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**Human rights situation in Palestine and
other occupied Arab territories**

Report of the Secretary-General on the status of implementation of paragraph 3 of Council resolution S-12/1 B*

Summary

This report focuses on the status of the implementation of the broad range of recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict. It reviews every recommendation of the Mission, following the order in which they appear in the Mission's report.

* Late submission.

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I. Introduction

1. In its resolution S-12/1 B of 16 October 2009, the Human Rights Council endorsed the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (hereinafter the “Mission”),¹ called upon all concerned parties, including United Nations bodies, to ensure their implementation in accordance with their respective mandates, recommended to the General Assembly that it consider the report during the main part of its sixty-fourth session, and requested the Secretary-General to submit to the Council, at its thirteenth session, a report on the status of the implementation of those recommendations. The present report is submitted pursuant to that request. The information it contains has been requested and received from States, organizations and other entities to which the Mission addressed its recommendations, as well as being gathered directly by the United Nations from relevant sources.

II. Status of the implementation of the recommendations of the Mission report

A. Action by the Human Rights Council

2. In paragraph 1968 of its report, the Mission addressed five recommendations to the Human Rights Council.

3. In paragraph 1968 (a) of its report, the Mission recommended that “the United Nations Human Rights Council should endorse the recommendations contained in this report, take appropriate action to implement them as recommended by the Mission and through other means as it may deem appropriate, and continue to review their implementation in future sessions”.

4. In paragraph 3 of its resolution S-12/1 B, the Human Rights Council endorsed the recommendations contained in the Mission’s report and called on all concerned parties, including United Nations bodies, to ensure their implementation in accordance with their respective mandates. In paragraph 4 of its resolution S-12/1 C, the Human Rights Council decided to follow up on the implementation, inter alia, of Section B of that resolution as its thirteenth session.

5. In paragraph 1968 (b) of its report, the Mission recommended that “in view of the gravity of the violations of international human rights and humanitarian law and possible war crimes and crimes against humanity that it has reported . . . the United Nations Human Rights Council should request the United Nations Secretary-General to bring this report to the attention of the United Nations Security Council under Article 99 of the Charter of the United Nations so that the Security Council may consider action according to the Mission’s relevant recommendations below”.

6. In its resolution S-12/1 B, the Human Rights Council did not direct any specific request to the Secretary-General to bring the Mission’s report to the attention of the Security Council under Article 99 of the Charter. At the same time, in paragraph 3 of that resolution, the Human Rights Council endorsed the recommendations of the Mission.

¹ A/HRC/12/48.

7. In paragraph 1968 (c) of its report, the Mission recommended that “the United Nations Human Rights Council should formally submit this report to the Prosecutor of the International Criminal Court”.
8. Further to paragraph 3 of Human Rights Council resolution S-12/1 B, the report of the Mission was transmitted by the Council secretariat to the Prosecutor of the International Criminal Court on 10 December 2009.
9. In paragraph 1968 (d) of its report, the Mission recommended that “the Human Rights Council should submit this report to the General Assembly with a request that it should be considered”.
10. In paragraph 4 of its resolution S-12/1 B, the Human Rights Council “recommend[ed] that the General Assembly consider the report of the [Mission], during the main part of its sixty-fourth session”.
11. In paragraph 1968 (e) of its report, the Mission recommended that “the Human Rights Council should bring the Mission’s recommendations to the attention of the relevant United Nations human rights treaty bodies so that they may include review of progress in their implementation, as may be relevant to their mandate and procedures, in their periodic review of compliance by Israel with its human rights obligations. The Mission further recommends that the Human Rights Council should consider review of progress as part of its universal periodic review process”.
12. The Mission’s report was transmitted to the United Nations treaty bodies that monitor compliance by the State of Israel with the human rights treaties to which it is party² on 10 December 2009.

B. Action by the Security Council

13. In paragraph 1969 of its report, the Mission addressed a total of six recommendations to the Security Council.
14. In paragraph 1969 (a) of its report, the Mission recommended that that the “Security Council should require the Government of Israel, under Article 40 of the Charter of the United Nations: (i) To take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the Mission and any other serious allegations that might come to its attention; and (ii) To inform the Security Council, within a further period of three months, of actions taken, or in process of being taken, by the Government of Israel to inquire into, investigate and prosecute such serious violations”.
15. To date, the Security Council has not directed such a request to the Government of Israel.
16. In paragraph 1969 (b) of its report, the Mission further recommended that the “Security Council should at the same time establish an independent committee of experts in international humanitarian and human rights law to monitor and report on any domestic legal or other proceedings undertaken by the Government of Israel in relation to the aforesaid investigations. Such committee of experts should report at the end of the six-

² The Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination Against Women, Committee Against Torture and Committee on the Rights of the Child.

month period to the Security Council on its assessment of relevant domestic proceedings initiated by the Government of Israel, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary. The committee should be appropriately supported by the Office of the United Nations High Commissioner for Human Rights”.

17. To date, the Security Council has not established such a committee.

18. In paragraph 1969 (d) of its report, the Mission recommended that “the Security Council should require the independent committee of experts referred to in [paragraph 1969 (b)] to monitor and report on any domestic legal or other proceedings undertaken by the relevant authorities in the Gaza Strip in relation to the aforesaid investigations. The committee should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the relevant authorities in Gaza, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been taken or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary”.

19. In paragraphs 1969 (c) and (e) of its report, the Mission further recommended that “upon receipt of the committee’s report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40” by the appropriate authorities of the State of Israel or the relevant authorities in Gaza, respectively, “acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute” of the International Criminal Court. In paragraph 1969 (f) of its report, the Mission recommended that “lack of cooperation by the Government of Israel or the Gaza authorities with the work of the committee should be regarded by the Security Council to be obstruction of the work of the committee”.

20. As the Security Council has not established an independent committee of experts, none of these recommended actions have been carried out.

C. Action by the Prosecutor of the International Criminal Court

21. In paragraph 1970 of its report, the Mission stated that, “with reference to the declaration under article 12 (3) [of the Rome Statute] received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine, [it] considers that accountability for victims and the interests of peace and justice in the region require that the Prosecutor should make the required legal determination as expeditiously as possible”.

22. By a letter dated 12 January 2010 addressed to the Deputy High Commissioner for Human Rights, the Office of the Prosecutor of the International Criminal Court stated that the Prosecutor had not, as of that date, made a determination whether, in his view, the International Criminal Court has jurisdiction in respect of any crimes referred to in article 5 of the Rome Statute that may have been committed in the Gaza Strip between December 2008 and January 2009. The Office of the Prosecutor additionally noted in its letter that the

Prosecutor had not yet made a determination whether, in his view, any cases relating to such crimes would be admissible before the Court.³

D. Action by the General Assembly

23. In paragraph 1971 of its report, the Mission addressed four recommendations to the General Assembly.

24. In paragraph 1971 (a) of its report, the Mission recommended that “the General Assembly should request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts in this report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the Mission’s recommendations. The General Assembly may remain apprised of the matter until it is satisfied that appropriate action is taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators. The General Assembly may consider whether additional action within its powers is required in the interests of justice, including under its resolution 377 (V) on uniting for peace”.

25. To date, the General Assembly has not directed such a request to the Security Council.

26. In paragraph 1971 (b) of its report, the Mission recommended to the General Assembly that it “should establish an escrow fund to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during the December-January military operation and actions in connection with it, and that the Government of Israel should pay the required amounts into such fund. The Mission further recommends that the General Assembly should ask the Office of the United Nations High Commissioner for Human Rights to provide expert advice on the appropriate modalities to establish the escrow fund”.

27. To date, the General Assembly has not established such a fund.

28. In paragraph 1971 (c) of its report, the Mission recommended that “the General Assembly should ask the Government of Switzerland to convene a conference of the high contracting parties to the Fourth Geneva Convention of 1949 on measures to enforce the Convention in the Occupied Palestinian Territory and to ensure its respect in accordance with its article 1”.

29. In paragraph 5 of its resolution 64/10 of 5 November 2009, the General Assembly “recommend[ed] that the Government of Switzerland, in its capacity as depository of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, undertake as soon as possible the necessary steps to reconvene a Conference of High Contracting parties to the Fourth Geneva Conventions on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common article 1”. In a subsequent communication to the Secretary-General, the Government of Switzerland provided an update on the preliminary consultations it had undertaken to this end.⁴

³ See “Letter to the UN High Commissioner on Human Rights”, 12 January 2010, available at www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/palestine/12%20january%202010%20_%20letter%20to%20the%20un%20high%20commissioner%20on%20human%20rights.

⁴ A/64/651, Annex III.

30. In paragraph 1971 (d) of its report, the Mission recommended that “the General Assembly should promote an urgent discussion on the future legality of the use of certain munitions referred to in this report, and in particular white phosphorous, flechettes and heavy metal such as tungsten. In such discussion the General Assembly should draw inter alia on the expertise of the International Committee of the Red Cross (ICRC). The Mission further recommend[ed] that the Government of Israel should undertake a moratorium on the use of such weapons in the light of the human suffering and damage they have caused in the Gaza Strip”.

31. To date, the General Assembly has not taken action to promote such a discussion.

E. Action by the State of Israel

32. In paragraph 1972 of its report, the Mission addressed a total of nine recommendations to the State of Israel.

33. In paragraph 1972 (a) of its report, the Mission recommended “that Israel should immediately cease the border closures and restrictions on passage through border crossings with the Gaza Strip and allow the passage of goods necessary and sufficient to meet the needs of the population, for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip”.

34. As of the date of this report, the policy of closures of Gaza remains in effect. The quantity and range of goods allowed into Gaza remain severely restricted, and the majority of material allowed in continues to be food and hygiene items (84 per cent of imports since October 2009). Material needed to commence reconstruction continues to be barred from entry, but some smaller-scale improvement has been noted. So, for example: outstanding shipments of spare parts for the Gaza Electricity Distribution Company have been allowed in between November 2009 and January 2010; 103 truckloads of glass have entered since 29 December 2009, and the United Nations is now starting negotiations to allow for a second tranche of glass; construction material including cement, gravel and tar for the Northern Gaza Waste Water Treatment project was allowed entry in November 2009. The Government of Israel has also indicated that the transfer of educational supplies to the Gaza strip was facilitated on 11 November 2009.⁵

35. In paragraph 1972 (b) of its report, the Mission recommended “that Israel should cease the restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles as provided for in the Oslo Accords. It further recommends that Israel should allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel”.

36. As of the date of this report, Israeli naval forces continue to prohibit Gazans access beyond three nautical miles from the shore and within a 300-metre-wide strip of land near the border fence.

37. In paragraph 1972 (c) of its report, the Mission recommended that “Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel. The Mission recommends that Israel should avail itself of the expertise of the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights and

⁵ Letter from the Permanent Mission of Israel to the High Commissioner for Human Rights, 16 November 2009.

other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law. In particular such rules of engagement should ensure that the principles of proportionality, distinction, precaution and non-discrimination are effectively integrated in all such guidance and in any oral briefings provided to officers, soldiers and security forces, so as to avoid the recurrence of Palestinian civilian deaths, destruction and affronts on human dignity in violation of international law”.

38. The Government of Israel has informed the United Nations that, on 20 January 2009, the Chief of General Staff of the Israel Defense Forces (IDF) ordered investigations into a range of allegations regarding the conduct of the IDF during the Gaza conflict. As a result of those investigations, the Chief of General Staff “ordered the IDF to implement lessons learned on a broad range of matters, directing that certain standing orders be highlighted or clarified, establishing further guidelines on the use of various munitions, and instructing that steps be taken to improve coordination with humanitarian organisations and entities”.⁶ On 9 November 2009 the Government of Israel informed the High Commissioner for Human Rights that, on the basis of its investigations conducted to date, “significant measures are already being taken to implement the lessons learned and improve IDF’s operational activities. Among the measures is the formulation of revised procedures for the destruction of property and infrastructure for military purposes, as well as for the use of certain means of warfare”.⁷ The Government of Israel has not to date approached the Office of the United Nations High Commissioner for Human Rights (OHCHR) to avail itself of its expertise in connection with a review of rules of engagement, standard operating procedures, open fire regulations or other relevant guidance for military personnel.

39. In paragraph 1972 (d) of its report, the Mission recommended that “Israel should allow freedom of movement for Palestinians within the Occupied Palestinian Territory — within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world — in accordance with international human rights standards and international commitments entered into by Israel and the representatives of the Palestinian people. The Mission further recommend[ed] that Israel should forthwith lift travel bans currently placed on Palestinians by reason of their human rights or political activities”.

40. Freedom of movement of Palestinians within the Occupied Palestinian Territory remains highly limited. The Israeli policy of closures continues to prevent the free movement of people and goods into and out of Gaza. Within the West Bank, since October 2009, the Israeli authorities continued to implement measures to increase freedom of movement of Palestinians between most Palestinian urban centres — excluding East Jerusalem — through the removal of some permanent obstacles and by allowing Palestinians to access roads previously reserved for Israelis.⁸ On the other hand, in January and February 2010 there was a significant increase in random, or so-called “flying”, checkpoints throughout the West Bank. In total, there were 550 obstacles to movement in

⁶ A/64/651, annex I, para. 101; also, para. 99.

⁷ “Examination of allegations by Israel Defense Force,” annex to Letter from the Permanent Mission of Israel to the High Commissioner, 9 November 2009. The High Commissioner for Human Rights requested further details on this by way of a letter dated 18 November 2009, but has yet to receive a reply.

⁸ In this regard, see report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/13/54, para. 7), which discusses the recent decision by the Israeli High Court of Justice that orders the IDF to allow Palestinian access to Route 443.

the West Bank as of February 2010 as compared to 592 in October 2009.⁹ Furthermore, many Palestinians engaged in human rights and political activities continue to face difficulties travelling between the Occupied Palestinian Territory and the outside world, since Israel has not lifted travel bans that are currently in place.

41. In paragraph 1972 (e) of its report, the Mission recommended that “Israel should release Palestinians who are detained in Israeli prisons in connection with the occupation. The release of children should be an utmost priority. The Mission further recommends that Israel should cease the discriminatory treatment of Palestinian detainees. Family visits for prisoners from Gaza should resume”.

42. Recently obtained information indicates that approximately 6,800 Palestinians are being held in Israeli prisons, including approximately 300 children.¹⁰ Approximately 260 persons are being held in administrative detention.¹¹ The number of such detainees fluctuates regularly, and it is often not possible to ascertain the reason that a detainee has been released. Family visits for prisoners from Gaza still do not take place, following the suspension by Israeli authorities of the Family Visits Programme of the International Committee of the Red Cross on 4 June 2007. The Israeli High Court of Justice upheld the suspension of this programme in December 2009.¹²

43. In paragraph 1972 (f) of its report, the Mission recommended that “Israel should forthwith cease interference with national political processes in the Occupied Palestinian Territory, and as a first step release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning”.

44. On 1 and 2 November 2009 Israel released seven members of the Palestinian Legislative Council; all affiliated to Hamas, bringing the total of Palestine Legislative Council (PLC) members in Israel's custody to 16, including 13 from Hamas, 2 from Fatah and one from the Popular Front for the Liberation of Palestine (PFLP). A small number of PLC members in the West Bank have been able to visit Gaza, but there has been no broad-based facilitation of movement of PLC members between Gaza and the West Bank.

45. In paragraph 1972(g) of its report, the Mission recommended that “the Government of Israel should cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning Israel's policies and conduct during the military operations in the Gaza Strip. The Mission also recommends that Israel should set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory, in terms of both charges and detention pending trial. The results of the inquiry should be made public and, subject to the findings, appropriate remedial action should be taken”.

46. Human rights NGOs have reported that the Government of Israel has made efforts to decrease the financial support available to such organizations working in the Occupied

⁹ Information obtained from the Office for the Coordination of Humanitarian Affairs (OCHA) in the OPT.

¹⁰ See B'Tselem statistics as of 31 January 2010 at www.btselem.org/english/statistics/Detainees_and_Prisoners.asp, and Addameer's statistics for January 2010 at <http://addameer.info/?icat=18>.

¹¹ Ibid. See also Defence for Children International, Child Detainee Figures as of 16 February 2010 at www.dci-pal.org/english/Display.cfm?DocId=902&CategoryId=11.

¹² *Rami Dhaqar Ismai'l Anbar et al v GOC Southern Command et al*, HCJ 5268/08, 09 December 2009 at para. 8.

Palestinian Territory.¹³ As of the date of this report, Israel has not established an inquiry of the kind recommended by the Mission.

47. In paragraph 1972 (h) of its report, the Mission recommended that “that the Government of Israel should refrain from any action of reprisal against Palestinian and Israeli individuals and organizations that have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict, in particular individuals who have appeared at the public hearings held by the Mission in Gaza and Geneva and expressed criticism of actions by Israel”.

48. In an open letter to senior Israeli government officials, a group of Israeli NGOs warned of the increasing “delegitimization” of organizations that cooperated with the Mission,¹⁴ which has raised serious concerns among civil society organizations carrying out human rights work.¹⁵

49. In paragraph 1972 (i) of its report, the Mission recommended that “Israel should reiterate its commitment to respecting the inviolability of United Nations premises and personnel and that it should undertake all appropriate measures to ensure that there is no repetition of violations in the future”. It further recommended that “reparations to the United Nations should be provided fully and without further delay, and that the General Assembly should consider this matter”.

50. As of the date of this report, the United Nations has not received any formal communication from the Government of Israel reiterating its commitment to respect the inviolability of United Nations premises and personnel.

51. In June and July 2009, the Secretary-General exchanged letters with the Foreign Minister of the Government of Israel regarding steps to improve coordination between the United Nations and the Israel Defense Forces (IDF), so as to ensure that United Nations personnel, operations and premises are not put at risk in the event of any future military operations affecting Gaza. The United Nations has prepared a proposal to improve coordination for discussion with the Ministry of Foreign Affairs.

52. In its resolution 64/89 of 10 December 2009, the General Assembly “deplor[ed] the extensive damage to and destruction of [United Nations Relief and Works Agency for Palestine Refugees in the Near East] facilities in the Gaza Strip caused during the military operations between December 2008 and January 2009, including to schools where civilians were sheltered and [UNRWA’s] main compound and warehouse” and “urge[d] the

¹³ See, e.g., Open Letter: Palestinian, Israeli and International Human Rights NGOs Deplore Politically-Motivated Claims Aimed at Discrediting Human Rights Defenders, signed by 52 human rights NGOs, 1 February 2010, available at <http://www.alhaq.org/etemplate.php?id=499>.

¹⁴ See the open letter to Mr. Shimon Peres, President of Israel, MK Reuven Rivlin, Knesset Speaker and Mr. Benjamin Netanyahu, Prime Minister of Israel, “Re: Assault and delegitimization of human rights organizations in Israel – warning and request for meeting”, 31 January 2010, signed by Aid Organization for Refugees and Asylum-Seekers in Israel, The Association for Civil Rights in Israel, Bimkom – Planners for Planning Rights, B’Tselem, Gisha, The Public Committee against Torture in Israel, Yesh Din, Hamoked – The Centre for the Defence of the Individual, The Hotline for Migrant Workers, Israel Religious Action Center, Kav LaOved – Worker’s Hotline, Physicians for Human Rights – Israel, Rabbis for Human Rights, available at <http://www.acri.org.il/pdf/lettertoperes310110.pdf>.

¹⁵ See the Association for Civil Rights in Israel, “ACRI Condemns Campaign against NIF, Naomi Chazan”, available at <http://www.acri.org.il/eng/story.aspx?id=705>, and Human Rights Watch, “Israel: Attacks on New Israel Fund, Critical Groups, Threaten Civil Society,” available at www.hrw.org/en/news/2010/02/08/israel-attacks-new-israel-fund-critical-groups-threaten-civil-society.

Government of Israel to speedily compensate [UNRWA] for damage and destruction to its property and facilities resulting from actions by the Israeli side, including as a result of the military operations in the Gaza Strip between December 2008 and January 2009”.

53. In August 2009, the United Nations submitted a claim to Israel for reimbursement for the losses that the Organization had sustained in seven incidents that had been investigated by the United Nations Headquarters Board of Inquiry into Certain Incidents that Occurred in Gaza Strip between 27 December 2008 and 19 January 2009 and for which the Board had found Israel responsible.¹⁶ In January 2010, the Government of Israel made a payment to the United Nations of \$10.5 million in respect of the losses that the Organization had sustained in the incidents that were investigated by the Board of Inquiry.

F. Action by Palestinian armed groups

54. In paragraph 1973 of its report, the Mission addressed two recommendations to Palestinian Armed Groups.

55. In paragraph 1973 (a) of its report, the Mission recommended that “Palestinian armed groups should undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities”.

56. Indiscriminate rocket and mortar attacks launched by Palestinian armed groups from Gaza continue to occur.¹⁷ OHCHR is unable to confirm whether Palestinian armed groups have taken “all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities.”

57. In paragraph 1973(b) of its report, the Mission recommended that “Palestinian armed groups who hold Israeli soldier Gilad Shalit in detention should release him on humanitarian grounds. Pending such release they should recognize his status as prisoner of war, treat him as such, and allow him ICRC visits”.

58. At the time of writing, Israeli soldier Gilad Shalit remains in detention, without being recognized as a prisoner of war and without being allowed contact with the International Committee of the Red Cross.

G. Action by responsible Palestinian authorities

59. The Mission directed three recommendations to responsible Palestinian authorities in paragraph 1974 of its report.

60. In paragraph 1974 (a) of its report, the Mission recommended that “the Palestinian Authority issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigations of all allegations of serious human rights violations by security forces under its control, and end resort to military justice to deal with cases involving civilians”.

¹⁶ A/63/855-S/2009/250.

¹⁷ Letters from the Permanent Mission of Israel to the High Commissioner for Human Rights, 9 November 2009, 26 November 2009, 14 December 2009, 5 January 2010, and 12 January 2010.

61. The Minister of Interior of the Palestinian Authority has issued two decisions¹⁸ that instruct security forces, within the context of handling detainees, to abide by human rights norms, as enshrined in the Palestinian Basic Law and international instruments. OHCHR has not been able to confirm whether the Palestinian Authority has ended resort to military justice to deal with cases involving civilians. At the same time, the Palestinian Authority established a committee on 25 January 2010,¹⁹ which is mandated to follow up on the implementation of the Mission's report in so far as it relates to the Palestinian Authority, and to undertake the investigative duties and responsibilities required of it by the Mission's report.

62. In paragraph 1974 (b) of its report, the Mission recommended that "the Palestinian Authority and the Gaza authorities should release without delay all political detainees currently in their power and refrain from further arrests on political grounds and in violation of international human rights law".

63. According to information provided to OHCHR, 523 detainees are being held in the West Bank for political reasons.²⁰ OHCHR has received information that approximately 100 prisoners were being held by the de facto Gaza authorities as of 1 December 2009 for political reasons.²¹ On 18 February it was reported that the de facto Gaza authorities had released 22 persons who were allegedly detained on political grounds.²² The Palestinian Authority and the de facto Gaza authorities both publicly claim that detainees and prisoners are not held on political but rather only on security or criminal grounds.

64. In paragraph 1974 (c) of its report, the Mission recommended that "the Palestinian Authority and the Gaza authorities should continue to enable the free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Independent Commission for Human Rights".

65. There is no indication that any specific action has been taken to implement this recommendation. Moreover, an escalation of attacks on human rights defenders in Gaza has been observed in recent months. One example is the attempt by Hamas security forces to close the Independent Commission for Human Rights' office in Gaza on 22 October 2009. It remains unclear who is responsible for the incursion into the premises of the Al-Dameer Institute for Human Rights on 15 November 2009 and the attack against the Palestinian Network of Non-Governmental Organizations on 13 December 2009.

H. Action by the international community

66. Paragraph 1975 of the Mission's report contains five recommendations addressed to a range of actors and partners in the international community. States and relevant organizations have provided information on the implementation of those recommendations.

67. In paragraph 1975 (a) of its report, the Mission recommended that "the States parties to the Geneva Conventions of 1949 should start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave

¹⁸ Palestinian National Authority, Minister of Interior, Decision No. 149, 20 August 2009, and Palestinian National Authority, Minister of Interior, Decision No. 172, 17 September 2009

¹⁹ Palestinian National Authority, Presidential Decree No. 0105, 25 January 2010.

²⁰ Information provided to OHCHR by the Independent Commission for Human Rights (ICHR) – Palestine.

²¹ Figures provided by ICHR, as of 1 December 2009

²² See *Jerusalem Post*, "Hamas: We've released 22 Fatah prisoners as goodwill gesture," at www.jpost.com/Headlines/Article.aspx?id=169070.

breaches of the Geneva Conventions of 1949. Where so warranted following investigations, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognized standards of justice”.

68. The High Commissioner for Human Rights sent notes verbales to all States parties to the Geneva Conventions to request information on the implementation of this recommendation. None of the States which replied indicated that any case related to the Gaza conflict was being investigated by its relevant national authorities or prosecuted before its national courts.²³

69. In paragraph 1975(b) of its report, the Mission recommended that “international aid providers should step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population”.

70. The High Commissioner for Human Rights sent letters to United Nations agencies engaged in such activities in the Occupied Palestinian Territory, and the following information regarding this recommendation is based on the replies received.²⁴

71. UNICEF has been working with the Palestinian Center for Democracy and Conflict Resolution (PCDCR) to provide psychosocial support to children and families affected by the conflict. This work includes initial and in-depth group sessions for children referred by schools, community-based organizations and community workers; individual support for children who require more focused help; emergency visits to children and communities; a toll free line to which children and families can call for support, advice and referral; and a socio-legal defence centre where people can call for legal advice on their rights and entitlements, referral and support. In 2009 UNICEF increased its support to PCDCR by establishing an emergency standby team of psychosocial support workers. A publicity campaign was also carried out in the lead-up to the anniversary of the war, with messages to parents that addressed the dangers of over-exposure to television and media images related to the conflict.

72. UNICEF is supporting the NGO Terre des Hommes to implement a mental health and psychosocial technical support unit for Gaza. The aim is to support mental health and psychosocial support (MHPSS) by mapping existing MHPSS actors and the different levels of support that are already in place, raising awareness regarding support available for mental health problems, including de-stigmatization of such problems, and adapting and disseminating the Inter-Agency Standing Committee’s (IASC) Guidelines on Mental Health and Psychosocial Support in Emergency Settings. Furthermore, UNICEF, in its capacity as co-chair of the MHPSS working group in Gaza, is providing periodic trainings in relation to the IASC Guidelines.

73. The World Health Organization (WHO) reports that over 80 national and international NGOs have been involved in working on MHPSS issues through the implementation of a coordinated joint effort. These organizations have convened on a

²³ As of 2 March 2010, replies had been received from Burkina Faso, Cyprus, Egypt, Finland, France, Jordan, Norway, Pakistan (in its capacity as Coordinator of the Organization of the Islamic Conference Group on human rights and humanitarian issues), Portugal, Nigeria (in its capacity as Coordinator of the Africa Group on human rights issues), Switzerland and Slovenia.

²⁴ Letters were addressed to: the Humanitarian Coordinator of the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO), which was copied to the Heads of United Nations Agencies in the Occupied Palestinian Territory; the Prosecutor of the International Criminal Court (ICC); to international aid providers: the European Commission in the West Bank and Gaza and to the Chair of the Ad-Hoc Liaison Committee, to the Special Envoy of the Quartet, to the United National Environment Programme (UNEP) and the World Health Organization (WHO).

regular basis to review and plan activities and develop and endorse input into policymaking regarding MHPSS issues.

74. In paragraph 1975 (c) of its report, the Mission recommended that, “in view of their crucial function . . . donor countries/assistance providers should continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law”.

75. In response to informal queries from the OHCHR field presence in the Occupied Palestinian Territory, neither Israeli nor Palestinian NGOs have reported any major changes in their funding as of the time of writing.

76. UNICEF chairs an inter-agency working group on grave violations against children that includes representatives of Palestinian and Israeli human rights organizations. Through this working group, which carries out monitoring and reporting activities, UNICEF has, since the date of the Mission’s report, organized workshops in Gaza and the West Bank to strengthen local capacities to contribute to reports for the Security Council regarding the situation of children in the Occupied Palestinian Territory.

77. OHCHR continues to lead the Protection Cluster Working Group as well as the Accountability Task Force within it. Both include a number of Palestinian and Israeli NGOs and both were active throughout the 2009, as was the Displacement Working Group, led by OCHA.

78. In paragraph 1975 (d) of its report, the Mission recommended that “States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, should ensure that respect for the rule of law, international law and human rights assumes a central role in internationally sponsored peace initiatives”.

79. The High Commissioner for Human Rights sent a letter on 14 December 2009 to the Quartet Representative requesting information on the implementation of this recommendation, and has not received a response to date.

80. In paragraph 1975 (e) of its report, the Mission recommended that “in view of the allegations and reports about long-term environmental damage that may have been created by certain munitions or debris from munitions . . . a programme of environmental monitoring should take place under the auspices of the United Nations, for as long as deemed necessary. The programme should include the Gaza Strip and areas within southern Israel close to impact sites. The environmental monitoring programme should be in accordance with the recommendations of an independent body, and samples and analyses should be analysed by one or more independent expert institutions. Such recommendations, at least at the outset, should include measurement mechanisms which address the fears of the population of Gaza and southern Israel at this time and should at a minimum be in a position to determine the presences of heavy metals of all varieties, white phosphorous, tungsten micro-shrapnel and granules and such other chemicals as may be revealed by the investigation”.

81. On 14 December 2009, the United Nations Environmental Programme (UNEP) released a report entitled “Environmental assessment of the Gaza Strip: following the escalation of hostilities in December 2008-January 2009”. In that report, lack of safe drinking water and the prevalence of methemoglobinemia are identified as critical concerns, including in relation to blue baby syndrome. In this regard, the UN Humanitarian Coordinator has agreed to launch a detailed study on methemoglobinemia, and UNICEF will prepare a strategy note on providing safe water for all children in the Gaza Strip. The report stresses that the situation with respect to groundwater continues to deteriorate and

that the aquifer is likely to collapse if action is not taken urgently. UNEP is preparing a technical paper on the long-term solutions required to address groundwater issues in Gaza.

I. Action by the international community and responsible Palestinian authorities

82. In paragraph 1976 (a) of its report, the Mission recommended to the international community and responsible Palestinian authorities that “appropriate mechanisms should be established to ensure that the funds pledged by international donors for reconstruction activities in the Gaza Strip are smoothly and effectively disbursed, and urgently put to use for the benefit of the population of Gaza.”

83. To date, no mechanism has been established to track commitments against the US\$ 4.2 billion pledged by international donors at the Gaza reconstruction conference held in Sharm el-Sheikh in March 2009. The low commitments against the US\$ 4.2 billion pledged may be attributable to the ongoing closures of Gaza. Notwithstanding this, some donor funding is reaching Gaza via budget and programme support to the Palestinian Authority (a significant portion of which goes to Gaza) and direct project support for various projects in Gaza. UNRWA reports that it has received US\$ 100 million to support reconstruction activities, although it notes that it is not possible to undertake such activities due to continuing restrictions on the import of reconstruction materials.

84. In paragraph 1976 (b) of its report, the Mission recommended that, “in view of the consequences of the military operations, . . . responsible Palestinian authorities as well as international aid providers should pay special attention to the needs of persons with disabilities. In addition, the Mission recommends that medical follow-up should be ensured by relevant international and Palestinian structures with regard to patients who suffered amputations or were otherwise injured by munitions, the nature of which has not been clarified, in order to monitor any possible long-term impact on their health. Financial and technical assistance should be provided to ensure adequate medical follow-up to Palestinian patients.”

85. It is reported that the Ministry of Social Affairs of the de facto authorities in Gaza recently established a department to provide support for persons with disabilities.²⁵ OHCHR is not aware of any further action taken by responsible Palestinian authorities or Palestinian structures, in response to the recommendation contained in paragraph 1976 (b) of the Mission’s report.

86. WHO reports that approximately 70 NGOs have been working in support of persons with disabilities. Substantial numbers of traumatic disabilities resulted from the Gaza conflict, including at least 221 amputees. Many seriously injured persons were transferred abroad during or immediately after the conflict to receive care. At the same time, a number of surgeons from abroad came to Gaza after the end of the conflict to assist in carrying out surgical corrective programmes. International NGOs, such as Médecins sans Frontières, continue to provide specialized support and post-operative care, while the local production of prostheses by the Artificial Limb and Polio Centre has doubled, thanks to support from the international humanitarian community.

87. UNRWA’s effort to assist persons with disabilities includes the provision of cash assistance to 76 individuals; the inclusion of 21 disabled persons in training opportunities abroad; supporting six community-based rehabilitation centres with technical expertise and human resource assistance (134 short-term workers); special educational services for 822

²⁵ Information received from National Society for Rehabilitation on 17 January 2010.

persons; equipment, such as wheel chairs, walkers, crutches, air mattresses, etc. for nearly 2,000 people; morale-boosting activities for children, such as festivals and days of recognition; medical follow up for amputees or persons otherwise wounded; and support for 17 health-care facilities in Gaza that specialize in various treatments. Furthermore, UNRWA cooperated with local organizations to ensure that 48 patients received prosthetic devices and artificial limbs, and provided physiotherapy for 393 persons who sustained injuries during the Gaza conflict, 33 per cent of whom were under 20 years old.²⁶

88. UNICEF reports that it provided surgical (trauma) kits, drugs and medical consumables sufficient to support the emergency care and rehabilitation of an estimated 250 children and adults affected by the crisis.

89. The UN Mine Action Team and its partners have been continuing to clear unexploded ordinance in destroyed houses and buildings, with a view toward reducing the risk of further disabilities.

90. The European Commission, through its ECHO humanitarian aid arm, has made efforts to meet shortages of medical supplies, assistive devices and training opportunities for medical professionals in Gaza, with a particular focus on providing care and rehabilitation services for persons with disabilities.

91. The OHCHR office in the Occupied Palestinian Territory has conducted a survey regarding persons with disabilities²⁷ and found that 529 persons were disabled as a result of the Gaza conflict, 173 of whom are children.²⁸ All persons interviewed by the OHCHR pointed out to the lack of access to sustained rehabilitation and support services. Persons with disabilities rely on rehabilitation services, both mental and physical, that are provided by NGOs and the United Nations. OHCHR came across a number of cases in which persons with disabilities were in need of a prosthetic device, yet were not able to receive help from either local organizations or from the de facto authorities in Gaza. In general, support provided by local authorities is highly limited and sporadic, especially for persons who are not considered to be in the most difficult situations.

J. Action by the international community, Israel and Palestinian authorities

92. In paragraph 1977 (a) of its report, the Mission recommended “that Israel and representatives of the Palestinian people, and international actors involved in the peace process, should involve Israeli and Palestinian civil society in devising sustainable peace agreements based on respect for international law. The participation of women should be ensured in accordance with Security Council resolution 1325 (2000)”.

93. There are many ongoing efforts to involve Israeli and Palestinian civil society groups in the peace process, and many civil society groups continue to play an active role in promoting ideas and processes to foster a successful peace process. The Secretary-General and the United Nations Special Coordinator for the Middle East peace process continues to engage with a broad spectrum of actors who are promoting initiatives in support of the

²⁶ The injuries incurred by these patients are broken down as follows: 43 per cent fractures, 29 per cent soft injuries, 20 per cent peripheral and centre nerve injury, 4 per cent amputees, and 4 per cent multiple injuries.

²⁷ Consisting of a series of interviews with persons with disabilities due to the operation Cast Lead and relevant local organizations.

²⁸ Out of the 529, 75 per cent are male (399) and 25 per cent female (120), while 42 per cent are from Gaza City.

peace process. The absence of formal peace negotiations presents a constraint to ensuring the sustainability of these initiatives and their integration into peace agreements.

94. In paragraph 1977 (b) of its report, the Mission recommended that “attention should be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security”.

95. The UN Inter-Agency Gender Task Force, led by UNIFEM and the GenCap Adviser, has been carrying out a range of activities in relation to the position of women. This includes launching a major survey and report on women’s specific needs after the conflict, and following up the report with a series of meetings with various communities throughout Gaza. Further, UNIFEM is supporting the opening of a safe house in Gaza to protect women affected by violence and the formation of a mechanism for women’s advocacy.

96. UNRWA has provided 777 loans to women owned and operated small businesses and employed an average of 3,800 women on a temporary basis through a job creation programme. UNRWA has also convened events to improve women’s self-sufficiency and ability to take leadership roles in their communities, provided technical and human resources support to organizations providing legal advice to women, and disseminated information targeted to women regarding how to obtain further assistance.

K. Action by the Secretary-General

97. In paragraph 1978 of its report, the Mission recommended that “the Secretary General should develop a policy to integrate human rights into peace initiatives in which the United Nations is involved, especially the Quartet, and request the United Nations High Commissioner for Human Rights to provide expertise required to implement this recommendation”.

98. The Secretary-General continues to make efforts to ensure that human rights are integrated into peace initiatives in which the United Nations is involved, including the Quartet.

L. Action by the Office of the United Nations High Commissioner for Human Rights

99. Paragraph 1979 of the Mission’s report contains two recommendations directed to OHCHR.

100. In paragraph 1979 (a) of its report, the Mission recommended that “the Office of the United Nations High Commissioner for Human Rights should monitor the situation of persons who have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict and periodically update the Human Rights Council through its public reports and in other ways as it may deem appropriate”.

101. Through its field presence in the Occupied Palestinian Territory, OHCHR has maintained contact with persons who have cooperated with the Mission, in order to monitor their situation, and will periodically report on their situation.

102. In paragraph 1979 (b) of its report, the Mission recommended that “the Office of the High Commissioner for Human Rights should give attention to the Mission’s recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council.”

103. The High Commissioner's periodic report on the implementation of Human Rights Council resolution S-9/1 (A/HRC/13/54) addresses a number of human rights issues that are also relevant to the Mission's recommendations.
