three stopping the flotilla by an operational action on the high seas, according to the contours of Heavenly Winds that was formulated in the IDF and was intended to contend with naval threats on the part of terrorists bodies and civilians. Here as well we are dealing with graduated means: Transmitting messages, announcements to the captain, deterrence, spraying water from water cannon, all this with the objective to

divert the entire flotilla from its course, to cause it to halt and finally if no other recourse existed, if it did not assent to the requests to accompany or to allow orderly boarding and the physical takeover of the vessel and its detainment. On 20.08.08 two yachts departed from the Port of Larnaca in Cyprus in the direction of the Gaza Strip, I think that we are dealing with the Liberty and Free Gaza, that in the end result were permitted with the authorization of the political echelon, to enter Gaza, although we put into motion against them an operation that was called "Heavenly Winds 1". Later on during the course of the months August to December on the dates 28.08, 05.11, 08.12 and 19.12, all in 2008, an additional four protest flotillas arrived, most of them via that same yacht called "Dignity" that departed the Port of Larnaca with scores of activists each time. To them as well, we are talking still of the previous government they gave permission but I was defense minister there as well, we gave them permission. Our concern was on the one hand the possibility that the media buzz would empower the flotillas, and there was also the implicit hope in granting permission to enter namely that entry, as I've noted previously, would diminish the appetite. Because if it is opened, and they allow you to enter, what do you have to scurry about all the time, if the entire purpose is a demonstration. And the danger of course all the time is that this will create a reality in which the ships keep on increasing in size, and perform sailings where in the first stage we will seize them and later on we will fail time after time in the Search and Visit or we will fail on some of the occasions, or sometimes there would be a sufficiently large ship with ample cargoes in plentiful layers the practicality of Search and Visit would not afford a true inspection of whether it was contraband or not and we would find ourselves in a blind alley the flotillas-

The Chairman Justice (Ret.) Jacob Turkel: Mr. Defense Minister, I would like to clarify the point here regarding the ships that were permitted to pass, was there some

measure of supervision over their cargoes? Or did you decide to take the risk?

Defense Minister Ehud Barak: No we tried to follow by employing intelligence, we operated, I perhaps I will go into detail in the closed room, we tried to estimate what was the probability that there were things that could do immediate damage, there was apprehension that they would try to extract activists. A parallel also exists: You didn't manage to arrest him on the way in you in any case don't know what they are taking with them on the way back. Sometimes they are dangerous people. There was the evaluation, and in each and every one of the circumstances the same process was employed and that means the IDF prepared to stop, we did the intelligence follow-up, and at a certain stage we tried even at that juncture as well to persuade not to allow them to arrive, and at a certain stage we allowed them to arrive in the calculation that primarily was between myself and the prime minister - the intelligence bodies, the foreign minister were generally not involved in it. I don't recall a convening of the cabinet surrounding these matters.

The Chairman, Justice (Ret.) Jacob Turkel: Thank you.

Amb. Reuven Merhav: Do you have sir a precise knowledge of what volumes arrived in all these flotillas?

The Defense Minister, Ehud Barak: Yes all the

Amb. Reuven Merhav: These matters are reported and well-known.

Defense Minister, Ehud Barak: these ships are generally photographed in advance. You know what their size and displacement is how much they can load.

Amb. Reuven Merhav: Do you have an evaluation how much entered there?

Defense Minister, Ehud Barak: I don't remember by heart the volume of the Dignity, or the other two, Free Gaza and Liberty were larger,

Amb. Reuven Merhav: All that you allowed to enter.

Defense Minister, Ehud Barak: I'm not sure that they brought a lot of equipment with them.

They primarily wanted to demonstrate the fact that they could depart from Larnaca and they were not stopped by the activity that then existed. A proclamation on the region where hostile activity was taking place existed then and they were exposed to Search and Visit.

Amb. Reuven Merhav: Did you have an evaluation that it also had a secondary value from the standpoint of transferring equipment?

Defense Minister Ehud Barak: Yes could be, it's possible to transfer something with this, definitely, even in a small ship that has a displacement of 20-30 tons, so if they bring over there 10 tons of rockets or war materiel or ammunition, this is a very bad thing. But we tried to ascertain and in places where --in the end result this was a status evaluation. Some of these earlier ships, the general staff or the Israel Security Agency demanded that we should stop them and we in the political echelon decided not to. Over time when this phenomenon intensified, we understood that we were not slowing it down, but we were by the permit accelerating it, this is already within 2008, way before the imposition of the closure. The Israeli Navy and its legal advisers warned us that we in practice were not sitting on a solid basis in these inspections, and that the situation from their perspective of breaking --this was not yet a closure, breaking the effective capability of supervising entries was continuously being eroded. Given, I will possibly find it here later in the file the actual entries for every one of the 10 or 12 previous cases, where the ships arrived what was each ship how much was on it, what was the decision that was taken, when on what date it occurred and so forth, and any other information that you want about it. Given the intensifying flotillas, it emerged that the declaration of the maritime region of the Gaza coast as a combat zone, within the framework of a Notice to Mariners that was published on 11.08.08 did not provide a suitable response for handling the various flotillas. Therefore the understanding crystallized in the Israeli Navy

and the IDF that only the imposition of a maritime closure according to the rules of international law, would allow a superior prospect for contending with a broad variety of security scenarios, and would provide a highly more preferable response to the security necessity of preventing the arrival of ships bearing war materiel to Gaza. The need to reinforce the prerogatives awarded the IDF, the Israel Navy and the legal system, in order to prevent the arrival of foreign ships to the Gaza coast that arose already during the months of August-December 2008, again surfaced at the beginning of operation Cast Lead at the close of December 2008. On 27.12.2008 Cast Lead began and lasted till 18.01. Two days after it began, that very same yacht Dignity that was the starring actor in the flotillas that they allowed to pass arrived and tried to enter at the time of a military operation with fighting in Gaza, it was damaged by the prow of a missile boat in the course of its attempt to take an evasive maneuver from the inspection within the rules of Search and Visit. Shortly afterwards a additional opinion by the advocate was prepared, the opinion of the military advocate general, which is in addition to the opinion of the Navy's lawyer, but this opinion of the advocate in his letter of 30.12.08, already at the start of Cast Lead to the chief of staff, was addressed to the State Attorney General and to the legal adviser of the defense ministry. The advocate general explained in his learned opinion the rules of international law and expressed his opinion that a declaration of maritime closure would award the Israeli Navy with the legal authority to adopt measures against vessels that would enter the area of the closure, and even against vessels that had not yet entered the closure area, but where a strong basis for assuming that they were attempting to enter the area of the closure existed. On 31.12.08 the Chief of Staff sent a letter to the Prime Minister, and the defense minister to me the prime minister that time was still Olmert, in which he requested that the diplomatic echelon work to impose a

maritime closure on the Gaza Strip, with reference to the legal opinion of the advocate general of the previous day 30.12. Pursuant to the request by the Israeli Navy, and the recommendations by the advocate general and the chief of staff after the opinion of the advocate general had been received and also proved acceptable to the State Attorney General and after the legal adviser to the defense establishment expressed as well his favorable opinion on the matter, the prime minister requested the defense minister to act to impose a maritime closure on Gaza. See the approach of the current military secretary to the Prime Minister, General Khalifi on 30.12.08. Pursuant to this and in accordance with this, the defense minister, yours truly, signed an order to impose a maritime closure on Gaza on 03.01.09, and directed the chief of staff to deal with promulgating the proclamation vis-a-vis the relevant authorities and with its enforcement.

The Chairman, Justice (Ret.) Jacob Turkel: All this was during the period of the previous government.

Defense Minister, Ehud Barak: All this was during the period of the previous government, but with me as defense minister, that same defense minister, the same chief of staff and the same advocate general, and Ahaz [Ben Ari] is the very same Ahaz. Ahaz is a legal adviser, who by his training is also a seaman. He also sails ships. But the previous Attorney General, was Mazouz. Pursuant to a decision on a naval closure, the Shipping Authority published a Notice to Mariners, regarding the imposition of a closure, that detailed the time for the beginning of the closure and its geographic boundaries, while noting the coordinates bounding the closed area, and noting that the region would be closed to all maritime movement beginning with the imposition of the maritime closure, and up to a new announcement. The aforesaid announcement was published in a number of accepted international channels, as well on the IDF and the Shipping Authority

and the Ministry of Transport websites. Likewise the announcement of the aforesaid notice was transmitted twice a day, to vessels sailing at a distance of up to 300 km from the Israeli coast in the emergency channel for maritime communication, I think that it is channel 16, I don't recall how they call it.

The Chairman, Justice (Ret.) Jacob Turkel: Up to this very day? Till this very day it is transmitted?

Defense Minister, Ehud Barak: I think so.

The Chairman, Justice (Ret.) Jacob Turkel: Yes?

Defense Minister, Ehud Barak: I wouldn't swear to this without checking, but I think so.

Professor Miguel Deutch: A question sir, with regards to the relation between the security closure, and the security role of the closure, to the economic role. To what extent could you say that there is an economic objective to the closure if such exists? And in practice what are the precise instructions on this matter? In other words, let us assume that a ship arrives carrying civilian merchandise. Do precise instructions exist on the question of how to handle such a ship? It is totally clear that there will be an inspection to see if there is war material, this is self-explanatory under the circumstances. The question is, what is the method of handling according to the guidelines, if such exist, what is the manner of handling civilian merchandise in such a situation? What precisely are they to do with it?

Defense Minister, Ehud Barak: As I've made it clear a difference exists, we see a clear distinction between the limitations on the entry of merchandise in the land crossings, where there are different dimensions of varying considerations that I've enumerated, to a certain extent you can call this economic as well, and a maritime closure, that is purely security. Our anchor is security, the reason for it is our need to defend in the end result against the arrival of munitions or materials that support combat and rockets and war materiel, but since we do not

limit, we, the closure, you're familiar with international law, it must be enforced on a consistent basis, it cannot be a matter of selection that this one you allow in and this one you don't. So it is exercised in a total fashion. But the process of the closure is that still before the ship arrives we inform it that a closure exists here, we ask it to turn to Ashdod and there is nothing to prevent it from bringing any merchandise whatsoever intended for Gaza, to the port of Ashdod, to unload it there, to pass through the inspection so if heaven forbid explosives will be found there was a material that can be the starting point for manufacturing explosives, there are such materials also in the area of fertilizers or steel pipes that are suitable or seem to have been ordered for lathe tuning into mortars, then you stop these things. But the other equipment, according to what one is allowed to introduce via the land crossings, one can transfer it through now it's not only –

Professor Miguel Deutch: You are actually applying the law of land crossings.

Defense Minister, Ehud Barak: Yes. Merchandise cannot breach the closure because the closure as aforesaid must be enforced, but merchandise can reach Ashdod and go through all the necessary processes following those same rules of what at the time one can transfer through. By the way this is not merely theoretical practice, this is the prevailing practice. Many many things arrive in Gaza, both before 31.05.10 and after 31.05.10, by sea. I will request that perhaps with your permission, I think I'm really coming to the end. If I can be allowed just to wind up and then I'll answer all the questions. Here precisely I was getting to this. It's important to note with regard to the maritime closure, one cannot perform "alleviations" or changes in its contour, both given the lack of an option to examine large ships that are carrying cargo on the high seas, as well as from the general necessity posed by international law, that mandates maintaining a closure that will be hermetic, effective, and without favoritism as a condition of

its legality. The sole consideration, I said is the security consideration, and the maritime closure is not intended to injure the Gaza residents. One can bring them any merchandise also by sea, but via the port of Ashdod, or by the way with slightly different limitations by the Egyptians, sometimes via El Arish. On the day 12.01.09, during operation Cast Lead, an Iranian cargo ship the Iran Shahd tried to reach Gaza. The Israeli naval vessels pass on a warning to refrain from reaching the region within the framework of an operation that we called "Heavenly Winds 3", that took place in the very same manner that we described beforehand, here without the diplomatic leg, because with Iran we didn't even dare to think that it would be worthwhile to make the attempt. And it backtracked from its intention to violate the maritime closure, without the need for a physical takeover. A short time later, still during the course of the Cast Lead, operation "Heavenly Winds 4" was conducted where the ship Spirit of Humanity that is the same Arion that will later on appear under a different name, that departed Larnaca, was told to go back on its tracks, and it obeyed this directive from the Israeli naval vessels. On the 05.02.09 about three weeks after Cast Lead, operation "Heavenly Winds 5" was put into operation, where the fighters of Flotilla 13 took control of the cargo ship Tali. It was sufficiently large I think 3000 or 4000 tons. The fighters' takeover of the ship was done in the same manner that the takeover of the ships was performed on 31.05. Then on 30.06.09 about six months after Cast Lead fighters of flotilla 13 took over the ship Arion, previously that same Spirit of Humanity in operation "Heavenly Winds 6". Prior to the takeover of the ship the Chief of Staff sent a letter on 29.6.06 a day before the takeover in which he expressed his position regarding the protest flotillas, and he recommended not to allow foreign civilian ships, bearing humanitarian assistance to enter Gaza in the future as well, due to the apprehension that this could lead subsequently to uncontrolled transport of arms

and ammunition. But one should enforce the maritime closure and operate according to the order of "Heavenly Winds", and takeover the vessels and conduct them to the port of Ashdod, expelling the foreign activists on board from Israel to their country of origin. The handling of the flotillas that arrived in the direction of Gaza, both before the imposition of the maritime closure, and after the imposition of that closure, was performed as aforesaid within the framework of the operational contours "Heavenly Winds" that was formulated in the IDF for this purpose. The defense minister escorted the IDF in the handling of previous flotillas, while he directed in accordance with the formulated concept, to work always in tandem: Concentrate its efforts on intelligence gathering prior to the flotilla, concentrate on political diplomatic efforts to prevent the flotilla, to stop it or minimize it, and make preparations for stopping the flotilla in an operational action. All this was graduated, when the physical takeover of the ship was the last priority. Let it be noted that the previous operations, that took place prior to all the protest flotillas, were authorized for execution by the defense minister and the prime minister, and in connection with them no discussion took place in the diplomatic security cabinet, or in any forum of cabinet members. In the few weeks that preceded the flotilla of 31.05, many discussions took place and I'll succinctly get to the process itself and touch upon it. I am coming up to the Turkish flotilla of 31.05.2010. In the course of April 2010, intelligence data was received to the effect that the international organizations and pro-Palestinian activists intended to reach the shores of Gaza in a protest flotilla of huge dimensions during the month of May. See intelligence reports 06.04.10 of Naval intelligence, and 14.04.10 of the Research Division. According to this information the Free Gaza organization had joined up with the IHH organization, this was a Muslim Turkish organization that maintained strong reciprocal ties with Hamas, with

the avowed objective of breaking the maritime closure that was imposed by Israel on the Gaza Strip. IHH personnel purchased a civilian vessel that would serve as the flagship of the flotilla, and aboard it a few hundred operatives, politicians and journalists would sail. It should be noted that the IHH organization was already banned in May 2008 in Israel, in accordance with the Emergency Defense Regulations, because of all sorts of activity on its part pertaining to the transfer of funds and the Hamas charitable organizations, also perhaps due to additional factors. Due to all the aforementioned information special attention was devoted to handling this flotilla as opposed to previous flotillas. The status picture that emerged was that we were dealing with a protest flotilla that was intended to cause a provocation, and to break through the maritime closure that was legally imposed by Israel. The organizers of the flotilla were preparing themselves for a clash with IDF forces with media coverage, in order to embarrass Israel, to stir up a global discussion in connection with the maritime closure issue and to exert pressure on Israel to open the land crossings to the Gaza Strip. True we were dealing with a larger flotilla that enjoyed expensive media coverage but still their components in terms of their substance if not in their quantity were in the same ball park as previous flotillas. The new component that characterized the Turkish flotilla was the number of expected vessels. It began with between 8-10 at the start; it grew to 10-12, and in the end it totaled 6 with the Rachel Corrie lagging behind. The large number of participants, including parliament members, journalists and people from 20 countries and 40 nationalities, resulted in media resonance. All this justified devoting special attention to this flotilla beyond the attentiveness that was devoted to previous flotillas. This found expression first of all in the size of the preparations by the IDF and other bodies, other government bodies, the proliferation of the deliberations at various levels that preceded the stopping

of the flotilla, and in a certain sense also in the deliberation, the fact that a deliberation a deliberation took place in the septet - there was nothing like it in regards to previous flotillas. By the nature of things the preparations for handling such a flotilla took a long time. And therefore in accordance with the procedure that was formulated on the matter, various actions were taken in parallel. There were also intensive activities, immediately following the information; those activities were related to the preparations and the commencement of diplomatic activity to reduce the flotilla and prevent its arrival, while simultaneously there was intelligence activity that brought partial results. And there was the beginning of IDF deployment for the contingency that it would prove necessary to stop the ship. Already on 22.04.10, given the background of intelligence surveys that were prepared regarding the organization of the Turkish flotilla, I staged on this matter a discussion in the office of the defense minister, with the participation of the Chief of Staff and senior officers. We're dealing with a deliberation that convened to evaluate the general situation and this topic arose during the course of it. During the aforesaid discussion I asked the commanders what they thought would be appropriate to do with regards to the Turkish flotilla in terms of handling this flotilla given its particular characteristics and if they knew how to do this. The response that arose from the deliberation was that the army was prepared and despite the difficulties and the gaps that were presented knew how to handle this flotilla as well. In other words it would act in its regard according to the "Heavenly Skies" order on a graduated basis, including, if necessary in the end a takeover of the boats. This was a preliminary discussion only. At its conclusion I directed the participants to make an additional status evaluation and to continue with the intelligence tracking of the flotilla and make preparations accordingly. On 06.05.10 - two weeks later - I held a discussion in

my office and one again the topic of the Turkish flotilla arose, and here the main idea to be implemented was presented. Present were the Chief of Staff, the head of military intelligence, the commander of the navy, the head of the operations branch, the representative of the Foreign Ministry, and many other participants. In that session I gave directions to involve additional bodies in the diplomatic campaign to prevent the flotilla, I guided the IDF to make a status evaluation with regards to examining the option of interdicting the departure of the flotilla or reducing it in terms of the means, the regions, the timing and the methods which I cannot go into detail here. In this discussion comments were made both by me and by others, with regards to examining extreme situations and extreme scenarios, and the parties responsible for the action were requested to pay attention to such situations. Additionally, I gave directions that the preparations for the flotilla should be presented to the prime minister for approval with the participation of the ministers pertaining to the matter. I then proceeded to enumerate the Ministry of Interior, the Foreign Ministry, Internal Security to have their legal representatives as their representatives at all the preparations. The preparation for the Turkish flotilla was different, dissimilar from the handling of previous flotillas. Also in terms of the scope of preparations by the IDF and all the systems, as well as by my involvement as defense minister and by the involvement of the entire political echelon that found expression in the end result in the deliberation of 26.05.10 with the septet.

The Chairman, Justice (Ret.) Jacob Turkel: I understand, that you sir are speaking here about special preparation. I understand that what pertains to the intelligence realm, that this was entrusted exclusively to Naval Intelligence, and other intelligence bodies were not involved in this. If you find it perhaps difficult to respond sir, then you can respond later.

Defense Minister, Ehud Barak: I would prefer to respond later, and I say that as far as I know, and I noticed more from a study of the Eiland report, subsequently, after the fact, I wasn't aware at the time of performance that there were any problems regarding contacts between Naval Intelligence and Military Intelligence or with regards to the Mossad or any other intelligence bodies that we share a connection with.

Prof. Miguel Deutch: Perhaps sir you could spare another word already now, on the topic of the session on 26.05. At that gathering was the suggested mode of operation presented at that stage?

Defense Minister Ehud Barak: I am immediately coming to this, let me go through another discussion, we are at the moment on 6 we were on 22.04 now we are on 06.05 now I'm going over to 13.05 and then we will immediately get to the 26th.

Amb. Reuven Merhav: I'd like to point out something here. Mr. Defense Minister, we received the material very late. And you are speaking very fast, and cramming us with details. If we want to remember some question now, I would very much request that you allow us to do so, of course with the permission of the chairman, because otherwise it will be difficult for us and perhaps it will be difficult for you to remember. And you have to take into account that we are mere mortals, and our memories sometimes indeed will function, but not always as fast as yours, and therefore we want to ask questions. In this context I would like to tell you something about the intelligence issue. The intelligence issue is such that one gets the picture that whoever was supposed to deal with this in reality didn't deal with this, and we get the picture that the Navy received the entire contract for the matter, in a manner that deviated, as much as it appears from its function as a very important operational arm, when other arms of the Army, that are entrusted with general matters that you yourself said, interface between the how and the what cannot express themselves. I would request that you refer to this

matter.

The Defense Minister, Ehud Barak: First of all, I will respond to questions as much as the chairman will request. My memory should not pose an obstacle, it's possible that it also can, not one of us is perfect, but I have all the papers and I was in this, you're studying this only now. I'll try to slow down a bit but also respond. Regarding your direct question I say, I know the answer as it appears in the Eiland report. I in the actual moment and till I read the Eiland report, was not aware of the fact that such a claim was being raised or such a determination was being made, that they did not work. I regretfully from my experience in operations know that many work methods exist. You spent many years in the intelligence establishment. There are many lateral channels that operate as a matter of day-to-day as a matter of routine latterly. The intelligence systems don't communicate with each other via their chiefs, and definitely not via the chief of staff or defense minister. They have different lateral channels between them, on the work levels, definitely between Naval Intelligence and Military Intelligence, there are lateral channels between Military Intelligence and the Mossad, at the summit of the intelligence system there is a Chiefs of Services Forum that works jointly on many things and discloses at the level of service chiefs. I think that there is enough, I also know of many cases where cooperation existed and there was excellent cooperation. I cannot testify firsthand, as a witness, on what occurred here. One has to find a way or read attentively or perhaps hear from Eiland or -

Amb. Reuven Merhav: No, I meant something additional. I meant that an important arm in the general staff, that takes the overall view, should have also perhaps taken a look at this as well. And I'm not certain that this happened.

The chairman, Justice (Ret.) Jacob Turkel: I have only a question of order, how much time sir do you estimate that-?

The Defense Minister, Ehud Barak: I think, 20 minutes.

The Chairman, Justice (Ret.) Jacob Turkel: Another 20 minutes.

Defense Minister, Ehud Barak: Another 20 minutes. If there won't be any questions. If this will be with questions it can take half an hour.

The chairman, Justice (Ret.) Jacob Turkel: Yes. Good.

Defense Minister, Ehud Barak: I can speed up if you want. There are two ways, to speak faster or skip over some of the things. I'm passing on from the discussion of 06.05 to the deliberation that took place in my office on 13.05, an additional deliberation in whose framework the Turkish flotilla topic arose. In this deliberation the Chief of Staff and additional senior officers presented the main points of the operational order and the operational contours for stopping the flotilla. At that time they thought that it would arrive on the 24th, namely in another 11 days. In the aforesaid discussion I gave directions that alongside the continued effort to interdict the Turkish flotilla via diplomatic channels one should make preparations for the contingency that the diplomatic effort would fail and for preventing the flotilla's arrival to the Gaza Strip, according to the closure, and following the operational contours that were presented by the IDF. Likewise I gave directions to continue the intelligence tracking of the flotilla organizers, with an emphasis on the possibility that amongst the passengers in the flotilla there would be terror elements who would attempt to harm our forces. On 26.05, pursuant to the deliberation of the septet ministers' forum, where I was also entrusted with the responsibility of dealing with the matter, no perhaps we should start first with the deliberation itself that Prof. Deutch asked. On the date--

The Chairman, Justice (Ret.) Jacob Turkel: Mr. Defense Minister I must request, we will announce a recess now for about half an hour, and after that will continue and we will continue afterwards with the closed portion.

Defense Minister, Ehud Barak: In the closed portion? I'm still prepared to speak in the open session.

The Chairman, Justice (Ret.) Jacob Turkel: The continuation of the discussion will be open, following the recess.

(Stenographer's comment: cessation of the recording)

The Chairman, Justice (Ret.) Jacob Turkel: We're continuing with the testimony. I have one small additional clarification, regarding the circumstances and considerations for imposing a maritime closure on the Gaza Strip and I'm presenting the question to you sir as a member of the previous government as well as of the current government. I understand that the security and diplomatic aspects that underpinned the decision to impose a closure at the time remain essentially intact today as well. The previous government was aware of them and the current government is aware of the same consideration and aspects. This means that there is no change in this respect.

Defense Minister, Ehud Barak: Is this a question?

The Chairman, Justice (Ret.) Jacob Turkel: That's a question.

Defense Minister, Ehud Barak: Previously there was an insistence that when governments change then the principle of continuity obtains, as long as they don't change it of course exists. Of course to the best of my knowledge, it was required then, and the need remains, to a certain extent it has even intensified. But I cannot say that an explicit discussion took place in this government, on this topic and it was determined overtly that the maritime closure was a necessity. This I almost would say appears to us as something that was self-explanatory and in the status evaluations, both by military intelligence as well as of the Israeli Security Agency and the other bodies you'll find such reference, amongst some of them as part of the snapshot of reality that derives from government decisions and from the policy that they're aware of. Amongst some of them it is something

that [is suggested] by force of their connection to what is occurring in Gaza, they view and recognize the importance of its continuation. I would say that this arose indirectly when flotillas occurred since the closure. When the recommendations...not everybody is proficient in the laws. I'm not certain that all the intelligence people really know that the closure was imposed, you can't make a selection and sometimes install it and other times not install it. Therefore time after time you find their recommendations that derive from their independent judgment. They don't explain this by the fact that the imposition of a closure compels you to be consistent, but due to the fact that in their opinion it is incorrect, and they write us letters that they're not sure that we know that it is not proper to allow these ships to enter because this is irreversible. I'm already speaking of when the current government is in existence, after Cast Lead, when we've already had the Arion and the Tali, those are the last ships.

The Chairman, Justice (Ret.) Jacob Turkel: Good, thank you, please continue sir.

The defense minister, Ehud Barak: There was one session of the cabinet that deal with Gaza in this government. I think on 19.06 perhaps 09, June 09. There was some sort of cabinet meeting I think that dealt with the situation; one can see its decision. I don't think it refers directly to the closure, it refers more to the range of conditions in Gaza, and there as well it's worthwhile to see the protocol, because there occasions as Kissinger once commented, that you don't always see everything in the summary. You have to see the finer points. I would like with your permission to go back a wee bit, to begin again with the deliberation of 13.05 because it was cut off somewhat by the questioning. On 13.05.10 it took place, this is about two weeks and a half before the flotilla, there took place at the defense minister's office an additional deliberation in whose framework the subject of the Turkish flotilla arose. In this discussion the chief of staff and additional senior officers presented the main points of the operational order, and

the operational contour that was already spoken of on 22.04 and 06.05 and said that it had to be prepared it - the operational contour for stopping the flotilla. In this discussion I gave directions that together with continuing the effort that had already begun in the previous weeks, to interdict the Turkish flotilla via diplomatic channels, and I will return to this, one should make preparations for the contingency that the diplomatic effort would fail and prevent the arrival of the flotilla to the Gaza Strip in the operational contour as presented by the IDF. I also gave directions to continue the intelligence tracking of the flotilla organizers with an emphasis on the possibility that terror elements would be found amongst the flotilla passengers. Remember that this was as if something was beyond the envelope or the range contingencies that appeared within the intelligence of information. And that closes 13.05. On 26.05.10 a deliberation of the of the septet ministers' forum took place where the topic of the Turkish flotilla was also discussed, in the presence of the Chief of Staff and military intelligence representatives. I have to say something about this deliberation. This deliberation was set without prior warning. It in practice sprang upon us as a continuation to the deliberation by the septet that was fixed in an orderly fashion on a different topic. At the end of the deliberation the prime minister requested that the people pertaining to the matter remain behind, and said, we want to speak about the flotilla. I concede that for a moment the question passed my mind, of how do we suddenly find ourselves in such a discussion, and I attributed it at the time to the possibility that this was an accumulation of intelligence, because all the time intelligence kept flowing, all the time you are reading the papers of Military Intelligence. The time was approaching when the flotilla was set to depart, this was already five days beforehand, perhaps it was my approach of a few weeks ago, that said, that one should conduct a discussion with the relevant ministers, or the propinquity of the prime minister's trip

abroad. He was about to depart I think the day after the next, or maybe on that same night abroad, and perhaps somebody initiated it because at the start of the deliberation, the first person whom he permitted to open the discussion was Dan Meridor, who actually had some different comment. I thought that maybe Dan Meridor initiated this in general or requested it of him. But in this deliberation, that began in such a fashion as a continuation of the different septet deliberation, but continued for two hours, you will see its protocol, scores of pages, and the dilemma facing the State of Israel was presented in all its clarity and scope precisely to the political echelon and less to the operational echelon. Given the evaluation that the diplomatic efforts for stopping the flotilla would not succeed and given the succinct intelligence survey and the brief operational description that the chief of staff made, that didn't leave, neither his description nor his subsequent comments didn't leave any room for doubt regarding the difficulties that he foresaw in carrying out and the prices that in his opinion and by the way also in the opinion of some of the participants including those who supported it the stopping, and the prices that we would pay for the this public and media covered friction, that we could arrive at. But the dilemma that we faced was presented in all its clarity and extent. One option was to enforce the closure at the problematic price of the violent clash with activists and peace demonstrators causing diplomatic consternation and appreciable media damage. The second option was to allow the arrival of the flotilla to Gaza while foregoing in practice the entire maritime closure, with all that this portended, primarily regarding the future Hamas buildup. The choice as is normal in life, in real life, was not between a good and bad option, definitely not between two good options but a choice of what was the lesser of the two evils. The ministers asked questions as I have already said, and a long and detailed discussion developed over the fundamental question do we forgo our position, and allow

the arrival of the flotilla, or do we insist on enforcing that maritime closure. At the end of such a prolonged deliberation that dealt as aforesaid primarily with the question of to stop or not to stop, and ventured further to a broad selection of additional topics, from the logic of the limitations on the passage of goods through the land crossings, until the actions taken by the Foreign Ministry to stop this flotilla or minimize it, the prime minister asked each and every one of the participants to express his position, and after they expressed their position it was already possible to comprehend the positions of most of the people from a deliberation that lasted two hours. He excluded all the other people and left only the ministers and the Chief of Staff and sought to hear the opinion of each and every one and he also joined in. And in the end result all the ministers who were present at the deliberation including the prime minister himself, positively supported executing the stopping. Of course this was in case that the passing days and the continued diplomatic efforts, and the approaches even at sea, would not induce the flotilla to retrace its footsteps, or to go to Ashdod. In a similar deliberation also before we stayed on to take the decision itself, only the ministers and the chief of staff I was entrusted with the responsibility of coordinating all this work topic and the entire handling of the flotilla, when the prime minister was abroad, of course while maintaining contact with him and with Bogey [Moshe Yaalon] who remained behind as his replacement. On 26.05, a few hours later, after the deliberation in the septet forum, I staged the additional discussion in the defense minister's office on the issue of the Turkish flotilla. The session dealt in light of the decision that had already been taken with executing the stopping and with the deployment and readiness of all the bodies in anticipation of the operation. The major matter was the coordination between all the bodies, the Foreign Ministry, the information system, the Ministry of Interior, the Ministry of Internal Security, the Ministry of Justice

and the IDF bodies. The IDF together with the director general of the defense ministry and other bodies performed very impressive preparation work in the weeks preceding the flotilla, and in this discussion I discovered that the preparations indeed were proceeding well.

The Chairman, Justice (Ret.) Jacob Turkel: When you talk about impressive preparatory work, what do you mean sir? To what branch or what topic? I saw for sample from a legal standpoint, I formed the impression that there was truly impressive work done, by the advocate general, aside from this, what areas can you tell us about sir?

The Defense Minister, Ehud Barak: The advocate general also sat there and the representative of the advocate general sat there and the representatives of Dovele. And representatives of the Ministry of Justice Blass, I never know if he is from the Ministry of Justice or the State Attorney General, but they and the representative of the Ministry of Justice sat there. They did outstanding comprehensive work. The legal advisors of the Israeli Navy they weren't with me but there was the advocate general and Dovele and they performed a very impressive work of coordination. The Israel Navy coordinated all the activity at the Port of Ashdod. One had to receive hundreds of people, these are not simple legal problems what happens with these people, what happens when a foreign member of parliament arrives here, what happens with other people, what do you do with the luggage of hundreds of people that you take down, is it possible or impossible to attach. How does one interview, as there are so many assignments that derive from the law, from the way that these people enter, in this fashion in one day, legal requirements, one has to question them, and each and every one separately and in Ashdod they constructed tracks and for each track an authorized person must sit on the matter for the Ministry of Interior, who knows what to ask and is familiar with this problem. You need to

document all these things, all sorts of questions surfaced where do you have to hold them, is it possible to hold them, I thought that it was necessary to hold them in the hotel. But it became clear to me that anything aside from an installation that slightly resembles a prison facility, even if it's milder is problematic and they also recalled the rioting that had occurred with such groups, when they are together you don't know how they're going to behave. There was a huge series of missions that my people had to perform now it could've been, there was the possibility that we would only take control over the bridge without our going down in practice to all the -- without the takeover forces, not only members of Flotilla 13 but also members of the Special Reconnaissance Forces, police forces and prison services personnel going down inside. This meant that a possibility existed that asserting physical control of the people would have to be done in Ashdod, aside from taking control of the bridge itself. There were things that were related to the handling of the matters what you do with the money that you find on their person, what's permissible what is prohibited to do with the ships themselves. All these matters have to be clarified. And when I made this discussion, and we prodded the representative of the bodies one after the next, it was a very positive surprise to see that first of all they knew each other. They worked together on this, they had worked on this topic already for some weeks. We received prior reports that the Israeli Navy was coordinating this work in Ashdod. Our system, the Defense Ministry, made preparations to take these goods following inspection, one had to unload them, one had to check them, and one had to bring them to Gaza. There was a stage that we thought of bringing them to Gaza if they would consent and agree to go down, to bring the goods with some of them, a few representatives out of the -- All these things are a very broad litany of preparations, most varied, both the infrastructure and the things, and one has to document everything, because if

you don't document then later on they'll claim that you took things, and if you don't report accurately what he said in the questioning. We had a discussion on all these things and formed the impression that it was ready; these matters had been well prepared.

Maj. Gen. (Ret.) Amos Horev: How was the intensity of opposition evaluation performed? For you noted that that they estimated that there would be resistance. But the issue of the intensity of the resistance was the key topic. How was this done?

Defense Messer, Ehud Barak: This was done in the conversation that occurred, the intelligence people brought the information that they had, beyond the information that was available we also raised questions and queries on things beyond the information, and some of them could have been common sense or things like that. All in all there was an evaluation that it could occur, and you'll find this in the protocols and see that there could be a clash and friction, even in this deliberation that I mentioned previously, even in the deliberation of the septet on 26.05, and definitely in previous deliberations, the question arose what happens if there is very bitter resistance. In some of the previous deliberations the question arose, what happens if there is gunfire? And those dealing with the matter would have to be prepared for this. Now again, if the ship, if information would've reached us or an evaluation would have crystallized, that it is being transformed from a protest ship, even if we are dealing with a violent protest, to a terror ship, for example that they put on board an RPG or machine guns, and concealed them, then this is very dangerous. Plus it's possible to fire upon people, we are dealing with scores of meters, in the water, one can fire from a helicopter. This transforms the matter into something else. We didn't reach such a pass. From a general evaluation of what precisely was the IHH, the representative of the Navy mentioned in one of the first deliberations at my office, I don't recall if this was on 13.05 or 06.05, but the representative of the

Navy or perhaps on 22.04, the representative of the Navy mentioned there that the IHH is that same organization that had the clash in the framework of one of the "land flotillas", they made a number of attempts to breakthrough via Egypt. The IHH participated in one of them. This ended up with violent friction, between them and the Egyptians with very similar parameters. They also dragged a group of Egyptians and took them captive presumably for a short time. But there it is no problem of accumulating force here, because this takes place on land in Egypt and all the policemen arrived. Like at a South Korean university. Six policemen arrive for each student or four policemen for every soldier, there's no problem of accumulating force. They always enjoy superiority. Then what happened is that it concluded I think with one Egyptian officer-

Spokesperson: Killed.

The Defense Minister, Ehud Barak: Killed, and with some like these I didn't remember such details at the time, but it was clear that this was going to be something more violent than the past. I can't say that it was clear that someone brought up at some stage that we will find ourselves at the end of the incident with this result, and we of course regret the loss of life of nine killed amongst the passengers. But all this you must see when you view the subject that we can call military or performance of a mission. One cannot say that we as the decision-makers in the political echelon, we were not exposed the fact that this would not be simple. This recurred all the time. This will not be simple, there will be resistance, such will occur, this will not be a game. At the same time, there was the cognition that one could do it. Also in this discussion that I just this moment described, with the inspection stations and who was dealing with the luggage and how does one sort out the cameras and the purses Also in this deliberation there was a short segment where the Navy Commander surveyed the readiness of the

forces for action, described briefly the action itself, and he reiterated and reemphasized that despite the difficulties and complexity, this wasn't going to be easy, the operation was ready. There were briefings and coordination with all parties. This was after practicing on the model at sea with simulation of the enemy, who drilled the force in outlines of resistance, and lessons were drawn from the drill. And his feeling and mine as a result of this was that we are truly prepared for this thing. Military operations are never the case - when there is a will by various people to clash; there are always margins of uncertainty. What are you doing? Or what do you do? You prepare many contingencies, expand the spectrum of cases and responses slightly more in the drills, and expect that even if what happens in reality does not coincide with even one of the things that were planned or drilled, then the very fact that a broad spectrum was drilled and prepared, will bring about a result where the resources will be utilized to the fullest at the time of the action.

Professor Miguel Deutch: You said sir that in the discussion on 13.05, you raised the possibility that there would be terror elements on the ship, when you discussed things with the military bodies. What can we deduce from this with regards to the military conduct in the wake of this? In other words how did this influence the military preparation for this how did this point actually influence the military preparedness? I don't know if this can be said openly, but if there aren't things that must be kept closed, from the standpoint of the media then perhaps this would be an opportune time.

Amb. Reuven Merhav: I would like to follow up this question. There is a very major gap between your entry into most exact details in the preparation in Ashdod later on, with the various tracks, and with your less vigorous entry into the intelligence topic and the issue of preparation for terror itself. Could you possibly explain this?

Defense Minister, Ehud Barak: On the terror question, I would prefer to answer it behind closed doors, but in the end result, this thing, this directive derived from our experience, since the appearance of terror bodies on the ship, if they were to join, would have taken this out of the framework for which we were preparing, and that Heavenly Winds -- Heavenly Winds would include confrontation with a violent clash. But it did not encompass the possibility of dealing with whether there was an RPG there, machine guns or an SA-18 shoulder launched anti aircraft missile. If terror bodies would arrive with a huge explosive charge, in order to make a terror attack at the time that they boarded, this would have taken the entire incident to some other realm, and one has to consider it differently. Had we known for example certainly via intelligence, that this ship was actually a provocation that wasn't intended for a photo op but was intended to kill people, and was prepared that their people would drown in order to kill Israelis on deck or I don't know what but it could be that this would've justified a different category of action against it from a greater distance, that we in normal fashion cannot consider. Because when a flotilla that you don't like departs, you can't according to international law go forth and act against it in a violent manner in some place whatsoever. All these things lead us to think about terror. But if you want more than this, I'll answer this thing. Look, there is a difference. First of all, we, my interest in these matters stems from the fact that this is like an encounter. The encounter of this operation is to remove the people from the boats, this is an encounter in a sensitive point from the standpoint of international law and the validity of all the measures, that render them either licit or sometimes unworthy, and this is predicated on small details, between the authorities and agencies here, that don't work together on a day-to-day basis and didn't undergo this honing process of life versus things that occur. And therefore, from the moment that the Prime Minister also requested

that I should be responsible in his absence for the coordination of all the bodies, including information and from his office on what they should inform the journalists, I thought it important to see the people and listen so I would know that they understand and comprehend what they were doing. This is not the same case with Flotilla 13. This is a unit that not only performs this type of operation, this is all also a unit that performs within the IDF, this is the can do system the most polished and most experienced operative system of the state. Flotilla 13 performs some uncommon operations astounding ones. I spent quite a few years in the world of operations, there were quite a few occasions where they came to me to present the operation and I at the first moment didn't think that they were capable of performing it. They reiterated that they were capable, and after that they drilled on a model in capability, they are capable. This is a very polished system a very veteran one, and the IDF knows how to work on these things, and this is its area, this is its natural professional habitat. I, should you so wish, will add this for you. I alluded to this, examples from the past and present, because I chanced during my childhood or adolescence, I don't know how to call to myself be in such units, and in the end the genuine knowledge of how to do such operations resides there. It's not somewhere on top but exists on down it grows from below, it is there below, and most definitely in such a polished unit as this. It's not a bad thing that ministers, some of the ministers really asked about these things, almost about what gloves and on what side from what side do you descend and how do you ascend. I think that the need, I tried more than on a single occasion to focus attention to the real things. The political echelon must first decide on the genuine substantial question before it. Not from what side of the helicopter does one descend, but should a stop be performed under such conditions or should one turn to another option. And the echelon that can, the people who can say how you carry this out, what does this mean,

and from them we have to hear if this is within the envelope of what they know how to do, of course with difficulties, this is not building engineering and not mathematics --

Amb. Reuven Merhav: This is not what I meant. I meant the activation of other intelligence arms and on this I request an answer.

The Minister of Defense, Ehud Barak: There is well, look, I was, you happened to be in more than one, I was in one of the arms all the time. But the collaboration that I witnessed when I now came to be the defense minister and looking back on it after the 5 to 6 years when I wasn't, I found much deeper cooperation than what I recalled. Many activities, many, and very efficient discourse, the more I encountered. And I didn't encounter in my experience in recent years, I did not encounter in the cases that I saw. Sometimes there were problems that stemmed from inter-organizational tension, this always exist. But problems of this type are always floating. They float directly to the top. I prefer to expand on this behind closed doors. On the working levels I did not encounter places where there wasn't a free flow between the bodies on how to cooperate.

Amb. Reuven Merhav: I assume that you will also refer to the test of the result later on.

Defense Minister, Ehud Barak: With your permission I will continue.

Prof. Miguel Deutch: Perhaps one general question, even if it very hypothetical, I am aware of the weakness of hypotheses on such matters, but would it be correct to assume that if what is known today was known then, the action would've been different? the manner of the action?

Defense Minister, Ehud Barak: To a large extent, on the level that is connected to the question of whether to stop the flotilla or not, in my opinion the answer is no. The same decision would have been taken. On the level of how they would have performed this exactly, would they have used water cannon, you don't use water cannon they would've come with four rubber boats or with two or with six or

with gas grenades, I assume yes. But this is a system that is learning all the time, and it is not by happenstance that I said previously that never, neither in an operation where the intelligence is perfect, there is no operation that is foreseen the way it should be. And we always have to examine ourselves and improve. But between this and between, maybe I should say some words at the end. Where we live, a society that wants to live, a country that wants to live in this region, has to be capable of rising up and get over these things, even when they don't turn out exactly as we wanted them to. I'll provide two examples from the past. I remember the morning after 35 children were killed at Maalot. And one of our finest units performed this that I happened to command up to the previous year. I remember the late Moshe Dayan meeting me in the paths of the Defense Ministry compound and telling me, even an old fogey like me would have performed this better. I told him Moshe sit on the Sabbath, he has relatives in nephews and all sorts of cousins, in the performing unit, sit with them and conduct a debriefing. I remember- but we didn't have this at that time we didn't shake ourselves up, there just wasn't. There was tremendous pain; there was tremendous shock; there was deep identification with the price and a terrible sense of pain, even among those who executed it - I also know some of them. But we didn't have a shock. Maybe it was because we didn't have the entire world [around]. I also remember the morning in which the late Yizhak Rabin called me up and announced that he had decided to expel 450 Hamas members and called me for consultation. He had already consulted with the leading legal bodies. It emerged that he didn't consult with enough of them, and they wanted to do it immediately and it cost us. They had already been expelled and it cost us an appearance before the Supreme Court and I as the current Chief of Staff, I was dispatched to explain the matter and what were the considerations. And there was severe international damage. Some of it has dragged on to this very

day. But we knew how to preserve a sense of proportion. We got a grip on ourselves; we said we have to do this thing, with the damages. We are a state here, for verily in Holland or New Zealand one doesn't have to expel 450 terrorists from the state and consider extreme considerations on the fringe of what is proper from an international perspective. I'm saying this with an eye to the future, as we haven't wound up matters. It's not that if we just on the matters we are presently discussing, the flotilla of 31.05 had safely resolved the issue then the Redeemer will come to Zion. This is not yet the case we are not yet there. Everything is still continuing. We are only at the beginning. The following flotillas already await us. And I don't want to say it here, but perhaps one can imagine flotillas that we will find it even more difficult to contend with, I don't want to disseminate ideas in a public conversation. And therefore it's very important, that we should be capable of contending all the time, and realize that some things occasionally won't turn out the way we want, and so from an operational standpoint or from an international standpoint this doesn't mean that we shouldn't repair things. Everything should be seen and repaired.

Amb. Reuven Merhav: Please tell me sir; you coordinated some of the contacts with the Turks.

And the contacts with the Turks continued almost up to the last minute. In retrospect we get the impression that what occurred here, and I will say this very carefully, there is a sense of lulling to sleep to a certain degree. Some deliberate effort. They sent signals here and there when in reality they actually didn't want to help. Now I understand that the test of it was the very fact that the flotilla set out. And now tell me if this is true, that this feeling is correct that up to the last minute you hoped that they would do something.

Defense Minister, Ehud Barak: In everything connected with the Turks, due to the sensitivity and the dynamics and the fact that this is still presently a live issue I would prefer to expand behind closed doors. I spoke with the Turkish foreign minister,

with the Turkish Ambassador here; I'm in contact with Washington with our people there who were in contact as well with the Turks both before and after the flotilla. And I prefer, due to the sensitivity of the matter to speak of this behind closed doors.

Amb. Reuven Merhav: I would just add another word. You in one of discussions asked what was the Mavi Marmara. That is the Blue Marmara

Defense Minister, Ehud Barak: Marmara means marble is that not so?

Amb. Reuven Merhav: The Blue Marble Sea

Defense Minister, Ehud Barak: Correct, I really asked that. Good, I would like to proceed with your permission, because we're really coming towards the end. During the entire aforesaid period comprehensive diplomatic activity was conducted by the prime minister, the Foreign Ministry, seniors in the Defense Ministry and the IDF and also on my part, in efforts to bring about the cancellation of the flotilla and its stopping or reduction. In the two weeks that preceded the arrival of the Turkish flotilla, I discussed the topic with the representative of the Quartet, Tony Blair, with the emissary of the UN Secretary-General, Robert Seri, the head of Egyptian General Intelligence, the Deputy Foreign Minister of Greece, the Turkish Foreign Minister, the Irish Foreign Minister, the Turkish Ambassador in Israel and an additional few who because of the nature of their diplomatic ties requested that I shouldn't cite their name. These numerous diplomatic efforts did not to my regret bear the fruit that we would have desired, although in my estimate these efforts, together with other things, reduced the flotilla and minimized it. At the start it seemed it would be 8-10 ships, later on 10-12, in the end six arrived, and the Rachel Corrie lagged behind. And most of the parties that spoke with us in effect said to us, we don't know how to stop this flotilla, these are independent organizations one cannot force this upon them. There was another party that behaved somewhat differently, it wasn't simple. You correctly

commented, committee member Ambassador Merhav, that the position of the Turkish government is problematic here. It could be that we have to talk about the entire matter of Turkey separately, but I will tell you only that the deterioration of our relations with Turkey, did not begin with the flotilla, but a year and half previously, and it is not the flotilla that caused the deterioration of relations, as I occasionally see appearing in the public discourse, I would almost say the reverse, the deterioration in relations with Turkey, and the level to which it reached, for reasons that we can perhaps speak of more freely behind closed doors, caused this sort of a stance, an indirect one, to speak in understatement their standing aside on the matter of the flotilla, despite the fact that the results of the incident as it occurred, undoubtedly leads to a further deterioration or imposes a further burden on these relations, that in the end result are important to the state of Israel. Turkey remains the most important country in the Middle East and we have an interest in finding the way, despite the pain and beyond the sorrow that we expressed on the loss of human life, and also the compulsion, that I think you will learn from involvement in the investigation, to open fire at a certain stage, we have an interest to repair relations with Turkey. We have no other issue. Okay. In these circumstances we really don't have any other choice but to enforce the maritime closure. I think this was a purifying decision that was decided in the end by the septet, and the decision that was reached was to do this and to stop, and therefore we directed the IDF to enforce the maritime closure upon the Turkish flotilla. I am persuaded even today in retrospect, that this was correct. As stated, I and the prime minister after the deliberation in the septet, we guided and authorized the action by the IDF. You have to understand that the national leadership always operates under conditions of uncertainty. It is called upon to select and decide not between a good and bad result or good and less good, but generally between

two evils that sometimes it's difficult to evaluate what is greater, and in our reality as people desirous of life and peace in our region, we really have to know how to withstand also tempests that are not precisely what we foresaw, what we wanted, and I deliberately mentioned previously the example of Maalot, as a turbulence where our pain was all directed inwards, and there was tremendous frustration over the fact that we did not succeed in preventing this. And the expulsion of the terrorists in Lebanon, that quickly became an international problem with damage to Israel that was not paltry, and from which we also had to recover and stand on our feet and examine what we have to do next. I don't recall that aside from internal deliberations amongst us, regarding what was proper to do, we thought that this involved additional things. The delegitimization of Israel and its isolation in the world, the way it was reflected in Turkey is perhaps an extreme case, but one cannot ignore that similar things exist in other parts of the world. We are in a process of isolation and I saw this in the public discourse, and to a certain extent I would even say in the Eiland Report some allusion that if we would've only behaved otherwise, let us say that we would've opened the land crossings and passed from a white list to a black list that means from a policy that it was permitted to bring only what was permitted, to prohibit from importing only what was prohibited, we would've found ourselves without the flotilla. So first of all, reality rebuts this. We see that we did it and still the flotillas are continuing. But I say in general the thought that if this flotilla and its handling that resulted in more bitter results than any of us would have wanted, to think that it brought delegitimation, this is not correct. It is also not be correct that there was some technical step that if we had done it previously that would've stopped it. The only thing that can by itself stop the delegitimization process is not better information it is not a matter of this, but a major change in policy and the positioning of Israel. In this sense this

is really something that goes back to the political echelon. But it's not connected to things that one could have done or couldn't have done during the weeks or months preceding the incident of 31.05 or as a result of it. This is something that is static. This means the citizens of the country when they decide once every four years, they decide what government will be. And the government faced with diplomatic constraints, acts. I am persuaded, and I'm saying this as a political person, not only as a cabinet member that it is clear that an aggressive and vigorous diplomatic process, that examines from a position of strength on the basis of Israel's current reality, a daring and broad progression to diplomatic processes with the Palestinians and as I mentioned previously, possibly with the Syrians, and to regional organization against radical terror, and marches along this line, there is a chance that the isolation would turn into the isolation of Hamas and it could be that this would set into motion processes that would allow us to contend with the matter in a different fashion. But this issue is tied so deeply to the fundamentals of policy, that I would not connect them with some sort of immediate tie. This doesn't mean that it's not important, despite the fact that is not a topic for the deliberation here and the examination. The results of the operation left a feeling of discomfort in any normal place in the world and with us as well because of the fashion in which it concluded, the pride and embrace for the soldiers notwithstanding. But Israel is simply not a normal place in the simple sense of the word. This is really not Canada, not Finland not Holland. We are a country in a struggle, surrounded by immediate and demanding life-threatening and daily challenges from the Hamas and the recalcitrants in Gaza, via Hezbollah in Lebanon, with the Syrian and of course Iranian backing. And we are dependent also for the normalcy of our present and our future first and foremost on the readiness of young boys to risk their lives to defend us, and upon our stability and resilience as individuals and a society,

even in tempestuous times, and to keep a cool spirit also under blows that can still come and apparently since the world is not perfect will arrive. And we are going to be tested in our work by professional norms of the executive arm, and take major decisions bravely, in the category of the diplomatic process that I mentioned previously, about the political echelon but exercising the prudence of leadership on the executive matters that confront us on the day today. I wish for ourselves that we will know how to manage these things. I congratulate, genuinely this inspection and that of any incident. I simply want to warn ourselves against two things that can, with all due modesty all of us, when we look upon such things. There is always the retrospective glance, this means the afterwards following the event, when one looks post factum , and things then sometimes seem clearer and more self evident than what they were really were or could have been at the actual moment. There's always the temptation of the road not taken what you didn't take and it always seems to you that from there the entire salvation could have arrived. But I simply saw in the Israeli public discourse, why didn't we cast the net to ensnare them, why didn't we stop them this way, why didn't we do this thing, why didn't we leave them to dehydrate in the sea, and why didn't we allow them to enter? All these things are good for journalistic discourse. When you examine these things one by one and some of these things we are examining for years, and to our regret we did not manage to find solutions, for others perhaps we will find solutions at some stage. I think that one should be cautious of this trap and in a similar manner from the snare that is tied to the fact that while we concentrate on a particular event and focus upon it as with a laser beam or magnifying glass I'm always thinking that it's important to us never to lose contact with the broader context, those very same people, that general staff, that Foreign Ministry that political echelon that are involved simultaneously in hundreds of demanding things, that always demand

constantly decisions, handling and attention. They have a great deal of sensitivity, and I'm convinced that when you see all the material and hear all that evidence, you'll be convinced that we have in the IDF, the government ministries, a system that one could rely on, that knows how to function in a proper fashion in incessant difficult constraints, and also knows how to take decisions and carry them out amidst difficulties even if not always with total success. This is definitely in my opinion a responsible, rational, and serious system that is attempting to the best of human ability, to contend in good fashion with the challenges that confront it. I again reiterate that I would have liked to submit to you an orderly position in writing, with the attachment of all the supporting documents so it will be possible to read it in a systematic fashion.

Prof. Miguel Deutch: I would also suggest if one can add factual reference. It appears to me that at the moment we are lacking data on one of the questions that can arise. As you know all sorts of arguments are raised with regards to the humanitarian situation in Gaza. And I believe that it would be important beyond the evaluations, conclusions and thoughts that we should have verified and organized data on the quantity of merchandise transferred on a practical basis in the day to day. If we could receive such data this would be useful I assume for the work.

Maj. Gen. (Ret.) Amos Horev: Including noting the impairments to the capability of transferring products or damages to the fuel terminal. There are phenomena that also derived from Hamas' behavior towards the transfer of merchandise.

Defense Minister, Ehud Barak: I believe that it could be possible to bring perhaps something from the COGAT from the Coordinator of Government Activities in the Territories. We were on the level of about 400 trucks I think at the time, if my memory does not deceive me about 400-450, at the time of the previous government, prior to Cast Lead. And we declined for amongst other things

because of the attacks on these places, we closed one of the crossings and opened the crossing in the south, and at the old crossing only the conveyor that transferred aggregates, at a pace of seventy truck loads I already don't remember. I think that you have to hear, this came up, at the second crossing 130 passed, and this was about half of the yearly quantity in recent months, I believe in the last seven months, since the start of the year, we are in a process of continuously augmenting the volumes, and recently we've committed to certain numbers, to reach the equivalent of 400 in a very abbreviated process.

Maj. Gen. (Ret.) Amos Horev: It would be worthwhile noting this in tons rather than in trucks.

Defense Minister, Ehud Barak: That could be. On average this means 10 tons per truck I think to a large measure. There is also and you have to understand that what enters and quite a lot of equipment and merchandise enters via the tunnels, there is a sophisticated industry there. But I suggest that we prepare for you a survey on this aspect, what happened in the land crossings, including what we think passes through the tunnels, and how do these two economies look, the tunnel economy and the crossings economy, they compete for the reality, that I think all the time way surpasses the level of a genuine humanitarian problem.

The Chairman, Justice (Ret.) Jacob Turkel: I understand that there was once an institution, maybe it exists to this very day, of staff officer for humanitarian affairs that then handled problems that would arise. So it could be that today after the evacuation of the Gaza Strip there is already no grounds for this in the same fashion, but perhaps yes, perhaps it still exists. I'm simply interested in knowing.

Defense Minister, Ehud Barak: The Coordinator of Government Activities in the Territories I know handles many humanitarian problems, sometimes it reaches me, direct requests from my people, from international figures, to whom some request has arrived, and I refer this to the COGAT that is what we call the Coordinator of Government Activities in the territories. Many health issues are handled in this

manner and all sorts of other exceptional issues that arise as humanitarian issues per se and they handle them.

The Chairman, Justice (Ret.) Jacob Turkel: Yes, good, before, are there still any other questions?

Amb. Reuven Merhav: Yes, I would like to ask you, it's at least grasped as such, that a large part of the security policy regarding the closure or limitations upon the Gaza Strip, are set at the diplomatic security headquarters by you. How can one explain the fact that what is taking place or is considered to take place, a security closure is considered throughout the world as starvation? A simply incomprehensible gap exists here, between the reality severe as it may be, and the way it is conceived in the global system. You can say that this comes from media exaggeration, but it is simply difficult to imagine such gaps. I don't recognize them in any other place in the world. I assume that you gave your mind to this, and maybe there is room to examine this. And I'm not speaking here merely as an Israeli. I'm speaking first of all as an observer of international events. The world is suffused with catastrophes, I don't know of anything like this.

Defense Minister, Ehud Barak: I think, first of all on the terrestrial, on the land crossings this is not only security. We do not only examine arms, ammunition and war materiel. There were limitations. By force of, I would refer you to the stenograms of the cabinet deliberations in general that dealt with these matters. Here there is also an objective of isolating Hamas, weakening Hamas. There was the view also of the intelligence people and also people who deal directly in connection with Gaza on the one hand and with the international organizations, and also in dialogue with our neighbors, the feeling that loosening, creating a situation that Hamas could do what its heart desired, when it on the one hand took over in a savage bloody takeover a million and a half citizens innocent in toto in their majority, and also used them as human shields and was preparing itself for

hostility with us behind their backs, that there was a reason to isolate it, to separate it. So we are cautious, for on the one hand we don't want to cause starvation nor anything that will be conceived as an attempt to coerce Hamas or obtain concrete results from Hamas, by harming these innocent civilians. This is not plausible; it is illogical, contravenes international law and also does not benefit the State of Israel. But I cannot say that we allowed everything that was conceivable to enter, the moment that this it was far over and beyond the humanitarian threshold. I think that what exerts greater influence is not only the media exaggeration, part of it is the pictures. Primarily this came after Cast Lead, when the pictures on the screens throughout the world created empathy with the suffering let us say of the Palestinians that was caused as a result of the action. The action was necessary, I think that also on this issue it would be proper for the international law community to give attention to the need to perhaps change the rules in which they approach fighting against terror bodies that operate against the citizens of another country, from within the citizenry of this entity, of this failing state or some other thing that doesn't exist in another country. But the result, what gets under the skin, are the pictures on the screens, and they position Israel in the situation of the strong and the Palestinians in the situation of the underdog, and this reverberates. This includes the Goldstone Report that in this sense caused a degree of damage, despite the fact that I think that is ridiculous and unsubstantiated in the way it was written. And the real thing and that I reiterate that constitutes the key to a deep change in Israel's legitimacy and will simultaneously get the world off our backs. I also think that it would be the wise thing from our standpoint for other reasons, to set in motion a broad diplomatic process, without losing eye contact with our security, without abandoning any supreme security or national interest, but to exhaust the possibility of reaching agreements with the neighbors, primarily with the

Palestinians, however painful the decisions will be to both parties. For first of all neither of us is God, nobody knows if it will succeed. It could be that it won't succeed. Perhaps it won't succeed because we don't have enough power or perhaps because the other side isn't ripe, or the conditions. But Israel's situation will be totally different, if it is considered by upright people in the free world, and by the leading governments throughout the world, as a state that operates in a vigorous, responsible and farseeing manner and is willing to take and make decisions that are tied to a fundamental change of the situation. This is almost the only thing that can change the erosion in Israel's legitimacy in the international community and throughout the world, including amongst our friends and states that are our most important reference groups.

The Chairman Justice (Ret.) Jacob Turkel: Good, Mr. Barak, I have one more question that I'm not sure is within your purview, and the intention is to present this to other bodies. But perhaps I would call upon you sir for one more issue that is within our mandate, and that is an examination of the question if the apparatus for inspecting and investigating complaints and arguments that are raised regarding the violation of the laws of war was customary in Israel in general and as it is implemented with regards to the present incident, coincides with the State of Israel's obligations in accordance with the rules of international law. I intended to ask this first and foremost of the advocate general. But do you sir have anything further to say on this issue?

Defense Minister, Ehud Barak, I feel that the answer is clearly positive. I think that the apparatus and the processes that prevail amongst us are truly, I would say in the front rank from the standpoint of norms and even more far-reaching than in countries such as the United States in terms of the rules when you look at the details. The soldiers indeed in order to defend the real thing that stands at the basis of a military system's capacity and the fighting units' capacity to function

and win must have the ability to draw something from every experience, and learn all the lessons in order to improve. And to make a true distinction from another profession, all the other professions are personal choices, you choose to be a surgeon, you get up each morning and you perform operations. You choose to be a judge; you sit on the judicial bench. You choose to be an engineer, so you plan houses all the time. The Army is something else. This is a place where you're always in preparation for something that you are here for. Fighting itself is something that happens infrequently. Operations happen infrequently. You are always preparing. Therefore these incidents where there is friction are rare, so you have to use all the time in order to improve. And the key to improvement is your ability to maintain a genuine debriefing, where people stand up and begin with what were my mistakes, and in what wasn't I okay and what I did and where I was mistaken, and everybody shares this and they get together to think how to do things better. It slightly reminds me of what happens in the operating theaters. And one has to defend this. Just like there are those who say that the major cost of the health system in United States derives partly from practice, from the malpractice procedures. The moment that a surgeon performing an operation has to take decisions in fractions of a second on what to do, has to think not only of how one saves the patient but how this will be interpreted later in a malpractice deliberation, then everything becomes more entangled, I'm not sure whether more operations fail as a result. This is something that's very important and good army units rise and fall on this matter. Therefore this debriefing must be preserved at all costs. But how does one guard against the possibility that it will be transformed into a code, for covering up indecent things? For also our soldier, even when he is compelled to fire and even when he makes mistakes, and occasionally he makes mistakes, and he kills a person as result. And on this mistake we want him to say, the entire matter

begins when he kills deliberately, when he doesn't have to fire and he fires when it's clearly unjustified, when there is a black flag over the action. How do we go about preventing this? We stage a debriefing; the debriefings are protected from being used as any evidence whatsoever. But still the advocate general who is an authority that is not in the chain of command, he is outside the chain of command, he looks into the military debriefings. He reads the testimonies of the soldiers themselves. He can see all the debriefings. And if he sees something that in his opinion and judgment, whether he distinguished it or somebody directed his attention and as a result he distinguished it, then he can decide that the matter departs from the defense of the debriefing. And because a transgression was perpetrated he opens an investigation. The investigation is performed by the Investigative Military Police. This time this is an investigation in terms of a violation of the law, with the possibility that you'll find yourself in criminal proceedings. I think that this is a proper division. Now in other places throughout the world and let me take for example the U.S. Army, I think that some of you are familiar with the practice there. In the United States the military prosecutor of the unit, the body of the division of the corps is subordinate to the commander. The commander alone decides whether to open a criminal investigation. With us it we are much more open and far-reaching. And the Americans believe that this meets the rules of international law. I think they're not the only ones that adopt this practice. With us the advocate general is not subordinate to the commander. From the substantive professional standpoint, and in his professional judgment he is not even subject to the Chief of Staff, he is subject to his professional conscience. He can determine, and there is nothing that can stop him, that one must open an investigation of something that wasn't seen. And therefore the prospect that something like this will happen by us, where an unworthy act occurred during an operation, first of

all the proper things should be clarified in the debriefing, and the soldiers must in general be extended the defense of the debriefing. Because just like I mentioned earlier about the surgeon, if a soldier at the time of the operation, not like this operation, another operation, he has to enter a building or into a room and clear it, when he knows that this could be the last movement that he makes in his life, and I tell this to you from experience, some of the soldiers standing near the door have to do go in against gunfire, convinced that they will get a bullet in the head. Sometimes they do receive a bullet in the head. That person, if in these fractions of a second primarily in an environment of anti-terror action, where people whom one cannot hurt are involved and one has to in a fraction of second exercise judgment whether a definite and immediate life-threatening situation has occurred or not and to press or not the press on the trigger, in a hair's breadth, fractions of seconds, I don't want that at the time that he takes this decision during that moment and upon that decision the success or failure of the action sometimes hinges, he will have to think about a lawyer who specializes in what I don't know what the decision of Vaknin vs. the Beit Shemesh municipality or the reverse or all sundry such things, from which he will infer what he has to do. He will not be able to carry out missions. We are going to lose the most important thing for our units. Therefore we have to protect this. And with us this goes further. It is not only the advocate general. If someone got the notion that the advocate general somehow doesn't exercise his independent judgment, he can turn to the State Attorney General and here as well he can receive assistance. If the State Attorney General didn't do anything and there is someone who feels that something happened that must be investigated he can even get to the Supreme Court. Therefore I think that we are more far-reaching in these matters and definitely meet the norms. There are investigations, the practice also demonstrate this, and when you examine the

investigations that they make it turns out that generations of advocate generals do not hesitate, neither during the First Intifada nor during the Second Intifada and not in this. I don't say that we are perfect, maybe in heaven perfection exists. But here on the level of what can be done on the human level I think that a system with professional integrity with command integrity exists and I think that we are in a situation that definitely situates us within international norms

The Chairman, Justice (Ret.) Jacob Turkel: Good, with this we are winding up the open deliberation and now we will move on to a continuation of the deliberation behind closed doors.