

**Press Conference by Archbishop Desmond Tutu and Christine Chinkin
on report of High-level Fact-finding mission to Beit Hanoun (Gaza) to the Human Rights Council**

18 September 2008, Geneva

The following is a near verbatim transcript of the press conference by Archbishop Desmond Tutu, head of the High-level Fact-finding Mission to Beit Hanoun, and Professor Christine Chinkin, member of the Mission, mandated by the Human Rights Council at its 3rd special session following the presentation of their final report to the Council this morning.

This morning, Professor Chinkin [Christine; member of the mission] and I presented to the Council our final report of the Beit Hanoun Fact Finding Mission. After fourteen months and numerous failed attempts, the Mission was able to travel to Beit Hanoun in the occupied Palestinian territory of Gaza in the last week of May this year, travelling through the Sinai and crossing at Rafah. What we saw in Gaza shocked us. As I have said earlier, nothing of what we had heard before prepared us for what we saw and experienced in Gaza.

The scars of the shelling on 8 November 2006 – which claimed the lives of nineteen civilians - are all too obvious: the physical and mental injuries, the destructions of homes, infrastructure and agricultural land, the loss of livelihoods and - perhaps most strikingly - the fragility of the community. Many of the wounds indeed have not yet healed, in particular psychological wounds. The right to life has been violated, not just through the killings, but also through the lack of an adequate investigation of the killings. The right to physical and mental health has been and continues to be violated in a number of ways. The psychological injuries caused by the shelling are, if anything, more disturbing than the physical.

When we arrived in Gaza, we met with senior members of Hamas, despite the objections of some in the international community. Meeting with Hamas allowed us to hear their views, hear their concerns. It also allowed us to challenge their positions and to demand an end to the launching of rockets against civilians in Israel. Hamas has a legal obligation to respect and ensure respect for the provision of international humanitarian law prohibiting the targeting of civilians. Accountability is a two way street. Those responsible must be held to account. Families living in Sderot have the right to live without the fear of rockets – however crude – dropping from the sky.

The story of the Beit Hanoun shelling is, if anything, as story of the failure of the rule of law. No verifiable explanation has been offered, no independent, impartial and transparent investigation has been held, no one has been held to account. The Israeli military has admitted responsibility but claimed a technological error. As we say in our report, the response of a largely secret internal military investigation is absolutely unacceptable from both legal and moral points of view.

Faced with this absence of a well-founded explanation from the Israeli military, the mission has to conclude that there is a possibility that the shelling of Beit Hanoun constituted a war crime. Accountability involves providing a remedy and redress for victims. To date, neither has been forthcoming from Israel, despite its admission of responsibility for the attack. The very clear message from the victims and survivors to the mission and to the Council is that they seek justice before anything else.

The greatest current factor affecting the victims and survivors of the shelling is the general situation in Gaza, specifically the blockade. This unjust and illegal action by Israel has vastly increased the suffering of a population which, being under occupation, is legally entitled to look to Israel protection and support. The occupation remains the root cause of incidents such as the shelling of Beit Hanoun. In our efforts to discharge our mandate, we have witnessed positions based on political objectives rather than on principle by all relevant parties.

Addressing human rights violations suffered by individuals in Israel and in the occupied Palestinian territories must be the prime motivating force for members of the Council and others with influence in the region.

Thank you.

Question: Are you going to continue carrying on reaching out to the Israelis on the question of compensation and on the question of an independent inquiry into Beit Hanoun, or is this the end of the matter for you?

Archbishop Tutu: We have fulfilled our mandate. We were given a specific remit which was to be this fact-finding mission which would make relevant recommendations about the state of victims and survivors. We have fulfilled that mandate now and it is up to the Council for it to decide what they're going to be doing about it...We long, as most people would, for a situation, in what many of us call the holy land, where people can live in peace and in security...We hope that our report will have been a contribution towards the process of finding a resolution.

Question: You mentioned that the shelling was a possibility of a war crime. How do you judge whether it is a war crime, who is the judge in this kind of situation? And if that is the case, then what is the consequence that flows out of such a judgement?

Professor Chinkin: We took the view that in the absence of an independent, impartial, publicly available investigation that there was at least the possibility of a war crime. Israel is bound by the Geneva Conventions; it is bound by the laws and customs of war, and a war crime is constituted by a grave breach of the Geneva Conventions or by a violation of the laws of customs of war, one of which includes, to quote, 'intentionally launching an attack in the knowledge that such an attack will cause incidental loss of or injury to civilians or damage to civilian objects'. What we saw suggested to us that there was at least a case to be made on that. With respect to who decides, clearly what is needed is a very full investigation. War crimes are very serious charges and require a great deal of detailed evidence collecting and determination of the legal situation against the factual situation. The first step we would suggest would be an internal investigation. Beyond that it is essentially up to the international community to decide whether and in what forum any further determination might be made. Israel has not ratified, for example, the International Criminal Court. So that is not a possibility.

Question: In your report do you call for such an investigation?

Professor Chinkin: Yes, we say there is a need to have an independent, impartial investigation of the facts of the situation. We don't specify who should do that. That is very much up to the Human Rights Council and not for us.

Question: You said the international community was not paying enough concern to the suffering of the Palestinians in Gaza. Could you elaborate on that, is it specific countries that you are worried about?

Archbishop Tutu: If you walk into Gaza, you have to be totally insensitive. You walk into a situation which is almost eerie. We were in a five-vehicle convoy; in most places where you have such a convoy passing through the streets children rush to go and wave. There were no children. Gaza used to be a lively commercial centre. You could count the number of cars on one hand that we saw, more or less...We saw people standing in long lines for rationing of fuel...We did not believe that if ordinary people in Israel knew what the consequences were of this blockade...that they would support this.

I spoke with a German diplomat who said Germany is responsible for two great wrongs – one, was the wrong done to the Jew in the Holocaust and now the wrong that has been done to the Palestinians. This was an incredible confession....I think the West quite rightly is feeling contrite, penitent, for its awful connivance with the Holocaust...the penance is being paid by the Palestinians. I just hope that ordinary citizens in the West will wake up and say 'we refuse to be part of this'.

Professor Chinkin: Many people talk about the grave humanitarian situation in Gaza. As the Archbishop has just said, it is shocking when you are there. What is important is that it is a humanitarian situation brought about by political choices and choices that are made by those who support the blockade or don't speak out against it. It's not a humanitarian situation that is somehow naturally there.

Question: Don't you think that there is a danger that your report may be seen as too little too late? The event took place two years ago...and too little in that you still don't speak out tremendously, clearly against this Israeli atrocity.

Archbishop Tutu: As noted in the report, in many ways it was an advantage to have gone nearly two years later because the awfulness of that situation was even more blatant. To see the trauma that people suffered nearly two years previously working itself out...it is that we have been given an even better chance of seeing the horror of what took place then....The father who nearly lost all of his family, for him it is not yesterday, it is everyday...Is it too little? No. Because we made recommendations that are doable. One is that the Israelis would permit an investigation that was transparent for determining what happened. And the suggestions we make about the possibility of the reparation and even the [recommendation] for people to be able to access medical treatment who can't get it in Gaza. That's not too little...we are pleading. There is not the foggiest chance of peace ever happening until the human rights of all are respected and upheld. And that's all.

Question: Whenever they talk about the Palestinian suffering, especially hunger...when there is a press conference a question which comes back all the time about the relation between Palestinian hunger and corruption...I would like you to enlighten us about the relation between what happened in Beit Hanoun and corruption.

Archbishop Tutu: ...We were not asked to investigate that. We were asked to investigate an atrocity which Israel admits it had committed and we were asked if we had recommendations about how we can prevent similar such incidents occurring. I think we have done that. Whether there could have been or is corruption is irrelevant to the matter that we were given to deal with.

Question: In your report you call on the international community to take up your recommendations and to try to press Israel for a clearer investigation. I wonder in the course of your investigation what contact you had with the international community, the Quartet, and with envoy Tony Blair, and what credibility you see such institutions still having after so many years of little progress?

Professor Chinkin: The fact-finding mission was a completely independent body created by the Human Rights Council. Therefore, we had no contact at all with any member of the Quartet...The only contact we had, with what you might call the international community, international organizations, was with the relief agencies on the ground; UNRWA, who had got first-hand experience of the situation in Gaza, and the World Health Organisation, again, because of the health issues in Gaza. These are functional agencies that could give information about what was actually happening, not with the political bodies pursuing the peace process...We felt we needed to speak to people who had got information on the factual situation on the ground, which was the basis of our mandate...That gave us the opportunity as well to express our concern and belief that the rocket attack from Gaza must themselves stop.

Question: As you know, it is never late to bring to justice the people or the persons committed in the Holocaust. Do you think it is too early to bring the people accused in this attack in Beit Hanoun to justice? And are you satisfied with the reaction of the Human Rights Council on your report?

Archbishop Tutu: I think there is a resolution which seems to me they have moved fairly quickly out of their blocks....We have executed our mandate and have given the reasons why it couldn't have happened earlier. We would have wanted to have gone...we were appointed in December of 2006 and immediately then we came to Geneva to try to ensure that we would be able to have gone to Beit Hanoun. Now we have done the best that we could. As they say, the ball is in the Council's court. The Israeli response is not to the report. They don't seem to contest any of the things we have said. They were making philosophical statements.

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