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Report of the UN Secretary-General Board of Inquiry on Damage to UN Facilities during Operation Protective Edge: Balanced and Unbiased

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On April 27, 2015, UN Secretary-General Ban-Ki moon released a summary of the report by the Board of Inquiry appointed to investigate damage to UN facilities during Operation Protective Edge in Gaza in July-August 2014. In his introductory letter, the Secretary-General deplored the killing of 44 Palestinians and the wounding of more than 227 others in UN facilities as a result of Israeli actions. Noting that UN “premises are inviolable,” and should be places of safety, particularly in a situation of armed conflict, he stated he will work with all concerned to ensure that such incidents will never be repeated. Other than this criticism, the report overall is formulated in a matter-of-fact, balanced way and does not blame Israel or assign it legal responsibility. Moreover, it presents Israel’s position on IDF conduct during the fighting relatively extensively. Finally, the report underscores that the Board was directed not to include any findings of law or any recommendations regarding compensation, disciplinary action, or legal liability.

The report examines seven instances in which UNRWA schools were damaged by IDF activity. For every incident, the report presents findings, the Israeli position, and the fact that the issue is under IDF examination. The report also notes that two of the events are under criminal investigation. The report then examines three incidents in which UNRWA schools were used to store weaponry by Palestinian armed groups and also refers to school premises being used to launch attacks. The Secretary-General expressed his deep dismay at the use made of UN facilities and the danger they were placed in, and noted that this conduct is unacceptable and undercuts the principle that UN facilities are civilian objects not to be used for military purposes. Throughout the report, reference is made to the intense fighting that took place near UN facilities; the warnings the IDF issued and the precautions it took during the war are also noted. The coordination between UN personnel and the IDF likewise receives favorable mention.

The Secretary-General expressed his appreciation for Israel’s cooperation with the Board, including submission of much written and filmed material, and welcomed the efforts of

the Israeli government in establishing criminal investigations into certain incidents falling within the scope of the Board's terms of reference. At the same time, the report diplomatically criticizes the Palestinians' conduct and "expresses hope" that "the government of Palestine" will also conduct examinations into possible criminal activity during the conflict. Most of the report's recommendations relate to internal UN units and are designed to improve the safety and security of UN facilities and communications and coordination among the sides. The only recommendations directed at Israel relate to enhancing coordination with UNRWA; Israel's submission of information to the UN regarding misuse of UN facilities; and commitment of advance warnings before attacks in the vicinity of UN facilities.

This is the second time that Ban Ki-moon formed a Board of Inquiry to examine events involving UN premises and personnel that occurred during Israel's military operations in the Gaza Strip. In 2009, he established a Board of Inquiry to examine damage to UN facilities resulting from Operation Cast Lead; the report that emerged was highly critical of the IDF's conduct and held Israel responsible for the incidents, despite Israel's cooperation with the Board. The 2009 Board examined nine incidents, and determined that in seven of them Israel was responsible for the damage done to the UN facilities, and presented the incidents as direct, deliberate IDF attacks, amounting to gross negligence and reckless disregard for the lives and safety of Palestinian civilians. The Board unequivocally rejected Israel's claim that the Palestinians were storing weapons and munitions in some of the UN facilities and that some were used for firing at IDF soldiers, and denied that UN facilities were used for any type of military activity. On the contrary, the Board alleged that Israel continued to make claims that the Board had found to be untrue. The Board also determined that it could not reach an unequivocal conclusion on whether or not Palestinian militant groups had carried out military activity in the vicinity of UN facilities, and stated that the IDF did not make sufficient efforts or take adequate precautions to protect civilians and UN facilities and personnel. In fact, the Board in practice created a new – and erroneous – legal principle whereby UN facilities enjoy absolute immunity that cannot be overridden by demands of military expediency and that the IDF had violated this immunity in all seven cases. Furthermore, the Board determined that in only one instance was Hamas responsible for damage to a UN warehouse facility from a Qassam rocket aimed at Israel. (Regarding another case, the Board was unable to reach any conclusion.) The report's recommendations included the demand that Israel officially acknowledge that its public statements alleging that Palestinians had fired from UN facilities were untrue and regretted; that actions are taken to seek accountability and provide compensation and reparation for the deaths and damage it caused; and that impartial inquiries are mandated to examine additional cases not covered by the Board's terms of reference.

The stated objective of both Boards was identical: to make findings of the facts and circumstances related to the incidents in order to prevent the repetition of similar events and better protect UN facilities and personnel working in the area. It seems that despite the similarity in the guiding rationale and institutional mechanism of both Boards and their general framework, there was a striking difference in how each Board interpreted and applied its mandate. This difference is evident in the description of the reality on the ground during the fighting, in the attitude to Israel's position on the events, in their sweeping conclusions, both factual and legal, and in their recommendations.

There is no doubt that from Israel's perspective, the current report represents a positive development. While the definitive reason for the essential differences between the two reports is uncertain, they are likely the result of hard behind-the-scenes work of Israelis in the political and legal arenas. Close cooperation and coordination between IDF units, especially the Coordinator of Government Activities in the Territories, and UN units during the fighting also made a significant contribution. Cooperation with the Board of Inquiry and the ability to present Israel's positions backed by reliable, concrete information, such as video clips documenting fire from UN facilities, as well as investigations carried out by the IDF's legal system, likewise affected the report's formulation and findings. Moreover, it may be that some of the difference between the two reports stems from the composition of the respective Boards. In 2009, the Board was headed by Ian Martin, a human rights expert who has held various UN positions relating to human rights, whereas the second Board was headed by Maj. Gen. Patrick Cammaert, a senior military figure and the former UN force commander for the Eastern Democratic Republic of the Congo who served as military advisor in the department of peacekeeping operations and military advisor to the UN Secretary-General. Clearly, deep, hands-on familiarity with war-like situations and the shifting challenges emerging from the nature of war helped to create a better and more accurate understanding of military activity. Thus, the second report is further proof of the great importance of including skilled, experienced military personnel in bodies of inquiry of this type.

The prosecutor of the International Criminal Court will likely take note of the Board's findings when she undertakes her preliminary examination of the events of last summer, as will the members of the Human Rights Council's commission of inquiry (the McGowan Davis Commission), still deliberating. It is to be hoped that this commission will relate to the factual findings of the Board of Inquiry regarding the misuse of civilian objects during Operation Protective Edge and moreover, will also assume an unbiased and balanced approach.