



DIVISION FOR PALESTINIAN RIGHTS

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I. UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR WESTERN ASIA REPORTS ON ECONOMIC AND SOCIAL REPERCUSSIONS OF THE ISRAELI OCCUPATION

The Economic and Social Commission for Western Asia prepared a report on the repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory in response to General Assembly resolution 63/201, requesting the Secretary-General to submit a report to it at its sixty-fourth session. The summary of the report is reproduced below (A/64/77-E/2009/13):

Summary

The occupation of Palestinian territory, including East Jerusalem, the use of arbitrary detention, the disproportionate use of force, house demolitions, severe mobility restrictions, lack of building permits and closure policies continue to intensify the economic and social hardship of the Palestinian residents of the occupied Palestinian territory. Internal Palestinian conflict has also continued to cause casualties and disrupted the delivery of essential services to the population.

Attacks by Palestinian militants and the launching of rockets into Israeli cities from the Gaza Strip continued in 2008, as did Israeli military operations. In December 2008, the Israeli army launched a 22-day military operation in the Gaza Strip that killed a reported 1,440 people and injured 5,380, and gravely deepened the existing humanitarian and economic crisis caused by the ongoing blockade imposed by Israel on the Gaza Strip, which has remained isolated since June 2007, with rapidly deteriorating conditions, a near collapse of the private sector and shortages of essentials such as food, electricity and fuel.

The Israeli closure system remains a primary cause of poverty and humanitarian

crisis in the occupied Palestinian territory, and restricts Palestinian access to natural resources, including land, basic social services, employment, markets and social and religious networks. However, despite those constraints, the Palestinian Authority managed to make some progress in areas such as security, public financial management, local public infrastructure and health and education services, not least because it was able to fully pay civil servants every month.

Israeli settlement and outpost expansion, land confiscation and the construction of a barrier in the occupied Palestinian territory, contrary to the road map and the Geneva Convention and other norms of international law, isolate occupied East Jerusalem, severely intrude into the West Bank and curtail economic and social life.

The ongoing occupation and expansion of settlements by Israel in the occupied Syrian Golan since 1967, in violation of Security Council resolution 497 (1981), and the restrictions imposed on the Syrian citizens living there also continue to create economic and social hardship for the Syrian Arab residents.

II. SECRETARY-GENERAL SUBMITS TO THE SECURITY COUNCIL A SUMMARY OF THE REPORT OF THE UNITED NATIONS HEADQUARTERS BOARD OF INQUIRY

Secretary-General Ban Ki-moon on 4 May 2009 submitted to the Security Council a summary of the report of the Board of Inquiry to review and investigate incidents that occurred in the Gaza Strip between 27 December 2008 and 19 January 2009 and in which death or injuries occurred at, and/or damage was done to, United Nations premises or in which death or injuries occurred, and/or damage was sustained, in the course of United Nations operations (A/63/855-S/2009/250). The summary is excerpted below:

...

1. On 11 February 2009, I convened a United Nations Headquarters Board of Inquiry¹ (hereinafter “the Board”) to review and investigate the following incidents that occurred in the Gaza Strip between 27 December 2008 and 19 January 2009 and in which death or injuries occurred at, and/or damage was done to, United Nations premises or in which death or injuries occurred, and/or damage was sustained, in the course of United Nations operations:

(a) Injuries occurring at and damage done to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Khan Younis Preparatory “A” Girls School on 29 December 2008 and the subsequent death of the person injured;

(b) Deaths occurring at and damage done to the UNRWA Asma Elementary School in Gaza City on 5 January 2009;

^{1/} The team was headed by Ian Martin and composed of Larry D. Johnson, Sinha Basnayake and Lieutenant Colonel Patrick Eichenberger as Board members and Nina Lahoud as Secretary of the Board.

(c) Deaths and injuries occurring at and in the immediate vicinity of, and damage done to, the UNRWA Jabalia Preparatory Boys “C” School on 6 January 2009;

(d) Injuries occurring at and damage done to the UNRWA Bureij Health Centre on 6 January 2009;

(e) Small-arms fire affecting an UNRWA convoy in the Ezbet Abed Rabou area on 8 January 2009 and related damage to a United Nations vehicle;

(f) Injuries occurring at and damage done to the UNRWA Field Office compound in Gaza City on 15 January 2009;

(g) Deaths and injuries occurring at and damage done to the UNRWA Beit Lahia Elementary School on 17 January 2009;

(h) Damage done to the Gaza compound of the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO) on 29 December 2008;

(i) Damage done to the World Food Programme (WFP) Karni Warehouse between 27 December 2008 and 19 January 2009.

2. As set out in its terms of reference, the detailed tasks of the investigation team were as follows:

(a) To gather and review all existing documentation related to the incidents, including the report of the inquiry into incidents affecting United Nations premises that Prime Minister Olmert has promised to the Secretary-General, if available, and any other available report that might result from national and other investigations;

(b) To identify and interview all relevant witnesses and others who could help the investigation and make a record of their statements;

(c) To visit the sites where the incidents occurred;

(d) To produce a Headquarters report on the incidents, to include the following:

(i) Findings on the facts of the incidents, including: the full names of deceased and injured persons; dates, times and places of their deaths or injuries; nature of their injuries; the causes of their deaths or injuries; whether those persons who were United Nations personnel were on duty at the time of the incidents; in the case of those persons who were not United Nations personnel, the reason for their presence at or in the immediate vicinity of the scene of the incident; and descriptions of losses of and damage to property of the United Nations and of the deceased and injured persons;

(ii) Findings on the causes of the incidents;

(iii) Findings on the responsibility of any individuals or entities for the incidents;

(iv) Recommendations concerning any action that, in the opinion of the team, should be taken by the United Nations, including any actions or measures that should be taken to avoid a recurrence of the incidents;

(v) Relevant evidence, to be added as appendices and annexes, including photographs, post-mortem reports and so on.

3. The Board noted that it was not within its terms of reference to address the wider aspects of the conflict in Gaza, its causes, or the situation affecting the civilian populations of Gaza and southern Israel in the period before “Operation Cast Lead” was launched. Its task was limited to considering the nine incidents identified in its terms of reference.

...

Recommendations

110. The terms of reference of the Board included making recommendations concerning any action that, in the opinion of the team, should be taken by the United Nations, including any actions or measures that should be taken to avoid recurrence of the incidents. The Board made the following recommendations:

Regarding compensation and reparation

Recommendation 1

The Board recommended that the United Nations should seek formal acknowledgement by the Government of Israel that its public statements alleging that Palestinians had fired from within the UNRWA Jabalia School on 6 January and

from within the UNRWA Field Office compound on 15 January were untrue and were regretted.

Recommendation 2

The Board recommended that the United Nations should take appropriate action to seek accountability and pursue claims to secure reparation or reimbursement for all expenses incurred and payment made by the United Nations in respect of:

- Death of or injury to any United Nations personnel or any third party on United Nations premises.
- The repair or replacement of damaged, destroyed or lost property of the United Nations or United Nations personnel where the death, injury, damage, destruction or loss was found to be the responsibility of the Government of Israel, Hamas or any other party.

Recommendation 3

The Board recommended that the United Nations should promote the provision of assistance to civilians not employed by the United Nations who were killed or injured within United Nations premises, as well as to other civilians who themselves incurred injury or suffered the death of family members. Such provision should include, inter alia, medical treatment, prosthetics and psychosocial support. Particular attention should be paid to the needs of children traumatized by the conflict and of caregivers for victims.

Regarding future coordination

Recommendation 4

The Board recommended that the United Nations should request the Government of Israel to strengthen internal mechanisms, especially those within the IDF, so as to ensure that United Nations personnel, operations and premises were not put at risk in the event of any future military operations affecting Gaza. The Board further recommended that the United Nations should request the Government of Israel to designate a high-level coordination focal point, to whom the United Nations could convey any problems which it believed needed to be addressed in respect of coordination and clearance arrangements in order to ensure the security of all United Nations personnel and premises, and the safe continuation of United Nations operations, in Gaza.

The Board recommended that the United Nations should request the Government of Israel to strengthen coordination arrangements for the safe movement of United Nations personnel and/or vehicles within Gaza during any future military operations and, as part of revised procedures, to ensure that written responses were provided in response to requests for clearance.

Recommendation 5

The Board recommended that the United Nations should request the Government of Israel to give a commitment that, in the event that it planned any future

military operation in proximity to United Nations premises, advance warning would be given, sufficient to enable the United Nations to ensure the security and safety of its personnel or other civilians within its premises.

Recommendation 6

The Board recommended that the United Nations should request the Government of Israel to give a commitment that, at any time it believed that it had information that United Nations premises had been misused for military purposes, such information would be promptly conveyed to senior management of UNRWA or any other United Nations entity concerned, in confidence, so that they could fulfil their responsibility to investigate and take any appropriate action.

Commendation

Recommendation 7

The Board recommended that particular commendation should be conveyed to UNRWA staff Jodie Clark and Scott Anderson for their courageous action on 15 January 2009 to prevent the combustion of the fuel stored in the UNRWA Gaza Field Office compound during continuing IDF military action affecting the compound and, assisted by others, to minimize damages and loss at the compound, risking their own lives.

Regarding investigations

Recommendation 8

The Board, noting that the then Prime Minister of Israel promised the Secretary-General that the report of the inquiry into

incidents affecting United Nations premises would be provided to the United Nations and recommended that the United Nations should pursue the request for that to be done.

The Board recommended that the United Nations should request the Government of Israel to give a commitment that, in the case of any future incident involving death or injury of United Nations personnel or damage to United Nations premises or sustained in the course of United Nations operations, which appeared to have been caused by IDF military action, prompt investigations would be carried out, that the report of such investigations would be made available to the Secretary-General and to any board of inquiry or other inquiry body he might establish in a timely manner, and that such a body would have access to IDF officers with relevant coordinating, operational or investigative responsibility.

Recommendation 9

The Board recommended that, in order to enable prompt and effective investigations, the United Nations should consider establishing stand-by arrangements to deploy trained investigators rapidly to any United Nations presence where such experts were not available, including persons with military, munitions, forensic and other relevant expertise, who could conduct initial investigations and assess, record and preserve evidence before a board of inquiry or other inquiry body visited the locations concerned.

Recommendation 10

The Board recommended that the Secretary-General, in consultation with the Commissioner-General of UNRWA, should

ensure the timely investigation of the other incidents involving the death or injury of UNRWA personnel, on or off duty, and/or physical damage to UNRWA premises that were not included in the Board's terms of reference.

Recommendation 11

The Board noted that it was restricted to examining the nine incidents specified in its terms of reference. The Board further noted that it was not within its scope or capacity to reach conclusions on all aspects of those incidents relevant to the assessment of the responsibility of the parties in accordance with the rules and principles of international humanitarian law. The Board specifically recalled in that regard that it had been unable to investigate fully all circumstances related to the deaths and injuries that occurred in the immediate vicinity of the UNRWA Jabalia School, which involved the greatest loss of life of any of the incidents included in its terms of reference. It also referred to the incident involving the deaths of nine trainees from the UNRWA Gaza training centre, which occurred on 27 December 2008 immediately

across the road from the UNRWA compound in Gaza City. It went on to state the view that the deaths, injuries and damage caused by the firing of smoke projectiles containing white phosphorus into populated urban areas of Gaza, including in the incidents at the UNRWA Field Office compound and the UNRWA Beit Lahia School, also required further examination in relation to the rules and principles of international humanitarian law. More generally, the Board noted that it was deeply conscious that those were among many incidents during "Operation Cast Lead" involving civilian victims and stated that, where civilians had been killed and there were allegations of violations of international humanitarian law, there should be thorough investigations, full explanations and, where required, accountability. It accordingly recommended that those incidents should be investigated as part of an impartial inquiry mandated, and adequately resourced, to investigate allegations of violations of international humanitarian law in Gaza and southern Israel by the IDF and by Hamas and other Palestinian militants.

III. UNITED NATIONS INTERNATIONAL MEETING IN SUPPORT OF ISRAELI-PALESTINIAN PEACE IN NICOSIA ADDRESSES ROLE OF PARLIAMENTS

The Committee on the Exercise of the Inalienable Rights of the Palestinian People on 6 and 7 May 2009 convened a United Nations International Meeting in Support of Israeli-Palestinian Peace in Nicosia. Discussion centered on the theme: "Action by European, Arab and other parliamentarians and their umbrella organizations for Israeli-Palestinian peace." The objective of the meeting was to emphasize the important role played by national parliaments and inter-parliamentary organizations in shaping public opinion, formulating policy guidelines and upholding international legitimacy in support of a comprehensive, just and lasting settlement of the question of Palestine. Following is the concluding statement of the organizers.

1. The United Nations International Meeting in Support of Israeli-Palestinian Peace was convened by the Committee on the Exercise of the Inalienable Rights of the Palestinian People in Nicosia on 6 and 7 May 2009.

2. The objective of the meeting was to emphasize the important role played by national parliaments and inter-parliamentary organizations at the regional and international levels in shaping public opinion, formulating policy guidelines and upholding international legitimacy in support of a comprehensive, just and lasting settlement of the question of Palestine. Participants in the meeting discussed ways in which lawmakers could be instrumental in helping Israelis and Palestinians resume the political dialogue. The meeting also underscored the need to promote and apply the principles of international law to all efforts aimed at resolving the Middle East conflict and in particular, its core issue, the question of Palestine.

3. The participants expressed serious concern about the deteriorating situation in the Occupied Palestinian Territory, including East Jerusalem. Participants were particularly alarmed about the status of the peace process between Israel and the Palestinians in the wake of Israel's military assault on Gaza. While the negotiations remained suspended and the prospects for their genuine resumption were considered bleak, the participants urged the new Israeli Government to declare its support for a two-State solution.

4. The participants were appalled by the lack of any tangible improvement of the situation in Gaza. The Israeli military invasion of December and January left some

1,440 Palestinian killed and over 5,300 injured, the majority of which were civilians. It also led to a massive destruction of and damage to Palestinian homes, property and infrastructure. The military onslaught followed many months of a suffocating Israeli blockade of the Gaza Strip – a policy continued to date. As a result, the Palestinians were faced with severe shortages of all basic and essential supplies, including materials badly needed to commence reconstruction. The participants in the Meeting recalled and reminded that under the Fourth Geneva Convention, Israel, the occupying Power, was obliged to protect the Palestinian civilian population under its occupation and to act within the ambit of international law. The participants noted that all efforts to achieve a ceasefire should be supported and lead to a permanent cessation of violence. They strongly condemned the killing of innocent civilians by either side. Violence proved to be affecting negatively any efforts at promoting political dialogue. Negotiations should not be held hostage to agendas of extremists. The participants called for an immediate lifting of the Israeli blockade of Gaza and the opening of all crossings in accordance with the Agreement on Access and Movement of 15 November 2005. They also called for the release of all prisoners, including Palestinian parliamentarians.

5. The participants expressed their appreciation for the immediate and continued engagement of the United Nations General Assembly and Security Council, Governments, national parliaments and their regional and international organizations, and many civil society organizations to achieve a ceasefire, provide basic services to the civilian population, investigate possible

violations of international humanitarian law, and demand concrete steps to improve the situation. The participants commended Arab and European parliamentarians who had been among the first on the ground to collect first-hand information and to report back to their Governments and constituencies. They encouraged parliamentarians to stay involved in the issue and to engage their Israeli and Palestinian counterparts, as well as their own Governments with a view to promoting a political solution of the conflict.

6. The participants concurred that the situation in Gaza will only tangibly improve once progress in the Israeli-Palestinian political process has been achieved. In this context, all efforts towards the goal of achieving a negotiated final status agreement should be encouraged and fully supported. For this to be achieved, the Israeli-Palestinian negotiations must be resumed with the clearly stated goal of achieving a two-State solution. Negotiations needed to be buttressed by tangible improvements in the situation on the ground. Most importantly, the parties must fulfill their obligations under Phase I of the Road Map.

7. In this regard, the participants expressed serious concern over Israel's ongoing settlement activity, with the Government continuing to confiscate large areas of Palestinian land and issue thousands of tenders for new housing units in settlements in the West Bank. The participants reiterated that the presence of settlements in the Occupied Palestinian Territory, including East Jerusalem, was illegal under international law. They called on Israel to immediately cease settlement activity, including construction related to

“natural growth” and to dismantle settlement outposts. Of particular concern was the expansion and consolidation of large settlement blocks in and around East Jerusalem, especially in the so-called “E-1” area. It was observed that the presence of settlements in that area had resulted in severing Jerusalem from the rest of the West Bank, cutting the West Bank into two parts and prejudging the outcome of the permanent status negotiations. The participants were particularly alarmed by the continuing demolition of Palestinian homes in East Jerusalem, where currently close to 2,000 demolition orders were pending and many more Palestinian families were potentially at risk of losing their homes. In this connection, the participants endorsed the proposal of convening, as soon as possible, a special conference of parliamentarians on Jerusalem.

8. The participants denounced the continued construction of the wall in the Occupied Palestinian Territory and its effects on Palestinian communities. The participants recalled the 2004 advisory opinion of the International Court of Justice, which had clearly stated that the construction of the wall was illegal under international law and insisted on its removal. Furthermore, they called for the removal of the many barriers and checkpoints in the Occupied Palestinian Territory and the restoration of the situation to that which existed before September 2000. They emphasized the need for more serious action by the international community challenging the presence of the wall in the Occupied Palestinian Territory. The participants commended the courageous advocacy actions of numerous parliamentarians who had participated in demonstrations against the wall, provided assistance to Gaza and

kept their home constituencies informed about the harsh realities of the situation in the Occupied Palestinian Territory, including Jerusalem. They encouraged them to continue to support action on these issues at the regional and international levels.

9. The participants warned that taken together, the systematic policies and actions of the occupying Power towards the West Bank, East Jerusalem and the Gaza Strip seriously endangered an internationally supported approach to the solution of the conflict and rendering the creation of a viable, contiguous and sovereign Palestinian State impossible. They called upon the parties to work for a peaceful settlement of the question of Palestine based on the existence of two States, Israel and Palestine, living side by side in peace and security. The participants reiterated that a comprehensive, just and lasting solution of the Israeli-Palestinian conflict could only be found in accordance with international law and based on Security Council resolutions 242 (1967), 338 (1973), 1397 (2002), 1515 (2003), and 1850 (2008) and all other relevant United Nations resolutions. The participants agreed that a negotiated solution to the question of Jerusalem, based on international law, was key not only for resolving the Israeli-Palestinian conflict, but also for a lasting peace in the whole region. In this connection, the participants recalled that the status of Jerusalem could only be resolved through negotiations and in full accordance with relevant United Nations resolutions. The participants agreed that the continued support of the international community was crucial for moving forward the Israeli-Palestinian negotiations on all core issues. They reiterated that the Arab Peace Initiative remained an important

element for advancing peace in the region and should be seized upon.

10. The participants expressed serious concern that Israel was not abiding by its obligations under the Fourth Geneva Convention to provide protection to the civilian population under occupation. The applicability of the Convention to the Occupied Palestinian Territory, including East Jerusalem, had been repeatedly confirmed by the Conference of the High Contracting Parties, as well as by the United Nations General Assembly, Security Council and the International Court of Justice. It was pointed out that parliamentarians had a special responsibility to ensure that their Governments took a principled action under the Convention to ensure respect of and adherence to norms of international humanitarian law.

11. The participants voiced their concern about the internal Palestinian divisions blocking national unity of the West Bank and the Gaza Strip under the Palestinian Authority. They expressed support for all efforts of Arab and other countries, in particular for the efforts by Egypt, as well as for the initiatives of President Abbas, aimed at promoting reconciliation and restoration of Palestinian national unity, which were essential for progress in achieving a permanent settlement of the question of Palestine. They encouraged the Palestinian factions to put the national interests and aspirations of the Palestinian people ahead of any partisan concerns and to bring the current rounds of talks to an early and successful conclusion.

12. The participants of the meeting, hosted by Cyprus, a European Union member State, appreciated the absolutely

critical role played by the European Union and other European States in support of the Palestinian people. They appreciated the profound interest and wide involvement of European institutions, its Commission, the Parliament and other structures in efforts at supporting a solution of the Israeli-Palestinian conflict. They encouraged the policymaking organs of the European Union continue to play a more supportive and proactive role in various aspects of the political process, thus complementing European Commission's substantial economic assistance.

13. The participants were of the view that national parliaments and inter-parliamentary organizations had a special role to play in advancing the Israeli-Palestinian peace process. Such organizations as the Inter-Parliamentary Union, the Parliamentary Assembly of the Mediterranean, the European-Mediterranean Parliamentary Assembly, the European Parliament, and the Arab Inter-Parliamentary Union worked towards upholding international law and promoting an effective political dialogue aimed at resolving all permanent status issues. The participants encouraged these inter-parliamentary organizations to develop closer cooperation among themselves, with Israeli and Palestinian lawmakers, and with the United Nations and its Committee on the Exercise of the Inalienable Rights of the Palestinian People, with a view to supporting a comprehensive, just and lasting

peace in the region, including a peaceful settlement of the question of Palestine. In this context, the participants noted the valid recommendations and suggestions made during the meeting in Nicosia to strengthen the role of parliamentarians at the national, regional, and international levels in contributing towards the resolution of the question of Palestine. They called on the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, in collaboration with the above-mentioned inter-parliamentary organizations, to examine those proposals with a view to their eventual implementation.

14. The participants commended Cyprus for its constructive role in the Committee on the Exercise of the Inalienable Rights of the Palestinian People and encouraged its continuation. They welcomed the personal interest of the President of the Republic of Cyprus in the United Nations meeting and appreciated his message in support of Israeli-Palestinian peace. They commended the many members of the House of Representatives of the Republic of Cyprus for their vivid interest and engagement in the question of Palestine, thus contributing to efforts at resolving the Israeli-Palestinian conflict. The participants expressed gratitude to the Government and Parliament of the Republic of Cyprus for hosting the meeting and the generous hospitality extended to them.

IV. SECRETARY-GENERAL ISSUES REPORT ON ASSISTANCE TO THE PALESTINIAN PEOPLE

Pursuant to General Assembly resolution 63/140, the Secretary-General on 7 May 2009 submitted to the Economic and Social Council at its 2009 substantive session a report entitled "Assistance to the Palestinian people" (A/64/78-E/2009/66). The summary and the conclusions of the report, which covers the period from May 2008 to April 2009, are reproduced below:

Summary

During the period under review, the government of Prime Minister Salam Fayyad made progress on fiscal, monetary and security reforms. Donors disbursed about \$1.8 billion to finance the recurrent budget, which is well above the amount pledged at the Paris donor conference. During the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, held on 2 March 2009, donors pledged approximately \$4.5 billion to support the needs of the Palestinian people.

The overall economic and political situation was challenging. Increased isolation, internal Palestinian divisions and armed conflict led to substantial economic and humanitarian deterioration in the Gaza Strip, where Hamas continued its control. In the West Bank, although Israeli restrictions on movement decreased in some locations, the number of obstacles remained overall the same during the reporting period. Settlements and outposts have expanded and house demolitions have increased, in particular in East Jerusalem. Bilateral political negotiations between the Government of Israel and the Palestine Liberation Organization continued, but no agreement was reached. Despite various attempts mediated by Egypt, no real progress has been made on intra-Palestinian reconciliation, prisoner exchange or a sustainable ceasefire.

Conclusions

The operational context for the United Nations in the period under review led to a two-pronged approach: (a) increasingly refocusing attention on longer-term economic, infrastructure, capacity-building and service delivery interventions in the West Bank; and (b) delivering emergency and life sustaining interventions in Gaza. However, United Nations agencies and programmes continued to face severe restrictions and obstacles that made the delivery of assistance more urgent, but also more difficult. In the light of the recent conflict in Gaza, the delivery of emergency and humanitarian assistance will continue to be critical. However, efforts to support the long-term recovery of Palestine and development efforts should remain high on the agenda. The United Nations will continue to focus, to the extent possible, on institution-building and aligning its programmes to the Palestinian Reform and Development Plan.

In 2009, the United Nations will continue working towards the realization of a just, lasting and comprehensive peace in the Middle East on the basis of Security Council resolutions 242 (1967), 338 (1973), 1397 (2002), 1515 (2003), 1850 (2008) and 1860 (2009), and the establishment of a sovereign, democratic, viable and contiguous Palestinian State, existing side by side in peace with a secure Israel.

V. SECURITY COUNCIL MINISTERIAL MEETING ON THE SITUATION IN THE MIDDLE EAST, INCLUDING THE PALESTINIAN QUESTION, ISSUES PRESIDENTIAL STATEMENT

The Security Council held on 11 May 2009 a ministerial meeting to discuss the situation in the Middle East, including the Palestinian question (S/PV.6123). Secretary-General Ban Ki-moon briefed the Council on the latest developments in the region. At the conclusion of the meeting, Security Council President, Sergey V. Lavrov, Minister for Foreign Affairs of the Russian Federation, made the following statement on behalf of the Council (S/PRST/2009/14). The Secretary-General's statement and the Presidential statement are reproduced below.

...

The Secretary-General: the Council meets at the outset of a very important few weeks for the cause of peace in the Middle East. In this regard, I welcome and appreciate the participation of many distinguished ministers in this meeting, and I appreciate the initiative of the Russian presidency.

After the inconclusive results of last year's negotiations and the bloodshed in Gaza, the past three months have witnessed almost no progress on the two key resolutions, resolutions 1850 (2008) and 1860 (2009), recently adopted by this Council. I hope that this meeting today will help provide direction and momentum.

In the period ahead, United States President Obama will host the Israeli and Palestinian leaders and key regional parties in Washington, D.C. I expect the Quartet to meet soon and to consult closely with members of the League of Arab States. The challenge is to begin implementing transformative changes on the ground and to kick-start a renewed and irreversible drive to achieve an Israeli-Palestinian agreement. The ultimate objective remains the emergence of an independent, democratic and viable Palestinian State, living side by

side in peace and security with Israel, and a just, lasting and comprehensive peace in the region.

Resolving the Israeli-Palestinian conflict is fundamental to the well-being of both peoples, the region and the world. This Council, the Quartet, States in the region, the international community as a whole and I as Secretary-General must each play our full role. Security Council resolutions, previous agreements and obligations, and the Arab Peace Initiative give us the framework we need. We should be as determined as we are patient, as insistent as we are supportive, and as principled as we are empathetic to the very real concerns of both parties. The parties need confidence that the process will address their vital interests. For that, they need confidence that commitments made will be commitments monitored and commitments kept.

In this regard, I believe that there is a deep crisis of confidence among ordinary people on the ground, and for good reason. Palestinians continue to see unacceptable unilateral actions in East Jerusalem and the remainder of the West Bank — house demolitions, intensified settlement activity, settler violence and oppressive movement restrictions due to permits, checkpoints and the barrier, which are intimately connected

to settlements. The time has come for Israel to fundamentally change its policies in this regard, as it has repeatedly promised to do but has not yet done. Action on the ground, together with a genuine readiness to negotiate on all core issues, including Jerusalem, borders and refugees, based on Israel's existing commitments, will be the true tests of Israel's commitment to the two-State solution.

Ordinary Israelis continue to seek reassurance that a future Palestinian State will guarantee their right to live in peace and security. In this respect, indiscriminate rocket attacks that have caused loss of life, civilian suffering and damage to property in Israel are not only deeply unacceptable, but also totally counterproductive, and must cease. The Palestinian Authority must continue its efforts to consolidate progress in developing and deploying an effective security structure and the functioning institutions of a future State — work that Israel must facilitate. For its part, Israel should refrain from using excessive force that kills and injures civilians, as it did during the recent conflict in Gaza with such devastating consequences. Firm and full respect for international humanitarian law by all parties is indispensable.

The beginning of Palestinian self-empowerment has been a key achievement of this past year's efforts and must not be imperilled by the financial crisis facing the Palestinian Authority. I appeal to donors, including in the region, to urgently meet unfulfilled commitments, including for budget support and Gaza's reconstruction.

I remain extremely worried about the situation in and around Gaza, with internal Palestinian divisions and Israeli-Hamas tensions trapping the civilian population in a

vortex of hopelessness. The United Nations continues to fully support Egypt's efforts to achieve reconciliation among Palestinian groups and is ready to engage with a Government that unites Gaza and the West Bank within the framework of the legitimate Palestinian Authority. As an interim measure, we would also welcome the establishment of practical mechanisms that could help Palestinians in Gaza focus on reconstruction, security issues and preparations for elections.

I am convinced that the policy of continued closure of the Gaza Strip does not weaken Israel's adversaries in Gaza, but does untold damage to the fabric of civilian life. Nearly four months after the conflict, in which 3,800 houses and two health-care centres were destroyed, and 34,000 homes, 15 hospitals, 41 health-care centres and 282 schools sustained varying degrees of damage, we cannot get anything beyond food and medicine into Gaza to assist a population that had been in the midst of a war zone. This is completely unacceptable.

I call on Israel to respond positively to repeated calls to allow glass, cement and building materials into Gaza. In the aftermath of the war and given the level of human suffering now evident on the ground, I seek the support of all members of this Council and the Quartet for the United Nations efforts in Gaza. We are ready to work with local businessmen to help start action to repair and rebuild houses, schools and clinics. I can assure all Council members that we will continue to ensure the full integrity of programmes and projects.

Indeed, the provisions of Security Council resolution 1860 (2009) — a durable and fully respected ceasefire, prevention of the illicit supply of weapons to Gaza, the

reopening of the crossings in accordance with the Agreement on Movement and Access, and progress on Palestinian reconciliation under the legitimate Palestinian Authority — must be fulfilled. Efforts on these elements, as well as a prisoner exchange, remain the only way of meaningfully altering the dynamics on the ground for the better.

Finally, let me emphasize the important regional context. Arab countries have reaffirmed their commitment to the Arab Peace Initiative, which offers Israel the opportunity for acceptance and security within the region on the basis of land for peace. This remains a key framework around which a comprehensive approach to peace can and must be built. I continue to believe strongly in the potential for activating the regional tracks of the peace process, alongside a rejuvenated Palestinian track, including between Israel and Syria, on the basis of land for peace. I support the convening of an international conference in Moscow. I also look to Arab and regional countries to play a positive role regarding the internal Palestinian situation by urging all parties to turn away from violence and weapons acquisition and towards reunification under one Palestinian Authority committed to the principles of the Palestine Liberation Organization and, indeed, to the Arab Peace Initiative itself.

Like a bicycle that falls over when left at a standstill, the situation on the ground could easily deteriorate unless proper direction is given and real momentum is quickly generated. Violence and terror will not bring the Palestinians statehood and dignity, and settlement expansion and closure will not bring Israel security or peace. And no two-State solution can be reached if the situation between Gaza and

southern Israel continues on its present destructive course or if Palestinians remain permanently divided.

I call on the parties to honour all existing agreements and previous commitments and to pursue an irreversible effort towards the two-State solution, including by fully implementing commitments on the ground. I also believe that the international community's credibility is at stake. We are a long way from where we hoped to be when we embarked on a fresh push for peace less than two years ago. However, I take heart that there is a deep consensus about the scale of the challenge and the importance of meeting it. Let us move forward with confidence and resolve, knowing that, if we rise to our responsibilities, we will help the parties rise to theirs, too.

...

Presidential statement

“The Security Council stressed the urgency of reaching comprehensive peace in the Middle East. Vigorous diplomatic action is needed to attain the goal set by the international community — lasting peace in the region, based on an enduring commitment to mutual recognition, freedom from violence, incitement and terror, and the two-State solution, building upon previous agreements and obligations.

“In this context, the Security Council recalls all its previous resolutions on the Middle East, in particular resolutions 242 (1967), 338 (1973), 1397 (2002), 1515 (2003), 1850 (2008), 1860 (2009), and the Madrid principles, and the Council notes the importance of the 2002 Arab Peace Initiative.

“The Security Council encourages the Quartet’s ongoing work to support the parties in their efforts to achieve a comprehensive, just and lasting peace in the Middle East.

“The Security Council reiterates its commitment to the irreversibility of the bilateral negotiations built upon previous agreements and obligations. The Council reiterates its call for renewed and urgent efforts by the parties and the international community to achieve a comprehensive, just and lasting peace in the Middle East, based on the vision of a region where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders.

“The Security Council further calls upon the parties to fulfil their obligations under the performance-based Road Map, refraining from any steps that could undermine confidence or prejudice the outcome of negotiations on all core issues.

“The Security Council calls on all States and international organizations to support the Palestinian Government that is committed to the Quartet principles and the Arab Peace Initiative and respects the commitments of the Palestine Liberation Organization, and the Council encourages tangible steps towards intra-Palestinian reconciliation, including in support of Egypt’s efforts, on this basis. It calls for assistance to help develop the Palestinian economy, to maximize the resources available to the Palestinian Authority and to build Palestinian institutions.

“The Security Council supports the proposal of the Russian Federation to convene, in consultation with the Quartet and the parties, an international conference on the Middle East peace process in Moscow in 2009.”

VI. LEAGUE OF ARAB STATES SUBMITS FINDINGS OF THE INDEPENDENT FACT-FINDING COMMITTEE ON GAZA

In a letter dated 12 May 2009, the Permanent Observer of the League of Arab States to the United Nations communicated to the President of the Security Council the executive summary of the report prepared by the Independent Fact-Finding Committee on Gaza (S/2009/244). The executive summary is reproduced below:

Executive summary

1. The Independent Fact-Finding Committee on Gaza to the League of Arab States (the Committee) was established in February 2009 with the tasks of investigating and reporting on violations of

human rights law and international humanitarian law during the Israeli military offensive (hereinafter operation *Cast Lead*) against Gaza from 27 December 2008 to 18 January 2009 and collecting information on the responsibility for the commission of international crimes during the operation.

The Committee comprised Professor John Dugard (South Africa: Chairman), Professor Paul de Waart (Netherlands), Judge Finn Lynghjem (Norway), Advocate Gonzalo Boye (Chile/Germany), Professor Francisco Corte-Real (Portugal; forensic body damage evaluator) and Ms. Raelene Sharp, solicitor (Australia: Rapporteur).

2. The Committee held an initial meeting with the Secretary-General of the Arab League and his staff in Cairo on 21 February. It then travelled to Gaza on 22 February, which it entered at the Rafah crossing. The Committee was accompanied by three representatives of the League: Mr. Radwan bin Khadfa, Legal Advisor to the Secretary-General and Head of the Legal Department, Mrs. Aliya Ghussien, Head of Palestine Department, and Ms. Elham Alshejni, from the Population Studies and Migration Department. The Committee was also accompanied by Mr. Omar Abdallah from the Egyptian Foreign Ministry.

3. The Committee remained in Gaza from 22 to 27 February. The programme for its visit was organized by the Palestinian Centre for Human Rights, which provided logistical support to the Committee. The Committee met with a wide range of persons, including victims of operation *Cast Lead*, witnesses, members of the Hamas Authority, doctors, lawyers, businessmen, journalists and members of NGOs and United Nations agencies. It visited the sites of much of the destruction, including hospitals, schools, universities, mosques, factories, businesses, police stations, government buildings, United Nations premises, private homes and agriculture land.

4. The Committee collected a wealth of information from many sources, including

the websites of the Israeli Foreign Ministry and Israel Defense Forces (IDF), Israeli newspapers and NGO reports, the reports of Palestinian and international NGOs, United Nations publications, Palestinian official documents and the testimony of witnesses to the conflict. On three occasions, the Committee wrote to the Government of Israel requesting its cooperation. Such letters were faxed to the Government in Israel and later delivered to the Israeli embassies in the Netherlands and Norway. The Committee received no response to its requests for cooperation, which compelled it to rely on official websites, publications and the media for information about the Israeli perspective. The Committee regrets the decision of the Government of Israel to withhold cooperation.

5. The Committee's visit to and experiences in Gaza inevitably influenced and shaped its opinion and assisted it in making its findings. The Committee's impressions and the inferences that it drew from what it saw and heard were corroborated by information from other sources. However, it could not have carried out its mandate without the visit to Gaza which allowed it to see for itself the destruction and devastation caused by operation *Cast Lead* and to speak to those who had experienced and suffered through the offensive.

6. The Committee's report is divided into three main parts: a factual description and analysis; a legal assessment and possible remedies; and recommendations. The factual description includes a report by the body damage evaluator, who examined 10 individuals who sustained injuries during operation *Cast Lead*. Operating under internationally recognized standards, the report documents the injuries suffered and their alleged causes.

The facts

7. The Committee saw, heard and read evidence of great loss of life and injury in Gaza. Statistics accepted by the Committee show that over 1,400 Palestinians were killed, including at the very least 850 civilians, 300 children and 110 women. Over 5,000 Palestinians were wounded. The Committee was unable to accept the figures given by Israel, which claim that only 295 of those killed were civilians, as they do not provide the names of the dead (unlike Palestinian sources). Moreover, Israel includes policemen as combatants, whereas they should be considered as civilians, and it asserts that only children below the age of sixteen qualify as such, whereas the accepted international age for children is eighteen. The Committee heard disturbing accounts of cold-blooded killing of civilians by members of the IDF, accounts which were later confirmed by Israeli soldiers at the Oranim military college.

8. Four Israeli civilians were killed by Palestinian rockets during operation *Cast Lead* and 182 wounded. Ten Israeli soldiers were killed (three by friendly fire) and 148 wounded.

9. Palestinian fighters had only unsophisticated weapons -- Qassam rockets and Grads whereas Israel was able to deploy the most sophisticated and modern weaponry to bombard the population of Gaza from the air, land and sea. Although Israel initially denied it had used white phosphorous in the offensive it later admitted its use but denied it had been used unlawfully. The Committee is, however, satisfied on the available evidence that white phosphorous was used as an incendiary weapon in densely populated areas.

10. There was substantial destruction of, and damage to property during the offensive. Over 3,000 homes were destroyed and over 11,000 damaged; 215 factories and 700 private businesses were seriously damaged or destroyed; 15 hospitals and 43 primary health-care centres were destroyed or damaged; 28 government buildings and 60 police stations were destroyed or damaged; 30 mosques were destroyed and 28 damaged; 10 schools were destroyed and 168 damaged; three universities/colleges were destroyed and 14 damaged; and 53 United Nations properties were damaged.

11. It was clear to the Committee the IDF had not distinguished between civilians and civilian objects and military targets. Both the loss of life and the damage to property were disproportionate to the harm suffered by Israel or any threatened harm. There was no evidence that any military advantage was served by the killing and wounding of civilians or the destruction of property.

12. The Committee received evidence of the bombing and shelling of hospitals and ambulances and of obstructions placed in the way of the evacuation of the wounded.

13. The 22-day offensive with bombing and shelling from the air, sea and land traumatized and terrorised the population. Israel dropped leaflets warning the population to evacuate, but in most cases failed to give details of the areas to be targeted and conversely which areas were safe. Phone calls were equally confusing. Generally, the leaflets and phone calls simply served to confuse the population and to cause panic.

14. Israel has defended its actions by arguing that buildings were used to store

munitions and hide militants and that the Palestinians made use of women and children as human shields. The Committee received evidence of human shields being used by both Hamas and Israel and has not been able to verify the truth of these allegations. Nevertheless it does not believe that such large-scale killing and wounding can be attributed to the use of human shields. Similarly, Israel has produced no credible evidence of buildings being used to harbour munitions and militants. Again, it is likely that this did occur in some cases but it could not possibly justify the type and amount of killing and wounding and damage to property that occurred.

15. The IDF conducted an internal investigation into allegations that its forces committed international crimes. It found that although there were a few irregularities international crimes were not committed by its forces. The Committee is unable to accept those findings. The Committee finds the IDF investigation to be unconvincing as it was not independent. There is also no suggestion that it considered Palestinian sources.

Legal assessment

16. Before making its legal assessment, the Committee considered a number of issues that might affect criminal responsibility for any crimes that were committed. The Committee found that:

(1) Gaza remains occupied territory and that Israel is obliged to comply with the Fourth Geneva Convention in its actions in Gaza;

(2) Due to the uncertain meaning of “aggression” it could make no finding on the question whether Israel's offensive constituted aggression;

(3) Israel's actions could not be justified as self-defence;

(4) It could not examine the criminal responsibility of either Israel or Hamas in the context of international terrorism as the meaning of both state terrorism and terrorism by non-state actors is too uncertain; consequently, criminal responsibility was best measured in accordance with the rules of international humanitarian law;

(5) Principles of proportionality should be applied in assessing criminal responsibility.

17. The focus of the report is on international crimes and the available remedies for prosecuting such crimes. Consequently little attention is paid to violations of human rights law and international humanitarian law that do not constitute international crimes. Nevertheless, the Committee found that there had been serious violations of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. There were also violations of the Fourth Geneva Convention and its Additional Protocols, particularly in respect of the prohibition on collective punishment.

18. The Committee then turned to the question of international criminal responsibility arising from the conflict. Here it considered war crimes, crimes against humanity and genocide.

War crimes

19. The Committee examined the responsibility of parties to the conflict for the commission of only those war crimes which are generally accepted and whose meaning and content is clear.

20. The Committee found that the IDF was responsible for the crime of indiscriminate and disproportionate attacks on civilians. In reaching this conclusion the Committee had regard to the number of civilians killed and wounded and to the extent of the destruction to civilian property. It rejected Israel's determination of who is a civilian. Members of the Hamas civil government responsible for administering the affairs of Gaza are not combatants as claimed by Israel. Nor are members of the police force responsible for maintaining law and order and controlling traffic.

21. The Committee also found that Palestinian militants who fired rockets into Israel indiscriminately, committed the war crime of indiscriminate and disproportionate attacks on civilians.

22. The Committee found that the IDF was responsible for the crime of killing, wounding and terrorizing civilians. The Committee based this finding on the number of civilians killed by 22 days of intense bombardment by air, sea and land. The Committee also found the weapons used by the IDF, particularly white phosphorous and flechettes, caused superfluous and unnecessary suffering.

23. The Committee rejected Israel's claim that it had warned civilians to evacuate their homes by leaflets and phone calls. The leaflets and phone calls generally failed to tell civilians which targets were to be bombed and where they might find safety. As a result they only served to cause confusion and panic. Incessant bombing and misleading warnings of this kind served to terrorize the population.

24. The Committee found that Palestinian militants who fired rockets indiscriminately

into Israel which killed four civilians and wounded 182 committed the war crime of killing, wounding and terrorizing civilians.

25. The Committee found that the IDF was responsible for the wanton destruction of property and that such destruction could not be justified on grounds of military necessity. The number of civilian properties destroyed was completely disproportionate to any harm threatened and there was no credible evidence that the destruction served any military advantage.

26. There was considerable evidence that the IDF and its members had bombed and shelled hospitals and ambulances and obstructed the evacuation of the wounded. In the opinion of the Committee this conduct also constituted a war crime. The Committee was not able to accept the findings of the IDF internal investigation on this subject as it took no account of Palestinian allegations.

Crimes against humanity

27. A crime against humanity comprises acts of murder, extermination, persecution and similar other inhumane acts committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack. The Committee found that Israel's offensive met the legal requirements for this crime and that the IDF was responsible for committing this crime.

Genocide

28. Genocide is considered the "crime of crimes". It has been singled out for special condemnation and opprobrium. The very suggestion that a state has committed genocide should therefore be approached with great care. Nevertheless the Committee believes that operation *Cast*

Lead was of such gravity it was compelled to consider whether this crime had been committed.

29. The Committee found Israel's actions met the requirements for the actus reus of the crime of genocide contained in the Genocide Convention, in that the IDF was responsible for killing, exterminating and causing serious bodily harm to members of a group - the Palestinians of Gaza. However, the Committee had difficulty in determining whether the acts in question had been committed with a special intent to destroy in whole or in part a national, ethnical or religious group, as required by the Genocide Convention. It rejected the argument that Israel had carried out operation *Cast Lead* in self-defence. However, it found the main reason for the operation was not to destroy a group, as required for the crime of genocide, but to engage in a vicious exercise of collective punishment designed either to compel the population to reject Hamas as the governing authority of Gaza or to subdue the population into a state of submission.

30. The Committee found although operation *Cast Lead* had not been carried out by the IDF to destroy the Palestinians of Gaza as a group, individual soldiers may well have had such an intent and might therefore be prosecuted for this crime. This finding was based on the brutality of some of the killing and reports that some soldiers had acted under the influence of rabbis who had encouraged them to believe that the Holy Land should be cleansed of non-Jews.

State responsibility for genocide

31. Under international law a state may be held responsible for the commission of internationally wrongful acts that are

attributable to it. Such responsibility may arise from customary international law or in terms of treaty obligations. It is clear internationally wrongful acts were committed by Israel in operation *Cast Lead*.

32. Most human rights and international humanitarian law treaties do not confer jurisdiction on the International Court of Justice for the commission of internationally wrongful acts under such conventions. However, the Genocide Convention, in article 9, confers such jurisdiction on the International Court of Justice in respect of the responsibility of a state for violation of the Convention, at the request of any other state party. It is not necessary for the other state party to show that it has a national interest in the dispute as the prohibition on genocide is an obligation *erga omnes*.

33. Proof of the commission of genocide is a prerequisite for bringing a claim under the Genocide Convention. It has already been shown that the Committee was not able to find that the State of Israel acting through the IDF had the necessary specific intent to destroy a group as required for the crime of genocide. On the other hand, there is a prospect that such a claim might succeed if it can be proved that individual members of the armed forces committed acts of genocide while they were acting under the direct control of the Government of Israel. Such a scenario would allow Israel to be held responsible under the Genocide Convention for failure to prevent or to punish genocide.

Responsibility of Israel

34. The Committee has found that members of the IDF committed war crimes, crimes against humanity and, *possibly*,

genocide in the course of operation *Cast Lead*. Those responsible for the commission of such crimes are individually responsible for their actions, as are those who ordered or incited the commission of such crimes or participated in a common purpose to commit such crimes. Military commanders and political leaders are likewise responsible for crimes committed under their effective command, authority or control where they knew or should have known the forces were committing such crimes and they failed to prevent or repress the commission of such crimes or to investigate and prosecute those responsible.

Responsibility of Hamas

35. As the governing de facto authority of Gaza, Hamas may be held responsible for violations of international humanitarian law attributed to it. Individuals who have fired rockets indiscriminately into Israel are criminally responsible for their actions and must be held accountable for them under the law governing the commission of war crimes. In assessing the responsibility of Hamas and individual Palestinian militants there are a number of factors that reduce their normal blameworthiness but not their criminal responsibility. Such factors include the fact Palestinians have been denied their right to self-determination by Israel and have long been subjected to a cruel siege by Israel.

Remedies

36. There are a number of remedies in the criminal law field that may be invoked by States, NGOs and individuals to secure redress for crimes committed in Gaza. These include prosecutions for violation of the Fourth Geneva Convention in national

courts in accordance with articles 146 and 147 of the Convention, prosecutions pursuant to universal jurisdiction statutes which allow a person to be prosecuted in a third country for an international crime committed extraterritorially, and referral to the International Criminal Court. On 22 January 2009 the Palestinian Minister of Justice, Mr. Ali Kashan, lodged a declaration with the Registrar of the International Criminal Court on behalf of the Government of Palestine recognizing the jurisdiction of the Court for international crimes committed in Palestine since 1 July 2002 under Article 12(3) of the Rome Statute. At this time the Registrar is still considering her decision. The Committee believes that the International Criminal Court should accept the declaration lodged by the Government of Palestine and investigate the commission of international crimes in the course of operation *Cast Lead*.

37. There are also a number of civil law remedies available to States, NGOs and individuals. As shown above, States may be able to initiate proceedings against Israel for failure to prevent or to punish the commission of the crime of genocide if it can be established that members of its armed forces were responsible for the commission of that crime.

38. The American Alien Tort Act, which allows American Federal Courts to exercise jurisdiction in any civil action brought by an alien for violation of a peremptory norm of international law outside the United States, is another remedy that may be considered.

39. Procedures within the United Nations may also be invoked. States may request the Security Council to refer the situation in Gaza to the International Criminal Court in

the same way that such a referral was made in the case of Darfur in resolution 1593 (2005). States may also request the General Assembly to request the International Court of Justice for an advisory opinion on the legal consequences of operation *Cast Lead* for Israel and other States. In 2005 the General Assembly adopted the Summit Outcome Document in which the United Nations undertakes the responsibility to protect States against genocide, war crimes and crimes against humanity. The General Assembly, and possibly the Security Council, might be approached to take action under this commitment.

Recommendations

40. The Committee makes the following recommendations:

Recommendations to organs of the United Nations

(1) The League of Arab States should request the General Assembly of the United Nations to request the International Court of Justice to give an advisory opinion on the legal consequences for States, including Israel, of the conflict in Gaza between 27 December 2008 and 18 January 2009 (the Conflict in Gaza);

(2) The League of Arab States should request the Security Council to refer the situation in Gaza, arising from Operation *Cast Lead*, to the Prosecutor of the International Criminal Court under Article 13(b) of the Rome Statute;

(3) The League of Arab States should request the Security Council, failing which, the General Assembly, to exercise its

responsibility to protect, affirmed in the Summit Outcome Document of 2005 in respect of Gaza;

Recommendations involving the International Criminal Court

(4) The League of Arab States should endorse Palestine's declaration accepting jurisdiction of the International Criminal Court under Article 12(3) of the Rome Statute. If the Security Council fails to refer the situation in Gaza to the International Criminal Court under Article 13(b) of the Rome Statute (recommendation 2), the League of Arab States should request the General Assembly to endorse Palestine's declaration under Article 12(3) of the Rome Statute in a meeting convened under the tenth emergency special session, constituted in terms of the "Uniting for peace" resolution 377 A (V);

Recommendations relying on the Geneva Conventions

(5) The League of Arab States should request the Swiss Government to convene a meeting of the State Parties to the Fourth Geneva Convention to consider the findings of the present report;

(6) The League of Arab States should request States to consider taking action under article 146 of the Fourth Geneva Convention to ensure that those suspected of having committed grave breaches of the Convention under article 147 be investigated and prosecuted;

(7) The League of Arab States should remind State Parties to the Geneva Conventions that they are obliged by article

1 of the Fourth Geneva Convention "to ensure respect" for the Convention. This obligation was confirmed by the International Court of Justice in its 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. It may be argued that the obligation contained in article 1 "to respect and to ensure respect for the present convention in all circumstances" includes an obligation on all States to render whatever assistance they can to a State subjected to violations of the Convention;

Recommendations to other States

(8) The League of Arab States should recommend to its members that they consider instituting legal proceedings against Israel in accordance with article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide, with due regard to the caution expressed in the present report;

(9) The League of Arab States should encourage States to prosecute persons responsible for the international crimes identified in the present report before their national courts (where universal jurisdiction statutes so permit);

(10) The League of Arab States should recommend to States that incurred damage to their property in the conflict in Gaza that they claim compensation from Israel for such losses;

Recommendations for action by the League of Arab States directly

(11) The League of Arab States should facilitate negotiations between Fatah and Hamas in order to ensure that the welfare of the people of Gaza is not affected by the conflict between these two parties, particularly in the medical field;

(12) The League of Arab States should establish a documentation centre to keep a record of breaches of international humanitarian law in Palestine. Such an historical archive would ensure that a record is kept of crimes against the Palestinian people, and may assist any future action(s) taken by the League or other bodies;

(13) This report should be referred to the United Nations, the European Union, the African Union, the Organization of American States, the Organization of the Islamic Conference, the Association of Southeast Asian Nations and the International Criminal Court, and distributed to relevant NGOs and the general public.

VII. WORLD HEALTH ORGANIZATION ADOPTS RESOLUTION ON HEALTH CONDITIONS IN THE OCCUPIED ARAB TERRITORIES

The sixty-second World Health Assembly on 21 May 2009 adopted resolution WHA62.2 entitled “Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan,” which is reproduced below:

The sixty-second World Health Assembly,

Mindful of the basic principle established in the Constitution of the World Health Organization (WHO), which affirms that the health of all peoples is fundamental to the attainment of peace and security;

Recalling all its previous resolutions on health conditions in the occupied Arab territories;

Recalling resolution EB124.R4, adopted by the Executive Board at its 124th session, on the grave health situation caused by Israeli military operations in the occupied Palestinian territory, particularly in the occupied Gaza Strip;

Taking note of the report of the Director-General on the health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan;¹

Noting with deep concern the findings in the report of the Director-General on the specialized health mission to the Gaza Strip;²

Stressing the essential role of UNRWA in providing crucial health and education services in the occupied

Palestinian territory, particularly in addressing the emergency needs in the Gaza Strip;

Expressing its concern at the deterioration of economic and health conditions as well as the humanitarian crisis resulting from the continued occupation and the severe restrictions imposed by Israel, the occupying Power;

Expressing its deep concern also at the health crisis and rising levels of food insecurity in the occupied Palestinian territory, particularly in the Gaza Strip;

Affirming the need for guaranteeing universal coverage of health services and for preserving the functions of the public health services in the occupied Palestinian territory;

Recognizing that the acute shortage of financial and medical resources in the Palestinian Ministry of Health, which is responsible for running and financing public health services, jeopardizes the access of the Palestinian population to curative and preventive services;

Affirming the right of Palestinian patients and medical staff to have access to the Palestinian health institutions in occupied east Jerusalem;

^{1/} Document A62/24.

^{2/} Document A62/24 Add.1.

Deploping the incidents involving lack of respect and protection for Palestinian ambulances and medical personnel by the Israeli army, which led to casualties among Palestinian medical personnel, as well as the restrictions on movement imposed on them by Israel, the occupying power, in violation of international humanitarian law;

Expressing deep concern at the grave implication of the wall on the accessibility and quality of medical services received by the Palestinian population in the occupied Palestinian territory, including east Jerusalem;

Expressing deep concern also at the serious implications for pregnant women and patients of Israeli restriction of movement imposed on Palestinian ambulances and medical personnel,

1. DEMANDS that Israel, the occupying power:

(1) Lift immediately the closure in the occupied Palestinian territory, particularly the closure of the crossing points of the occupied Gaza Strip that are causing the serious shortage of medicines and medical supplies therein, and comply in this regard with the provisions of the Israeli Palestinian Agreement on Movement and Access of November 2005;

(2) Reverse its policies and measures that have led to the prevailing dire health conditions and severe food and fuel shortages in the Gaza Strip;

(3) Comply with the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the wall which, inter alia, has grave implications on the accessibility and quality of medical

services received by the Palestinian population in the occupied Palestinian territory, including east Jerusalem;

(4) Facilitate the access of Palestinian patients and medical staff to the Palestinian health institutions in occupied east Jerusalem and abroad;

(5) Ensure unhindered and safe passage for Palestinian ambulances as well as respect and protection of medical personnel, in compliance with international humanitarian law;

(6) Improve the living and medical conditions of Palestinian detainees, particularly children, women and patients;

(7) Facilitate the transit and entry of medicine and medical equipment to the occupied Palestinian territory;

(8) Shoulder its responsibility towards the humanitarian needs of the Palestinian people and their daily access to humanitarian aid, including food and medicine, in compliance with international humanitarian law;

(9) Halt immediately all its practices, policies and plans, including its policy of closure, that seriously affect the health conditions of civilians under occupation;

(10) Respect and facilitate the mandate and work of UNRWA and other international organizations, and ensure the free movement of their staff and aid provisions;

2. URGES Member States and intergovernmental and non-governmental organizations:

(1) To help overcome the health crisis in the occupied Palestinian territory by providing assistance to the Palestinian people;

(2) To help meet the urgent health and humanitarian needs, as well as the important health-related needs for the medium and long term, identified in the report of the Director-General on the specialized health mission to the Gaza Strip;³

(3) To help lift the restrictions and obstacles imposed on the Palestinian people in the occupied Palestinian territory;

(4) To remind Israel, the occupying power, to abide by the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949;

(5) To support and assist the Palestinian Ministry of Health in carrying out its duties, including running and financing public health services;

(6) To provide financial and technical support to the Palestinian public health and veterinary services;

3. EXPRESSES its deep appreciation to the Director-General for the efforts to provide necessary assistance to the Palestinian people in the occupied Palestinian territory, including east Jerusalem, and to the Syrian population in the occupied Syrian Golan;

^{3/} Document A62/24 Add.1.

4. REQUESTS the Director-General:

(1) To provide support to the Palestinian health and veterinary services including capacity-building;

(2) To submit a fact-finding report on the health and economic situation in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan;

(3) To support the establishment of medical facilities and provide health-related technical assistance for the Syrian population in the occupied Syrian Golan;

(4) To continue providing necessary technical assistance in order to meet the health needs of the Palestinian people, including the handicapped and injured;

(5) To provide also support to the Palestinian health and veterinary services in preparing for a potential pandemic of influenza A (H1N1);

(6) To support the development of the health system in Palestine, including development of human resources;

(7) To make available the detailed report prepared by the specialized health mission to the Gaza Strip;

(8) To report on implementation of this resolution to the sixty-third World Health Assembly.

Seventh plenary meeting
21 May 2009
A62/VR/7

VIII. COMMITTEE ON THE EXERCISE OF THE INALIENABLE RIGHTS OF THE PALESTINIAN PEOPLE EXPRESSES UTMOST CONCERN OVER ISRAELI MEASURES IN EAST JERUSALEM

On 19 May 2009 the Committee on the Exercise of the Inalienable Rights of the Palestinian People adopted at its 316th meeting, the following statement (A/63/861-S/2009/265 and A/ES-10/456):

The Committee on the Exercise of the Inalienable Rights of the Palestinian People expresses its utmost concern about illegal and provocative Israeli policies and measures in Occupied East Jerusalem, including the demolition of Palestinian houses, settlement construction in and around the city, wall construction, movement restrictions and other measures that affect the legal, demographic and cultural character and status of the city.

According to the Office for the Coordination of Humanitarian Affairs, between 2000 and 2008, the Israeli authorities demolished more than 670 Palestinian-owned structures in East Jerusalem, 90 of which were demolished in 2008. These actions by the occupying Power led to the displacement of some 400 Palestinians. Currently, some 60,000 Palestinians are at risk of having their homes demolished because they were built without the required Israeli permits, which are nearly impossible for Palestinians to obtain for construction and expansion of homes in East Jerusalem. Furthermore, over one third of East Jerusalem has been expropriated throughout the Israeli occupation for the construction of settlements. These practices violate article 49 of the Fourth Geneva Convention, which states, “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”, and article 53 of the Convention, which prohibits the destruction of personal or State-owned property by the occupying

Power, except where such destruction is rendered absolutely necessary by military operations.

Over the years, numerous resolutions on the question of Jerusalem have been adopted by the General Assembly and the Security Council. In 1968, the Security Council adopted resolution 252 (1968), in which the Council considered that “all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”. In the same resolution, the Council also called upon Israel to “rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem”. A similar position was expressed in subsequent Security Council resolutions.

The question of Jerusalem is a key aspect of the question of Palestine and constitutes one of the six core issues for the permanent status negotiations of the peace process. The Committee reiterates that Israel must refrain from any activities that change the legal, demographic and cultural character and status of East Jerusalem, the capital of a future Palestinian State. In this regard, Israel must scrupulously abide by its legal obligations as an occupying Power, including under the Fourth Geneva Convention. The Committee considers that

an agreement encompassing East Jerusalem as the capital of a future Palestinian State is central for the achievement of a just and sustainable settlement of the conflict. Furthermore, the Committee feels strongly that any action purporting to alter the demographic composition, legal status or physical character of East Jerusalem is illegal, provocative and predetermines the

outcome of the permanent status negotiations between the parties. The Committee also calls upon the Security Council to live up to its Charter obligations and act against the ongoing illegal actions by the occupying Power in East Jerusalem, by upholding its own resolutions that continue to be unimplemented.

IX. UNITED NATIONS FACT-FINDING MISSION TO TRAVEL TO GAZA

The following is a statement issued on 29 May 2009 by the Independent International Fact-Finding Mission that had been established by the President of the Human Rights Council pursuant to Human Rights Council resolution S-9/1 to investigate all violations of international human rights law and international humanitarian law committed during the Gaza conflict (UNOG Press release HR/09/075).

The fact-finding mission established by the President of the Human Rights Council, Ambassador Martin Ihoeghian Uhomoibhi of Nigeria, on 3 April 2009 pursuant to the Human Rights Council resolution adopted at its special session on the Gaza conflict on 12 January, will travel to the region over the weekend and will be in Gaza as of June and will remain there for about one week. The mission, which is headed by Justice Richard Goldstone, former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, will enter Gaza from Egypt via the Rafah crossing point. Other field visits are being planned.

The mission plans to meet with all parties concerned, including non-governmental organizations and civil society organizations and groups, UN agencies, victims and witnesses of alleged violations and other persons who may provide

information with regard to the facts under investigation.

Other mission members include Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, who was a member of the High-level fact finding mission to Beit Hanoun (2008); Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary-General on the situation of human rights defenders, who was a member of the International Commission of Inquiry on Darfur (2004); and Colonel Desmond Travers, a former officer in the Irish Armed Forces and member of the Board of Directors of the Institute for International Criminal Investigations. As is usual practice, the mission is supported by a secretariat provided by the Office of the High Commissioner for Human Rights.