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**Human rights situation in Palestine and other
occupied Arab territories**

Progress report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolution 16/32*

Summary

The present report provides information on the status of implementation of Human Rights Council resolution 16/32, which concerns follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict.

* Late submission.

I. Background

1. The Human Rights Council, in paragraph 11 of resolution 16/32, requested the High Commissioner for Human Rights to present a progress report on the implementation of the same resolution. The present report is submitted pursuant to this request. In order to gather information for the present report, the Office of the High Commissioner for Human Rights sent notes verbales to the Permanent Mission of Israel to the United Nations Office and other international organizations in Geneva; the Permanent Observer Mission of Palestine to the United Nations Office and other international organizations in Geneva; and the Permanent Mission of Switzerland to the United Nations Office and other international organizations in Geneva. On 8 July 2011 a reply was received from the Government of Switzerland. The Government of Switzerland's reply is reflected in paragraph 7 of the present report.

II. Implementation of Human Rights Council resolution 16/32

2. In paragraph 2 of resolution 16/32, the Human Rights Council took note of the reports of the Committee of independent experts in international humanitarian and human rights law to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in light of General Assembly resolution 64/254, and called for the implementation of their conclusions.

3. As of the submission of this report, the High Commissioner is not aware of any action taken during the period under consideration in response to paragraph 2 of resolution 16/32.

4. In paragraph 3 of resolution 16/32, the Human Rights Council reiterated its call upon all concerned parties, including United Nations bodies, to ensure the implementation of the recommendations contained in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48), in accordance with their respective mandates.

5. In response to paragraph 10 of resolution 16/32, the status of implementation of the recommendations contained in the report of the Fact-Finding Mission is comprehensively addressed in the report of the Secretary-General to the eighteenth session of the Council on the progress made in the implementation of the recommendations of the Fact-Finding Mission by all concerned parties, including United Nations bodies, in accordance with paragraph 3 of section B of Human Rights Council resolution S-12/1 (A/HRC/18/49).

6. In paragraph 5 of resolution 16/32, the Human Rights Council welcomed the efforts made by the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to reconvene, as soon as possible, a conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure respect for it in accordance with common article 1, bearing in mind the statement adopted on 15 July 1999 as well as the reconvening of the conference and the declaration adopted on 5 December 2001, and recommended that the Government of Switzerland continue to pursue its efforts with the aim of resuming the above-mentioned conference before September 2011.

7. In its reply to a note verbale sent by the Office of the High Commissioner for Human Rights, the Government of Switzerland provided an overview of its efforts undertaken, in line with General Assembly resolution 64/10 and Human Rights Council

resolutions 13/9 and 16/32, in relation to the potential convening of a conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure respect for the Convention in accordance with common article 1. The Government of Switzerland noted that an initial round of consultations was conducted in December 2009, and that the participants in and results of these initial consultations were summarized in an annex to the report of the Secretary-General (A/64/651) of 4 February 2010. It further noted that a second round of consultations was conducted in New York, Washington, D.C., Brussels, and Geneva between April and July 2010, and that this second round of consultations was reported on in an annex to the report of the Secretary-General (A/64/890) of 11 August 2010. According to the Government of Switzerland, in early 2011 it received a request from the Non-Aligned Movement to reconvene the informal working group that had been convened in the summer of 2010, with a view toward again discussing the possibility of convening a conference. The Government of Switzerland therefore reconvened the informal working group on 1 February 2011 in Geneva, the composition of the informal working group on this date being established in line with criteria used for the summer 2010 informal working group and consultations carried out prior to the conferences of the High Contracting Parties in 1999 and 2001. The Government of Switzerland reports that the 1 February 2011 informal working group confirmed the lack of consensus among participants in regard to the desirability of convening such a conference. The three previously declared positions again emerged: namely, High Contracting Parties which support the convening of a conference; High Contracting Parties which oppose the convening of a conference on principle; and High Contracting Parties which are of the view that the time is not right to convene a conference. A further round of consultations, convened by the Government of Switzerland in April 2011, reconfirmed these positions. The Government of Switzerland states that it has drawn the following conclusions, in its role as a facilitator of this process. Following more than a year of consultations there is no cross-regional critical mass in support of the convening of a conference of High Contracting Parties, or a similar meeting. It will continue to follow the situation closely and it remains at the full disposal of High Contracting Parties and other relevant actors.

8. Paragraph 6 of resolution 16/32 called upon the High Commissioner to follow up on the determination of the appropriate modalities for the establishment of an escrow fund for the provision of reparations to Palestinians who suffered loss and damage as a result of unlawful acts attributable to the State of Israel during the military operations conducted from December 2008 to January 2009, also taking into consideration Israelis who suffered loss and damage as a result of unlawful acts attributable to the Palestinian side.

9. In an addendum (A/HRC/15/52/Add.1) to the Report of the United Nations High Commissioner for Human Rights on follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, the High Commissioner indicated to the Human Rights Council, pursuant to advice received from the Office of Legal Affairs, a number of decisions that would need to be taken by a competent organ of the United Nations (for example the General Assembly) if the decision were to be made to follow the relevant recommendation in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict. These would include (a) a decision to establish the escrow fund; (b) a decision on the source(s) of funding for the fund; (c) a decision to establish a body to administer the fund; (d) a decision on the extent to which the body would rely on the investigations carried out by the Government of Israel and the Palestinian authorities in order to determine the factual basis of a claim for compensation from the fund; and (e) a decision to establish a secretariat of the body administering the fund. The High Commissioner also informed the Council of a set of ancillary decisions, identified by the Office of Legal Affairs, that would also need to be taken, including decisions on the identification of persons eligible to receive compensation

from the fund; the particular types of loss for which compensation might be paid; the process for the submission of claims for compensation; a timetable for the submission of claims; and a target date for the completion of claims processing. As of the submission of this report, no competent organ of the United Nations has made any decisions with respect to the relevant recommendation of the Fact-Finding Mission.

10. The Human Rights Council, in paragraph 7 of resolution 16/32, reiterated its call to the General Assembly to promote an urgent discussion on the future legality of the use of certain munitions, as referred to in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, drawing on, *inter alia*, the expertise of the International Committee of the Red Cross.

11. As of the submission of this report, the General Assembly has not acted on the recommendation contained in paragraph 7 of resolution 16/32.

12. In paragraph 8 of resolution 16/32, the Human Rights Council recommended that the General Assembly reconsider the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict at its sixty-sixth session, and urged the Assembly to submit that report to the Security Council for its consideration and appropriate action, including consideration of referral of the situation in the Occupied Palestinian Territory to the prosecutor of the International Criminal Court, pursuant to article 13 (b) of the Rome Statute.

13. As of the submission of this report, the sixty-sixth session of the General Assembly has not yet been convened. Thus, no action has been taken yet in response to paragraph 8 of resolution 16/32.

14. The Human Rights Council also recommended, in paragraph 9 of resolution 16/32, that the General Assembly remain apprised of the matter until it is satisfied that appropriate action has been taken at the domestic or international level to ensure justice for victims and accountability for perpetrators, and also remain ready to consider whether additional action within its powers is required in the interests of justice.

15. As of the submission of this report, the General Assembly has not acted on the recommendation contained in paragraph 9 of resolution 16/32.

16. The Human Rights Council, in paragraph 10 of resolution 16/32, requested the Secretary-General to present a comprehensive report on the progress made in the implementation of the recommendations of the Fact-Finding Mission by all concerned parties, including United Nations bodies, in accordance with paragraph 3 of section B of resolution S-12/1, to the Council at its eighteenth session.

18. The Secretary-General has submitted a report to the Council's eighteenth session in pursuance of this request, as noted in paragraph 5 above.
