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**UN Human Rights Council – 12th Special Session:
The Human Rights Situation in the Occupied Palestinian Territory including
East Jerusalem**

**General Debate
Statement by the United States of America**

Geneva, October 15, 2009

Thank you, Mr. President.

Mr. President, though we do not believe that this Special Session constitutes the appropriate forum for such a discussion, the United States will take this opportunity to share our views on the Report of the United Nations Fact Finding Mission on the Gaza Conflict. On September 28, 2009 Assistant Secretary for Human Rights, Democracy and Labor, Michael Posner, offered the U.S. assessment of the Report itself. As he said, the report raises important issues and serious allegations and the United States has serious concerns about many of its conclusions and recommendations which are, in our view, flawed. Our concerns have been outlined in this forum.

Today I will reflect on how we as a Council can move forward constructively on this challenging issue.

Reports on human rights issues offer the possibility of helping to promote accountability and prevent future abuses. Notwithstanding the history of this Report and the flaws in the document itself, we continue to hope that we as a Council can still come together and realize some of that potential.

The United States believes the Council should consider four key elements in shaping its approach:

The first key element is fairness. Fairness must be a hallmark of our approach to this Report, to the conflict it addresses, and indeed to all our work together as a Council. Fairness is the only way that this institution can strengthen its credibility and foster constructive dialogue on the important issues we must together address.

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Fairness means an acknowledgment of Israel's fundamental right to self-defense, a right that is at the core of the international system and of each of our obligations as sovereign nations. Fairness also requires recognition of the civilian casualties that resulted from the Gaza conflict, and the destruction of property and livelihoods. The Report makes clear that the Gaza operation was commenced lawfully after civilians in Israel came under sustained attack by Hamas, in violation of international human rights and humanitarian law. The Report looks at allegations on all sides of the conflict, and this body must do the same.

A second key element is the wider context of negotiations in the region. We stand at an important moment, and must all be mindful of the larger context of ongoing efforts to restart permanent status negotiations that would lead to the creation of a Palestinian state. The resolution of the very difficult and painful issues involved will come not in the press, not in a court, and not even in this chamber. It can come only when the needs of both sides to this conflict are met in two states, where Israelis and Palestinians each live in peace and security.

A third key element of our approach is appreciation of the complex interplay of the principle of self-defense and compliance with the laws of war, including responsibilities for civilian protection. If we as a Council insist on oversimplifying or overlooking the difficult challenges of humanitarian protection, we will fail in our duty. For example, with respect to the Gaza conflict early this year, a question left unaddressed by the Goldstone Report and other human rights reports on the conflict relates to how Israel can effectively defend itself against Hamas's attacks in a manner consistent with international law. The Report affirms the bedrock principles of proportionality and distinction, which exist to help protect civilians from harm during armed conflict. But the report leaves open crucial questions regarding the complications associated with implementing fundamental law of war principles – including proportionality, distinction, and precautions – in the face of deliberate tactics by Hamas which target civilians, and in view of the physical footprint and population density of Gaza. It is not the job of this body to proffer military strategies, and we recognize states' continuing obligations to comply with these principles even in difficult circumstances. Israel is not the only nation-state facing conflicts in which non-state actors launch attacks against the state and its population from civilian areas. Virtually every region of the world has similar

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conflict situations. This is one of the complex issues presented by the Report and is an issue that requires more consideration than this body has given it.

A fourth indispensable element of our approach is accountability. There have been calls for accountability on all sides of this conflict. These calls come not just from political leaders in international organizations and government officials, but from husbands, wives, parents and children who live with the pain of losing innocent loved ones to violence and with the threat of imminent danger to their families. These calls cannot be ignored or deflected. They must be heard, and they deserve a response.

These four principles, a commitment to fairness, an understanding of the wider context of negotiations, an appreciation of the interplay of the right to self-defense, the responsibility for civilian protection and the conduct of hostilities in heavily populated areas, and an emphasis on accountability should guide this Council in our further deliberations on this Report. Undertaking such deliberations takes time; constructive dialogue cannot be carried out in the heat of confrontation or in a rush to a predetermined conclusion. The central responsibility here lies with the parties themselves, each of whom should uphold its obligation to deal credibly with the allegations through domestic processes. We urge this Council and individual Member States to insist that Hamas cease ongoing violations of international humanitarian law. The Palestinian Authority has institutions that can investigate alleged violations in the West Bank, and we urge it to do so.

Israel enjoys the benefit of a strong, credible legal system, democratic institutions and a vibrant civil society that can ensure thorough, transparent investigations and appropriate follow-up. Responsible countries need and deserve the space to work through what processes will be most effective, and this cannot be dictated from the outside. The benchmark should be a determined, objective effort to get to the truth of what happened and why. Where violations are found, those responsible should be held accountable and systems put in place to prevent recurrence. Jurisdictions that carry out such efforts in a diligent way should not face the threat that their efforts will be overrun by external bodies or foreign governments.

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The efforts we describe, in themselves, will not bring an end to the Palestinian Israeli conflict, or satisfy all the calls for justice and accountability. That will require a longer process of peacemaking, one centered in the region and not in Geneva. As a Human Rights Council, we have a choice of whether to advance the protection of human rights through even-handed and serious engagement, or to set it back with politicized debates and unbalanced resolutions. Having made the decision to join this body, we are steadfastly committed to transforming it into a vehicle that advances our shared vision to protect human rights and fundamental freedoms around the world. During this session and in the months to come we hope you will join us in that effort.

Thank you, Mr. President.