

Mr. President,
Distinguished Members of the Human Rights Council,
Honored Representatives of Civil Society Organizations,
Excellencies,
Ladies and Gentlemen,

1. The Report in front of you is the outcome of the work of the Committee of Experts appointed by the UN High Commissioner for Human Rights on 14 June 2010. The Committee's mandate to "monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards" was set out in Human Rights Council resolution 13/9 of 25 March 2010. The three members of the Committee are Judge Mary McGowan Davis, former Justice of the Supreme Court of the State of New York and former federal prosecutor, Mr. Param Cumaraswamy, jurist and former Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, and myself, Christian Tomuschat, professor emeritus at Humboldt University Berlin, former member of the Human Rights Committee and of the International Law Commission and also former rapporteur for the Commission on Human Rights in respect of the situation of human rights in Guatemala.
2. The Committee worked under considerable time constraints. It had less than three months at its disposal. With a view effectively to discharge the mandate entrusted to it, it attempted to collect to the extent possible all materials susceptible of shedding light on the investigations carried out by the Israeli authorities and the Palestinian side in response to the allegations of serious violations of human rights and international humanitarian law contained in the report of the Fact-Finding Mission headed by Judge Goldstone.

3. First of all, the Committee turned to the responsible authorities on both sides in order to obtain first-hand information on the relevant proceedings.
4. As far as the Israeli Government is concerned, the Committee expressed its wish to visit Israel on a number of occasions in talks with diplomatic representatives as well as in writing. The Committee considered it necessary to establish direct contacts with the persons in charge of the investigations and other proceedings. Unfortunately, these requests went unheeded. Consequently, the Committee was unable to access Israel and the Occupied Palestinian Territory of the West Bank.
5. The Palestinian Authority was prepared, from the very outset, to co-operate with the Committee. It provided the Committee with the report of the Independent Investigation Commission appointed to look into the allegations directed against the Palestinian authorities both in the West Bank and in the Gaza Strip.
6. Lastly, the Committee received two reports from the de facto authorities in the Gaza Strip.
7. The first task of the Committee was to identify what standards determine whether an investigation can be considered credible and genuine. For that purpose, the Committee relied primarily on rules of international humanitarian law, taking additionally into account human rights standards laid down in treaty law and further developed especially in the jurisprudence of the Human Rights Committee, the European Court of Human Rights and the Inter-American Court of Human Rights. Drawing on these sources, the Committee concluded that independence, impartiality, thoroughness, promptness, effectiveness and transparency were the relevant criteria.
8. The Committee notes that Israel has indeed taken steps to address some of the many complaints raised in relation to the Gaza conflict. Noteworthy are new procedures for the protection of civilians in urban warfare; the establishment of a "humanitarian affairs officer" for every fighting battalion with responsibility for liaising with the civilian population; the New Order Regulating the Destruction of Private Property for Military Purposes; the establishment of a doctrine and orders

on the use of munitions containing white phosphorous. Additionally, Israel established the Turkel Commission with the mandate to examine the question of whether the current mechanisms for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict conform with Israel's obligations under the rules of international law. Israel further stated that some 150 incidents and complaints had been investigated, of which 47 were criminal investigations resulting in four indictments.

9. However, the Committee remains concerned that not all allegations of serious violations of international humanitarian law may have been investigated. Moreover, for lack of adequate information, the Committee is not in a position to ascertain whether the investigations undertaken fully comport with recognized international standards. Three reports submitted to the United Nations Secretary-General and made available to the Committee contain little substantiation regarding the methods employed and the evidence relied upon by the investigators. The proceedings conducted in Israel are marred by a fundamental lack of transparency. Generally, the Palestinians feel that they have not been included in a joint effort to establish the truth.
10. The impartiality of the investigations appears to be affected by the dual role played by the Military Advocate-General both as advisor of the Government, who was involved in planning the strategy of the Gaza operation, and as the organ responsible for referring relevant cases from the Gaza operation to criminal investigation. The Committee sees here a clear functional inconsistency.
11. The Committee is not able to conclude that all allegations of serious violations of international human rights law have been investigated. In particular, it had no information on investigations in respect of Israel's actions in the West Bank at the time of the military conflict. It also appears that Israel has refrained from conducting a general review of the military doctrine regarding legitimate military targets as opposed to civilian objects. The Fact-Finding Mission rejected the Israeli viewpoint that the entire governmental infrastructure in the Gaza Strip, including the Legislative Council building, was a legitimate target.
12. Lastly, the Committee is concerned that apparently Israel has abstained from conducting investigations into decisions made at the highest levels about the design and implementation of the Gaza operations.

13. The Palestinian Authority established an Independent Investigation Commission, composed of Palestinian lawyers, which carried out a detailed inquiry into the allegations addressed to the Palestinian side. The Commission, however, was unable to access the Gaza Strip. With this reservation, the Commission has laid the groundwork for initiating proceedings against the perpetrators and other measures suited to provide redress to the victims.
14. The de facto authorities in Gaza established two committees of inquiry. The reports of these two committees focus primarily on allegations aimed at Israel. Other information on remedial measures taken is not substantiated.
15. The main conclusions of the Committee have already been submitted to you.
16. With regard to Israel, the Committee regrets a deliberate refusal to cooperate. Consequently, the Committee lacked a sufficiently broad and reliable basis of information for the discharge of its mandate. On the one hand, Israel has a well organized judicial system with appropriate remedies to secure redress for unlawful State action. However, the Committee was not in a position to ascertain that this system complies with the appropriate standards of investigation with regard to the Palestinian victims of the Gaza conflict and is seriously concerned that some allegations have not been at all investigated.
17. As far as the Palestinian Authority is concerned, the Committee appreciates the way in which the investigation into the violations accounted in the report of the Fact-Finding Mission was conducted by an independent commission. However, actual steps would have to be undertaken with a view to implementing the results of the investigation, in particular by commencing criminal prosecution against the alleged perpetrators where appropriate.
18. Unfortunately, the two reports which the Committee has received from the de facto authorities in Gaza do not indicate that a serious investigation into the violations alleged in the report of the Fact-Finding Mission took place.
19. The Committee views its Report as a call to both sides strictly to abide by the rule of law. Under no circumstances can the norms of international humanitarian law and human rights law be departed from. Credible and genuine investigations are an indispensable first step in the process of restoring confidence in the law. In this respect, transparency is a primary requirement.

20. The Committee hopes and trusts that both sides will heed the findings of the Report of this Committee in their pending and forthcoming dealings with the offences that were committed during the Gaza conflict.

