

WAR CRIMES IN GAZA

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The lack of accountability for war crimes and possible crimes against humanity has reached a crisis point," the head of the United Nations Fact-Finding Mission on the Gaza Conflict, Justice Richard Goldstone of South Africa, told the United Nations Human Rights Council on 29 September.

"Now is the time for action. A culture of impunity in the region has existed for too long," said Justice Goldstone, who headed a four-member Mission to investigate all violations of international human rights and humanitarian law that might have been committed in the context of the Israeli military operation conducted in Gaza during the period from 27 December 2008 to 18 January 2009.

The "ongoing lack of justice is undermining any hope for a successful peace process and reinforcing an environment that fosters violence. Time and again, experience has taught us that overlooking justice only leads to increased conflict and violence," he said.

Justice Goldstone's remarks came during his presentation of the report of the Fact-Finding Mission to the Human Rights Council.

The other members of the Fact-Finding Mission included Professor Christine Chinkin of the London School of Economics and Political Science, Hina Jilani, Advocate of the Supreme Court of Pakistan, and Colonel Desmond Travers, former officer in Ireland's Defence Forces.

The report of the Fact-Finding Mission found that there was evidence indicating serious violations by Israel of international human rights and humanitarian law during the Gaza conflict. Israel had committed actions amounting to war crimes and possibly crimes against humanity, it said.

The report, first released on 15 September, also found that there was evidence that Palestinian armed groups committed war crimes, as well as possibly crimes against humanity, in their repeated launching of rockets and mortars into Southern Israel.

The 574-page report, which contained detailed analysis of 36 specific incidents in Gaza as well as a number of others in the West Bank and Israel, made a number of recommendations, chief among these being that the Human Rights Council request the UN Secretary-General to bring the report to the attention of the UN Security Council so that the Security Council may consider action according to the relevant recommendations of the Mission.

It also recommended that the Security Council require Israel to report to it, within six months, on investigations and prosecutions it should carry out with regard to the violations identified in the report.

It further recommended that the Security Council set up a body of independent experts to report to it on the progress of the Israeli investigations and prosecutions. If the experts' reports do not indicate within six months that good faith, independent proceedings are taking place, the Security Council should refer the situation in Gaza to the Prosecutor of the International Criminal Court.

The report also recommended that the same independent expert body report to the Security Council on proceedings undertaken by the relevant Gaza authorities with regard to crimes committed by the Palestinian side, and that if

within six months there are no good faith independent proceedings conforming to the international standards in place, the Council should refer the situation to the ICC Prosecutor.

"The Government of Israel has a duty to protect its citizens," Justice Goldstone told the Human Rights Council. "That in no way justifies a policy of collective punishment of a people under effective occupation, destroying their means to live a dignified life and the trauma caused by the kind of military intervention the Israeli Government called Operation Cast Lead."

"This contributes to a situation where young people grow up in a culture of hatred and violence, with little hope for change in the future," he added.

He called on the Council and the international community as a whole to take up the Mission's recommendations.

In a statement at the Human Rights Council in response to the report of the Fact-Finding Mission, US Assistant Secretary of State for Democracy, Human Rights and Labour, Michael Posner, said that the document was "deeply flawed". He further said that the US disagreed sharply with the document's methodology and many of its recommendations, including their extraordinarily broad scope.

The "unbalanced recommendations taint many of the report's suggestions for international action," he told the Human Rights Council.

Pakistan, on behalf of the Organization of the Islamic Conference, welcomed the fact-finding mission and thanked the mission for presenting an objective, impartial and most comprehensive account of violations of international human rights law and international humanitarian law throughout the Occupied Palestinian Territory including East Jerusalem.

Egypt, speaking on behalf of the Non-Aligned Movement, also welcomed the report. It told the Human Rights Council that serious consideration of the report was of the utmost importance to ensure the credibility of the Council through taking concrete follow-up steps aimed at holding accountable the perpetrators of such crimes, and bringing an end to the persistent situation of impunity and defiance of the law.

Tunisia, on behalf of the Arab Group, supported and commended the report. It was necessary for the Human Rights Council to work to protect all human rights and for it to ensure follow-up to the recommendations in the report, it said.

Nigeria, on behalf of the African Group, welcomed the report, saying that it was comprehensive and balanced.

Human Rights Watch, in its press release, said that the failure of the US and European Union governments to endorse the report of the Gaza fact-finding mission sends a message that serious laws-of-war violations will be treated with kid gloves when committed by an ally.

The US-based human rights group said that the report reflects a sober, careful assessment of the violations committed by both sides in the conflict.

According to Human Rights Watch, the statement by Sweden on behalf of the European Union at the Human Rights Council recognized the seriousness of the report but failed to endorse its conclusions or recommendations. EU countries on the Council including the United Kingdom, France and Germany remained silent about the report.

"The US effort to dismiss the Goldstone report was downright shameful for an administration that claims to promote the rule of law and accountability for war crimes," said Juliette de Rivero, Geneva director at Human Rights Watch.

"It is also deeply disappointing that key EU governments did not seize this valuable opportunity to demand justice for victims on both sides of the conflict. The report's detailed findings and its careful recommendations deserve support, not dismissal and silence," she added.

Meanwhile, UN High Commissioner for Human Rights, Ms Navanethem Pi Hay, recommended that all allegations of breaches of international humanitarian law and human rights violations during the Gaza military operations and their aftermath -whether through attacks on civilians and civilian objects in Gaza or indiscriminate rocket attacks into Israel - be thoroughly investigated by credible, independent and transparent accountability mechanisms, respectful of international standards of due process.

Equally crucial is upholding the right of victims to reparation, she said in her first periodic report to the Council on the grave violations of human rights in the Occupied Palestinian Territories, particularly due to the recent Israeli military attacks against the Occupied Gaza Strip.

The recommendations of Justice Goldstone's fact-finding mission should be followed up by the Council in order to fulfil its responsibility to promote universal respect for the protection of all human rights and fundamental freedoms for all. The interest of all victims and respect for international law must be the central focus of the Council's action, she said.

"This body's impartiality and an even-handed approach on the part of the international community as a whole, are indispensable to help prevent future human rights violations and to establish solid bases for peace and security," the High Commissioner stressed. □□□

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