

Update Note for the Secretary-General
8 May 2009 *[Signature]*

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1. Gaza

Horst Heitmann has sent a note¹ on the consultations of the Security Council, concerning the SG's letter which attached the summary of the report of the Board of Inquiry into incidents in the Gaza Strip. (*Attachment #1*).

2. Middle East – BoI/Goldstone mission

The President of the Human Rights Council wrote to the Secretary-General welcoming the completion of the work of the BoI, which, he says, “also appears to respond to the mandate given to the Secretary-General in paragraph 16 of the Human Rights Council resolution S-9/1 of 12 January 2009. Uhomoibhi notes that the letter of the Secretary-General transmitting the BoI report to the Security Council indicates, in relation to recommendation 11, that the Secretary-General “does not plan any further investigation”. In this connection, he then refers to the Goldstone Fact Finding Mission, which he appointed pursuant to HRC resolution S-9/1, and recalls the word of support for the mission that the Secretary-General shared with him in Geneva last month.

Uhomoibhi regrets that the statement of the Secretary-General that no further inquiry is planned has given rise to misunderstandings and have been misconstrued as indicating a lack of support for the Goldstone Mission. He indicates that the Fact Finding Mission is currently in Geneva engaged in meetings with diplomats to secure support vitally need for the fulfillment of this mandate. Uhomoibhi therefore appreciates greatly the statement to the media by the Spokesperson on 6 May clarifying that the Secretary-General supports the Mission and urging member states to cooperate with it. Uhomoibhi concludes expressing his profound thanks for the Secretary-General's support for the Fact Finding Mission.

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¹ (29-04855)

3. Somalia

Ould Abdallah reports² that Somali Security Minister Omar Hashi and FM Abdullahi Omar recently accused Eritrea of transporting a weapons shipment to Baledogle airstrip, which is under the control of Al-Shabaab. Earlier this week, confidential sources reported that the armed opposition was pouring weapons into Mogadishu for an eventual all-out war against the UN – endorsed Government of National Unity, led by Somali President Sheikh Sharif Ahmed. Minister Dirir said the Ethiopian Government: “will not cross the border” into Somalia, although he admitted that Ethiopia and Eritrea, long time Horn of Africa rivals, were divided over political developments in that country.

USG O’Brien sent a note³ on the vexed question of a legal forum to deal pirates who have been apprehended. (*Attachment #2*)

4. Afghanistan

Further to yesterday’s Update, DPKO updates that estimates of civilian casualties from recent air strikes in western Farah Province have been revised upwards, to as many as 147 people. UNAMA is endeavouring to ascertain the facts about the incident, including the number of civilians who have lost their lives.

Eide reports on the eleventh JCMB meeting on 19 April, resulting in an endorsement of a National Agricultural Development Framework and priorities on private sector development [NB: both agreed as priorities in Paris last year.] The JCMB also discussed police reform and approved an interim increase of 4,800 police personnel in Kabul and 5,000-10,000 in vulnerable provinces, to be deployed before the elections.

5. Pakistan

DPKO reports that military operations against insurgent fighters in NWFP, noting that some estimate that upwards of 4,000 militants are in place in the Swat valley region.

OCHA relays to the Political Unit that with a new IDP outflow from Lower Dir, Buner and Swat in NWFP, local (conservative) estimates indicate some

² (CMN-097 of 8/5/09)

³ (29-04871)

1.3 million displaced by now (including some 556,000 registered earlier in NWFP), while liberal estimates put the figure as high as 1.8 million.

5. Nepal

Landgren briefed⁴ the Security Council on the events that led to the current political crisis in Nepal, touching on the significant progress made in recent months, but expressed concern about the implications the crisis may have on the peace process. She highlighted that OHCHR's mandate in Nepal will expire on 9 June and appealed that its extension, for which Nepal's main political parties have expressed support, should not become a victim of the present fluid situation.

While Council Members echoed the SG's guardedly positive tone in his report on the progress made in the last few months, they also expressed deep concerns about the political developments that led to the PM's resignation and called on the parties to again forge the common vision needed to preserve the peace process and move forward.

He acknowledged the need for UNMIN to play a technical role in support of the integration and rehabilitation process, the RSG stressed the inherent political nature of these issues, which require difficult negotiations between the parties. She said that the meeting of the Joint Monitoring Coordination Committee (JMCC), which is an important dialogue forum, has continued throughout the peace process despite rough patches.

On the release of children, the RSG recognized the risk that it would now become a low political priority, but assured that UNMIN will continue to encourage the Maoists and other parties to move forward on this issue. Echoing the concerns of some Member States, the RSG highlighted the deteriorating security situation in the Rarai, which could be exacerbated by weak engagement with identity and ethnic based groups. She said the challenge is to ensure that the interest of these groups are reflected as part of the New Nepal without recourse to violence; as "unity is the answer and dialogue is the only way".

6. Security Council briefing and consultations on Chad

Today, the Security Council held an open briefing on the situation along the Sudan-Chad border. The meeting was requested by Chad but the

⁴ (CC #1014 of 07/05/09)

Sudanese PR was also invited to speak. Chad's PR denounced the Sudanese government for attempting to overthrow the Chadian government through proxy warfare, even after the recent agreement in Doha. He accused Sudan of violating the agreement 'even before the ink on the agreement had dried'. The PR of Sudan, describing the Chadian allegations as "crocodile tears," charged that Chad has failed to implement its own commitments and tried to hide its plan of aggression against Sudan.

Following the open briefing, the Council held closed consultations during which most of the Council members supported the issuing of a PRST, a draft of which had been circulated by France. However, Libya voiced its reservations on blaming one side (Sudan), saying that given the complexity of the issue, such a PRST would not help ease the tensions. China did not oppose a PRST but said it should be fair and objective while Russia (current President stated that any PRST issued should de-escalate the situation. Due to Libya's firm position, the Council agreed on a PRST, without any reference to "support from Sudan " nor " SG's last report S/2009/199."

7. President Obama sends message to ongoing NPT meeting

In a message to the Third PrepCom of the 2010 NPT Review Conference, President Obama reaffirmed points made in his landmark Prague speech, including US commitment to nuclear zero and specific measures to achieve this goal, in particular improving verification and compliance with the NPT. The President's message was read yesterday by Assistant Secretary Rose Gettemoeller.

Of particular note, the US mentioned Israel by name in calling for universal adherence to the NPT - India, Israel, Pakistan and North Korea.



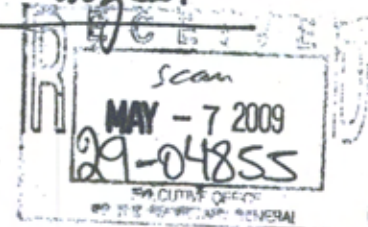
Political Unit
8 May 2009

cc: DSG, VN, KWS

✓ N/KWS/6/3
 WH

Note to Mr. Pascoe

BOARD OF INQUIRY (GAZA)



During consultations of the Security Council this morning, under Other Matters, Ambassador Churkin (in his capacity as President of the Council) asked for members' views regarding the Secretary-General's letter of 4 May which attached the summary of the report of the Board of Inquiry (BoI) into incidents in the Gaza Strip.

Taking the floor first and delving into the substance of the summary, Libya proposed that the Council hold a meeting under the topic – Protection of Civilians – to consider the report. Libya intended to circulate elements of a "document" (apparently a draft resolution) to be issued following that meeting. Ambassador Churkin subsequently advised members to discuss the procedural, rather than the substantive, aspects of the BoI summary.

The United States did not believe that there was anything for the Security Council to discuss and Ambassador Rice said that there was no need for a briefing from either the Secretary-General or the Secretariat nor should the Council issue a "product" on the matter.

In response to questions on the Secretary-General's intentions regarding a possible discussion in the Council, as requested, I relayed a message from the EOSG to the effect that the Secretariat had nothing further of substance to report to the Council on the Board's findings. The United Kingdom welcomed the clarification and said that if the Secretariat had nothing further to add, then members should hold a meeting to discuss the issue amongst themselves. Members then spent some time deliberating the format and timing of such a meeting. France and others stated that, should the Council decide to consider the matter, it should be done following the meeting on the Middle East and prior to the Council's departure on mission on 14 May. Ambassador Churkin then indicated his preference to schedule informal consultations on the issue.

Taking the floor a second time, the United States stated that her delegation remained opposed to any form of Security Council meeting and/or consultations – even if it were to occur under Other Matters. Ambassador Rice said that a Security Council meeting on the findings of a Board of Inquiry would be unprecedented and added that the United States could not see what could be gained from a Council meeting if neither the Secretary-General nor the Secretariat had anything to add to the issue.

As members were unable to concur on Libya's request for a meeting, the President said that his delegation would continue discussions with members in order to find a solution to the issue.

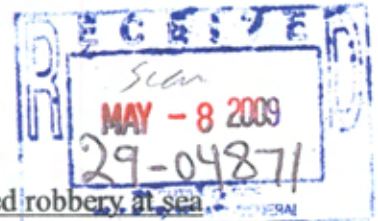
H.H.
 Horst Heitmann
 7 May 2009

cc: Mr. Nambiar/Mr. Kim
 Ms. O'Brien, OLA
 Ms. Buttenheim

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Attachment # 2

Note to Mr. Nambiar



Possible judicial accountability mechanism to combat piracy and armed robbery at sea

1. Further to the discussion we had on Thursday, 5 May, in the Secretary-General's meeting with senior advisers when the matter of piracy was raised, I wish to brief you on a meeting I had today with Ambassador Martin Ney, Deputy Permanent Representative of Germany, on that issue (German non-paper attached). It has recently become evident that States are actively contemplating solutions to the wide range of legal problems regarding criminal accountability in respect of piracy. The Russian Federation, among others, have been expressing an interest in the idea of establishing an international court for piracy.
2. While the current agreement between the EU and Kenya on the transfer of suspects for their prosecution in Kenyan courts appears to be working well, it seems clear that this arrangement does not offer a viable long-term solution to the problem. The shortcomings of this arrangement include the lack of jurisdiction of some States, procedural problems and issues of physical capacity.
3. Among others, the German Government has been actively considering ideas of creating a new international judicial mechanism to hold perpetrators of the crimes in question accountable. Two options were mentioned: (1) an internationalized chamber embedded in a national judiciary following the model of the Extraordinary Chambers in the Courts of Cambodia (ECCC); or (2) a treaty-based "stand-alone" international court based in the region following the model of the Special Court for Sierra Leone (SCSL).
4. We expressed interest but at the same time we raised some reservations about option (1) because of our experience with the concept of a "hybrid" chamber within a national jurisdiction. We also noted that the SCSL model (option 2) has been a great success that served its purpose very well.
5. The question was raised as to whether an international court could be based on an agreement between the European Union and the African Union "with a blessing by the Security Council". In that regard, we expressed interest but cautioned whether such an arrangement might have the potential to exclude many States, including several key States such as the Russian Federation, the United States and others.
6. While noting that we would certainly be available for and interested in continued discussions, I pointed out that the matter was within the prerogative of States and that OLA would not for the moment assume a pro-active role in this regard. We are of course following this topic very closely and in that regard we mentioned our active participation in the promising work of the "Contact Group on Piracy off the Coast of Somalia".
7. We will continue to follow this issue closely and will keep you informed of any new developments and will furnish more detailed reports as the matter evolves.

Patricia O'Brien

7 May 2009

cc.: Mr. Le Roy
Mr. Pascoe
Mr. Kim
Mr. Haysom