THE REPORT OF THE HUMAN RIGHT'S COUNCIL COMMISSION OF INQUIRY ON THE 2014 OPERATION IN THE GAZA STRIP - A CRITICAL ANALYSIS

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I. INTRODUCTION

On June 22, 2015, the UN Independent Commission of Inquiry, established by the Human Rights Council to investigate the conduct of the parties to the 2014 military conflict in the Gaza Strip (hereinafter, the “COI”), released its report (hereinafter, the “Report”).¹ Since its publication, and as is often the case with similar reports issued by international bodies of inquiry, the Report has been significant for Israel in several respects. It has served to evaluate and assess the legality of Israel's actions within the U.N. system, e.g., leading to general resolutions on the subject and the establishment of follow-up mechanisms. It can potentially facilitate efforts to advance legal proceedings against Israeli officials in national courts through universal jurisdiction (as evidence of alleged offenses); and it has affected and continues to affect general legitimacy of the Israel Defence Forces’ (hereinafter, the “IDF”) conduct in the eyes of the international community. In addition, the Report is undoubtedly one of the main sources of information being examined by the Office of the Prosecutor of the International Criminal Court in the preliminary examination that it is currently conducting into the events that took place in Israel, the Gaza Strip and the West Bank in the summer of 2014.²

However, beyond the potential ramifications of the Report for Israel, the COI Report also carries significance for other States in that it includes general methodology and analysis concerning the conduct of hostilities, which could be applied in other contexts and to other militaries. Therefore, given the potential impact of the Report both on Israel and on the analysis of

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the conduct of militaries in general – particularly with respect to conflicts between States and non-State actors – it is important to examine the Report and assess its methodology, analysis, findings and conclusions.

The mandate of the COI was to investigate all violations of international humanitarian law and international human rights law in the Gaza Strip and the West Bank, including Jerusalem, which took place in the course of military operations in the summer of 2014.\(^3\) It should be noted that the same resolution, which established the COI to examine possible violations of international law, included a condemnation of Israeli violations\(^4\) – in essence predetermining what the COI was being tasked with investigating – thus generating serious concerns about whether the COI was indeed meant to be an independent and objective body of inquiry.\(^5\) This apprehension increased

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3 Paragraph 13 of Resolution S-21/1 of July 23, 2014 states the following: “[d]ecides to urgently dispatch an independent, international commission of inquiry, to be appointed by the President of the Human Rights Council, to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after, to establish the facts and circumstances of such violations and of the crimes perpetrated and to identify those responsible, to make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring that those responsible are held accountable, and on ways and means to protect civilians against any further assaults, and to report to the Council at its twenty-eighth session. Human Rights Council resolution S-21/1 adopted on 23 July 2014 Ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session21/Pages/21stSpecialSession.aspx.

4 Paragraph 2 of the resolution states that the Human Rights Council “Condemns in the strongest terms the widespread, systematic and gross violations of international human rights and fundamental freedoms arising from the Israeli military operations carried out in the Occupied Palestinian Territory since 13 June 2014, particularly the latest Israeli military assault on the occupied Gaza Strip, by air, land and sea, which has involved disproportionate and indiscriminate attacks, including aerial bombardment of civilian areas, the targeting of civilians and civilian properties in collective punishment contrary to international law, and other actions, including the targeting of medical and humanitarian personnel, that may amount to international crimes, directly resulting in the killing of more than 650 Palestinians, most of them civilians and more than 170 of whom are children, the injury of more than 4,000 people and the wanton destruction of homes, vital infrastructure and public properties.” Ibid.

5 The HRC is notorious for its bias against Israel, as acknowledged by the US and others. See, e.g., C. Morello, “Kerry defends Israel against U.N. ‘bias’ amid strains over Iran nuclear talks”, The Washington Post (March 2, 2015) available at <www.washingtonpost.com/world/kerry-and-lavrov-meet-in-geneva/2015/03/02/41e8f2d2-9ac5-4408-bf7f-031674cc1a0d_story.html> See also TheTower.org, “New Watchdog Report Traces Pattern of Bias at UN Human Rights Council” The Tower (June