

U.S. Response to the Report of the United Nations Fact-Finding Mission on the Gaza Conflict

12th Session of the Human Rights Council

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As prepared for Delivery

Thank you, Mr. President.

I appreciate the opportunity to address the Council with respect to the report of the United Nations Fact-Finding Mission on the Gaza Conflict. This is my first appearance before the Human Rights Council representing the United States as the new Assistant Secretary of State for Democracy, Human Rights, and Labor. I want to set my comments about this report in a broader context. Earlier this year President Obama expressed his deep concern over the loss of life and humanitarian suffering in both Israel and Gaza. He has also made clear his abiding commitment to comprehensive peace in the Middle East, in which two states, Israel and Palestine, live side by side in peace and security.

We have approached this report applying broad principles. First, we are ready to engage in the discussion of this report and the broader issues relating to Israel and the Palestinians in a fair and honest way. Although we believe that the document is deeply flawed and disagree sharply with its methodology and many of its recommendations, including their extraordinarily broad scope, we recognize Justice Goldstone's distinguished record of public service in his own country, South Africa, and in the larger global efforts to promote justice – in the former Yugoslavia, in Rwanda, and elsewhere.

In engaging in discussions over this report, we must step back and take issue with the grossly disproportionate attention the Council pays to one country, Israel. When the United States decided to seek a seat on the Council, we stated our clear intention to address this lack of balance in the Council's proceedings. We urge our fellow members to join us in firmly rejecting this double standard. This is a high priority for us, one which we believe needs to be addressed now. Israel is the only country that has its own agenda item at this Council. In the past 5 years, the Council and its predecessor organization, the UN Commission on Human Rights, have commissioned more than 20 reports on Israel, far more than any other country in the world. Since the Council was created in 2006, it has passed 20 resolutions on Israel, more than the number of resolutions for all 191 other UN members combined. The Council also has held 11 special sessions, 5 focused exclusively on Israel. This is unfair, and it prevents the Council from devoting adequate time and attention to many other situations around the world that deserve our attention. We hope that Council members will join us in approaching the important work of this Council in a new, constructive spirit that does not seek to vilify any particular UN member nation.

Second, we are guided by our commitment to the universal application of international law, including humanitarian law and human rights law, in assessing the findings and recommendations of this report, but that cannot be understood to imply a moral equivalence between Israel, a democratic state with the right of self-defense, and the terrorist group Hamas, that responded to Israel's pull-out of Gaza by terrorizing civilians in southern Israel. The report includes a number of very serious allegations charging Israel and the Palestinians with violations of human rights and humanitarian law. We take these allegations seriously. We are confident that Israel, as a democracy with a well-established commitment to rule of law, has the institutions and ability to carry out robust investigations into these allegations. We note that Israel has stated publicly it has already investigated at least 100 complaints related to the Gaza conflict, including about some incidents mentioned in the report, and is currently pursuing action in 23 individual cases. The findings from each of its investigations is subject to multiple

independent layers of review. We encourage Israel to utilize appropriate domestic review procedures and meaningful accountability mechanisms to investigate and address all credible allegations of misconduct or violations of international law. Hamas, a terrorist group that has seized control of a territory, has neither democratic structures, nor an independent judiciary, nor willingness to examine its own violations of international humanitarian law and human rights law. Nevertheless, this body should certainly demand from Hamas that it do so, as well as demand an end to Hamas' deliberate targeting of civilians and its use of its own population as human shields. This body also should ask the Palestinian Authority to carry out its own investigation into Hamas' violations of international law.

Third, a genuine commitment to the truth should compel this body to discuss the weaknesses of the report. Those weaknesses will appear clearer to those who actually have read the full report and understood its implications. The report makes extraordinarily negative inferences about the intentions of Israeli military commanders, senior political leaders, and the entire Israeli criminal justice system on the basis of a limited factual record and from those inferences draws condemnatory conclusions of law, treating accusations and inferences as fact. One example is the report's call for UNGA to establish an escrow account to which only Palestinians could make compensation claims and which only Israel is required to fund. The report further calls on Israel to undertake a moratorium on the use of certain munitions; it makes no such demand of Hamas with regard to its use of indiscriminate rockets. These unbalanced recommendations taint many of the report's suggestions for international action.

Another significant problem with the report is its failure to deal adequately with the asymmetrical nature of this conflict or assign appropriate responsibility to Hamas for its decision to base itself and its military operations in heavily civilian-populated urban areas. The conflict in Gaza is emblematic of a new kind of conflict in our world, where some of those engaged in combat use civilian spaces – schools, hospitals and religious institutions – to store weapons and as staging grounds for rocket attacks and armed combat. National militaries engaged in

asymmetrical warfare must remain bound by humanitarian law, but it is a stark and tragic reality that terrorists systematically ignore these laws. Actions by terrorist groups that have the effect of employing civilians as human shields put enormous pressures on militaries that are trying to protect civilians and their own soldiers, an issue faced by many militaries today. Although the Goldstone report deals briefly with these issues, its findings of fact and law are tentative and equivocating.

We also have very serious concerns about the recommendations spelled out in this report, especially that these allegations be taken up by the UN Security Council and then possibly referred to the International Criminal Court. The role of the Human Rights Council would be dramatically different if this approach were to be applied in every conflict situation around the world where there are alleged violations of human rights or humanitarian law.

We urge members of this Council to commit with us to pass a consensus resolution that encourages Israel to investigate and address allegations in the Report thoroughly through credible domestic processes. It should also call on the Palestinians to launch credible investigations to address allegations of Hamas abuses and demand that Hamas stop its clear violations. If undertaken properly and fairly, these reviews can serve as important confidence building measures that will support our larger, essential objective, which is our shared quest for a just and lasting peace in the Middle East.

Thank you.