

XXXI. RECOMMENDATIONS

1764. The Mission makes the following recommendations related to:

- (i) Accountability for serious violations of International Humanitarian Law
- (ii) Reparations
- (iii) Serious violations of human rights law
- (iv) The blockade and reconstruction
- (v) The use of weapons and military procedures
- (vi) The protection of human rights organizations and defenders
- (vii) Follow up to the Mission's recommendations

1765. To the Human Rights Council

- The Mission recommends that the United Nations Human Rights Council endorse the recommendations contained in this report, takes appropriate action to implement them as recommended by the Mission and through other means as it may deem appropriate, and continues to review their implementation in future sessions.
- 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 Mission recommends that the United Nations Human Rights Council request the United Nations Secretary-General to bring this report to the attention of the United Nations Security Council under Art. 99 of the Charter of the United Nations so that the Security Council may consider action according to the relevant Mission's recommendations below.
- The Mission further recommends that the United Nations Human Rights Council formally submit this report to the Prosecutor of the International Criminal Court.
- The Mission recommends that the Human Rights Council submits this report to the General Assembly with a request that it should be considered.
- The Mission recommends that the Human Rights Council brings 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 consider review of progress as part of its Universal Periodic Review process.

1766. To the United Nations Security Council

- The Mission recommends:

1. That the Security Council require the Government of Israel, under Article 40 of the Charter of the United Nations:

- (a) 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;
- (b) 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

2. The Mission further recommends that the Security Council 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-months 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.

3. The Mission recommends that upon receipt of the committee's report the Security Council 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, again 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 Statute of the International Criminal Court.

- The Mission recommends:

1. That the Security Council require the independent committee of experts referred to in paragraph 3 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-months 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.

2. The Mission recommends that upon receipt of the committee's report the Security Council 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 in Gaza, 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 Statute of the International Criminal Court.

- The Mission recommends 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.

1767. To the Prosecutor of the International Criminal Court

- With reference to the declaration under article 12 (3) received by the Office of the Prosecutor of the ICC from the Government of Palestine, the Mission considers that accountability for victims and the interests of peace and justice in the region require that the legal determination should be made by the Prosecutor as expeditiously as possible.

1768. To the General Assembly

- The Mission recommends that the General Assembly 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 GA may consider whether additional action within its powers is required in the interests of justice, including under resolution 377 (V) *Uniting for Peace*.
- The Mission recommends that the General Assembly 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 the State of Israel during the December-January military operations and actions in connection with it, and that

the Government of Israel pay the required amounts into such fund. The Mission further recommends that the General Assembly ask the Office of the High Commissioner for Human Rights to provide expert advice on the appropriate modalities to establish the escrow fund.

- The Mission recommends that the General Assembly 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 OPT and to ensure its respect in accordance with art. 1.
- The Mission recommends that the General Assembly 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 recommends that the Government of Israel undertake a moratorium in the use of such weapons in light of the human suffering and damage they have caused in the Gaza Strip.

1769. To Israel

- The Mission recommends that Israel immediately cease the border closures and restrictions of passage through border crossings with the Gaza Strip and allow 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.
- The Mission recommends that Israel 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 allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel.
- 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 avail itself of the expertise of the ICRC, the United Nations Office of the High Commissioner for Human Rights and 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.

- The Mission recommends that Israel allow freedom of movement for Palestinians within the OPT - within the West Bank including East Jerusalem, between the Gaza Strip and the West Bank and between the OPT 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 recommends that Israel forthwith lifts travel bans currently placed on Palestinians by reason of their human rights or political activities.
- The Mission recommends that Israel 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 cease the discriminatory treatment of Palestinian detainees. Family visits for prisoners from Gaza should resume.
- Israel should forthwith cease interference with national political processes in the OPT, and as a first step release all members of the Palestinian Legislative Council currently in detention and allow all members of the PLC to move between Gaza and the West Bank so that the Council may resume functioning
- 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 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, both in terms of 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.
- The Government of Israel should refrain from any action of reprisal against Palestinian and Israeli individuals and organizations that have cooperated with the UN 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 the State of Israel.
- The Mission recommends that Israel reiterates its commitment to respect the inviolability of UN premises and personnel and that it undertakes all appropriate measures to ensure that there is no repetition of violations in the future (ref Convention on Privileges and Immunities of the UN). It further recommends that reparation to the United Nations be provided fully and without further delay by the State of Israel, and that the General Assembly consider this matter.

1770. *To Palestinian armed groups*

- The Mission recommends that Palestinian armed groups 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
- The Mission recommends that Palestinian armed groups who hold Israeli soldier Gilad Shalit in detention 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.

1771. To responsible Palestinian authorities

- The Mission recommends 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 investigation 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.
- The Mission recommends that the Palestinian Authority and the Gaza authorities 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.
- The Mission recommends that the Palestinian Authority and the Gaza authorities continue to enable the free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Independent Commission on Human Rights

1772. To the international community

- The Mission recommends that States Parties to the Geneva Conventions of 1949 start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions of 1949. Where so warranted following investigation, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognised standards of justice.
- International aid providers should step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population.

- In view of their crucial function, the Mission recommends that donor countries/assistance providers 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.
- The Mission recommends that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, ensure that respect for the rule of law, international law and human rights assume a central role in internationally sponsored peace initiatives.
- In view of the allegations and reports about long term environmental damage that may have been created by certain munitions or debris from munitions, the Mission recommends that a programme of environmental monitoring 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 hard metals of all varieties, white phosphorous, tungsten micro-shrapnel and granules and such other chemicals as may be revealed by the investigation.

1773. *To the international community and responsible Palestinian authorities*

- The Mission recommends that appropriate mechanisms be established to ensure that the funds pledged by international donors for reconstruction activities in the Gaza strip are smoothly and efficiently disbursed, and urgently put to use for the benefit of the population of Gaza.
- In view of the consequences of the military operations, the Mission recommends that responsible Palestinian authorities as well as international aid providers pay special attention to the needs of persons with disabilities. In addition, the Mission recommends that medical follow-up 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.

1774. *To the international community, Israel and Palestinian authorities*

- The Mission recommends that Israel and representatives of the Palestinian people, and international actors involved in the peace process, 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.
- The Mission recommends that attention be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security.

1775. To the United Nations Secretary General

- The Mission recommends that the Secretary General develop a policy to integrate human rights in peace initiatives in which the United Nations is involved, especially the Quartet, and request the High Commissioner for Human Rights to provide the expertise required to implement this recommendation.

1776. To the Office of the High Commissioner for Human Rights

- The Mission recommends that the Office of the High Commissioner for Human Rights monitor the situation of persons who have cooperated with the UN 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.
- The Mission recommends the Office of the High Commissioner for Human Rights give attention to the Mission's recommendations in its periodic reporting on the OPT to the Human Rights Council