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Report of the Secretary-General on the protection of civilians in armed conflict**I. Introduction**

1. The present eighth report on the protection of civilians in armed conflict is submitted pursuant to Security Council resolution 1894 (2009).
2. The adoption of resolution 1894 (2009) on 11 November 2009 was a fitting commemoration of 10 years of thematic action by the Security Council on the protection of civilians and a welcome manifestation of the ongoing commitment of the Council to that critical issue. The resolution marked a significant step towards responding to some of the five core challenges identified in my previous report of 29 May 2009 (S/2009/277), namely, the need to enhance compliance by parties to conflict with international law, enhance compliance by non-State armed groups, enhance protection by United Nations peacekeeping and other relevant missions, enhance humanitarian access and enhance accountability for violations.
3. The present report provides an update on progress made in responding to those core challenges. It takes stock of positive developments and ongoing or new concerns affecting civilians in today's conflicts and makes additional recommendations for responding to the core challenges. In doing so, the report emphasizes the fundamental need to focus efforts on making a tangible difference where and for whom it matters most: in the midst of conflict and for the hundreds of thousands of civilians — women, men and children — confronting the horrors, pain and suffering of war on a daily basis. Whether as the intended targets of attack or the incidental victims of the use of force, civilians continue to account for the majority of casualties in conflict. The unstinting and rigorous attention of the Security Council to their situation remains vital and must be at the centre of its deliberations and actions. This is particularly the case in the many protracted violent crises and conflicts that persistently pose unacceptable levels of risk to civilians, with little prospect of peaceful resolution in the near future.
4. Through its thematic resolutions on the protection of civilians, including, most recently, resolution 1894 (2009), as well as resolutions relating to children and armed conflict and to women and peace and security; the mandating of peacekeeping missions to protect civilians; the adoption of the aide-memoire on the protection of civilians (see S/PRST/2009/1); and the creation of the informal Expert Group on the Protection of Civilians, the Security Council has over the course of the past 11 years established a comprehensive framework through which to pursue more effective protection on the ground. While this framework may be further developed, the emphasis must now be on making progress in enhancing protection on the ground.
5. For the Security Council, that means the systematic application of the aide-memoire and the regular use of the Expert Group to inform the development and revision of peacekeeping and other mission mandates, as well as other forms of Security Council action on protection. It means monitoring progress in providing protection to civilians and ensuring the implementation of the Council's resolutions. For United Nations country teams and peacekeeping and other relevant missions, it means more effective coordination, strategy setting and prioritizing; regular monitoring of the protection of civilians; and candid reporting to relevant bodies, including the Council, on obstacles to and opportunities for progress. For all involved — parties to conflict, the Security Council, Member States and the United Nations more broadly — it means redoubling efforts to meet the five core challenges and enhance respect for the principles of international humanitarian law, human rights law and refugee law on which the protection of civilians is founded.

II. The state of the protection of civilians

6. To the extent that progress can be reported in the protection of civilians in the 18 months since my previous report, it is not on account of parties to conflict having scrupulously observed their obligations under international law. On the contrary, such progress rests with developments at the normative level and, above all, with the efforts of United Nations actors, in particular humanitarian agencies and peacekeeping missions, and other international and non-governmental organizations to enhance protection, as well as with the courage and ingenuity of the affected populations.

A. Ongoing and emerging concerns

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13. Displacement within and across borders remains a defining characteristic of conflict, as civilians flee violence or are forced from their homes, often in violation of international law. At the end of 2009, more than 27 million people remained internally displaced by conflict, including 11.6 million in sub-Saharan Africa, while the world's refugee population stood at more than 15 million. Alarming, the number of newly displaced continues to outnumber returns, and durable solutions are woefully absent for millions of internally displaced persons and refugees in situations of protracted displacement.

14. As highlighted in my previous two reports, housing, land and property issues feature prominently in contemporary conflicts. Disputes over land and resources continue to be both drivers and consequences of conflict. There is increasing recognition of the need to address these issues, particularly in relation to the return of internally displaced persons and refugees and the restitution of their housing, land and other property, including by paying attention to the difficulties faced by women in such situations. Restitution is only one possible component of the response, however. Many refugees and internally displaced persons may have had irregular tenancy rights prior to displacement, may be occupying land that belongs to or is legally occupied by others, or may be competing with others who also have claims to land and property under customary or statutory legal frameworks. Returning to the situation prior to displacement may not be possible or desirable, and alternative solutions to restitution must be found.

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16. Attacks against journalists in conflict situations remain of concern. During 2009 and 2010, journalists were reportedly killed in Afghanistan, Colombia, the Democratic Republic of the Congo, Iraq, Israel, Lebanon, Pakistan, the occupied Palestinian territories, Somalia, Sri Lanka and Yemen. I would remind the Security Council of the pressing need, as expressed in resolution 1738 (2006), for States and other parties to conflict to prevent attacks against journalists and prosecute those

responsible. I would also encourage the Human Rights Council to consider positively the recommendation of the former and current Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression to study the issue and develop proposals for strengthened protection.

B. Encouraging developments

19. Sobering though the reality is, there are encouraging developments to report, though largely at the normative level.

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Countering impunity

31. Efforts to counter impunity continue to gather pace. July 2010 saw the first conviction by the Extraordinary Chambers in the Courts of Cambodia, of Kaing Guek Eav for crimes against humanity and grave breaches of the 1949 Geneva Conventions. That same month, the International Criminal Court (ICC) issued an indictment for the President of the Sudan on three counts of genocide. This is in addition to the indictment already issued for war crimes and crimes against humanity. In terms of domestic judicial proceedings, for example, there was the conviction by an Israeli military court in October 2010 of two Israeli soldiers for using a Palestinian child as a human shield during Operation Cast Lead in 2009, as well as the ongoing prosecution of a number of military personnel of the United States of America who are accused of involvement in the murder of three Afghan civilians earlier this year. There was also the arrest of individuals by the authorities in Germany in November 2009, and France in October 2010, for allegedly committing war crimes and crimes against humanity in Rwanda and the Democratic Republic of the Congo, respectively. October 2010 also saw the arrest by the national authorities of the leader of an armed group allegedly involved in the aforementioned rapes in Kibua in the Democratic Republic of the Congo. Welcome though they are, as discussed in greater detail below, such arrests and prosecutions remain simply too few in the face of existing and mounting allegations of serious violations of humanitarian law and human rights in these and other contexts.

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Strengthening protection on the ground

33. Of particular note, there has been progress in strengthening protection on the ground. Special mention should be made of the specific mandate entrusted by the international community to the ICRC in the protection of civilians. In addition to ICRC, an increasing number of humanitarian organizations now prioritize protection and have either mainstreamed it across their programmes or are implementing specific protection projects. The implementation of the cluster approach by United Nations and other humanitarian organizations and the establishment of field-based protection clusters, as well as the development of new protection tools, guidance and standards, are ensuring a more coordinated and professional response to protection concerns. Nevertheless, the need for more comprehensive and consistent action remains.

III. The five core challenges

43. Such developments notwithstanding, still more needs to be done to meet the five core challenges to ensuring more effective protection for civilians, as identified in my previous report, namely enhancing compliance by parties to conflict with international law, enhancing compliance by non-State armed groups, enhancing protection by United Nations peacekeeping and other relevant missions, enhancing humanitarian access and enhancing accountability for violations of the law.

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B. Enhancing compliance by non-State armed groups

52. Improved compliance with international humanitarian law and human rights law will always remain a distant prospect in the absence of, and absent acceptance of the need for, systematic and consistent engagement with non-State armed groups. Whether engagement is sought with armed groups in Afghanistan, Colombia, the Democratic Republic of the Congo, the occupied Palestinian territories, Pakistan, Somalia, the Sudan, Uganda, Yemen or elsewhere, experience shows that lives can be saved by engaging armed groups in order to seek compliance with international humanitarian law in their combat operations and general conduct, gain safe access for humanitarian purposes and dissuade them from using certain types of weapons.

53. Indeed, while armed groups are diverse in their motivations and conduct, there are those which have shown a readiness to establish and implement commitments in conformity with their obligations under international humanitarian law and with human rights law. Some non-State armed groups have been receptive to training on these topics. Some have adopted codes of conduct, unilateral declarations and special agreements, as envisaged under international humanitarian law, through which they commit to comply with their obligations or even undertake commitments that go beyond those required by the law. Some groups have agreed to and implemented action plans, pursuant to Security Council resolution 1612 (2005), to bring their conduct into line with international norms regarding children in armed conflict and, in particular, to release children in their ranks. Forty-one armed groups have signed the Geneva Call Deed of Commitment, resulting in the destruction of approximately 20,000 stockpiled anti-personnel mines and thousands of improvised explosive devices and abandoned ordnance.

54. Recent research has identified a number of incentives for non-State armed groups to comply with international norms to protect civilians.¹ The primary incentive for compliance appears to be the group's own self-interest, which has military, political, and legal aspects. With respect to the military arguments for compliance, respect for norms by one party to a conflict typically encourages respect for norms by the other party or parties. Conversely, although not justified by the law, abuses and violations committed by one party are normally met with a similar response from the other party or parties. The political arguments for compliance centre on the desire of many non-State armed groups and/or the causes they espouse to be recognized as "legitimate". The legal arguments for compliance centre primarily on the avoidance of international criminal sanction, which is best achieved through the effective command and control by an armed group of its members. In addition, there are important humanitarian arguments for compliance that relate to the desire of certain non-State armed groups to respect human dignity. This desire should not be underestimated, and may allow for opportunities to go beyond actual international obligations and hold such groups to standards that provide a higher level of protection for civilians than those strictly demanded by international law.

55. Engagement with armed groups for humanitarian ends is clearly possible and, indeed, necessary in order to negotiate safe humanitarian access to those in need. I am encouraged that the ongoing discussions on this issue during the Security Council's biannual open debates on the protection of civilians reveals an increasing appreciation by Member States of the importance of engagement for humanitarian purposes. This is yet to translate, however, into broad acceptance of such engagement or, moreover, into a willingness to refrain from adopting measures that impede or, in some cases, criminalize engagement with non-State armed groups. For example, in Somalia concerns exist that some donor States, particularly those that have designated Al-Shabaab as a terrorist organization, have introduced conditions into their funding agreements with humanitarian organizations that impose limits on operations in Al-Shabaab-controlled areas. In Gaza, the humanitarian funding policies of some donor States have sought to limit contact with Hamas by the humanitarian organizations they fund, even though Hamas exercises effective control over Gaza and is thus a key interlocutor in ensuring that aid reaches those who need it. Humanitarian agencies also voiced concerns over the possible humanitarian impact of domestic legislation, such as that in the United States, which criminalizes various forms of material support to prohibited groups.

Recommendations

56. I would again stress the need for a comprehensive approach towards improving compliance with the law by non-State armed groups. Such an approach would involve an increased understanding of the motivations of specific groups and their incentives to comply with international law, and the development of strategies for engaging such groups, with a view to seeking improved protection for civilians, including safe and secure humanitarian access to those in need.

57. More immediately, I would urge Member States to consider the potential humanitarian consequences of their legal and policy initiatives and to avoid introducing measures that have the effect of inhibiting humanitarian actors in their efforts to engage armed groups for the humanitarian purposes referred to above.

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D. Humanitarian access

73. Access is the fundamental prerequisite to humanitarian action, yet, as demonstrated in the annex to the present report, access is all too frequently compromised. Bureaucratic constraints, active hostilities, deliberate attacks against humanitarian workers, the economically motivated theft of humanitarian supplies and equipment, or a combination of all of the above continue to undermine efforts to protect and assist those in need.

74. In resolution 1894 (2009), the Security Council noted with grave concern the severity and prevalence of constraints on humanitarian access, the frequency and gravity of attacks against humanitarian personnel and the implications of such attacks for humanitarian operations. The Council further stressed the importance of parties to armed conflict cooperating with humanitarian personnel in order to allow and facilitate access to conflict-affected populations.

75. Importantly, in that resolution the Security Council reaffirmed its role in promoting an environment that is conducive to facilitating humanitarian access. To that end, the Council expressed its intention to call on parties to armed conflict to comply with their obligations under international humanitarian law to facilitate the rapid and unimpeded passage of relief consignments, equipment and personnel and to respect and protect humanitarian personnel. The Council further expressed its intention to consistently condemn and call for the immediate cessation of all acts of violence and other forms of intimidation deliberately directed against humanitarian personnel, and to take appropriate steps in response to deliberate attacks against humanitarian personnel.

76. The continued attention of the Security Council to access constraints is welcome, although this issue still requires a more comprehensive and consistent approach. The Council has continued to express concern about restrictions on humanitarian access in several situations and has called on all parties to provide rapid and unimpeded access to all persons in need of assistance. Nevertheless, greater precision is needed in specifying the nature of such restrictions and, moreover, actions to be taken to counter them, such as expediting customs examination and clearance procedures and waiving or streamlining processes for travel permits. The Council has also repeatedly condemned attacks against humanitarian workers in Afghanistan, Darfur, the Democratic Republic of the Congo, Somalia and elsewhere. In very few cases, however, has the Council called for accountability for those responsible for such attacks.

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Recommendations

79. **The Security Council is urged to take a more consistent and comprehensive approach to addressing access constraints, in particular in implementing the provisions of resolution 1894 (2009).**

80. **The Security Council is also urged to ensure enhanced accountability for grave instances of deliberate delays or denials of access for humanitarian operations, as well as situations involving attacks against humanitarian workers, including through referrals to ICC or encouraging domestic prosecutions.**

81. **In this connection, and in line with resolution 1894 (2009), the Security Council should request the Emergency Relief Coordinator to systematically bring to its attention situations in which humanitarian operations are deliberately obstructed and to suggest possible response actions for consideration by the Council.**

E. Enhancing accountability

82. Fundamental to enhancing compliance is the need to enhance accountability for violations of international humanitarian and human rights law, both for parties to conflict and individual perpetrators. As noted in my previous report, in many conflicts it is to a large degree the absence of accountability, and, worse still, the lack in many instances of any expectation thereof, that allow violations to thrive.

83. My previous report outlined several recommendations to enhance accountability. These still stand, and some were reiterated by the Security Council in resolution 1894 (2009). Specifically, in that resolution, the Council called upon all parties concerned to disseminate information about, and provide training to combatants on, international humanitarian, human rights and refugee law and to ensure that orders and instructions issued to combatants complied with international law and were observed, including by establishing effective disciplinary procedures. The Council emphasized, moreover, the responsibility of States to comply with their obligations to investigate and prosecute persons suspected of war crimes, crimes against humanity, genocide or other serious violations of international humanitarian law.

84. The emphasis on the responsibility of States to investigate and prosecute such crimes is warranted, and, as noted above in section II.B, there have been further positive, if incremental, steps at the national level. These are critically important developments, not least in terms of raising the expectation of accountability among belligerents; however, they remain simply too few in the face of existing and mounting allegations of serious violations of humanitarian and human rights law in today's conflicts.

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88. The International Humanitarian Fact-Finding Commission is one option at the disposal of the Security Council. The Council has in the past also requested the establishment of ad hoc commissions in relation to the former Yugoslavia, Rwanda and Darfur, pursuant to resolutions 780 (1992), 935 (1994) and 1564 (2004), respectively. The findings and recommendations of these commissions contributed to the establishment of the International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, as well as the decision of the Council to refer the situation in Darfur to ICC.

89. It is not only the Security Council that can take initiatives in this area. The Human Rights Council has mandated a number of fact-finding commissions, with secretariat support provided by the Office of the United Nations High Commissioner for Human Rights, including the United Nations Fact-Finding Commission on the Gaza Conflict, established in April 2009. The report of the Fact-Finding Commission, issued in September 2009, found that serious violations of international humanitarian law and human rights law had been committed by Israeli armed forces and Palestinian armed groups. The Human Rights Council has instituted a system of reporting to monitor progress in implementing the Commission's recommendations, as well as a committee of independent experts to monitor and assess any domestic, legal or other proceedings undertaken by Israel and the Palestinian side.

90. Establishing commissions of inquiry and similar mechanisms can be politically sensitive, yet they clearly have utility in ascertaining the facts and recommending follow-up action with a view to ensuring accountability for violations. I intend to request Secretariat departments directly involved in launching and supporting inquiries to undertake a review of the United Nations experience in these processes, in consultation with other relevant departments, with a view to identifying how such processes might be used on a more consistent and less politically influenced basis. Scrutiny must be the norm.

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Recommendations

95. **Member States are encouraged to provide financial and technical assistance to support more effective national efforts to investigate and prosecute serious violations of international humanitarian and human rights law.**

96. **Member States are encouraged to consider the possibility of "mixed" criminal courts and tribunals when national mechanisms are unable to cope with the existing or potential caseload.**

97. **Member States that have yet to do so are encouraged to sign and ratify the Rome Statute of ICC.**

98. **The Security Council should:**

(a) **Systematically include in relevant situation-specific resolutions provisions relating to:**

(i) **The need to disseminate information about, and provide training for combatants on, international humanitarian, human rights and refugee law and to establish effective disciplinary procedures to ensure that orders and instructions issued to combatants are observed;**

(ii) **The need for States to take appropriate steps to comply with their obligations to investigate and prosecute persons suspected of war crimes, crimes against humanity, genocide or other serious violations of human rights law;**

(b) **Insist that Member States cooperate fully with ICC and similar mechanisms. This includes, for States parties to the Rome Statute, apprehending persons indicted by ICC who are on their territory;**

(c) **Enforce such cooperation, as necessary, through targeted measures;**

(d) **Systematically request reports on violations and consider mandating commissions of inquiry to examine situations in which concerns exist about serious violations of international humanitarian and human rights law, including with a view to identifying those responsible and their being held accountable at the national level or subjected to targeted measures and/or the situation being referred to ICC;**

(e) **Call upon States to establish, or mandate, mechanisms to receive claims from individuals alleging to be the victims of violations of international humanitarian law and human rights law.**

IV. Conclusions and actions

99. The present report began with a clear and simple message: that we must focus our efforts on enhancing protection where and for whom it matters most — on the ground, in the midst of conflict and for the hundreds of thousands of civilians who are, on a daily basis, at risk of, or fall victim to, serious violations of international humanitarian law and human rights law.

100. In both the present report and in my previous report, I have outlined pertinent recommendations intended to meet the five core challenges and, above all, facilitate protection on the ground. I would strongly urge the Security Council and Member States to consider these recommendations and implement them accordingly.

101. In addition, I would urge members of the Security Council and other Member States to consider three actions that are implicit in the present report and absolutely fundamental to enhancing collective efforts to enhance the protection of civilians. The first two apply specifically to the Council, while the third concerns the role of United Nations humanitarian and peacekeeping operations.

Action one

Ensuring a comprehensive approach

102. It is imperative that we move away from the current selective approach to the protection of civilians in armed conflict. In resolution 1894 (2009), the Security Council reiterated its willingness to respond to situations of armed conflict where civilians were being targeted or humanitarian assistance was being deliberately obstructed, including through the consideration of appropriate measures at its disposal. It would also be important for the Council to consider extending this willingness to act to conflicts of which it is not already seized, as they often raise many of the same, and sometimes more acute, protection concerns that are seen in those situations that are already on the Council's agenda. Such conflicts may equally warrant or, by their very nature, demand Council attention, condemnation and action, in line with the thematic resolutions on the protection of civilians and the actions listed in the aide-memoire.

103. I would urge the Security Council to find new and innovative ways to address those contexts that are not formally on its agenda but in which significant concerns exist in relation to the protection of civilians, including through Arria-formula meetings and expert-level meetings of a less formal character. The Secretariat stands ready to assist in this regard.

Action two

Ensuring a consistent approach

104. The stated commitment of the Security Council to the protection of civilians as a thematic issue is evident, including through its work in the informal Expert Group on the Protection of Civilians; however, the need for a more comprehensive approach notwithstanding, there must be greater consistency in the manner and extent to which the Council addresses protection in those contexts of which it is actually seized.

105. Members of the Security Council are encouraged to systematically apply the aide-memoire, continue to make extensive use of the informal Expert Group on the Protection of Civilians and consider other ways in which the Expert Group could further inform the Council's deliberations, including through specific briefings on thematic protection concerns and on progress made in addressing country-specific protection concerns against benchmarks.

Action three

Ensuring an accountable approach

106. Systematic monitoring and reporting on the impact of our efforts to improve the protection of civilians is essential. We must track progress, including in terms of the implementation of the Security Council's resolutions; identify areas of concern and appropriate response actions; and ensure an approach in which those involved are accountable for their actions or lack thereof.

107. The Security Council has recognized the need for benchmarks against which peacekeeping missions should report on the implementation of their mandates, including in relation to the protection of civilians. This is fundamental, not least in terms of the drawdown of missions, particularly those that have played an instrumental role in protecting civilians.

108. A broader approach is needed, however. We need to systematically monitor, review and report on the protection of civilians in all relevant situations and, moreover, on the role of all relevant actors in the response, including but not limited to peacekeeping missions, which are merely one protection actor and present only in a limited number of situations. We need to systematically assess and report on the extent to which our actions are making civilians safer.

109. I intend to ask the Emergency Relief Coordinator to develop, in consultation with relevant United Nations and other actors, indicators for systematic monitoring and reporting on the protection of civilians in armed conflict.

110. While our efforts to protect civilians on the ground have not kept pace with developments at the normative level, we cannot afford to be dismissive of their impact. As the daily work of countless humanitarian and human rights workers, peacekeepers and political negotiators demonstrates, protection can be done. We need, however, to make it a priority for our actions, operationally and politically, thereby reflecting the very spirit of the United Nations and its Charter. In this respect, our focus, more than 10 years after the Security Council first considered this issue, must shift from describing shortcomings and urging normative change to clearly improving our tools on the ground and monitoring progress — or failure. This is the task that now lies before the Council and, indeed, all of us.

Annex

Constraints on humanitarian access

1. Constraints on humanitarian access in situations of armed conflict take different forms, affecting both access by humanitarian personnel to civilian populations in need and access by civilian populations to assistance and services. Not all constraints are deliberate, and not all constitute violations of international law.

2. My previous report included an annex identifying different types of access constraints. It highlighted three in particular as posing the greatest challenge, owing to their widespread and frequent occurrence and their severe consequences for humanitarian personnel and operations and populations in need: bureaucratic constraints imposed by Governments and other authorities; the intensity of hostilities; and attacks on humanitarian personnel and theft of assets. Eighteen months on, these same constraints continue to seriously affect humanitarian operations and undermine the well-being of civilian populations in conflicts throughout the world.

I. Bureaucratic constraints

3. Bureaucratic restrictions on the entry of personnel, goods and equipment into an affected State, as well as on their movement within the country of operations, can be onerous and time-consuming to comply with and often cause significant delays in the provision of assistance. While, under international humanitarian law, humanitarian activities require the consent, and are subject to the control, of the parties to conflict, those parties are obliged to give such consent to impartial relief operations and must facilitate and allow humanitarian activities to be carried out, including the full, safe and unhindered access by humanitarian personnel to civilian populations in need. Restrictions should not place undue burden on humanitarian operations at the expense of timely access to, and to the detriment of, the affected population.

4. In support of facilitating the timely entry of goods and equipment into affected States, in September 2010 the Office for the Coordination of Humanitarian Affairs and the World Customs Organization signed a memorandum of understanding in which they agreed to cooperate in establishing and promoting measures to expedite the import of relief items and equipment during emergency situations. Drawing on customs-related components of existing conventions, the Office for the Coordination of Humanitarian Affairs and the World Customs Organization have also developed model language concerning, for example, expedited customs examination and clearance procedures. The Security Council can support solutions to ongoing bureaucratic constraints by calling on affected States to refer to the model language for the development of bilateral agreements with humanitarian agencies and to overcome bottlenecks in customs procedures in a timely manner.

5. Meanwhile, bureaucratic constraints continue to restrict access and the delivery of assistance to those in need. In the occupied Palestinian territories, for example, restrictions on the entry of humanitarian goods, imposed as part of Israel's blockade of Gaza since June 2007, continue to impede recovery efforts and undermine the well-being of the civilian population. Since June 2010, Israel has incrementally relaxed restrictions on commercial goods entering Gaza, and some United Nations recovery projects have been approved by Israeli authorities. Nevertheless, the reconstruction of homes, medical facilities and water and sewerage systems damaged during Operation Cast Lead continues to be impeded by restrictions on the import of construction materials and spare parts intended for humanitarian projects. Time-consuming procedures for monitoring the entry of individual truckloads, as well as existing restrictions on the type and quantity of items that can be brought in and on the movement of humanitarian personnel, continue to impede the implementation of a humanitarian response commensurate with the existing humanitarian need.

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