Jerusalem, September 15th, 2009

Israel's Analysis and Comments on the
GAZA FACT FINDING MISSION REPORT
(Communicated by the Foreign Ministry Spokesperson)

General:

- Israel is appalled and disappointed by the Report published on 15 September 2009 by the Gaza Fact Finding Mission. The Report effectively ignores Israel's right of self defense, makes unsubstantiated claims about its intent and challenges Israel's democratic values and rule of law.

- At the same time the Report all but ignores the deliberate strategy of Hamas of operating within and behind the civilian population and turning densely populated areas into an arena of battle. By turning a blind eye to such tactics it effectively rewards them.

- The Report barely disguises its goal of instigating a political campaign against Israel, and in its recommendations seeks to involve the Security Council, the General Assembly the International Criminal Court, the Human Rights Council, and the entire international community in such a campaign.

The Mandate of the Mission:

- The one-sided mandate of the Gaza Fact Finding Mission, and the resolution established it, gave serious reasons for concern both to Israel and to the many states on the Council which refused to support it - including the member states of the European Union, Switzerland, Canada, Korea and Japan.

- It also troubled many distinguished individuals, including former High Commissioner for Human Rights Mary Robinson, who refused invitations to head the Mission and admitted that it was "guided not by human rights but by politics".

The Conduct of the Mission:

- These concerns were exacerbated by the conduct of the Mission itself, including reports in the Palestinian media that, throughout its visits to Gaza, it was continuously accompanied by Hamas officials and its refusal to recuse members of the mission with clear political views on the issues under investigation. One mission member signed a letter to the Sunday Times saying that Israel's actions against Hamas attacks were acts of "aggression not self-defense", prejudging the investigation before it had even begun.

- The unprecedented holding of telecast hearings also gave cause for concern. The fact that all the witnesses were prescreened and selected, and none were asked questions relating to any Palestinian terrorist activity or the location of weaponry and terrorists in civilian areas only supports concerns that they were part of an orchestrated political campaign.

A "non-judicial" document

- Justice Goldstone as Head of the Mission repeatedly insisted that the Mission was not a judicial inquiry and so "could not reach judicial conclusions". On this basis that he justified the inclusion of partisan mission members, admitting that their involvement "would not be appropriate for a judicial inquiry'. The Report however is highly judicial in nature, reaching conclusive judicial determinations of guilt, and including 'detailed legal findings' even in the absence of the sensitive intelligence information which Israel did not feel able to provide. These determinations are made notwithstanding the Report's admission that it does "pretend to reach the standard of proof applicable in criminal trials".

Elements Ignored by the Report:

- The Report all but ignores the deliberate terrorist strategy of operating in the heart of densely populated civilian areas which dictated the arena of battle. Even when the Hamas terrorists mixed among civilians, the Report rejects the notion that there was an intention to put the civilian population at risk.

- Astonishingly, despite the many widely reported instances in the international press of the abuse of civilian facilities by terrorist groups, and the statements of Hamas own leaders praising women

and children who acted as human shields, the Report repeatedly stated that it could find no evidence of such activities. This, even despite its admission that those interviewed were "reluctant to speak about the presence or conduct of hostilities by the Palestinian armed groups".

- The Report also ignores Israel's extensive efforts, even in the midst of fighting, to maintain humanitarian standards. While it does, reluctantly, acknowledge Israel's "significant efforts" to issue warnings before attacks, it does not find any of these efforts to be effective

- While the Report passes judgment against Israel in respect of almost any allegation, it seeks to absolve the Hamas of almost any wrongdoing. The word "terrorist" is almost entirely absent. Soldier Gilad Shalit, now held incommunicado in captivity for over three years, was "captured during an enemy incursion" and the Hamas members that the Mission met with in Gaza are thanked as the "Gaza authorities" for extending their full cooperation and support to the Mission.

- Even the thousands of rocket attacks against Israelis which necessitated the Gaza Operation are given the most cursory treatment, and indeed the Report indirectly blames Israel even for these by terming them "'reprisals".

Rejection of democratic values:

- In a Report which relies so heavily on Israeli human rights organizations and which also petitions on sensitive security issues to Israel's Supreme Court the Report devotes considerable attention to "repression of dissent in Israel". It bases this assertion in large part on the widespread support for the military operation in the Israeli public, assuming that Israel has "created a political climate in which dissent is not tolerated. The notion that the majority of Israelis genuinely supported action to bring years of continuous rocket and missile attacks against Israeli civilians to an end does not appear to have occurred to the members of the Mission.

- The Report is also critical of Israel internal investigations even though these compare favorably to investigations of allegations in military matters in most western countries, and have regularly resulted in criminal investigations and convictions.

Recommendations:

- The Report's recommendations are as one-sided as its findings. It seeks to harness the Human Rights Council, the Security Council the General Assembly, the Office of the High Commissioner of Human Rights and the International Criminal Court and the international community as parts of its hostile political campaign.

- Despite token recommendations in respect of the Palestinian side, all the international pressure is directed solely against Israel.

- The true test of such a Report can only be whether in future conflicts it will have the effect of increasing or decreasing respect for the rule of law. Regrettably a one-sided report of this nature, claiming to represent international law, can only weaken the standing of law in future conflicts. At the same time, it will broadcast a deeply troubling message to terrorist groups wherever they are that the cynical tactics of seeking to exploit civilian suffering for political ends actually pays dividends.