

UNITED NATIONS UPDATE

UN RESPONDS TO THE RECENT ISRAELI OFFENSIVE IN GAZA

The recent Israeli incursion into Gaza has prompted a mostly negative response from the UN. During the 22-day offensive that began on December 27, 2008, the UN General Assembly called a special session following demands from groups such as the Organization of the Islamic Conference and the Non-Aligned Movement. The UN Security Council adopted a resolution calling for a ceasefire, and the UN Secretary General made a whirlwind tour of the Middle East pleading for an end to the violence and for aid in the growing humanitarian crisis. The UN High Commissioner for Human Rights (“UNHCHR”), Navanethem (Navi) Pillay, called for investigations into the allegations of war crimes committed by the Israeli forces.

Allegations of war crimes began to emerge early in the 22-day offensive; many came from Palestinians and organizations monitoring human rights violations in the region. Palestinians accused the Israelis of using white phosphorous shells in civilian areas. Although not prohibited by international standards, white phosphorous can be extremely dangerous to civilians. The phosphorous shells burn at extremely high temperatures and can land on civilians in the area causing severe, deep burns. The shells are used to create a smoke screen for advancing forces, but they vastly increased the risk of serious injury or death for noncombatants.

Israel claims that it does everything possible to minimize civilian casualties, but the use of white phosphorous is not the only reason for the international outcry. One well-publicized incident involved a house in Zeitoun where 48 members of a civilian family were killed while hiding from the fighting. After their killings, the fighting forced the survivors, many of whom were children, to remain in the house with the bodies. As the conflict continued, nearby Israeli soldiers continuously denied the survivors any aid.

Although the proposed investigations might uncover war crimes, prosecuting the perpetrators will be difficult. Israel has not signed the Rome Statute; therefore the International Criminal Court (“ICC”) does not have jurisdiction to charge Israelis as possible war criminals. The only way to bring Israeli soldiers or officials into the ICC to face prosecution would be through a Security Council Resolution, as it has the power to recommend specific cases for potential prosecutions. The U.S., as an ally of Israel, would likely use its veto power to block any such resolution.

There are other options to pursue charges of war crimes against the Israelis, but all are unlikely to produce results. For instance, the UN General Assembly could ask the International Court of Justice (“ICJ”) for an advisory opinion on the matter. The ICJ has no enforcement mechanisms, however, so this route would not likely resolve much.

Charges of war crimes against the Palestinians, such as for their continued rocket fire aimed at civilian populations, face an even smaller chance of seeing the inside of a court room for two major reasons. First, Hamas, the Palestinian organization currently in power, is regarded by most western nations as a terrorist organization; therefore, the UN does not recognize Hamas officials as the leaders of the Palestinian state despite their democratic election. Second, the Palestinians, like Israel, are not parties to the Rome Statute governing the ICC, leaving them outside the court’s jurisdiction.

Overall the UN’s vocal response seemed to fall on deaf ears. Israel and Hamas entered unilateral ceasefires on their own accord, which seemed to coincide with political events such as the inauguration of the new U.S. president and preparations for the next Israeli elections. The political timing of the end of the conflict seemed unrelated to any objections from the international community.

HOMOSEXUAL RIGHTS TAKE THE SPOTLIGHT AT THE UN

In the past months, the UN has increased its focus on homosexual rights, with multiple controversies arising around the divisive issue. Appointments of advisory status to more homosexual rights groups and dueling non-binding statements released from the General Assembly are recent examples of this debate. This is not the first time the issue of homosexual rights has come before the UN, but the debate seems more heated this time. In 2003 and 2004, Brazil sponsored a resolution at the UN Human Rights Commission to outlaw discrimination based on sexual orientation. This prompted a backlash from the Muslim community, spearheaded by the Organization of the Islamic Conference (“OIC”), which eventually forced Brazil to withdraw the resolution.

The backlash against the movement for homosexual rights remains strong today. More than 70 countries around the world still criminalize homosexual acts, and, in seven countries, punishments can include the death penalty. Recently, Senegal sentenced nine men, one of them a prominent AIDS activist, to eight years in prison for being homosexual.

Last August, the UN granted advisory status to two homosexual rights groups, prompting protests from the Vatican, the OIC, and other conservative religious groups. Social and religious conservatives condemned the move due to their perception of close ties between homosexual groups and groups that advocate pedophilia. Regardless of whether there is any basis to these allegations, there is a strong movement against granting rights to homosexuals in many nations.

On December 18th, 66 nations in the UN General Assembly responded to protests by signing a statement condemning the criminalization of homosexual acts. The non-binding statement claimed that the Universal Declaration of Human Rights (UDHR) protects homosexuals’ rights. Many conservatives dispute this

claim, however. non-signing nations included the U.S. and the nations that make up the OIC.

The UNHCHR released a video message in support of the proposition that the UDHR protects homosexuals' rights, saying, "Those who are lesbian, gay or bisexual, those who are transgender, transsexual or intersex, are full and equal members of the human family and are entitled to be treated as such." She went on to state that most of the current laws criminalizing homosexual acts are relics of old colonial policies and conflict with international law and the traditional respect for the dignity of all.

In response to the General Assembly's non-binding statement in support of homosexuals' rights, 60 non-signatories created their own statement condemning homosexual acts. This statement deplored the attempt of the other to "create 'new rights' and 'new standards'" and said the statement supporting homosexual rights could "seriously jeopardize the entire international human rights framework."

ONGOING ALLEGATIONS OF SEXUAL ABUSE BY UN PEACEKEEPERS

The UN's Department of Peacekeeping Operations' (DPKO) confidential study into the actions of its peacekeeping force in Congo has exposed 217 allegations of sexual abuse. Such allegations have

always plagued UN peacekeeping forces, surfacing in other missions such as those in Kosovo and Haiti. As the investigation into the Congo peacekeeping force progressed, the number of sexual abuse allegations rose dramatically.

The UN states that it takes all such allegations very seriously. The UN enacted a "zero tolerance" policy which prohibits peacekeepers from engaging in sexual activity with anyone under 18 years of age or with any person for money or other compensation. Many of the allegations, however, involve girls as young as 12 who were paid for sexual activity with as little as one dollar or with necessities such as eggs or milk. The UN rejected a proposed ban on all sexual contact between peacekeepers and local inhabitants because of enforcement difficulties and the belief that a ban would only create additional hidden problems.

The main problem is one of enforcement. UN peacekeepers receive immunity from prosecution in exchange for joining the UN forces; as a result, the countries in which they serve cannot prosecute them for crimes committed while in the force. The only option the UN has is to deport the suspected abusers to their home countries and waive their immunity. As a result, the only way the perpetrators will stand trial is under the laws of their home countries, many of which are reluctant to prosecute their citizens for these crimes. In the past, very few of these allega-

tions have resulted in countries taking action, which means that the perpetrators regularly go unpunished. A few crimes, however, were egregious enough that the home countries prosecuted the perpetrators. In one of the most disturbing cases, a senior UN logistics officer, Didier Bourguet, allegedly had sexual relations with dozens of young girls and photographed them during the act. Bourguet's trial began last September in Paris. He faces up to 20 years in prison.

Although peacekeeping forces are supposed to protect the helpless, seeing perpetrators go unpunished creates doubt in the minds of locals as to the legitimacy of the mission. The UN maintains that the perpetrators represent a very small portion of the force and that the majority of its soldiers have the interests of the populations in mind. The UN peacekeeping force in Congo is the largest UN force deployed anywhere in the world and the local population is one of the most marginalized and desperate. Therefore, maintaining the legitimacy of the UN's mission in Congo is critical to maintaining the legitimacy of UN peacekeeping forces worldwide.

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