



# SECURITY COUNCIL REPORT

# UPDATE REPORT



12 October 2009 No. 1

## ISRAEL/PALESTINE

### Expected Council Action

The Security Council is set to hold an open debate on the Middle East on 14 October. Under-Secretary-General for Political Affairs B. Lynn Pascoe is expected to brief the Council and the Palestinian Minister of Foreign Affairs and the Secretary-General of the Arab League are likely to participate. No outcome is expected.

The Middle East open debate was originally scheduled for 20 October in the context of the regular monthly briefing on the region that the Council has been receiving since 2002. Moving it forward on the programme of work was decided after closed consultations of the Council on 7 October. The change of date appears to be a compromise in lieu of a separate open debate requested by Libya to discuss the report of the UN Fact-Finding Mission on the Gaza Conflict, or the Goldstone report.

### Background on the Goldstone Report

The Human Rights Council in January 2009 adopted a resolution mandating an investigation into violations related to the Gaza conflict. The original mandate for this mission focused only on Israel but that approach was amended by the then president of the Human Rights Council, Ambassador Martin Uhomoihi of Nigeria, who broadened the inquiry to look at "all human rights and humanitarian law violations that may have been committed in the context of the conflict that took place between 27 December 2008 and 18 January 2009." The Human Rights Council acquiesced to this change which was announced in its plenary sessions of 23 March 2009 and 15 June 2009.

In April 2009 the president of the Human Rights Council established the investigative team, appointing Justice Richard J. Goldstone, a former judge on South Africa's Constitutional Court and chair of that country's Commission of Inquiry Regarding Public Violence and Intimidation. (Goldstone accepted this role only after the original mandate was revised.) Among other things, Goldstone is the former chief prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, he served on the independent committee to investigate the Iraqi oil-for-food programme, he chaired the International Independent Inquiry on Kosovo and was a governor of Hebrew University in Jerusalem.

In May 2009 the Mission established its programme of work and set out its methodology which called for submissions of relevant information, field visits and public hearings. The hearings, held in Gaza and Geneva, provided an opportunity for testimony from both sides of the conflict, something that was particularly important for the Israeli victims and witnesses since the team was barred by Israel from entering the country.

The 575 page report was released on 15 September and included the following recommendations:

- to the Human Rights Council:
  - endorse the report's recommendations;
  - request the Secretary-General to bring the report to the Security Council's attention;
  - submit the report to the International Criminal Court (ICC);
  - submit the report to the General Assembly with a request for it to be considered; and
  - bring the recommendations to the attention of relevant UN human rights treaty bodies and consider the review of progress on the recommendations as part of the Universal Periodic Review process.
- to the Security Council:
  - require Israel to launch, within three months, their own independent investigations and inform the Security Council within a further three month period of actions taken;
  - establish an independent committee to monitor and report back to the Security Council at the end of the six month period on:
    - Israel's domestic proceedings; and
    - any proceedings undertaken by relevant authorities in Gaza;
  - if the Security Council, upon receipt of the independent committee's report, deems that there is an absence of good faith investigations then the Security Council should refer the situation in Gaza to the ICC; and
  - regard any lack of cooperation by Israel or Gaza authorities as an obstruction of the committee's work.
- to the ICC:
  - require an expeditious legal determination on Palestine's declaration to the ICC (the declaration was submitted in January 2009 accepting ICC jurisdiction in the Palestinian territories; a key element to the determination will be whether or not Palestine qualifies as a state).
- to the General Assembly:
  - request the Security Council to report on measures it has taken to ensure accountability;
  - establish an escrow account to pay compensation to Palestinians, to which Israel should pay required amounts;
  - ask Switzerland to convene a conference on measures to enforce the Geneva Conventions in the Occupied Palestinian Territories; and
  - promote urgent discussions on the legality of the use of certain munitions, in particular white phosphorous, flechettes and heavy metal such as tungsten (the report recommends that Israel undertake a moratorium on the use of such weapons).
- to the Secretary-General:
  - integrate human rights into peace initiatives, in particular the Quartet.
- to the Office of the High Commissioner for Human Rights:
  - monitor the situation of those who have cooperated with the mission and keep the Human Rights Council updated; and
  - give attention to the recommendations in its reporting to the Human Rights Council on the Occupied Palestinian Territories.

The report also made recommendations to Israel, Palestinian armed groups, Palestinian authorities and the international community.

## **Key Recent Developments**

On 22 September Palestinian President Mahmoud Abbas attended the tri-lateral meeting with US President Barack Obama and Israeli Prime Minister Benjamin Netanyahu without receiving any Israeli concession for a settlement freeze. (Previous to that meeting, held on the sidelines of the General Assembly, Palestinian negotiators had indicated that a settlement freeze would be requisite for Abbas to participate.)

The Goldstone report was formally presented to the Human Rights Council on 29 September but a decision on a Palestinian draft resolution endorsing the report's recommendations in full—tabled by Pakistan (on behalf of the Organisation of the Islamic Conference), Tunisia (on behalf of the Arab Group), Nigeria (on behalf of the African Group) and Egypt (on behalf of the Non-Aligned Movement)—was deferred to its next session in March 2010.

Media reports indicate that President Abbas met with significant pressure to request the sponsors of the draft resolution to defer action in order to give space to the American initiative to restart substantive peace negotiations between Israel and the Palestinians.

In the days following the deferred action in the Human Rights Council there were demonstrations in Ramallah protesting the Geneva decision and calls for Abbas to resign.

Egyptian-brokered talks for a Fatah-Hamas reconciliation are also now likely in jeopardy. Ismail Haniya, the head of Hamas in Gaza, has criticised the delay in endorsing the Goldstone report's recommendations and has asked Egypt to postpone the meeting scheduled for 24-26 October where an intra-Palestinian agreement was to be signed. This agreement is crucial for the anticipated elections in the first half of 2010.

Observers note that these events have contributed to a crisis of confidence in the leadership of Abbas and may be behind the abrupt change in course the Palestinians took in pressing for the Goldstone report to be brought to the Security Council's attention just days after action had been deferred in the Human Rights Council.

The recent clashes in Jerusalem between Palestinians and Israeli police at the Al-Aqsa mosque have contributed to the unease.

According to media reports, on 11 October the Israeli Foreign Ministry convened an emergency meeting after John Sawers, the UK ambassador to the UN, said on Israel's Army Radio that he supported the Goldstone report and encouraged Israel and the Palestinians to investigate its conclusions.

There has also been talk in the last few days that the Palestinians may be considering trying to revive the deferred resolution at the Human Rights Council by seeking a special session that would look at this rise in tension as well as the Goldstone report.

## **Key Issues**

Ostensibly, the open debate will be held under the standard monthly agenda item, "Middle East, including the question of Palestine" and will not have any focus on the Goldstone report. However, it is quite likely that participants, especially the non-Council members, will put significant emphasis on the report and its recommendations. Council members may briefly touch upon the report but most members are unlikely to bring up the recommendations in their comments.

In comments to the media after the Council's 7 October consultations, Libya stated that it was not pushing for any Council outcome at the open debate on Wednesday. The goal was an open discussion to keep the report's momentum alive.

However, the Sudanese ambassador, in his capacity as chair of the Arab Group, said that the report should be "operationalised".

The Palestinian permanent observer said there was an active desire for the recommendations to be implemented starting with domestic investigations supervised by an independent body appointed by the Security Council with a reporting mechanism.

The key issue for the Council is to determine what its next steps might be, if any, regarding any possible future consideration of the Goldstone report and its recommendations in the Security Council context.

Some believe that the proper body to take up the report first is the one that mandated it and that the Security Council should not interfere with the work of the Human Rights Council. However, the report's recommendations do not indicate that there needs to be any sequential consideration by the various actors to which it made recommendations. The opposite seems to be the case. In terms of timing, the recommendations seem to propose that all actors work on parallel tracks to quell impunity and ensure accountability by establishing as soon as possible a credible inquiry, investigation and prosecution of all violations cited by the report.

### **Options**

No Council outcome is expected from the 14 October open debate. But to keep momentum alive the Council could:

- invite the High Commissioner for Human Rights to brief the Council at the 14 October debate;
- convene a private meeting of the Council to be briefed by Justice Goldstone on the report and the work of the fact-finding mission; and
- organise an Arria-formula meeting, inviting Justice Goldstone to present his report to Council members in an informal setting.

In addition, members are likely to be closely following related developments in the next six months.

- If the situation stabilises and the initiative for renewed Israeli/Palestinian negotiations materialises in a substantial way then a Council press release or presidential statement supporting the process could be considered as a means of sending a positive signal.
- If the situation continues to deteriorate a political message signaling Council involvement, possibly by taking up the Goldstone report in a more formal format, to restore confidence in the current peace initiative and the Palestinian leadership may be an option, though at this stage it appears highly unlikely.

### **Council Dynamics**

The majority of Council members seem to feel that the appropriate body for consideration of the Goldstone Report is the Human Rights Council. Currently there does not seem to be willingness in the Security Council to take up the report's recommendations.

However, some Council members feel that, though the time is not now ripe for Council consideration of the report and its recommendations, it nevertheless should not be dismissed but rather followed closely.

Most Council members at this juncture link any future Council action on the issue of Israel/Palestine to a significant change in the current situation, either an improvement or sharp deterioration.

## UN Documents

### Security Council Letters

- S/2009/524 (8 October 2009) was a letter from Syria, as chair of the Organisation of the Islamic Conference Group, supporting Libya's request for a meeting on the Goldstone report.
- S/2009/519 (7 October 2009) was a letter from Egypt, as chair of the Non-Aligned Movement, supporting Libya's request for a meeting on the Goldstone report.
- S/2009/510 (6 October 2009) was a letter from Libya requesting a meeting of the Security Council to discuss the Goldstone report.

### Security Council Meeting Record

- S/PV.4474 (21 February 2002) stated "the members of the Security Council reached agreement on holding periodic consultations as to the situation in the Middle East, based upon information and points of view afforded...by the Secretariat."

### Human Rights Council

- A/HRC/12/L.12 (25 September 2009) was the deferred draft resolution of the Human Rights Council on the Goldstone report.
- A/HRC/12/48 (15 September 2009) was the report of the UN Fact-Finding Mission on the Gaza Conflict, or the Goldstone report.
- A/HRC/S-9/L.1 (12 January 2009) was the resolution adopted at the ninth special session which mandated the UN Fact-Finding Mission on the Gaza Conflict.

## Useful Additional Resources

Website of the UN Fact-Finding Mission on the Gaza Conflict

<http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm>

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