



Human Rights Council 12th Session, Item 7:

Report of the Fact-Finding Mission on the Gaza Conflict and Interactive Dialogue, 29 - 30 September 2009

Introduction

Carrying out the mandate given to them by the Human Rights Council, the Fact-Finding Mission on the Gaza Conflict, led by Richard Goldstone, has produced a report of its findings of human rights violation by both parties to the conflict. This report was discussed in the Human Rights Council on 29 - 30 September 2009. During the session the Human Rights Council was unusually crowded as many states, national institutions and NGOs wanted to give their view of the report. The debate was heated, distinctly different views were expressed, several points of order were raised and more than a few times the President had to ask the speakers to use a language suitable for the Human Rights Council. European voices were scarce however. The EU raised the concern that this report could possibly harm the peace process in the region. The United States criticized the report and did not support the idea of bringing it to the Security Council or the ICC, but did call for investigations by Israel and by the Palestinian authorities. Apart from Israel, the United States and a few NGO speakers, all parties agreed that the Mission had done a good job in balancing the investigations and in producing a serious report, although the initial mandate was seen by many as unbalanced.

Richard Goldstone on Behalf of the Members of the UN Fact Finding Mission on the Gaza Conflict

While abstaining from addressing attacks on Members of the Fact-Finding Mission, Mr. Goldstone did address one major accusation leveled against the Mission; the one that accuses the mission's efforts of having been politically motivated. He reaffirmed that the Members of the Mission accepted its mandate because of their deep belief 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". They accepted their mission "with the conviction that pursuing justice is essential and that no state or armed group should be above the law" and "out of deep concern for the hundreds of civilians who needlessly died and those who suffered injury and dislocation of their lives".

Mr. Goldstone stated that the Mission regretted that the government of Israel has avoided dealing with the substance of the report in its responses as well as its refusal to cooperate with the Mission in giving it access to Gaza, the West Bank and to southern Israel. Mr. Goldstone further expressed the Mission's gratitude to the Government of the Arab Republic of Egypt for having facilitated its entry into Gaza, to the many civil society organisations which continue to play a crucial role in upholding human rights, and to the OHCHR for providing support for the Mission.

He briefly mentioned some of the findings in the report, specifically that Israeli attacks on Gaza resulting in the destruction of the only remaining flour producing factory, large parts of the Gaza egg production, huge tracts of agricultural land, and some two hundred industrial facilities, amounted to reprisals and collective punishment and therefore

constituted war crimes. He specifically mentioned one of the recommendations of the report; the one that calls on the Security Council to require investigations and prosecutions by both parties and that if within six months there are no good faith investigations conforming to international standards, the Security Council should refer the situation to the International Criminal Court (ICC) Prosecutor.

Statements by Concerned Countries

Israel

The Israeli government representative said that five years ago, in a remarkable gesture reaching out for peace, Israel removed all soldiers and civilians from the Gaza Strip. Israel wanted to remind the Human Rights Council that it had applauded this measure and assured that it would back Israel in its inherent right to self-defense. Five years later, he said, rockets have been fired on Israel, but Israel's appeal to the international community was to no avail. He further argued that some soldiers did not live up to the standards that they expected of them. To deal with such cases Israel had issued a number of investigations and of these investigations, 23 had already resulted in criminal proceedings. Israel called the report shameful and one-sided. This was a report, he stated, that not once mentioned the rights to self-defense. The authors had little interest in finding facts and their efforts were politically motivated, he argued. According to Israel this report seeks to inject UN bodies with political poison. The report further sends a message to terrorist groups that the cynical tactics of seeking to exploit civilian suffering for political ends actually pays dividends. He assured that Israel will conduct investigations, not to follow the recommendations of the report, but to prove the report wrong.

Palestine

The representative of Palestine said that this was a professional and un-biased report that relates to facts that can not be denied. It is a report that contains elements of all parties based on the mandate given and the result is objective. I do not want to use this body to make a political statement, he continued, because this is not a political body, this is a body that serves to protect human rights. He argued that his people have suffered genocide at the hand of Israel, while Israel still continues to be a part of the UN. All I ask for, he said, is to implement paragraph 3 and 5 of resolution 9/1. This report should not be another archived document. My country will not forgive the international community if it leaves the perpetrators unpunished.

Interactive Dialogue (selected speakers)

Arab Group

Tunisia, speaking on behalf of the Arab Group, said that the Arab group thanked the Mission for their enormous efforts in preparing this very important, professional and neutral report on human rights violations. The Arab Group condemned the fact that Israel continues to refuse to cooperate, despite the neutrality and independence of the Mission, and called on Israel to comply with international conventions. The Arab Group wished to reiterate the right of the Palestinian people to self-determination. International human rights law and humanitarian law must be applied. It is now necessary for the Human Rights Council to work objectively to ensure follow-up to the recommendations in the report, despite some parties' attempts to sow doubt about the report's objectivity and importance. The Arab Group insisted that it is necessary to bring to an end the Israeli occupation and that Israel has to respect international law.

Organisation of the Islamic Conference

Pakistan, speaking on behalf of the Organisation of the Islamic Conference, thanked the Mission for its excellent job. The refusal of the Israeli government to allow the Mission access to Gaza is condemnable as it reflects an above the law mentality and is a clear refusal to acknowledge the international community's human rights concerns, he argued. OIC further stated that the root cause of the conflict is Israel's occupation. The report is a valuable contribution to a peace process in the region and the recommendations made in the report need to be implemented. The OIC further wished to remind all Member states of the Human Rights Council of the pledges made to make this body truly impartial and objective on the strive to protect universal human rights. Words need to be transformed into deeds and the OIC wished for a consensus adoption of the report by the Council.

Non-Aligned Movement

Egypt, speaking on behalf of the Non-Align Movement, said that the occupying forces continue to commit war crimes. Heads of states of NAM condemned in the strongest terms Israel's military intervention in Gaza. The NAM further welcomed the report and its recommendations, saying that concrete follow-up is vital to ensure compliance with international law and to ensure credibility of the Council.

European Union

Sweden, speaking on behalf of the European Union, said that the European Union places a lot of importance on accountability and on countering impunity for violations of international law. In the view of the European Union the Mission has produced a serious report that deserves serious consideration and follow-up by the Council. He further wished to ask the Mission some questions about the report; how did the Mission take into account the lack of Israeli input into the investigations? The EU representative further raised the issue that there have been articulated fears that this report can have negative impacts on the peace process in the region, and asked for comments on this by the Mission. Furthermore, the EU wished to know the Mission's views on how the Human Rights Council best could deal with the recommendations in the report, intentionally leaving aside the issue of referring the report to other United Nation bodies.

African Group

Nigeria, speaking on behalf of the African Group, commended the Members of the Mission on producing a comprehensive and balanced report and the transparent and impartial manner of the investigations. The Council should not dilute its efforts or attack Members of the Mission, who dutifully carried out their mandate. They stressed that this opportunity must not be lost by the Council, the Council will be mistaken if it assumes that this report can be treated lightly. The African Group felt that the recommendations of the report are worthy of notice and action and will contribute to peace in the entire region.

United States

The United States was displeased with the grossly disproportionate attention that the Human Rights Council pays to Israel. They further disagreed sharply with many of the findings and recommendations of the report and believed that it was deeply flawed. They said that commitments to international law should not imply a moral equivalence between Israel, a democratic state with the right to self-defense, and Hamas, which responded to Israel's withdrawal from Gaza with attacks on Israeli civilians. The United

States urged the Human Rights Council to discuss the weaknesses of the report, in its commitment to the truth. The United States was deeply concerned with the recommendations that the allegations be referred to the Security Council and possibly the ICC. The United States further said that they take the allegations in the report seriously and called on the Human Rights Council to pass a consensus resolution that encourages Israel and the Palestinian authorities to investigate credible allegations.

NHRIs and NGOs

Hard voices were heard from supporters of both sides also when NGO representatives took the floor, with some speakers seriously criticizing the report and members of the Fact-Finding Mission, and others using the findings of the report as evidence of accusations of “genocide” and “massacres”, in a way that was not supported by the report.

The majority of National Human Rights Institutions and non-governmental organisations however, welcomed the report and urged for the report to be referred to the Security Council and for the recommendations of the report to be implemented. Human Rights Watch acknowledged that the initial mandate of the mission was flawed as it focused exclusively on Israel, but that the working mandate was purposefully expanded and that the final report documented war crimes and possible crimes against humanity by both Israel and Hamas. Human Rights Watch and Amnesty International called for the full endorsement of the report and all its recommendations and its submission to the Secretary-General, the Security Council, the General Assembly and the ICC.

Women’s International League for Peace and Freedom made a statement on the report specifically welcoming the recommendation of the Fact-Finding Mission to give special attention to the situation of women regarding consequences of Operation Cast Lead. WILPF also urged for serious follow-up of all the recommendations and stressed the importance of the involvement of civil society in the Middle East peace process.

Follow-up

The Human Rights Council did not take a decision on the Goldstone report at this session, but deferred it to its March session. Palestinian authorities approved this decision under pressure from the USA and Israel. The decision has spurred serious protests by Palestinians in the Occupied Territories and in the Diaspora. Proposed by the Palestinian authorities and supported by 18 states, the Human Rights Council has now decided to hold a Special Session on the Human Rights situation in the Occupied Palestinian Territories including East Jerusalem on 15 October 2009.

Meanwhile, Libya, the only Arab State on the Security Council, has presented the Goldstone report to the Security Council requesting a special session to consider it. This request was rejected but it contributed to the Security Council moving forward an open debate on the Middle East from the 20 October to the 14 October.