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Agenda item 1

Organizational and procedural matters

Report of the United Nations High Commissioner for Human Rights on the status of implementation of the conclusions contained in the report of the independent international fact-finding mission on the incident of the humanitarian flotilla

Summary

The present report provides information on the status of the implementation of Human Rights Council resolution 17/10, in which the Council called upon concerned parties to ensure the implementation of the conclusions contained in the report of the independent international fact-finding mission on the incident of the humanitarian flotilla (A/HRC/15/21).

1. The present report is submitted pursuant to Human Rights Council resolution 17/10, in which the Council called upon concerned parties to ensure the immediate implementation of the conclusions contained in the report of the independent international fact-finding mission (A/HRC/15/21), and requested the United Nations High Commissioner for Human Rights to submit a concluding report on the status of the implementation of paragraph 3 of resolution 17/10 to the Council at its twentieth session.
2. Pursuant to the request of the Human Rights Council, on 4 January 2012, the Office of the High Commissioner (OHCHR) addressed notes verbales to the Permanent Missions of Israel and Turkey, as well as to the Permanent Observer Mission of Palestine, in which it requested information on any steps that their respective Governments had taken, envisaged taking or were otherwise aware of concerning the status of implementation of paragraph 3 of resolution 17/10.
3. In a note dated 21 February 2012 addressed to OHCHR, the Government of Turkey reiterated the main conclusions of the report of the fact-finding mission, recalled that the conclusions were directed at Israel and also that the conclusions had been endorsed by Human Rights Council in its resolution 15/1. Turkey stressed that it had fully cooperated with the fact-finding mission, and highlighted the independent and legal nature of its work and report.
4. Turkey also stressed its full cooperation with the panel of inquiry established by the Secretary-General, in particular by providing substantial material on both the legal and factual aspects of the incident. With regard to the report prepared by the panel of inquiry and submitted to the Secretary-General on 2 September 2011, the Government of Turkey highlighted the conclusion that there had been excessive and unreasonable use of force, leading to nine deaths and serious injuries, and that no satisfactory explanation had been provided by Israel for these deaths.
5. Turkey furthermore pointed out that the forensic evidence showing that the deceased had been shot multiple times, including in the back and at close range, had not been accounted for in the material presented by Israel. In addition, Turkey recalled the panel's conclusions regarding the significant mistreatment of passengers by the Israeli authorities after the takeover of the vessels, including physical mistreatment, harassment, intimidation, unjustified confiscation of belongings and the denial of timely consular assistance.
6. In its note, Turkey expressed its disagreement with the chairperson and co-chairperson of the panel on the question of the legality of the blockade imposed on Gaza. Recalling that the Turkish member of the panel had not signed the report, Turkey referred to General Assembly resolution 64/10 and Human Rights Council resolutions 14/1 and 15/21, in which the unlawfulness of the Gaza blockade had been affirmed. Turkey also cited the statement made by the President of the Security Council (S/PRST/2010/9) condemning the use of force by Israel during the flotilla incident, stressed the need for the sustained flow of goods and humanitarian assistance, and reiterated the concern of the Security Council at the humanitarian situation in Gaza.
7. The Government of Turkey added that the assessment by the panel chairperson and co-chairperson of the legality of the blockade had no credibility, since it was based on political rather than legal considerations, and reaffirmed its commitment to take all legal action against those who had committed the crimes against civilians on the humanitarian flotilla.
8. The Government of Turkey emphasized that relations between Turkey and Israel will not be normalized unless Israel provides proper redress for the injuries and losses its actions caused and an official apology and compensation to the victims. It also stressed its extreme disappointment with Israel's non-cooperation with the Human Rights Council.

9. At the time of the preparation of the present report, no information had been received from the Permanent Mission of Israel or the Permanent Observer Mission of Palestine.

10. Pursuant to the request of the Human Rights Council in paragraph 5 of its resolution 17/10, the High Commissioner recalls the main conclusions of the fact-finding mission and makes the observations below.

11. In its report, the fact-finding mission concluded that there was clear evidence to support prosecutions of the crimes of wilful killing, torture, inhuman or degrading treatment, and wilfully causing great suffering or serious injury to body or health, within the terms of article 147 of the Fourth Geneva Convention. The mission also considered that a series of violations of Israel's obligations under international human rights law had taken place, including violations of the right to life;¹ the use of torture and other cruel, inhuman or degrading treatment or punishment;² and violations to the right to liberty and security of person and freedom from arbitrary arrest or detention;³ the right of detainees to be treated with humanity and respect for the inherent dignity of the human person;⁴ and freedom of expression.⁵ The mission added that the right to an effective remedy should be guaranteed to all victims.

12. The High Commissioner notes that the Government of Israel established a mechanism, the Public Commission to Examine the Maritime Incident of 31 May 2010, to examine the flotilla incident.⁶ To the High Commissioner's knowledge, based on publicly available information, there have neither been prosecutions nor an effective remedy for the above-mentioned crimes and violations noted by the fact-finding mission in its report.

13. In its report, the fact-finding mission concluded that the retention by the Israeli authorities of unlawfully seized property remained a continuing offence, and called upon Israel to return such property forthwith.⁷

14. The High Commissioner notes that Military Police Investigations of the Israel Defense Forces launched seven criminal investigations into incidents of theft by its soldiers of property belonging to participants in the flotilla.⁸ To the High Commissioner's knowledge, based on publicly available information, neither these investigations nor any other action by the Government of Israel have resulted in the return of property referred to in the report of the fact-finding mission.

15. In its report, the fact-finding mission concluded that the perpetrators of more serious crimes could not be identified without the assistance of the Israeli authorities, and that the said perpetrators had reacted in a violent manner whenever they thought that anyone was attempting to identify them. The mission expressed the sincere hope that the Government of Israel would cooperate to assist in their identification with a view to prosecuting the culpable and bring closure to the situation.⁹

¹ International Covenant on Civil and Political Rights, art. 6.

² *Ibid.* para. 7, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

³ International Covenant on Civil and Political Rights, art. 9.

⁴ *Ibid.*, art. 10.

⁵ *Ibid.*, art. 19. See A/HRC/15/21, para. 265.

⁶ See www.turkel-committee.gov.il/index.html.

⁷ A/HRC/15/21, para. 266.

⁸ See the report of the Public Commission To Examine the Maritime Incident of 31 May 2010, Part One (available from www.turkel-committee.gov.il/files/wordocs/8707200211english.pdf), para. 160.

⁹ A/HRC/15/21, para. 267.

16. The High Commissioner notes with regret that the Government of Israel did not cooperate with the fact-finding mission, nor did it cooperate in the preparation of the follow-up reports requested by the Human Rights Council, nor in any initiative that may have led to the implementation of the conclusion of the fact-finding mission referred to in paragraph 15 above. Against this backdrop, the High Commissioner observes that the main conclusions of the fact-finding mission have yet to be met with effective action by the Israeli authorities for their implementation.
