



Statement by Richard Goldstone on behalf of the Members of the United Nations Fact Finding Mission on the Gaza Conflict before the Human Rights Council

Human Rights Council 12th Session – 29 September 2009

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*Mr. President,
(Madame High Commissioner)
members of the Council,
ladies and gentlemen*

My colleagues and I are here today to present to the Council the final report of the United Nations Fact Finding Mission on the Gaza Conflict.

Since the release of the advance version of the report two weeks ago, we have witnessed many attestations of support, but also a barrage of criticism towards our findings as well as public attacks against the Members of the Mission.

We will not address these attacks as we believe that the answers to those who have criticised us are in the findings of the report.

I have, however, to strongly reject one major accusation levelled against the Mission; the one that portrays our efforts as being politically motivated.

Let me repeat before this Council what I have already stated on many occasions:

We accepted this Mission because we believe deeply in the rule of law, humanitarian law, human rights, and the principle that in armed conflict civilians should to the greatest extent possible be protected from harm.

We accepted with the conviction that pursuing justice is essential and that no state or armed group should be above the law. Failing to pursue justice for serious violations during any conflict will have a deeply corrosive effect on international justice.

We accepted out of a deep concern for the hundreds of civilians who needlessly died and those who suffered injury and dislocation of their lives.

We accepted because we believe that the perpetrators of serious violations must be held to account.

We do not claim to be immune from error. After the release of the report we have received a number of comments from people who are sincerely interested in the truth.

We have considered them and where relevant redressed inaccuracies in the final version of the report which is today before you.

We regret that the response to date of the Government of Israel avoids dealing with the substance of the report.

Mr. President

As you all know, the Mission was established in April of this year with the mandate to investigate “all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza from 27 December 2008 – 18 January 2009, whether before during or after”.

Ambassador Uhomoibhi and I announced the establishment of the team at a press conference in April and he brought the mandate of the Mission before this Council in June.

The mandate of the mission was to look at all parties: Israel; the Palestinian Authority; Hamas, which governs Gaza; and armed Palestinian groups.

Soon after its establishment the Mission was faced with one of its major challenges: the decision of the Government of Israel not to cooperate with it and its implicit refusal to give us access to Gaza, the West Bank and to southern Israel.

We decided not to allow this lack of cooperation to prevent the Mission from discharging its mandate.

The Mission is grateful to the Government of the Arab Republic of Egypt for having facilitated its entry into Gaza through the Rafah crossing.

The Mission also wishes to express its gratitude to many, without whose assistance its task would have been impossible to fulfil.

It would be difficult to name all of them here. We attempt to do so in the acknowledgement section of the report.

We wish, however, to pay our respect to the many civil society organisations, in Gaza, in the West Bank, in Israel and elsewhere, which – often under difficult and challenging circumstances – continue to play a crucial role in upholding the universal principles of human rights.

We would respectfully suggest that this Council should recognize and support these organizations.

The first field visit by the Mission Members was conducted in the Gaza Strip from 1-5 June 2009, during which we held meetings, conducted interviews with victims and witnesses and visited the sites of incidents.

The Members of the Mission were in Gaza again from 26 June to 1 July, during which time we continued our investigations and held the Mission's first round of public hearings. Mission staff maintained a presence in Gaza until early July.

Members of the Mission also travelled to Amman, Jordan, from 1 to 4 July to interview witnesses and meet with people and organizations from Israel and the West Bank.

As part of its investigation process, the Mission held a second set of public hearings. In the two rounds of public hearings, 38 witnesses, victims and experts gave testimony.

The aim of holding the hearings publicly was to give a voice to those who had direct experiences and expertise that related to the mandate of the Mission.

The Mission reviewed reports produced by various organizations and institutions as well as submissions on matters of fact and law relevant to its inquiry.

The Mission consulted with a wide range of interlocutors. They included victims and witnesses, Palestinian, Israeli and international NGOs, United Nations and other international organizations, community organizations, human rights defenders, medical and other professionals, legal and military experts, authorities and other sources of reliable information relevant to the Mission's mandate. These interlocutors were both within and outside Israel and the occupied Palestinian territory.

The Mission conducted 188 individual interviews, reviewed over 10 000 pages of documentation and viewed some 1200 photographs, including satellite imagery and video-tapes.

The Mission was supported by an outstanding Secretariat provided by the Office of the High Commissioner for Human Rights (OHCHR). We are grateful to the High Commissioner for providing this support, without which the Mission could not have carried out its mandate.

In making findings of fact, we relied primarily on our own evaluation of the people who spoke to us and from what we saw with our own eyes.

We relied on reports from others where they corroborated the views we had formed.

The exception to that approach was in respect of some facts relating to the West Bank and to Israel in light of the refusal by the Israeli Government to allow us into Israel or to visit the West Bank.

On 15 September the Mission released an advance version of its report.

Mr. President
Members of the Council

Our report is before this Council for its consideration. Allow us, however, to focus the Council's attention on a number of points.

Let me immediately say that the report reflects the unanimous views of all four of its members.

For practical reasons, the Mission decided for the most part to restrict its fact finding to the period from 16 June 2008 to 31 July 2009. The 16th June 2008 was the date on which a cease fire between Israel and Hamas came into effect.

The Report contains an analysis of 36 specific incidents in Gaza as well as a number on the West Bank and in Israel.

In Chapter XI of the Report, for example we detail a number of specific incidents in which Israeli forces launched direct attacks against civilians with lethal consequences. These were, with only one exception, where the facts establish that there was no military objective or advantage that could justify the attacks.

You will find details of the other 35 incidents in the Report. Some of them relate to the use by the Israel Defense Forces of human shields in violation of an earlier ruling by the Israel Supreme Court outlawing such conduct.

The Mission investigated in some detail the effects on the civilian population in Southern Israel of the sustained rocket and mortar attacks from Palestinian armed groups in Gaza. We detail the suffering of victims and the highly prejudicial effects of these acts on the towns and cities that fall within the range of the rockets and mortars.

The Mission decided that in order to understand the effect of the Israeli military operations on the infrastructure and economy of Gaza, and especially its food supplies, it was necessary to have regard to the effects of the blockade that Israel has imposed on the Gaza Strip for some years and has been tightened since Hamas became the controlling authority of Gaza.

The Mission found that the attack on the only remaining flour producing factory, the destruction of a large part of the Gaza egg production, the bulldozing of huge tracts of agricultural land, and the bombing of some two hundred industrial facilities, could not on any basis be justified on military grounds. Those attacks had nothing whatever to do with the firing of rockets and mortars at Israel.

The Mission looked closely and sets out in the Report statements made by Israeli political and military leaders in which they stated in clear terms that they would hit at the “ Hamas infrastructure”.

If “ infrastructure” were to be understood in that way and become a justifiable military objective, it would completely subvert the whole purpose of IHL built up over the last 100 years and more. It would make civilians and civilian buildings justifiable targets.

These attacks amounted to reprisals and collective punishment and constitute war crimes.

The Government of Israel has a duty to protect its citizens. That in no way justifies a policy of collective punishment of a people under effective occupation, destroying their means to live a dignified life and the trauma caused by the kind of military intervention the Israeli Government called Operation Cast Lead. This contributes to a situation where young people grow up in a culture of hatred and violence, with little hope for change in the future.

Finally, the teaching of hate and dehumanization by each side against the other contributes to the destabilization of the whole region.

Mr. President
Members of the Council

Let me come to some of the recommendations.

The Mission debated long and hard on whether this was a case, like Darfur, where the Security Council should consider referring the situation both in Israel and Gaza to the International Criminal Court.

The Mission is highly critical of the pusillanimous efforts by Israel to investigate alleged violations of international law and the complete failure by the Gaza authorities to do so in respect of the armed groups. That notwithstanding the Mission came to the conclusion that both Israel and the Gaza Authorities have the ability to conduct open and transparent investigations and launch appropriate prosecutions if they decide to do so.

We therefore recommended that the Security Council should require Israel to report to it within six months, on the investigations and prosecutions it is carrying out with regard to the violations referred to in this Report and any others that may come to its attention.

The Mission recommends further that the Security Council should set up a body of independent experts to report to it on the progress of the Israeli investigations and prosecutions. The committee of experts should similarly report on investigations and prosecutions undertaken by the relevant authorities in Gaza with regard to crimes committed by the Palestinian armed groups.

In both cases, if within the six month period there are no good faith investigations conforming to international standards, the Security Council should refer the situation or situations to the ICC Prosecutor.

The Mission was concerned at the use made by the Israeli army of certain munitions and especially white phosphorous, flechettes and certain heavy metals such as tungsten. Their use is not presently banned by international law.

The Mission has recommended that the General Assembly should promote an urgent discussion on the future legality of the use of these munitions.

As appears from the Report the manner in which those munitions were used in Gaza caused unacceptable and unnecessary human suffering as well as environmental damage – not only in Gaza but probably also in southern Israel. The situations arising from the latter should be monitored by the United Nations.

Since the issue of the advance copy of the Report it has been rejected in vehement terms by the Government of Israel. The call for transparent investigations has been rejected. The Government of Israel wishes to restrict its investigations to secret inquiries by the Military investigating itself. That would clearly not satisfy the legitimate expectations of the many victims of the Israeli military operations.

A word about accountability. It has been my experience in many regions of the world, including my own country, South Africa, that peace and reconciliation depend, to a great extent, upon public acknowledgement of what victims suffer. That applies no less in the Middle East. It is a pre-requisite to the beginning of the healing and meaningful peace process.

The truth and accountability are also essential to prevent ascribing collective guilt to a people. Many people in Gaza deplore the firing of thousands of rockets at civilians in Southern Israel and the terror that it has caused to innocent children, women and men. And many in Israel, Jews and Palestinians, deplore the actions by the Israel Defense Force that caused unjustifiable civilian deaths and injuries on a very large scale. They do not approve of the damage to the food and commercial infrastructure of Gaza that will take many years to repair.

Support for many of the recommendations contained in the Report has come from Gaza, the West Bank and Israel.

People of the region should not be demonized. Rather their common humanity should be emphasized.

It is for this reason that the Mission came to the conclusion that it is accountability above all that is called for in the aftermath of the regrettable violence that has caused so much misery for so many.

The Mission calls upon the HRC to accept the Report and adopt its recommendations.

Mr. President

Now is the time for action.

A culture of impunity in the region has existed for too long.

The lack of accountability for war crimes and possible crimes against humanity has reached a crisis point; the ongoing lack of justice is undermining any hope for a successful peace process and reinforcing an environment that fosters violence. Time and again, experience has taught us that overlooking justice only leads to increased conflict and violence.

In conclusion, may I say that the Mission hopes that the substance of this report will be used to strengthen initiatives for peace in the region. The mission is convinced that the international community must confront the realities highlighted in this report and that by doing so find a meaningful basis for the pursuit of peace and security for all the people of the region. Only in that way will the human dignity and security of these people be realised.

By appointing this Fact Finding Mission, the Human Rights Council raised expectations for action and for justice: we call on the Council and on the international community as a whole to take up our recommendations so those expectations will not have been raised in vain.

Thank you.

Geneva, 29 September 2009