



UNIVERSITY OF CALIFORNIA PRESS  
JOURNALS + DIGITAL PUBLISHING



---

The Goldstone Report

Source: *Journal of Palestine Studies*, Vol. 39, No. 2 (Winter 2010), pp. 60-121

Published by: [University of California Press](#) on behalf of the [Institute for Palestine Studies](#)

Stable URL: <http://www.jstor.org/stable/10.1525/jps.2010.XXXIX.2.60>

Accessed: 17/03/2015 17:55

---

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at  
<http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



University of California Press and Institute for Palestine Studies are collaborating with JSTOR to digitize, preserve and extend access to *Journal of Palestine Studies*.

<http://www.jstor.org>



## SPECIAL DOCUMENT FILE

### THE GOLDSTONE REPORT

<b>A. UN Human Rights Council (HRC), Resolution Calling for a Fact-Finding Mission to Gaza, Geneva, 12 January 2009 (excerpts) . . . . .</b>	<b>63</b>
<b>B. HRC, Press Release Concerning the Appointment of the Fact-Finding Mission on the Gaza Conflict, Including Revised Mandate, Geneva, 3 April 2009 (excerpts) . . . . .</b>	<b>63</b>
<b>C. Report of the UN Fact-Finding Mission on the Gaza Conflict (the Goldstone Report), Geneva, 25 September 2009 (excerpts) . . . . .</b>	<b>65</b>
<b>D. Government of Israel, Initial Response to the Goldstone Report (Summary), Tel Aviv, 24 September 2009 . . . . .</b>	<b>104</b>
<b>E. HRC, Resolution Endorsing the Goldstone Report, Geneva, 16 October 2009 (excerpts) . . . . .</b>	<b>106</b>
<b>F. U.S. House of Representatives, Resolution Calling on the President and the Secretary of State to Oppose Unequivocally any Endorsement or Further Consideration of the Goldstone Report, Washington, 3 November 2009 (excerpts) . . . . .</b>	<b>107</b>
<b>G. Justice Richard Goldstone, Letter to the Sponsors of the U.S. House of Representatives Resolution Condemning His Report, 29 October 2009 (excerpts) . . . . .</b>	<b>109</b>
<b>H. Palestinian NGOs, Statement on Proposed UN General Assembly Resolution on the Goldstone Report, 4 November 2009. . . . .</b>	<b>113</b>
<b>I. UN General Assembly (UNGA), Resolution on the Follow-up to the Report of the UN Fact-Finding Mission on the Gaza Conflict, New York, 5 November 2009. . . . .</b>	<b>115</b>
<b>J. Richard Falk, "The Goldstone Report and the Battle for Legitimacy," <i>Electronic Intifada</i>, 22 September 2009 . . . . .</b>	<b>117</b>

*Whatever the ultimate fate of the Goldstone report's recommendations, the report itself, in the fierce emotions and controversy it has unleashed, will stand as a fitting coda to the event it investigates. Operation Cast Lead (OCL), Israel's military assault on the Gaza Strip launched on 27 December 2008 with the avowed intention of stopping Hamas rocket fire on southern Israel, left some 1,400 Palestinians (mostly civilians) and 13 Israelis (including 3 civilians) dead. In the weeks and months that followed the operation's end on 18 January 2009, numerous human rights organizations published investigations of violations of human rights and humanitarian law committed during the conflict, principally on the Israeli side, but none was awaited with such anticipation or attracted such attention as the report of the UN Fact-Finding Mission on the Gaza Conflict, otherwise known as the Goldstone report.*

*The Goldstone mission and mandate originated in the UN Human Rights Council (HRC) at a special session convened in January 2009 to discuss the*

*Journal of Palestine Studies* Vol. XXXIX, No. 2 (Winter 2010), pp. 60–121, ISSN: 0377-919X; electronic ISSN: 1533-8614.  
© 2010 by the Institute for Palestine Studies. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press's Rights and Permissions website, at <http://www.ucpressjournals.com/reprintInfo.asp>. DOI: jps.2010.XXXIX.2.60.

violence even before OCL had ended. In implementation of the HRC resolution (Doc. A) passed at that meeting, the Council in April 2009 announced the appointment of a four-person fact-finding mission (Doc. B) under the chairmanship of Justice Richard J. Goldstone of South Africa, an eminent jurist and former chief prosecutor of the war crimes tribunals for the former Yugoslavia and Rwanda. Despite Israel's refusal to cooperate—announced almost immediately—the mission was able to carry out its investigation, and on 15 September 2009, it released the 575-page advance version of its report; the final version was presented to the HRC on 29 September (see Doc. C). On the basis of its findings, the mission concluded that in a number of instances Israel had “committed actions amounting to war crimes, possibly crimes against humanity” by using disproportionate force, deliberately targeting civilians, and destroying nonmilitary infrastructure essential to the health and wellbeing of Gaza's civilians. The report also concluded that Palestinian armed groups had committed war crimes and possibly crimes against humanity in their indiscriminate rocket and mortar attacks on Israeli towns and settlements across the Green Line. One of the most striking aspects of the report was its insistence on accountability mechanisms and timetables, including endorsement of the principle of universal jurisdiction and possible resort to the UN Security Council and the International Criminal Court if Israel and Hamas did not produce fair and impartial investigations of their actions during the war within the six months stipulated.

Although Israel habitually reacts dismissively to human rights reports and resolutions condemning its policies and conduct (including the International Court of Justice's 2004 ruling on the illegality of the separation wall), from the start, it displayed uncharacteristic concern about the Goldstone mission. In July 2009 the Israeli government preemptively issued a 164-page “defense brief” on OCL prepared by the Foreign Ministry's legal department (see Doc. C4 in JPS 153) in anticipation of the report's publication. Immediately following the release of the first draft of the report, the government organized a global public relations offensive aimed at delegitimizing the report in the eyes of the international community—particularly the United States. Within ten days it issued a 24-page official statement outlining its objections to the Goldstone report (see Doc. D for the official summary). The main themes of Israel's critique were (1) that it ignored Israel's right to self-defense and downplayed the magnitude of the terrorist threat; (2) that it was biased and politically motivated, its conclusions predetermined; and (3) that it had a one-sided mandate and agenda, making it selective in the incidents investigated. These general criticisms were echoed (albeit more quietly) by the U.S. administration (see *Quarterly Update* in this issue), which stood firmly with Israel in rejecting the report. (The U.S. House of Representatives passed a nonbinding resolution, which adopted the tone and wording of the Israeli government's official response, condemning the report on 3 November; see Doc. E.) The European Union's (EU) extremely cautious response was to declare (10/14/09) its commitment to “assess the report and its recommendations seriously” and to remind all parties to the conflict of their obligations under international law. Most EU members either abstained or voted against the UN resolutions endorsing the report (see Docs. A, E, and D).

Indicative of the passions raised by the report were a number of personal attacks on Goldstone himself, despite his credentials as a lifelong friend of Israel and a committed Zionist. Israeli president Shimon Peres accused (11/11/09) him of being “on

a one-sided mission to hurt Israel" and called him a "small man, devoid of any sense of justice, a technocrat with no real understanding of jurisprudence" who himself should be investigated. Israeli finance minister Yuval Steinitz commented (9/16/09) with regard to the report that Jews, too, could be "anti-Semitic and discriminate against our people and despise and hate our people." Israel's supporters also weighed in. Harvard law professor Alan Dershowitz, a close friend of Goldstone's before his participation in the Gaza fact-finding mission, called (02/08/2010) the report "a defamation written by an evil, evil man," while Nobel peace laureate Elie Wiesel labeled (2/9/2010) it "a crime against the Jewish people." Although the Israeli public consensus seemed to endorse such views, a number of Israelis, especially intellectuals and human rights activists, warned of the consequences of ignoring mounting world criticism of Israel's actions even while not necessarily endorsing the report. The day the advance version of the report was released, for example, nine Israeli human rights organizations, including the Association for Civil Rights in Israel, B'Tselem, Gisha, HaMoked, and Physicians for Human Rights-Israel, called on the Israeli government to take the report seriously and to follow its recommendation that Israel conduct an internationally monitored independent and impartial investigation.

Palestinian reactions ranged from positive to critical. The Palestinian Authority (PA) greeted the report enthusiastically, with Palestinian representative to the UN Ibrahim Kbraishi praising the report's objectivity and stating (9/29/09) in response to Israeli critiques that "what bothered some parties was that the report simply monitored international law, international humanitarian law, and all relevant international instruments. This was not a political instrument that supported Palestine or Israel." (For PA president Mahmud Abbas's temporary withdrawal of support under pressure—and its fallout—see the Quarterly Update in this issue and Doc. E below.) As for Hamas, its response was one of qualified support: "Although we do not agree with certain aspects of his [Goldstone] report, we intend to act on his recommendation and to carry out our own investigation into any alleged crimes committed by members of the resistance movements in Gaza" (10/16/09). Palestinians in general massively supported the Goldstone report (see for example Doc. H), though many besides Hamas objected to the report's failure to challenge Israel's claim that OCL was a defensive war.

Despite the suspicion that continues to dog the HRC in the United States and to a lesser extent in Europe for its "anti-Israel" record, the report and its recommendations were endorsed by the leading human rights organizations and such bodies as the World Council of Churches. The lingering caution was well reflected in the endorsement by Human Rights Watch's Middle East director, who stated (9/16/09), "The Human Rights Council has focused disproportionately on Israel in the past, but the Goldstone report rises above politics to examine abuses by both sides accurately and professionally."

This special document file concludes with a thoughtful critique and perspective on the report by Richard Falk, UN Special Rapporteur on the situation of human rights in the occupied Palestinian territories, that also offers insights into potential future developments (see Doc. J). His analysis, though critical, demonstrates that whatever happens, the report has set an important precedent for international handling of conflict investigations, and will serve as a rallying point for all sides in the continuing Arab-Israeli conflict.

**A. UN HUMAN RIGHTS COUNCIL (HRC), RESOLUTION CALLING FOR A FACT-FINDING MISSION TO GAZA, GENEVA, 12 JANUARY 2009 (EXCERPTS).**

*With the war on Gaza still in progress, the HRC convened a special session from 9 to 12 January 2009 to address the “grave violations of human rights in the occupied Palestinian territory including the recent aggression in the occupied Gaza Strip.” (To convene a special session, the support of one-third of the HRC’s membership is required.) The resulting Resolution S-9/1, titled “The grave violations of human rights in the occupied Palestinian territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip,” was introduced by Cuba, Egypt (on behalf of the Arab and African Groups), and Pakistan (on behalf of the Organization of the Islamic Conference) on 9 January 2009. Of the resolution’s 17 operative clauses (condemning the Israeli operation; calling for an immediate cessation of military attacks and the withdrawal of Israeli forces from Gaza; calling on Israel to end its occupation of Palestinian lands and lift the siege on Gaza; calling for international protection and international action to end international human rights and other violations by Israel; and so on), only three relate to the creation of a fact-finding mission to Gaza. These are reproduced below. The resolution, brought to a vote on 12 January 2009, passed with 33 in favor (including China, India, Russia), 1 against (Canada), and 13 abstentions (including France, Germany, Italy, Japan, the Netherlands, Switzerland, and the United Kingdom). The full resolution can be found online at <http://domino.un.org/unispal.nsf>.*

*The Human Rights Council,*

...

14. *Decides* to dispatch an urgent, independent international fact-finding mission, to be appointed by the President of the Council, to investigate all violations of international human rights law and international humanitarian law by the occupying Power, Israel, against the Palestinian people throughout the occupied Palestinian territory, particularly in the occupied Gaza Strip, due to the current aggression, and calls upon Israel not to obstruct the process of investigation and to fully cooperate with the mission;

15. *Requests* the Secretary-General and the High Commissioner [for Human Rights] to provide all administrative, technical and logistical assistance required to enable the above-mentioned special procedures mandate-holders and the fact-finding mission to fulfill their mandates promptly and efficiently;

...

17. *Decides* to follow up on the implementation of the present resolution at its next session.

**B. HRC, PRESS RELEASE CONCERNING THE APPOINTMENT OF THE FACT-FINDING MISSION ON THE GAZA CONFLICT, INCLUDING REVISED MANDATE, GENEVA, 3 APRIL 2009 (EXCERPTS).**

*In implementation of its Resolution S-9/1 of 12 January 2009, the HRC appointed in early April the fact-finding mission to investigate violations committed during the winter 2008–2009 assault on Gaza. The appointment had reportedly been delayed by discussions over the mission’s mandate as stated in Resolution S-9/1 to which a number of potential candidates had objected. Thus, the press release, in addition to disclosing the names and backgrounds of the four individuals appointed to the*

*mission, amended the original mandate (namely, to “investigate all violations of international human rights law and international humanitarian law by the occupying Power, Israel, against the Palestinian people”) by eliminating the one-sidedness implicit therein. While not specifically referring to the original, the president of the HRC stated that the mission was to “assess in an independent and impartial manner all human rights ... violations” without reference to Israel. The statement quoted in the press release by the newly appointed head of the fact-finding mission, Justice Richard Goldstone, was more explicit, spelling out that the violations “on all sides” would be investigated. Although the change was not formally ratified, all subsequent UN documents referencing the mission—including all relevant resolutions and the final version of the mission’s report—repeated the new mandate as presented in the press release.*

*The press release also included biographical information of the four mission members. Justice Goldstone’s is included below in full, but it is worth highlighting select experience and credentials from the biographies of the other three. Christine Chinkin served on the HRC’s High-Level Fact-Finding Mission to Bayt Hanun from 2006 to 2008. Hina Jilani served as a commissioner on the International Commission of Inquiry on Darfur in 2004. Desmond Travers, in a forty-year military career, served in key appointments with UN and EU peace support missions in Lebanon, Cyprus, and the former Yugoslavia. The full press release can be found online at <http://domino.un.org/unispal.nsf>.*

The Human Rights Council today announced the appointment of Richard J. Goldstone, former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda and current Spinoza Fellow at the Netherlands Institute for Advanced Study in the Humanity and Social Sciences, to lead an independent fact-finding mission to investigate international human rights and humanitarian law violations related to the recent conflict in the Gaza Strip.

The Council’s president, Nigerian ambassador Martin Ihoeghian Uhomobhi, today announced his decision to appoint Justice Goldstone to lead the mission, which will also include the following experts: Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, University of London; Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary General on Human Rights Defenders; and Colonel (retired from the Irish Armed Forces) Desmond Travers, member of the Board of Directors of the Institute for International Criminal Investigations (IICD). The team will be supported by staff of the Office of the High Commissioner for Human Rights.

“I am confident that the mission will be in a position to assess in an independent and impartial manner all human rights and humanitarian law violations committed in the context of the conflict which took place between 27 December 2008 and 18 January 2009 and provide much needed clarity about the legality of the thousands of deaths and injuries and the widespread destruction that occurred,” Ambassador Uhomobhi stated.

Today’s appointment comes following the adoption of a resolution by the Human Rights Council at the conclusion of its Special Session on 9 and 12 January convened to address “the grave violations of human rights in the occupied Palestinian territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip.”

“It is in the interest of all Palestinians and Israelis that the allegations of war crimes and serious human rights violations related to the recent conflict on all sides be investigated. It is my hope that the findings of this mission will make a meaningful

contribution to the peace process in the Middle East and to providing justice for the victims," Justice Goldstone stated upon his appointment.

Members of the fact-finding mission will hold a range of discussions in Geneva within the next few weeks before departing for the region.

*[Richard Goldstone Biography]*

Justice Richard J. Goldstone is a director of the International Center for Transitional Justice, Human Rights Watch, the Center for Economic and Social Rights, the Institute for Transitional Justice and Reconciliation, and Physicians for Human Rights, and he is on the advisory board of the Project on Justice in Times of Transition. For many years he has served as a governor of the Hebrew University in Jerusalem.

He has been a visiting professor at NYU Law School, Fordham Law School, Georgetown Law School, and Harvard Law School. He is currently the Spinoza Fellow at the Netherlands Institute for Advanced Study in The Hague.

After graduating from the University of the Witwatersrand with a BA LLB cum laude, Goldstone practiced as an advocate at the Johannesburg Bar.

In 1976, he was appointed senior counsel and in 1980 was made a judge of the Transvaal Supreme Court. In 1989, he was appointed to the Appellate Division. From 1991 to 1994, he served as the chairperson of the Commission of Inquiry Regarding Public Violence and Intimidation, which came to be known as the Goldstone Commission.

He served as a judge of the Constitutional Court of South Africa from July 1994 to October 2003. From 15 August 1994 to September 1996, he served as the chief prosecutor of the United Nations' International Criminal Tribunals for the former Yugoslavia and Rwanda. From August 1999 until December 2001, he was the chairperson of the International Independent Inquiry on Kosovo. In December 2001, he was appointed the co-chairperson of the International Task Force on Terrorism, which was established by the International Bar Association. In April 2004, the secretary-general of the United Nations appointed Goldstone to the independent committee to investigate the Iraqi oil-for-food program (the Volcker Committee). In October 2007, he was appointed by the Registrars of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda to chair an Advisory Committee on the Archiving of the Documents and Records of the two tribunals.

Justice Goldstone is the recipient of several international human rights awards and most recently the MacArthur Foundation Award for International Justice, to be presented at The Hague on 25 May 2009.

**C. REPORT OF THE UN FACT-FINDING MISSION ON THE GAZA CONFLICT (THE GOLDSTONE REPORT), GENEVA, 25 SEPTEMBER 2009 (EXCERPTS).**

*The four-person UN fact-finding mission travelled to Gaza twice, from 30 May to 6 June and from 26 June to 1 July 2009, with its support staff remaining in the Strip to conduct field investigations from 22 May to 4 July. With Israel refusing to cooperate with the mission, the Goldstone team was obliged to enter Gaza through Egypt and was unable to visit either the Sederot area of Israel hit by Hamas rockets or the West Bank to investigate violations there, including internal Palestinian violence. Sederot residents were interviewed by telephone and some gave testimony at public hearings in Geneva, where priority was given to the participation of victims and persons from the affected communities. The mission was able to meet members of the PA government in Amman, and a number of West Bankers also took part in the Geneva hearings.*

*The West Bank and Gaza authorities both cooperated fully with the mission. While the Goldstone mission did not have access either to Israeli internal documents or Israeli officials, it had the cooperation of a number of former government and military officials as well as of Israeli human rights organizations. In addition to public hearings (which included 38 public testimonies), the mission conducted 188 individual interviews, reviewed over 10,000 pages of documentation, and viewed over 30 videos and 1,200 photographs, including satellite imagery. Thirty-six incidents seen as illustrative of the main patterns of violation were examined and analyzed in depth. The period covered by the report extends beyond the 23 days of the assault, including events since 19 June 2008, the start of the Israeli-Hamas cease-fire, and the period up to the end of its investigations on the ground.*

*Given the size of the Goldstone report, selecting excerpts was difficult. The table of contents is presented here in full, as it shows the report's structure and comprehensiveness and also gives a more complete picture of the mission's concerns (notably, the importance accorded to the background and context of OCL). (Within the table of contents, numbers presented next to each chapter heading indicate paragraphs, not pages.) Because of extensive treatment elsewhere (e.g., human rights and press reports, JPS 151 and 152), JPS decided not to excerpt material on dramatic incidents involving extensive loss of human life, the use of human shields, the use of banned weaponry, and so on.*

*Chapter XIII, which covers the destruction of nonmilitary infrastructure essential to life in Gaza, was selected as a good example of the methodical approach and level of detail applied throughout the report. The presentation and method are particularly visible in the chapter's first incident, "the destruction of el-Bader flour mill," in simplified form: site visit, background and description of the incident, the mission's assessment of the facts ("factual findings"), and the mission's legal assessment in light of the relevant laws ("legal findings"). The chapter XIII excerpts also exemplify the inaccuracy of the Israeli-U.S. charge that the Goldstone report fails to take into account Israel's right to "self-defense." On the contrary, the report never questions whether OCL was legitimate, and it views "military necessity" or the pursuit of a military objective or advantage as potentially valid grounds for an attack, provided proportionality and other criteria are met (see for example paragraphs 929, 957, 972, 974, 985, and 986).*

*Other excerpts are from chapter XVI (on the objectives of OCL), which provides an excellent analysis of the strategic underpinnings of the operation, and chapter XXIV, on the impact of Palestinian rocket fire on Israeli civilians. Also included are excerpts relating to universal jurisdiction (chapter XXVIII), accountability and reparations (chapter XXIX), as well as parts of the general conclusions and recommendations (chapters XXX-XXXI). The full report can be found online at <http://domino.un.org/unispal.nsf>. Footnotes have been omitted for space considerations.*

## 1. TABLE OF CONTENTS

### PART ONE: METHODOLOGY, CONTEXT AND APPLICABLE LAW

*Introduction: 131-150*

*I. Methodology: 151-175*

*A. Mandate and terms of reference: 151-155*

*B. Methods of work: 156-167*

- C. Assessment of information: 168-172
- D. Consultation with the parties: 173-175

*II. Context: 176-222*

- A. Historical context: 177-197
- B. Overview of Israel's pattern of policies and conduct relevant to the Occupied Palestinian Territory, and links between the situation in Gaza and in the West Bank: 198-209
- C. Relevant political and administrative structures in the Gaza Strip and the West Bank: 210-215
- D. Relevant political and administrative structures in Israel: 216-222

*III. Events Occurring between the "Cease-Fire" of 18 June 2008 between Israel and the Gaza Authorities and the Start of Israel's Military Operations in Gaza on 27 December 2008: 223-267*

*IV. Applicable Law: 268-310*

- A. Self-determination: 269
- B. International humanitarian law: 270-285
- C. International criminal law: 286-293
- D. International human rights law: 294-310

**PART TWO: OCCUPIED PALESTINIAN TERRITORY**

THE GAZA STRIP: 311-1372

**Section A: Military operations: 311-1344**

*V. The Blockade: Introduction and Overview: 311-326*

*VI. Overview of Military Operations Conducted by Israel in Gaza between 27 December 2008 and 18 January 2009 and data on casualties: 327-364*

- A. The parties relevant to the conduct of military activities in Gaza between 27 December 2008 and 28 January 2009: 328-332
- B. The phases of the hostilities: 333-351
- C. Data on casualties during the Israeli military operations in Gaza from 28 December 2008 to 17 January 2009: 352-364

*VII. Attacks on Government Buildings and Police: 365-438*

- A. Deliberate attacks on Gaza government infrastructure: 365-392
- B. Deliberate attacks on the Gaza police: 393-438

*VIII. Obligation on Palestinian Armed Groups in Gaza to Take Feasible Precautions to Protect the Civilian Population: 439-498*

- A. Launching attacks from within civilian areas and from within or in the immediate vicinity of protected sites: 446-460
- B. Booby-trapping of civilian houses: 461-463
- C. Use of mosques to launch attacks against the Israeli armed forces or to store weapons: 464-465
- D. Misuse of medical facilities and ambulances: 466-474
- E. Forcing civilians to remain in an area for the specific purpose of sheltering that area or forces in that area from attack: 475-478

- F. Mingling with the civilian population to shield combatants against attack: 479-481
- G. Factual findings: 482-488
- H. Legal findings: 489-498

*IX. Obligation on Israel to Take Feasible Precautions to Protect Civilian Population and Civilian Objects in Gaza: 499-652*

- A. Warnings: 500-542
- B. UNRWA compound, Gaza City: 543-595
- C. Al-Quds hospital, Tal el-Hawa, Gaza City: 596-629
- D. Attacks on al-Wafa hospital, 5 and 16 January 2009: 630-652

*X. Indiscriminate Attacks by Israeli Armed Forces Resulting in the Loss of Life and Injury to Civilians: 653-703*

- A. The shelling in al-Fakhura Street by Israeli armed forces: 653-654
- B. The facts surrounding the Israeli armed forces' mortar shelling: 655-666
- C. The Israeli position: 667-673
- D. Other reports: 674-686
- E. Factual findings: 687-690
- F. Legal findings: 691-703

*XI. Deliberate Attacks against the Civilian Population: 704-885*

- A. Attacks on the houses of Ateya al-Samouni and Wa'ed al-Samouni in Zeytoun, resulting in the death of 23 members of the al-Samouni family: 706-735
- B. Killing of civilians attempting to leave their homes to walk to safer areas: 736-801
- C. Information concerning the instructions given to the Israeli armed forces with regard to the opening of fire against civilians: 802-808
- D. Legal findings with regard to the cases investigated by the Mission: 809-821
- E. The attack on the al-Maqadmah mosque, 3 January 2009: 822-843
- F. The attack on the al-Daya family house, 6 January 2009: 844-866
- G. Attack on the Abd al-Dayem condolence tents: 867-885

*XII. The Use of Certain Weapons: 886-912*

- A. White phosphorous: 887-901
- B. Flechettes: 902-905
- C. Alleged use of munitions causing a specific type of injury: 906-908
- D. Factual findings on the use of munitions causing a specific type of injury: 909-910
- E. Allegations regarding the use of depleted and non-depleted uranium munitions by the Israeli armed forces: 911-912

*XIII. Attacks on the Foundations of Civilian Life in Gaza: Destruction of Industrial Infrastructure, Food Production, Water Installations, Sewage Treatment Plants and Housing: 913-1031*

- A. The destruction of el-Bader flour mill: 913-941
- B. The destruction of the Sawafeary chicken farms: 942-961
- C. The destruction of water and sewage installations: 962-989
- D. The destruction of housing: 990-1007
- E. Analysis of the pattern of widespread destruction of economic and infrastructural targets: 1008-1031

*XIV. The Use of Palestinian Civilians as Human Shields: 1032-1106*

- A. The case of Majdi Abd Rabbo: 1033-1063
- B. The case of Abbas Ahmad Ibrahim Halawa: 1064-1075
- C. The case of Mahmoud Abd Rabbo al-Ajrami: 1076-1085
- D. The case of AD/03: 1086-1088
- E. Denial of the allegations by the Israeli armed forces: 1089
- F. Factual findings: 1090-1095
- G. Legal findings: 1096-1106

*XV. Deprivation of Liberty: Gazans Detained during the Israeli Military Operations of 27 December 2008 to 18 January 2009: 1107-1176*

- A. Al-Atatra sandpits: 1112-1126
- B. Detention and abuse of AD/02: 1127-1142
- C. AD/03: 1143-1163
- D. Factual findings: 1164
- E. Legal findings: 1165-1176

*XVI. Objectives and Strategy of Israel's Military Operations in Gaza: 1177-1216*

- A. Planning: 1178-1191
- B. The development of strategic objectives in Israeli military thinking: 1192-1199
- C. Official Israeli statements on the objectives of the military operations in Gaza: 1200-1202
- D. The strategy to achieve the objectives: 1203-1212
- E. Conclusions: 1213-1216

*XVII. The Impact of the Blockade and of the Military Operations on the People of Gaza and Their Human Rights: 1217-1335*

- A. The economy, livelihoods and employment: 1220-1233
- B. Food and nutrition: 1234-1241
- C. Housing: 1242-1245
- D. Water and sanitation: 1246-1249
- E. Environment: 1250-1251
- F. Physical and mental health: 1252-1267
- G. Education: 1268-1274
- H. Impact on women and children: 1275-1282
- I. Persons with disabilities: 1283-1291
- J. Impact on humanitarian assistance provided by the United Nations: 1292-1299
- K. Legal analysis: 1300-1335

*XVIII. The Continuing Detention of Israeli Soldier Gilad Shalit: 1336-1344***Section B: Internal violence: 1345-1372***XIX. Internal Violence and Targeting of Fatah Affiliates by Security Services under the Control of the Gaza Authorities: 1345-1372*

- A. Factual findings: 1366-1368
- B. Legal findings: 1369-1372

## THE WEST BANK, INCLUDING EAST JERUSALEM: 1373–1589

*XX. Treatment of Palestinians in the West Bank by Israeli Security Forces, Including Use of Excessive or Lethal Force during Demonstrations: 1381–1440*

- A. Settler violence in the West Bank in the period preceding the Israeli military operations in Gaza: 1384–1393
- B. The increased level of force since the end of the operations in Gaza: 1394–1404
- C. The role of impunity: 1405–1409
- D. Legal analysis and conclusions: 1410–1440

*XXI. Detention of Palestinians in Israeli Prisons: 1441–1507*

- A. Issues linked to Israel's December-January military operations in Gaza: 1449–1487
- B. Legal analysis and conclusions: 1488–1507

*XXII. Israeli Violations of the Right to Free Movement and Access: 1508–1549*

- A. Movement restrictions affecting the Mission's work: 1515–1516
- B. Movement and access and the Israeli military operations in Gaza: 1517–1519
- C. West Bank closures during the Israeli operations in Gaza: 1520–1523
- D. New measures to formalize the separation of Gaza and the West Bank: 1524–1527
- E. Movement and access, current situation: 1528–1534
- F. Jerusalem: accelerating the "silent transfer": 1535–1537
- G. New settlements, land expropriation and the demolition of villages in area C: 1538–1539
- H. Connecting the dots: 1540–1541
- I. Legal analysis and conclusions: 1542–1549

*XXIII. Internal Violence, Targeting of Hamas Supporters and Restrictions on Freedom of Assembly and Expression by the Palestinian Authority: 1550–1589*

- A. Crackdown by the Palestinian Authority on Hamas and other Islamic parties: 1555–1563
- B. Freedom of the press, freedom of expression and opinion: 1564–1570
- C. Freedom of assembly: repression of demonstrations during the Israeli military operations in Gaza of 27 December 2008–18 January 2009: 1571–1575
- D. Legal analysis: 1576–1583
- E. Conclusions: 1584–1589

**PART THREE: ISRAEL***XXIV. The Impact on Civilians of Rocket and Mortar Attacks by Palestinian Armed Groups on Southern Israel: 1594–1691*

- A. Summary of rocket and mortar fire from 18 June 2008 to 31 July 2009: 1600–1609
- B. Relevant Palestinian armed groups: 1610–1615
- C. Type of rockets and mortars held by the Palestinian armed groups: 1616–1623
- D. Rocket and mortar attacks by the Palestinian armed groups on Israel: 1624–1628
- E. Statements by Palestinian armed groups concerning their launching of rockets into Israel: 1629–1633

- F. Statements by the Gaza authorities to the Mission: 1634-1636
- G. Precautionary measures in effect in southern Israel: 1637-1646
- H. Impact of rocket and mortar fire on communities in southern Israel: 1647-1681
- I. Legal analysis and conclusions: 1682-1686
- J. Findings: 1687-1691

*XXV. Repression of Dissent in Israel, Right to Access to Information and Treatment of Human Rights Defenders: 1692-1772*

- A. Protests inside Israel: 1697-1711
- B. Judicial responses following the arrests of protesters: 1712-1718
- C. The interrogation of political activists by the General Security Services: 1719-1723
- D. Freedom of association and treatment of human rights organizations inside Israel: 1724-1732
- E. The access of the media and human rights monitors to Gaza prior to, during and after the military operations: 1733-1751
- F. Legal analysis and conclusions: 1752-1772

**PART FOUR: ACCOUNTABILITY AND JUDICIAL REMEDIES**

*XXVI. Proceedings and Responses by Israel to Allegations of Violations by Its Armed Forces against Palestinians: 1773-1835*

- A. Israel's system of investigation and prosecution: 1789-1803
- B. Legal assessment: 1804-1835

*XXVII. Proceedings by Palestinian Authorities: 1836-1848*

- A. Proceedings related to actions in the Gaza Strip: 1836-1842
- B. Proceedings related to actions in the West Bank: 1843-1848

*XXVIII. Universal Jurisdiction: 1849-1857*

*XXIX. Reparation: 1858-1873*

- A. The right to a remedy and reparation under international law: 1861-1866
- B. Compensation and reparations to the Palestinian people in the Gaza Strip: 1867-1873

**PART FIVE: CONCLUSIONS AND RECOMMENDATIONS**

*XXX. Conclusions: 1874-1966*

- A. Concluding observations: 1874-1876
- B. The Israeli military operations in Gaza: relevance to and links with Israel's policies vis-à-vis the occupied Palestinian territory: 1877-1879
- C. Nature, objectives and targets of the Israeli military operations in Gaza: 1880-1895
- D. Occupation, resilience and civil society: 1896-1899
- E. Rocket and mortar attacks in Israel: 1900-1902
- F. Dissenting voices in Israel: 1903-1904
- G. The impact of dehumanization: 1905-1910
- H. The intra-Palestinian situation: 1911
- I. The need for protection and the role of the international community: 1912-1917
- J. Summary of legal findings: 1918-1956
- K. The need for accountability: 1957-1966

*XXXI. Recommendations: 1967-1979*

*Annexes*

## 2. EXCERPTS

### ***PART TWO: OCCUPIED PALESTINIAN TERRITORY***

#### **XIII. ATTACKS ON THE FOUNDATIONS OF CIVILIAN LIFE IN GAZA: DESTRUCTION OF INDUSTRIAL INFRASTRUCTURE, FOOD PRODUCTION, WATER INSTALLATIONS, SEWAGE TREATMENT PLANTS AND HOUSING: 913-1031**

##### ***A. The destruction of el-Bader [al-Badir] flour mill: 913-941***

913. The mission visited the site of the air strikes and surveyed the surrounding area in Sudaniyah [al-Sudaniyya], west of Jabaliyah [Jabaliya]. It met and interviewed the Hamada brothers, joint owners of the el-Bader flour mill, on four occasions. It spoke with representatives of the business community about the context and consequences of the strike on the flour mill. Mr. Hamada also testified at the public hearings in Gaza. The mission also addressed questions to the government of Israel with regard to the military advantage pursued in attacking the el-Bader flour mill, but received no reply.

915. The el-Bader flour mill began operations in 1999. By 27 December 2008, it was the only one of Gaza's three flour mills still operating. The others had ceased operations owing to a lack of supplies. The el-Bader mill was able to continue in part because of its greater storage capacity.

916. On 30 December 2008, a recorded warning was left on the flour mill's answering machine to the effect that the message was from the Israeli armed forces and that the building should be evacuated immediately. The approximately 45 workers in the mill at the time were evacuated at around 9.30 a.m.

917. Following the evacuation, Mr. Hamada called a business associate in Israel, explained what had happened and asked him for advice. The business associate called him back, indicating that he had spoken with contacts in the Israeli armed forces on Mr. Hamada's behalf, and had been told that, although the mill had been on a list of proposed targets, they had decided not to proceed with the strike. Mr. Hamada did not receive any information as to why his mill might have been targeted.

918. As a result of these conversations and the fact that there had been no strike, the employees returned to work the next day. Work continued for a number of days until a second recorded warning was received on or around 4 January 2009. The flour mill was again evacuated and Mr. Hamada again contacted his business associate in Israel. The same scenario unfolded. . . . The employees returned to work. . . .

919. On 9 January, at around 3 or 4 a.m., the flour mill was hit by an air strike, possibly by an F-16. The missile struck the floor that housed one of the machines indispensable to the mill's functioning, completely destroying it. The guard who was on duty at the time called Mr. Hamada to inform him that the building had been hit and was on fire. He was unhurt. In the next 60 to 90 minutes the mill was hit several times by missiles fired from an Apache helicopter. These missiles hit the upper floors of the factory, destroying key machinery. . . . The strikes entirely disabled the factory and it has not been back in operation since. . . .

920. The Israeli armed forces occupied the disabled building until around 13 January. Hundreds of shells were found on its roof after the soldiers left. They appeared to be 40-mm grenade machine-gun spent cartridges.

921. The Hamada brothers rejected any suggestion that the building was at any time used for any purpose by Palestinian armed groups. They pointed out that all of the buildings and factories were surrounded by a high wall and manned by at least one guard at night. In addition, the Israeli authorities knew them as businessmen and they would not have been given Businessman Cards had there been any reason for the Israeli government to suspect that they were involved with or supported armed groups. They were both adamant that their interest was and always had been industrial and commercial and that the last thing they were prepared to do was put their business at risk.

### *1. Factual findings*

922. The mission found the Hamada brothers to be credible and reliable witnesses. It has no reason to doubt the veracity of their testimony. The information they provided was corroborated by other representatives of the Gaza business community with whom the mission discussed the context and consequences of the strike on the flour mill.

...

### *2. Legal findings*

...

926. [*Ed. Note*—Citation of relevant articles of Additional Protocol I to the Geneva Conventions.]

927. No other buildings in the industrial compound belonging to the Hamadas were damaged at the time of the strikes. It appears that the strikes on the flour mill were intentional and precise.

928. The Hamada brothers are well-known businessmen. The Israeli authorities did not appear to consider them either before or after the military operations to be a threat, given the unrestricted issuance of their Businessman Cards and their ability to travel to Israel afterwards. . . . It is not plausible that the Israeli authorities would issue such a document to any party it regarded with suspicion.

929. The only issue that remains to be examined is whether there was any reason for the flour mill to have been deemed a military objective on 9 January. The building was one of the tallest in the area and would have offered extensive views to the Israeli armed forces. The mission notes that taking control of the building might be deemed a legitimate objective in the circumstances. However, by 9 January, the Israeli armed forces were fully aware that the flour mill could be evacuated at short notice by using the warning message system. If the reason for attacking the mill was to gain control of it for observation and control purposes, it made no sense to bomb the principal machinery and to destroy the upper floors. There is also no suggestion that the Israeli armed forces considered the building to be a source of enemy fire.

930. The nature of the strikes on the mill and in particular the precise targeting of crucial machinery on one of the mid-level floors suggests that the intention was to disable its productive capacity. There appears to be no plausible justification for the extensive damage to the flour mill if the sole objective was to take control of the building. It thus appears that the only purpose was to put an end to the production of flour in the Gaza Strip.

931. From the facts it ascertained, the mission finds that there has been a violation of the grave breaches provisions of the Fourth Geneva Convention. Unlawful and wanton destruction which is not justified by military necessity would amount to a war crime.

932. Having concluded that the strikes were without any military justification, and therefore wanton and unlawful, the mission finds it useful to consider if there was any non-military purpose to the strikes.

933. The aim of the strike, if not military, could only have been to destroy the local capacity to produce flour. The question is whether such deliberate destruction of the sole remaining flour producing capacity in the Gaza Strip can be described as having been done for the purpose of denying sustenance to the civilian population.

...

937. From the facts ascertained by it, the mission finds that the destruction of the mill was carried out for the purpose of denying sustenance to the civilian population, which is a violation of customary international law as reflected in Article 54 (2) of Additional Protocol I and may constitute a war crime.

### ***B. The destruction of the Sawafeary chicken farms: 942–961***

...

943. Sameh Sawafeary is a chicken farmer. His family has been in the egg production business for many years. He indicated that he, his brothers and his children owned 11 chicken farms in Zeytoun [al-Zaytun] as of December 2008. The farms housed more than 100,000 chickens.

944. On 3 January, Mr. Sawafeary, who was in his home on al-Sekka Road in the al-Samouni [al-Samuni] neighborhood of Zeytoun with his family, was alerted by an al-Jazeera television news broadcast at around 8 p.m. that an Israeli ground invasion was imminent. As a result, he took a number of precautions, including hiding money and other valuables. He then gathered around 11 members of his family on the upper floor of the two-storey concrete house. At around 10 p.m. a missile struck the house, entering through the rear of the upper floor and exiting near the window of the living room opposite. The missile passed over several of Mr. Sawafeary's children and grandchildren, who were lying on the floor. No one was injured.

945. At around 11 p.m., Mr. Sawafeary heard the sound of helicopters flying over his house followed by soldiers landing on his roof. The soldiers remained there until 7 a.m. the next morning, firing what he described as "a rain of bullets." The family stayed, terrified, on the floor of an upstairs room.

946. At around 7.15 a.m. on 4 January, soldiers came into the upstairs room where the family was sheltering. They separated the men from the women and put the women in another room. The hands of the men and the boys were tied behind their backs, except for one of Mr. Sawafeary's sons who has only one arm. After some time the commander told Mr. Sawafeary that they should walk south and "go to Rafah." The soldiers then searched the house. The 11 members of the household there at the time left the house as instructed.

947. The Sawafeary family spent the following five days in terror. Together with neighboring families they spent one night in the Abu Zur house and the following three in the nearby house of Mr. Rajab Mughrabi. During that time, they suffered a number of violations at the hands of the Israeli armed forces, including the killing of the child Ibrahim Juha (see chap. XI).

948. For the purposes of this section the mission refers to the information it received about the systematic destruction that occurred for several days and which the witnesses

were able to see during the time they were forced by the circumstances to remain in the house of Mr. Mughrabi.

949. Mr. Sawafeary and Mr. Mughrabi informed the mission that they had watched Israeli armored bulldozers systematically destroy land, crops, chickens and farm infrastructure. Mr. Mughrabi stated that he watched the bulldozers plough through fields with crops and trees, destroying everything in their path. Mr. Sawafeary stated that he saw less, as he was watching through a small opening because he was afraid of being seen and shot. He stated that he saw only two or three “tanks,” but was not in a position to say whether there were more. He watched as the armored bulldozers destroyed the chicken farms, crushing the wire mesh coops with the chickens inside. He could not see his own farms and the chickens he could see being destroyed were not his. He noted that the drivers of the tanks would spend hours flattening the chicken coops, sometimes stopping for coffee breaks, before resuming their work.

950. When he left Mr. Mughrabi’s house on 8 January, Mr. Sawafeary was able to see that his own farms did not appear to have been subjected to the destruction he had witnessed from inside the house. However, when he was able to return to his home after the Israeli withdrawal, all 31,000 of his chickens had been killed and the coops systematically flattened.

951. The mission visited the site and saw the still flattened mesh coops, which had been covered with corrugated iron, as well as the remains of water tanks and machinery. The mission was also shown the remnants of a small mosque near the end of one of the lines of the coops that had been destroyed. The remains of some dead chickens were still visible and Mr. Sawafeary stated that it had been a mammoth task to clean up the area when he returned. He pointed out that, in addition to the loss of livestock, the farm had been completely automated with significant investment in machinery, all of which had been destroyed, as had the plant for packaging the eggs. In short, the business had been razed to the ground. A protective grille, believed to be part of a D-9 armored bulldozer, was found at the site.

...

954. Mr. Sawafeary told the mission that he and his family together supplied approximately 35 percent of the egg market in Gaza. His own farms supplied over 10 percent. He noted that it was not only his farms that had been destroyed but also most of his family’s farms had been destroyed in the same way as his. He estimated that close to 100,000 chickens were killed in the process.

955. The mission has reviewed the relevant UNOSAT [UN Institute for Training and Research Operational Satellite Applications Program] report and satellite imagery. One satellite image shows the Sawafeary chicken farms in June 2007 and another shows the area in January 2009. The images depict clearly the size of the farms and the surrounding area. The destruction is plainly visible in the second image.

### *1. Factual findings*

...

957. The mission finds that the destruction of the land and farms in the area was not justified by the pursuit of any military objective. The Israeli armed forces that arrived took control of the area within a matter of hours. They remained there until 18 January. The destruction of the land was not necessary to move the tanks or equipment or gain any particular visual advantage.

...

960. From the facts ascertained by it, the mission finds that the Sawafeary chicken farms, the 31,000 chickens, and the plant and material necessary for the business were systematically and deliberately destroyed, and that this constituted a deliberate act of wanton destruction not justified by any military necessity.

...

### ***C. The destruction of water and sewage installations: 962–989***

#### ***1. The Gaza wastewater treatment plant, Road No. 10, al-Sheikh Ejlin [Shaykh Ajlin], Gaza City***

...

963. The Gaza wastewater treatment plant is located in the coastal area southwest of Gaza City in the al-Sheikh Ejlin neighborhood. It was built in 1977 and expanded with support from development cooperation. It consists of a number of installations, including offices, tanks and lagoons to store raw sewage.

964. At some point between 3 and 10 January, a large missile hit the northernmost wall of lagoon No. 3, causing a massive outflow of raw sewage, which travelled a distance of 1.2 kilometers and damaged 5.5 hectares of land, including agricultural land, according to UNOSAT satellite imagery.

965. The chief of the plant, Mr. Jaoudat al-Dalou, explained to the mission that when the Israeli ground offensive started around 3 January, all staff left for security reasons, as did the local residents of the sparsely populated area. Around 14 January, he received a phone call from someone in the vicinity of the plant reporting the strike on lagoon No. 3 and the flooding of neighboring farmland by sewage. He contacted ICRC [the International Committee of the Red Cross] and PRCS [Palestinian Red Crescent Society] to seek permission from the Israeli armed forces to go to the plant and carry out urgent repairs. Permission was denied on the grounds that the area was a “military zone.”

966. After the withdrawal of the Israeli armed forces, Mr. al-Dalou and his colleagues returned to al-Sheikh Ejlin to inspect the damage. They also saw what they believed to be unexploded bombs nearby and called the police to contact UNRWA [UN Relief and Works Agency] to clear the area. Mr. al-Dalou found a crater five meters deep on the northeast side of lagoon No. 3. The damaged wall took over four days to repair at a cost of some US\$ 158,000. More than 200,000 cubic meters of raw sewage had flowed into neighboring farmland.

967. In addition, a number of items, including an incubator, had been taken out of the plant and used by Israeli soldiers to make a barricade or protection wall. The damage done by the impact of bullets could still be seen on interior walls. Shattered windows had still not been replaced as glass was not available. Other damaged equipment included distillation equipment (damaged beyond repair) and a nitrogen ammonium machine.

968. In interviews with the mission, Mr. Munther Shublaq, who issued a CMWU [Coastal Municipalities Water Utility] report of the damage in January 2009, confirmed that staff had left upon the arrival of Israeli ground forces and did not return until their withdrawal. He also indicated that on hearing news of the rupture of lagoon No. 3 he made several unsuccessful efforts to obtain permission to access the area to stop the damage caused by the outflow.

969. The mission noted breaks in a large raw-sewage pipe which ran to the north of lagoon No. 3. Plant officials suggested that clearly visible markings on the pipe had been made by tanks. The routes of such pipes are marked by 1.5-meter-high, red and

white poles to ensure that care is taken not to damage the pipes. The damage is very close to one such pole.

970. The precise date of the strike on Lagoon No. 3 is uncertain because there were no witnesses in the area at the time. With satellite images it is, however, possible to establish that the strike must have occurred before 10 January 2009, as the images clearly show the massive outflow of sewage from the lagoon on that date.

971. It is also possible to ascertain from the satellite images that the strike on the lagoon wall's eastern side created a breach of about 22 meters, through which the sewage flowed. The same images show the route of the outflow and where it stopped. The United Nations Environment Program carried out a ground survey of the site on 30 January 2009 and data from that survey were added to the UNOSAT image interpretation.

972. The plant occupies a position at the top of a hill and provides a view over a considerable area of open land, which is mainly farmland. As such, it might reasonably be considered to be of strategic interest.

### **Factual findings**

...

974. Notwithstanding the possible military advantage offered to the Israeli armed forces by the plant's location, the mission cannot find any justification for striking the lagoon with what must have been a very powerful missile, sufficient to cause a breach 5 meters deep and 22 meters wide. It is highly unlikely that Palestinian armed groups could have taken up positions in or around the lagoon after the initial occupation of the area by Israeli armed forces: any such groups would have been exposed in the open area. The fact that the lagoon wall was struck precisely there where it would cause outflow of the raw sewage suggests that the strike was deliberate and premeditated.

#### *2. Namar wells group, Salah ad-Din [Salah al-Din] Street, Jabaliyah refugee camp*

...

976. The wells group stood approximately 50 meters from the Jabaliyah refugee camp's administration building, which was also destroyed. A crater (approximately five meters wide) was still visible in the grounds belonging to the civil administration, with at its bottom the case of a rocket.

977. This was a complex of two water well pumps, one in operation and another next to it as standby. Mr. Ramadan Nai'm told the mission how proud CMWU had been of this water well, which produced more than 200 cubic meters per hour of the best-quality water in the area. The well supplied water to some 25,000 people in eastern and central Jabaliyah. The standby well pump was capable of pumping some 100 cubic meters of water. Both were completely destroyed on 27 December by an airstrike.

978. In the Namar water wells complex there were not only pumping machines but also a 180 kg generator, a fuel store, a reservoir chlorination unit, buildings and related equipment. These were also destroyed.

979. The operator, Mr. Abdullah Ismail al-Zein, was killed in the air strike while he was working at the station. He was employed by the municipality rather than by CMWU and had been working in the station for four years. He was blown to pieces and his identity was established when his shoes were found three days later.

980. The strike also blew up the pipes connecting the wells to other water wells; incoming water spilled into the area for some 10 days before the pipes could be shut off.

981. Mr. Nai'm informed the mission that he tried through the mediation of ICRC to get permission from the Israeli armed forces to repair the supply pipes, but permission

was not granted and he was obliged to wait until the withdrawal of the Israeli armed forces.

982. It was calculated that repairs to this group of water wells would cost around US\$ 200,000, excluding the ancillary but necessary civil engineering works.

983. Mr. Nai'm stated that at least 10 bombs were used to destroy the complex. Not a single wall was left intact.

#### **Factual findings**

984. From the facts ascertained by it, the mission finds that the Namar wells were destroyed by multiple air strikes on the first day of the Israeli aerial attack and that civil administration buildings located at approximately 50 meters were also destroyed.

985. The question remains as to whether the Israeli air strikes on the Namar wells group were deliberate or made in error. The mission notes that the deployment systems and aircraft used in the strikes of 27 December (principally F-16 fighter jets and UAVs [unmanned aerial vehicles]) are capable of a high degree of precision. It notes also that, by all accounts, a great deal of preparation had been put into determining and designating the targets of air strikes. The mission considers it unlikely that a target the size of the Namar wells could have been hit by multiple strikes in error, given the nature of the deployment systems and the distance between the wells and any neighboring buildings. The facts thus indicate that the strikes on the Namar wells group were intentional.

986. The mission found no grounds to suggest that there was any military advantage to be gained from hitting the wells. There was no suggestion that Palestinian armed groups had used the wells for any purpose.

...

#### ***D. The destruction of housing: 990–1007***

...

##### ***1. Factual findings***

998. From the facts gathered, the mission concludes that, in a number of cases it investigated, the Israeli armed forces launched direct attacks against residential houses, destroying them. Although the mission does not have complete information on the circumstances prevailing in Juhur ad-Dik [Juhur al-Dik], al-Samouni neighborhood, and Izbat Abd Rabbo [Izbat 'Abid Rabbuh] when the houses of the Hajaj, al-Samouni, and Khalid Abd Rabbo families were destroyed, the information in its possession strongly suggests that they were destroyed outside of any combat engagements with Palestinian armed groups. Nor were these houses otherwise making any effective contribution to military action. These attacks deprived the extended families living there of shelter and of a significant part of their property.

999. In other cases, residential neighborhoods were subjected to air-launched bombing and to intensive shelling apparently in the context of the advance of Israeli ground forces. In these cases, although the facts gathered by the mission do not suggest that the residential houses were directly targeted, it doubts whether there were military objectives pursued by the shelling.

##### ***2. Corroboration of mission's factual findings and widespread nature of housing destruction***

1000. Testimonies of Israeli soldiers deployed in Gaza during the military operations corroborate what the mission saw for itself and heard from the witnesses it interviewed. Several of the soldiers interviewed by Breaking the Silence spoke of the unprecedented

scale of destruction of houses and of “intentional, systematic destruction.” The testimonies of the soldiers appear to distinguish between three phases in or types of destruction of residential housing. First, there is the destruction which is incidental to the actual combat between the advancing Israeli forces and the Palestinian combatants or to Israeli forces directing fire at locations from which rockets were launched. Second, there is destruction of houses for what is termed “operational reasons.” This is the deliberate destruction of houses from which fire had been opened on Israeli soldiers or which were suspected of being booby-trapped, containing tunnels, or being used for weapons storage. “Operational necessity” also embraced the destruction of houses which obstructed visibility for the Israeli armed forces or had a “strategic advantage” for them. “In case of any doubt, take down houses. You don’t need confirmation for anything, if you want,” were the instructions of one commander to his troops.

1001. The third phase of destruction of housing was no longer tied to the “operational necessities” of the ongoing military operations. It was in view of “the day after” the Israeli armed forces withdrew from Gaza. In the words of one Israeli soldier:

... then we were told there are houses to be demolished for the sake of “the day after.” The day after is actually a thought that obviously we’re going in for a limited period of time which could be a week and it might also be a few months. But it’s not a longer span of time without defining what it is. And the rationale was that we want to come out with the area remaining sterile as far as we’re concerned. And the best way to do this is by razing. That way we have good firing capacity, good visibility for observation, we can see anything, we control a very large part of the area and very effectively. This was the meaning of demolition for the sake of the day after. In practical terms this meant taking a house that is not implicated in any way, that its single sin is the fact that it is situated on top of a hill in the Gaza Strip.

1002. Satellite imagery provided by UNOSAT at the mission’s request is consistent with the soldiers’ testimonies. It shows, for instance, that 65 percent of the destruction/damage of buildings in Rafah was caused by airstrikes between 11 and 18 January. By contrast, 54 percent of the destruction/damage in Izbet Abd Rabbo (east Gaza) occurred between 6 and 10 January as the Israeli troops advanced into the city.

1003. The UNOSAT reports on the destruction of buildings in al-Samouni neighborhood and al-Atatra, two areas that suffered particularly heavy destruction of civilian housing and other buildings, show that most were destroyed during the last three days of the Israeli armed forces’ presence on the ground in Gaza. In al-Samouni, out of 114 severely damaged or completely destroyed buildings, 60 were destroyed between 27 December 2008 and 10 January 2009 (i.e., the air phase and the advance of the ground invasion), only 4 between 10 and 16 January, and 50 between 16 and 19 January 2009. Similarly, in al-Atatra, out of 94 severely damaged or completely destroyed buildings, 36 were destroyed between 27 December 2008 and 10 January 2009, only 6 between 10 and 16 January, and 52 between 16 and 19 January 2009.

1004. These figures confirm that a first phase of extensive destruction of housing for the “operational necessity” of the advancing Israeli forces in these areas was followed by a period of relative idleness on the part of the Israeli bulldozers and explosives engineers. But during the last three days, aware of their imminent withdrawal, the Israeli armed forces engaged in another wave of systematic destruction of civilian buildings.

### 3. Legal findings

1006. Considering the facts it has gathered on the destruction of these houses from the soldiers' testimonies and the UNOSAT report, the mission finds that the conduct of the Israeli armed forces in these cases amounted to the grave breach of "extensive destruction ... of property, not justified by military necessity and carried out unlawfully and wantonly" under Article 147 of the Fourth Geneva Convention.

#### ***E. Analysis of the pattern of widespread destruction of economic and infrastructural targets: 1008–1031***

1008. The mission interviewed Mr. Amr Hamad, the Deputy General-Secretary of the Palestinian Federation of Industries, on three separate occasions, including at the public hearings in Gaza. The mission also met a number of businessmen involved in fishing, strawberry farming, construction, including concrete and cement production and packaging, food and drinks production, car mechanics and repairs, livestock farming, and refrigeration. While much of the information provided to the mission focused on the effect of the restrictions Israel had imposed on the Gaza Strip for a considerable time before 27 December 2008, significant information was also provided on the effect of the attacks during the Israeli military operations in Gaza.

1009. Mr. Amr Hamad indicated that 324 factories had been destroyed during the Israeli military operations at a cost of 40,000 jobs. In its detailed written report on the impact of the Israeli military activities, the Palestinian Federation of Industries points out that 200 businesses and factories were destroyed in Gaza City, 101 in northern Gaza and 20 in southern Gaza. Of the total 324 premises damaged, almost 30 percent were linked to the metals and engineering sector, over 20 percent to construction, and 16 percent to furniture businesses. Other sectors with significant losses were aluminum, food, sewing textiles, chemicals and cosmetics, plastics and rubber, paper and carton, and handicrafts. The Federation states that more than half were totally destroyed.

1010. The Federation emphasized that "the Gaza Strip's most crucial industries, and ones which require the greatest investment, were most severely hit." Eleven of the 324 premises struck by the Israeli armed forces were linked to the food industry and the losses incurred amount to some US\$37 million, i.e., over one third of all the losses to the industrial sector. Similarly, while the construction sector suffered 69 of the 324 strikes, this represented just under 30 percent of the total damage. The report notes that the majority of the losses resulting from the strikes on the 324 premises related to machinery costs (50 percent), while just over a quarter relate to the buildings themselves.

1011. The mission found the information provided by Mr. Hamad, as well as the report produced by the Palestinian Federation of Industries, to be credible and reliable. The mission discussed and was satisfied by the methodology used in compiling the report, which was produced with the support of the Konrad Adenauer Foundation. The mission also found that the testimony of businessmen whose premises had been struck or destroyed by the Israeli armed forces corroborate information provided by Mr. Hamad and the Palestinian Federation of Industries.

#### ***1. Construction industry***

1012. One of the incidents Mr. Hamad referred to at the public hearing relates to the destruction of the only cement-packaging plant in Gaza. The mission also interviewed its owner, Mr. Atta Abu Jubbah. According to the reconstruction of the events, the

Israeli armed forces began striking the plant from the air, damaging it significantly. Later ground forces—equipped with bulldozers and tanks—moved in and used mines and explosives to destroy the silo that used to contain 4,000 tons of cement. Helicopters launched rockets to destroy the main manufacturing line and fired holes into the cement containers. Bulldozers were used to destroy the factory walls. Over four days the factory was systematically destroyed. The mission spoke with a number of other witnesses able to verify this account and considers it to be reliable. Among those witnesses was a civil engineer who inspected the site and confirmed that certain aspects of the destruction could have been achieved only by placing explosives inside the building. The silo had not been entirely destroyed in the aerial attacks, so explosives were attached to its supporting columns.

1013. The plant was an important part of Gaza's construction industry. It produced cement in bags, selling 200 tons per day with a profit of US\$15 per ton. The company is valued at some US\$12 million. As mentioned above, the owner's house was also destroyed by rocket fire.

1014. The owner is one of fewer than 100 businessmen who are in possession of the Businessman Card issued by Israel. The mission notes that the plant was not destroyed during the aerial phase but was systematically reduced to rubble in a concerted effort over several days at the end of the military operations.

1015. The destruction of Mr. Atta Abu Jubbah's plant forms part of what appears to have been a very deliberate strategy of attacking the construction industry. The Palestinian Federation of Industries also provides detail on the systematic and total destruction of the Abu Eida factories for ready-mix concrete. They were established in 1993. Nineteen of the 27 concrete factories were reported to have been destroyed, representing 85 percent of the productive capacity.

1016. The ability to produce and supply concrete in a context where external supplies are entirely controlled by Israel is a matter not only of economic importance but arguably one of human necessity to satisfy the basic need for shelter. Even if the population can get by in makeshift accommodation or by living in cramped conditions with their extended families, the capacity to repair the massive damage done to buildings without internally produced concrete is severely reduced. To the extent that concrete is allowed to enter at all, it is significantly more expensive than domestically produced concrete.

1017. There appears to have been no military reason or justification for destroying the factory. This conclusion is borne out by the long established trading history of the owners and their recognition through the Businessman Cards.

## *2. Destruction of the remaining food industry*

1018. As already reported, more than a third of all egg factories were destroyed by the Israeli armed forces. Other testimonies, for example that of the mayor of al-Atatra, who referred to the destruction of his sister's chicken farms, indicated that a substantial part of the chicken farming industry appears to have been deliberately and systematically destroyed.

1019. The mission also notes the destruction of the al-Wadiyah Group's factories. The al-Wadiyah Group employed some 170 people, had been in business since 1954, and produced a variety of food and drinks. Dr. al-Wadiyah presented a detailed account of its activities and losses to the mission.

1020. The mission found no reason to believe that the premises of the flour mill, chicken farms, and food-processing plants that were destroyed had been used for purposes that would render them in any way military objectives.

1021. The mission also reviewed satellite images showing significant destruction of greenhouses throughout Gaza. In total, it is estimated that over 30 hectares of greenhouses were demolished; 11.2 hectares were destroyed in Gaza City and 9.5 hectares in north Gaza. The mission found that the large-scale and systematic destruction of greenhouses was not justified by any possible military objective.

### *3. Destruction of water installations*

1022. Finally, in relation to the supply and treatment of water, the mission analyzed a limited number of cases. The strikes on the al-Sheikh Ejlin plant and on the Namar water wells have been described in some detail. The mission also spoke at length with Mr. Munther Shublaq, who was responsible for the CMWU Damage Assessment Report. That report indicates that all types of water installations appeared to have been damaged to some extent during the Israeli operations, but notes especially that in some areas, particularly Beit Lahia [Bayt Lahiya], Jabaliyah, Beit Hanoun [Bayt Hanun], part of Zeytoun, south of Rafah, and the villages in the east, buildings, water and wastewater infrastructure and other facilities have been totally destroyed. "Those areas need a complete water and wastewater infrastructure which may require re-designing the networks based on the new population in the area."

1023. Mr. Munther Shublaq noted that, although a number of wells had been struck, the worst effects had been as a result of the damage to water-treatment plants and sewage pipes. The mission heard a number of reports that indicated that the strikes on plants, pipes, wells, and tanks had put considerable pressure on the sanitation and water-supply system.

1024. The Palestinian Authority claimed that 5,708 roof water storage tanks were destroyed, but it is not clear how many of these were on the roofs of the 4,036 houses that the Palestinian Authority stated were destroyed.

1025. The mission found that the targeting of water-related installations was not justified by any possible military objective.

...

### *5. General legal findings*

1028. The mission has made detailed findings in relation to each of the incidents set out above. However, given the nature of the systematic attacks on the food, water, and infrastructure provision in Gaza during the military operations, the mission also believes it is important to highlight the issue of state responsibility and the liability of Israel in relation to the internationally wrongful acts committed.

1029. While the element of fault is controversial in the law of state responsibility, the mission has found that in all of the cases described above both the act and the consequence were intended.

1030. Israel had a number of duties in respect of its actions during the military operations. These included the general obligation reflected in Article 52 of Additional Protocol I to ensure that civilian objects are not the objects of attack and to ensure the protection of objects indispensable to the survival of the civilian population. In addition, the customary norms of international law contained in Article 54 (2) of Additional Protocol I require states not to destroy objects indispensable to the survival of the population.

1031. Israel displayed a premeditated determination to achieve the objective of destruction. It is, therefore, responsible for the internationally wrongful acts it perpetrated in breach of the duties specified above.

...

## **XVI. OBJECTIVES AND STRATEGY OF ISRAEL'S MILITARY OPERATIONS IN GAZA: 1177–1216**

1177. This chapter addresses the objectives and the strategy underlying the Israeli military operations in Gaza.

### ***A. Planning: 1178–1191***

1178. The question of whether incidents involving the Israeli armed forces that occurred between 27 December 2008 and 18 January 2009 are likely to be the result of error, the activities of rogue elements, or a deliberate policy or planning depends on a number of factors, including the degree and level of planning involved, the degree of discretion field commanders have in operations, the technical sophistication and specification of weaponry, and the degree of control commanders have over their subordinates.

1179. The government of Israel has refused to cooperate with the mission. The mission has therefore been unable to interview high-level members of the Israeli armed forces. It has, nevertheless, reviewed a significant amount of commentary and conducted a number of interviews on planning and discipline, including with persons who have been connected with the planning of Israeli military operations in the recent past. The mission has also analyzed the views expressed by Israeli officials in official statements, official activities and articles, and considered comments by former senior soldiers and politicians.

#### ***1. The context***

1180. Before considering the issue of planning there is an important issue that has to be borne in mind about the context of Israeli operations in Gaza. The land mass of Gaza covers 360 square kilometers of land. Israel had a physical presence on the ground for almost 40 years with a significant military force until 2005. Israel's extensive and intimate knowledge of the realities of Gaza present a considerable advantage in terms of planning military operations. The mission has seen grid maps in possession of the Israeli armed forces, for example, that show the identification by number of blocks of houses throughout Gaza City.

1181. In addition to such detailed background knowledge, it is also clear that the Israeli armed forces were able to access the telephone networks to contact a significant number of users in the course of their operations.

1182. Since the departure of its ground forces from Gaza in 2005, Israel has maintained almost total control over land access and total control over air and sea access. This has also included the ability to maintain a monitoring capacity in Gaza, by a variety of surveillance and electronic means, including UAVs. In short, Israel's intelligence gathering capacity in Gaza since its ground forces withdrew has remained extremely effective.

#### ***2. Legal input and training of soldiers on legal standards***

1183. The Israeli government has set out the legal training and supervision relevant to the planning, execution, and investigation of military operations. The mission also met Col. (ret.) Daniel Reisner, who was the head of the International Legal Department of the Military Advocate General's Office of the Israel Defense Forces from 1995 until 2004. In an interview with the mission he explained how the principles and contents of international humanitarian law were instilled into officers. He explained the four-tiered training system, reflecting elements similar to those presented by the government,

which seeks to ensure knowledge of the relevant legal obligations for compliance in the field. Firstly, during training all soldiers and officers receive basic courses on relevant legal matters. The more senior the ranks, the more training is required “so that it becomes ingrained.” Secondly, before a significant or new operation, legal advice will be given. Col. Reisner indicated that he understood from talking with colleagues still in active service that detailed consultations had taken place with legal advisers in the planning of the December-January military operations. He was not in a position to say what that advice had been. Thirdly, there would be real-time legal support to commanders and decision makers at headquarters, command, and division levels (but not at regiment levels or below). The fourth stage is that of investigation and prosecution wherever necessary.

1184. The same framework explained by Col. Reisner appears to be repeated in similar detail in a presentation of the Office of the Legal Adviser to the Ministry of Foreign Affairs.

### *3. The means at the disposal of the Israeli armed forces*

1185. The Israeli armed forces are, in technological terms, among the most advanced in the world. Not only do they possess the most advanced hardware in many respects, they are also a market leader in the production of some of the most advanced pieces of technology available, including UAVs. They have a very significant capacity for precision strikes by a variety of methods, including aerial and ground launches. Moreover, some new targeting systems may have been employed in Gaza.

1186. Taking into account all of the foregoing factors, the mission, therefore, concludes that Israel had the means necessary to plan the December-January military operations in detail. Given both the means at Israel’s disposal and the apparent degree of training, including training in international humanitarian law, and legal advice received, the mission considers it highly unlikely that actions were taken, at least in the aerial phase of the operations, that had not been the subject of planning and deliberation. In relation to the land-air phase, ground commanders would have had some discretion to decide on the specific tactics used to attack or respond to attacks. The same degree of planning and premeditation would therefore not be present. However, the mission deduces from a review of many elements, including some soldiers’ statements at seminars in Tel Aviv and to Breaking the Silence, that what occurred on the ground reflected guidance that had been provided to soldiers in training and briefing exercises.

1187. The mission notes that it has found only one example where the Israeli authorities have acknowledged that an error had occurred. This was in relation to the deaths of 22 members of the al-Daya family in Zeytoun. The government of Israel explained that its armed forces had intended to strike the house next door, but that errors were made in the planning of the operation. The mission expresses elsewhere its concerns about this explanation (see chap. XI). However, since it appears to be the only incident that has elicited an admission of error by the Israeli authorities, the mission takes the view that the government of Israel does not consider the other strikes brought to its attention to be the result of similar or other errors.

1188. In relation to air strikes, the mission notes the statement issued in Hebrew posted on the website of the Israeli armed forces on 23 March 2009:

Official data gathered by the Air Force concluded that 99 percent of the firing that was carried out hit targets accurately. It also concluded that over 80 percent of the bombs and missiles used by the

Air Force are defined as accurate and their use reduces innocent casualties significantly. . . .

...

1190. These represent extremely important findings by the Israeli Air Force. It means that what was struck was meant to be struck. It should also be borne in mind that the beginning of the ground phase of the operation on 3 January did not mean the end of the use of the Israeli Air Force. The statement indicates:

During the days prior to the operation "Cast Lead," every brigade was provided with an escorting UAV squadron that would participate in action with it during the operation. Teams from the squadrons arrived at the armor and infantry corps, personally met the soldiers they were about to join and assisted in planning the infantry maneuvers. The UAV squadrons had representatives in the command headquarters and officers in locations of actual combat who assisted in communication between the UAVs—operated by only two people, who are in Israeli territory—and the forces on the ground. The assistance of UAVs sometimes reached a ratio of one UAV to a regiment and, during extreme cases, even one UAV to a team.

1191. Taking into account the ability to plan, the means to execute plans with the most developed technology available, the indication that almost no errors occurred, and the determination by investigating authorities thus far that no violations occurred, the mission finds that the incident and patterns of events that are considered in this report have resulted from deliberate planning and policy decisions throughout the chain of command, down to the standard operating procedures and instructions given to the troops on the ground.

***B. The development of strategic objectives in Israeli military thinking:  
1192–1199***

1192. . . . The military operations from 27 December to 18 January did not occur in a vacuum, either in terms of proximate causes in relation to the Hamas/Israeli dynamics or in relation to the development of Israeli military thinking about how best to describe the nature of its military objectives.

1193. A review of the available information reveals that, while many of the tactics remain the same, the reframing of the strategic goals has resulted in a qualitative shift from relatively focused operations to massive and deliberate destruction.

1194. In its operations in southern Lebanon in 2006, there emerged from Israeli military thinking a concept known as the Dahiya doctrine, as a result of the approach taken to the Beirut neighborhood of that name. Major General Gadi Eisenkot, the Israeli Northern Command chief, expressed the premise of the doctrine:

1195. What happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on. [...] We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases. [...] This is not a recommendation. This is a plan. And it has been approved.

1196. After the war in southern Lebanon in 2006, a number of senior former military figures appeared to develop the thinking that underlay the strategy set out by Gen. Eisenkot. In particular Major General (ret.) Giora Eiland has argued that, in the event of

another war with Hizballah, the target must not be the defeat of Hizballah but “the elimination of the Lebanese military, the destruction of the national infrastructure and intense suffering among the population ... Serious damage to the Republic of Lebanon, the destruction of homes and infrastructure, and the suffering of hundreds of thousands of people are consequences that can influence Hizballah’s behavior more than anything else.”

1197. These thoughts, published in October 2008, were preceded by one month by the reflections of Col. (ret.) Gabriel Siboni:

With an outbreak of hostilities, the IDF will need to act immediately, decisively, and with force that is disproportionate to the enemy’s actions and the threat it poses. Such a response aims at inflicting damage and meting out punishment to an extent that will demand long and expensive reconstruction processes. The strike must be carried out as quickly as possible, and must prioritize damaging assets over seeking out each and every launcher. Punishment must be aimed at decision makers and the power elite ... In Lebanon, attacks should both aim at Hizballah’s military capabilities and should target economic interests and the centers of civilian power that support the organization. Moreover, the closer the relationship between Hizballah and the Lebanese government, the more the elements of the Lebanese state infrastructure should be targeted. Such a response will create a lasting memory among ... Lebanese decision makers, thereby increasing Israeli deterrence and reducing the likelihood of hostilities against Israel for an extended period. At the same time, it will force Syria, Hizballah, and Lebanon to commit to lengthy and resource-intensive reconstruction programs ... This approach is applicable to the Gaza Strip as well. There, the IDF will be required to strike hard at Hamas and to refrain from the cat and mouse games of searching for Qassam rocket launchers. The IDF should not be expected to stop the rocket and missile fire against the Israeli home front through attacks on the launchers themselves, but by means of imposing a ceasefire on the enemy.

1198. General Eisenkot used the language quoted above while he was in active service in a senior command position and clarified that this was not a theoretical idea but an approved plan. Major General Eiland, though retired, was a man of considerable seniority. Colonel Siboni, while less senior than the other two, was nonetheless an experienced officer writing on his field of expertise in a publication regarded as serious.

1199. The mission does not have to consider whether Israeli military officials were directly influenced by these writings. It is able to conclude from a review of the facts on the ground that it witnessed for itself that what is prescribed as the best strategy appears to have been precisely what was put into practice.

### ***C. Official Israeli statements on the objectives of the military operations in Gaza: 1200–1202***

1200. The mission is aware of the official statements on the goals of the military operations:

The Operation was limited to what the IDF believed necessary to accomplish its objectives: to stop the bombardment of Israeli

civilians by destroying and damaging the mortar and rocket launching apparatus and its supporting infrastructure, and to improve the safety and security of southern Israel and its residents by reducing the ability of Hamas and other terrorist organizations in Gaza to carry out future attacks.

...

***D. The strategy to achieve the objectives: 1203–1212***

1203. The issue that is of special concern to the mission is the conceptualization of the “supporting infrastructure.” The notion is indicated quite clearly in General Eisenkot’s statements in 2006 and reinforced by the reflections cited by non-serving but well-informed military thinkers.

1204. On 6 January 2009, during the military operations in Gaza, Deputy Prime Minister Eli Yishai stated: “It [should be] possible to destroy Gaza, so they will understand not to mess with us.” He added that “it is a great opportunity to demolish thousands of houses of all the terrorists, so they will think twice before they launch rockets. I hope the operation will come to an end with great achievements and with the complete destruction of terrorism and Hamas. In my opinion, they should be razed to the ground, so thousands of houses, tunnels, and industries will be demolished.” He added that “residents of the South are strengthening us, so the operation will continue until a total destruction of Hamas [is achieved].”

1205. On 2 February 2009, after the end of the military operations, Eli Yishai went on: “Even if the rockets fall in an open air or to the sea, we should hit their infrastructure, and destroy 100 homes for every rocket fired.”

...

1207. It is in the context of comments such as these that the massive destruction of businesses, agricultural land, chicken farms, and residential houses has to be understood. In particular, the mission notes the large-scale destruction that occurred in the days leading up to the end of the operations. During the withdrawal phase it appears that possibly thousands of homes were destroyed. The mission has referred elsewhere in this report to the “day after” doctrine, as explained in the testimonies of Israeli soldiers, which can fit in with the general approach of massively disproportionate destruction without much difficulty.

1208. The concept of what constituted the supporting infrastructure has to be understood not only in the context of the military operations of December and January, but in the tightening of the restrictions of access to goods and people into and out of Gaza, especially since Hamas took power. The mission does not accept that these restrictions can be characterized as primarily an attempt to limit the flow of materials to armed groups. The expected impact, and the mission believes primary purpose, was to bring about a situation in which the civilian population would find life so intolerable that they would leave (if that were possible) or turn Hamas out of office, as well as to collectively punish the civilian population.

1209. The Israeli Government has stated:

While Hamas operates ministries and is in charge of a variety of administrative and traditionally governmental functions in the Gaza Strip, it still remains a terrorist organization. Many of the ostensibly civilian elements of its regime are in reality active components of its terrorist and military efforts. Indeed, Hamas does not separate

its civilian and military activities in the manner in which a legitimate government might. Instead, Hamas uses apparatuses under its control, including quasi-governmental institutions, to promote its terrorist activity.

1210. The framing of the military objectives Israel sought to strike is thus very wide indeed. There is, in particular, a lack of clarity about the concept of promoting “terrorist activity”: since Israel claims there is no real division between civilian and military activities and it considers Hamas to be a terrorist organization, it would appear that anyone who supports Hamas in any way may be considered as promoting its terrorist activity. Hamas was the clear winner of the latest elections in Gaza. It is not far-fetched for the mission to consider that Israel regards very large sections of the Gazan civilian population as part of the “supporting infrastructure.”

1211. The indiscriminate and disproportionate impact of the restrictions on the movement of goods and people indicates that, from as early as some point in 2007, Israel had already determined its view about what constitutes attacking the supporting infrastructure, and it appears to encompass effectively the population of Gaza.

1212. A statement of objectives that explicitly admits the intentional targeting of civilian objects as part of the Israeli strategy is attributed to the Deputy Chief of Staff, Maj. Gen. Dan Harel. While the Israeli military operations in Gaza were underway, Maj. Gen. Harel was reported as saying, in a meeting with local authorities in southern Israel:

This operation is different from previous ones. We have set a high goal which we are aiming for. We are hitting not only terrorists and launchers, but also the whole Hamas government and all its wings. [...] We are hitting government buildings, production factories, security wings, and more. We are demanding governmental responsibility from Hamas and are not making distinctions between the various wings. After this operation there will not be one Hamas building left standing in Gaza, and we plan to change the rules of the game.

### ***E. Conclusions: 1213–1216***

1213. The Israeli military conception of what was necessary in a future war with Hamas seems to have been developed from at least the time of the 2006 conflict in southern Lebanon. It finds its origin in a military doctrine that views disproportionate destruction and creating maximum disruption in the lives of many people as a legitimate means to achieve military and political goals.

...

1216. To the extent to which statements such as that of Mr. Yishai on 2 February 2009 indicate that the destruction of civilian objects, homes in that case, would be justified as a response to rocket attacks (“destroy 100 homes for every rocket fired”), the mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law. Even if such actions could be considered a lawful reprisal, they do not meet the stringent conditions imposed, in particular they are disproportionate, and violate fundamental human rights and obligations of a humanitarian character. One party’s targeting of civilians or civilian areas can never justify the opposing party’s targeting of civilians and civilian objects, such as homes, public and religious buildings, or schools.

**PART THREE: ISRAEL**

...

**XXIV. THE IMPACT ON CIVILIANS OF ROCKET AND MORTAR ATTACKS BY PALESTINIAN ARMED GROUPS ON SOUTHERN ISRAEL: 1594–1691**

...

1597. Since April 2001, Palestinian armed groups have launched more than 8,000 rockets and mortars from Gaza into southern Israel. Communities such as Sderot [Sederot], the surrounding kibbutzim, and some of the unrecognized villages in the Negev have been in range since that time. During the Israeli military operations in Gaza in December 2008 and January 2009, the range of the rockets and mortars increased significantly to nearly 40 kilometers from the Gaza border, encompassing the Israeli towns of Yavne 30 kilometers to the north and Beersheba 28 kilometers to the southeast.

1598. Since the rocket and mortar fire does not often hit populated areas, and because of the precautions taken by the government of Israel, the rockets and mortars have caused relatively few fatalities and physical injuries among the residents of southern Israel. Property damage, while by no means insignificant, has not been extensive. More widespread, however, has been the psychological trauma and the feeling of insecurity that living under rocket fire has caused and continues to cause, to people living in the affected towns and villages, as well as the erosion of the economic, social and cultural life of these communities.

1599. Every death and injury is not only a tragedy but a matter of utmost concern to the mission. The mission wishes to emphasize that the issues of concern, and indeed the consequences of any attack affecting civilians, cannot be reduced to a recitation of statistics, nor should they be.

**A. Summary of rocket and mortar fire from 18 June 2008 to 31 July 2009: 1600–1609****1. 18 June 2008–26 December 2008**

1600. According to Israeli sources, 230 rockets and 298 mortars were fired against Israel between 18 June and 26 December 2008; 227 rockets and 285 mortars struck territory inside the State of Israel. Media reports indicate that areas struck by rockets included the Western Negev, Sderot and Ashkelon [Ashqelon]. This includes the 157 rockets and 203 mortars that were fired during the ceasefire, which ended officially on 18 December 2008.

1601. The mission notes that 92 percent (212) of the rockets and 93 percent (279) of the mortars fired between 18 June and 26 December 2008 were fired after 5 November 2008.

1602. While there were no fatalities inside Israel, two young Palestinian girls, aged 5 and 12 years, were killed when a rocket fell short, landing in northern Gaza on 26 December 2008.

1603. Media reports indicated that, during this period, six Israelis and one foreign worker were wounded as a result of rockets landing in built-up areas in southern Israel. Where rockets did not land in open space, property damage was sustained. As is discussed below, an unknown number of people in southern Israel were treated for shock following the sounding of the early warning system and the subsequent rocket strikes.

2. 27 December 2008–18 January 2009

1604. According to the Israeli authorities, armed groups in Gaza fired approximately 570 rockets and 205 mortars into Israel during the 22 days of the military operations in Gaza. On their websites, the [Izzeddin] al-Qassam Brigades and Islamic Jihad claimed to have fired over 800 rockets into Israel during this time.

1605. During the Israeli military operations in Gaza, the range of rocket and mortar fire increased dramatically, reaching towns such as Beersheba 28 kilometers to the southeast and Ashdod 24 kilometers to the north of the Gaza Strip. Rockets continued to fall in areas such as Sderot, the Eshkol Regional Council, and the surrounding kibbutzim, which had experienced rockets strikes since 2001. A total of 90 rockets struck Sderot during the 22 days of military operations in Gaza.

1606. During the period of the operations, three civilian fatalities and one military fatality were recorded in Israel resulting from the rocket and mortar strikes launched from Gaza. According to Magen David Adom [MDA], 918 people were injured (17 critically injured, 62 medium injuries and 829 lightly injured) in this time period. There were also 1,595 people inside Israel treated for stress-related injuries.

...

**G. Precautionary measures in effect in southern Israel: 1637–1646**

*1. The Tseva Adom early warning system*

1637. The Tseva Adom (or 'Red Color') is an early warning radar system installed by the Israeli armed forces in towns in southern Israel. It was installed in Sderot in 2002 and in different areas of Ashkelon in 2005 and 2006.

1638. When the early warning system detects the signature of a rocket launch originating in Gaza, it automatically activates the public broadcast warning system in nearby Israeli communities and military bases. A two-tone electronic audio alert is broadcast twice, followed by a recorded female voice intoning the words "Tseva Adom". The entire program is repeated until all rockets have hit and launches are no longer detected. . . .

1639. In Sderot, the system gives residents a warning of approximately 15 seconds before an incoming missile strikes. The further residents are from the Gaza Strip, the longer the warning period. Residents of Ashkelon interviewed by the mission estimated that the system gives them a 20 second warning, while residents of the more northern city of Ashdod or of the town of Beersheba in the Negev estimate that the system gives them a warning of approximately 40 to 45 seconds.

1640. It should be noted that the Tseva Adom system is not 100 percent effective; according to Noam Bedein, the system failed to detect a rocket that struck Sderot on 21 May 2007, killing one and wounding two others. Moreover, the system may also give false alerts, a fact which led authorities in Ashkelon to switch off the system in May 2008. Consequently, no warning was given when a rocket struck a shopping centre on 14 May 2008, seriously injuring three people (including Dr. Emilia Siderer, who appeared before the mission at the public hearings held in Geneva on 6 July 2009).

1641. The sounding of the Tseva Adom system and the knowledge that it does not provide a guaranteed forewarning of a rocket strike, have, according to organizations providing mental health services, also had a profound, adverse psychological effect on the communities living within the range of rocket and mortar fire. This issue is discussed in detail below.

## 2. Construction of fortifications and shelters

1642. In recent years, the government of Israel has fortified towns in southern Israel with bomb shelters. Some residential homes contain “secure rooms.” In March 2008, the government fortified 120 bus-stops in Sderot and, by January 2009, all schools in Sderot had been fortified against rocket attacks.

1643. According to an article published in *Ha’Aretz*, approximately 5,000 residents of southern Israel, mostly elderly immigrants from the former Soviet Union, lacked proper reinforced rooms or reasonable access to public shelters. In interviews with residents of the affected communities in southern Israel, the mission received reports of families abandoning the upper floors of their homes and living together in a room on the ground floor for fear of the failure of the early warning system and/or not being able to descend from the upper floors quickly enough reach a shelter.

1644. In March 2009, Sderot inaugurated a reinforced children’s recreation centre, designed to provide a rocket-proof place for children to play. There are fortified playgrounds in Sderot, with concrete tunnels painted to look like caterpillars.

1645. The government of Israel has stated that, on current information, spending on fortifications and shelters between 2005 and 2011 will amount to approximately \$460 million. It should be noted, however, that the fortifications do not necessarily prevent rockets penetrating these buildings; for instance, on 3 January 2009, a Grad rocket penetrated the fortification of a school in Ashkelon, striking an empty classroom.

...

## **H. Impact of rocket and mortar fire on communities in southern Israel: 1647–1681**

1647. The mission notes that the impact on communities is greater than the numbers of fatalities and injuries actually sustained. The mission also notes the information in the government of Israel paper of July 2009, in which an article from the *Guardian* was cited, stating that as [of] July 2009, 92 percent of Sderot residents had seen or heard a rocket impact, 56 percent had had shrapnel fall on their homes and 65 percent knew someone who had been injured.

### 1. Fatalities

1648. Between 18 June 2008 and 31 July 2009, there were four fatalities in Israel as a consequence of rocket and mortar fire from Gaza, of which there were three civilian and one military casualties.

...

### 2. Physical injuries

1652. According to [MDA], during the period of the Israeli military operations in Gaza, a total of 918 civilians were wounded by rocket attacks. This figure includes 27 critically wounded, 62 moderately wounded and 829 lightly wounded. From 19 January to 19 March 2009, 10 people physically injured from rocket fire were treated by MDA.

### 3. Psychological trauma/mental health

1653. In interviews with both residents of southern Israel and the organizations dealing with mental health issues, the issue of psychological trauma suffered by adults and children living in the zone of rocket fire was repeatedly raised. While news articles sometimes report on people being treated for shock following a rocket strike, both individuals and organizations have voiced a real frustration with the lack of focus on

what they termed the “invisible damage” caused by rockets. According to MDA, 1,596 people were treated by health facilities in Israel between 27 December 2008 and 18 January 2009. From 19 January to 2 August 2009, 549 people from Sderot alone were treated for stress-related injuries.

1654. A study of October 2007, commissioned by NATAL [Israel Trauma Center for Victims of Terror and War], on the impact of the ongoing traumatic stress conditions on Sderot found that 28.4 percent of adults and between 72 and 94 percent of children in Sderot reported signs indicative of post-traumatic stress disorder. The study also found that children under the age of 12 years showed a high frequency of reported symptoms including fear, avoidance, behavioral problems, problems at school, somatic problems, regression and difficulty in sleeping.

...

1656. Dalia Yosef of the Sderot Resiliency Center stated that the Center’s 18 therapists provided counseling to over 300 people in Sderot during the military operations in Gaza and noted that trauma symptoms were particularly noticeable in children. Ms. Yosef stated that trauma was triggered not only by the rocket strikes but also by the sounding of the early warning system alerts, even where no rocket strike subsequently occurred.

1657. The observations made by the organizations dealing with treating trauma were borne out in the descriptions of daily life made in the interviews held with residents in the affected communities. The Community Manager of Kibbutz Gevim, near Sderot, stated that 60 percent of children in the kibbutz were in touch with psychological services. . . .

#### *4. Damage to property*

1659. Where rockets have landed in towns and villages in southern Israel, they have caused localized property damage. This has included private houses and cars. During the operations in Gaza, a total of nine schools and kindergartens in Sderot, Beersheba, Ashdod, Ashkelon, and Kiryat Ha Hinoch were hit and damaged by rockets. Two kindergartens were struck and damaged by rocket fire in Ashdod. On 8 January 2009, a Grad rocket hit a school in Ashkelon.

1660. On 26 February 2009, a rocket launched from Gaza damaged two houses in Sderot. On 5 March 2009, a rocket hit a synagogue in Netivot, causing light damage.

1661. The mission was not able to obtain an estimate of the financial cost of the damage to property caused by rocket and mortar fire. In its paper of July 2009, the government of Israel stated, “for direct damage caused to buildings or property as a result of rocket or mortar attacks 2,400 claims, amounting to a total of 31 million NIS (\$7.95 million) were submitted in 2008, in addition to 2,300 additional claims between January and July 2009, of which a total of approximately 25 million NIS (\$6.4 million) was granted thus far.”

#### *5. Impact on the right to education*

1662. The combination of the early warning systems alarms (and the move to the shelters), the rockets strikes and the ongoing psychological trauma caused by the alerts and the strikes had an adverse impact on the right to education of children and young adults in the affected communities in southern Israel.

1663. Most obvious is the disruption caused to education caused by the closure of schools during heightened hostilities. During the operations in Gaza, educational institutions in Sderot, Ashkelon, and Ashdod and across areas within rocket range were closed.

1664. Even when classes are held in more peaceful times, education is disrupted by students having to move to secure areas every time that the early warning system sounds, at time from 10 to 20 times a day, making it virtually impossible for classes to be held. . . .

1665. Commenting on the impact of the education of children in the kibbutzim near Sderot, Avi Kadosh, during a telephone interview on 29 June 2009, stated:

Children here can't run around and play. They have to stay close to a secure place. The older ones have grown up with it and know the drills. They know they have 15 seconds to get inside to a protected place. Some children have been born into it and for them; they clap their hands and run to the safety room. It is also difficult for them to get to class. The rockets are disruptive and the atmosphere is not conducive to learning.

...

#### *7. The unrecognized Palestinian Arab Bedouin villages of the Negev*

1675. The unrecognized villages in the Negev are Palestinian Arab Bedouin villages that are not recognized by Israel and have been subjected to demolitions by the Israeli authorities. They are not marked on any commercial maps and are ineligible for municipal services such as connection to the electricity grid, water mains or for garbage collection. According to the director of the Regional Council for the Unrecognized Villages, Atwa Abu Fraih, in an interview on 30 July 2009, approximately 90,000 people live in these villages, including 17,000 schoolchildren.

1676. According to Physicians for Human Rights-Israel, these villages are in range of rocket fire but have no early warning system, nor have any shelters been built to protect the residents who live there. As much was confirmed by the director of the Regional Council of Unrecognized Villages, Atwa Abu Fraih, who told the mission that most of the structures in the villages were made of zinc, including all the schools and that none of the unrecognized villages had any shelters from rocket or mortar fire. He also pointed out that none of the unrecognized villages was equipped with the early warning alarm system though seven recognized villages did. Unrecognized villages close to either recognized villages with an early warning system or Jewish Israeli towns could hear the alarms. He stated, however, that the early warning system was of little use if there were no shelters. . . .

#### *8. Recognized Palestinian towns and villages in southern Israel*

1678. Where the towns and villages predominantly populated by Palestinian citizens of Israel are recognized (and consequently eligible for municipal services such as electricity), they still lack the public shelters commonly found in towns and villages populated predominantly by Israel's Jewish citizens.

...

1681. The mission is concerned about the disparity in treatment of Jewish and Palestinian citizens by the government of Israel in the installation of early warning systems and provision of public shelters and fortified schools between its Jewish and Palestinian citizens. . . .

...

#### ***J. Findings: 1687–1691***

1687. There is no justification in international law for the launching of rockets and mortars that cannot be directed at specific military targets into areas where civilian

populations are located. Indeed, Palestinian armed groups, among them Hamas, have publicly expressed their intention to target Israel civilians. The al-Qassam Brigades, on their website, claimed responsibility for the deaths of each of the Israeli civilians killed by rocket fire during the operations in Gaza.

1688. From the facts it ascertained, the mission finds that the Palestinian armed groups have failed in their duty to protect and respect civilians. Even though the al-Qassam Brigades and other armed groups in Gaza have recently claimed that they do not intend to harm civilians, the fact that they continue to launch rockets at populated areas without any definite military targets and are aware of the consequences to civilians indicates an intent to target civilians. Furthermore, the launching of unguided rockets and mortars breaches the fundamental principle of distinction: an attack must distinguish between military and civilian targets. Where there is no intended military target and the rockets and mortars are launched into civilian areas, they constitute a deliberate attack against the civilian population.

1689. Given the apparent inability of the Palestinian armed groups to aim rockets and mortars at specific targets and, the fact that the attacks have caused very little damage to Israeli military assets, it is plausible that one of the primary purposes of these continued attacks is to spread terror—prohibited under international humanitarian law—among the civilian population of southern Israel.

1690. The above view is supported by public statements of the armed groups, such as that made by Hamas on 5 November 2008. Following an Israeli raid in Gaza which resulted in the death of five Hamas militants, a Hamas spokesman stated “The Israelis began this tension and they must pay an expensive price . . . They cannot leave us drowning in blood while they sleep soundly in their beds.” As noted in chapter XVI, reprisal attacks cannot be carried out against a civilian population.

1691. From the facts available, the mission finds that the rocket and mortars attacks, launched by Palestinian armed groups in Gaza, have caused terror in the affected communities of southern Israel and in Israel as a whole. Furthermore, it is the mission’s view that the mortars and rockets are uncontrolled and uncontrollable, respectively. This indicates the commission of an indiscriminate attack on the civilian population of southern Israel, a war crime, and may amount to crimes against humanity. These attacks have caused loss of life and physical and mental injury to civilians and damage to private houses, religious buildings and property and have eroded the economic and cultural life of the affected communities.

#### ***PART FOUR: ACCOUNTABILITY AND JUDICIAL REMEDIES***

#### **XXVIII. UNIVERSAL JURISDICTION: 1849–1857**

1849. In their search for justice, victims of serious violations of human rights have often looked for accountability mechanisms in other countries when there were none at home or the existing ones did not offer an effective remedy. The principle of universality, which says that international crimes that violate fundamental human values are a concern for the entire international community, underpins the exercise of criminal jurisdiction in many states. The exercise of criminal jurisdiction on the basis of the universality principle concerns especially serious crimes regardless of the place of commission, the nationality of the perpetrator or the nationality of the victim. This form of jurisdiction is concurrent with others based on more traditional principles of territoriality, active and passive nationality, and it is not subsidiary to them.

1850. It is uncontroversial today that states may confer upon their courts the right to exercise universal jurisdiction over international crimes, including war crimes, crimes against humanity and genocide. However, there is lingering controversy about the conditions or requirements for the exercise of that jurisdiction and, in particular, about whether the alleged perpetrator should be physically in the territory of the prosecuting state or not.

...

1853. Many countries around the world incorporate the principle of universal jurisdiction into their national legislation, including Australia, Bangladesh, Belgium, Costa Rica, and Spain.

...

1857. It is the view of the mission that universal jurisdiction is a potentially efficient tool for enforcing international humanitarian law and international human rights law, preventing impunity and promoting international accountability. In the context of increasing unwillingness on the part of Israel to open criminal investigations that comply with international standards and establish judicial accountability over its military actions in the Occupied Palestinian Territory, and until such a time as clarity is achieved as to whether the International Criminal Court will exercise jurisdiction over alleged crimes committed in the Occupied Palestinian Territory, including in Gaza, the mission supports the reliance on universal jurisdiction as an avenue for States to investigate violations of grave breach provisions of the Geneva Convention of 1949, prevent impunity and promote international accountability.

## **XXIX. REPARATION: 1858–1873**

...

### ***B. Compensation and reparations to the Palestinian people in the Gaza Strip: 1867–1873***

...

1868. These assistance and compensation schemes notwithstanding, the mission is of the view that international law requires the state responsible for the internationally wrongful act to provide reparation and compensation to the victim. To the mission's knowledge, Israel has to date considered compensation to be paid only to the United Nations for the damage inflicted on United Nations personnel and facilities, without acknowledging responsibility. At the very least, similar compensation should be offered to Palestinian individuals.

1869. In its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the International Court of Justice affirmed that "Israel has the obligation to make reparation for the damage caused to all natural and legal persons concerned." The United Nations has established the United Nations Registry of Damages, which collects data on damage caused to Palestinians by the construction of the Wall. Domestic law of Israel would be one vehicle to make possible reparations for affected Palestinians.

1870. The possibilities for obtaining reparation and compensation in the Israeli legal system have been limited. A 2001 amendment to the Civil Wrongs Act extended the definition of "acts of war" and set procedural limitations on Palestinians' ability to bring claims against Israel. These limitations include the shortening of the period before the statute of limitations applies and the requirement to submit a "notice" of

damage to the Israeli defense minister in advance of the claim and within two months after the damage occurred. Additional amendments passed in 2002 and 2005 prevent the courts from hearing claims relating to actions by security forces in “conflict zones” proclaimed as such by the minister of defense, and give immunity to the state against claims by subjects of enemy states or members of “terrorist organizations.” Under the last two amendments the character of the harmful act, the circumstances under which harm was suffered and the causality link between the perpetrator and the harm have become irrelevant. The mission received information that the amendments allowed the minister of defense to declare areas in the Occupied Palestinian Territory as “conflict zones” retroactively.

1871. The 2005 amendment No. 7 was challenged before the Supreme Court of Israel, which ruled in 2006 that section 5C of the Civil Wrongs Law (as amended in 2005) was not constitutional. Therefore, the provision that makes Israel immune from civil liability for acts of security forces in declared “zones of conflict” was struck down. However, the ruling did not pronounce on the constitutionality of section 5B of the Law, which grants immunity to the state against civil claims brought by subjects of a state enemy of Israel and persons active in or members of a terrorist organization. At the same time, other amendments passed prior to 2005 have not been challenged and stand as law in force in the land.

1872. The mission is concerned that the possibilities for civil compensation for damage and loss of property suffered by Palestinians during military operations are limited in Israeli domestic law since that damage is generally seen as the result of “acts of war” regardless of the nature of the action. . . .

1873. It is the view of the mission that the current constitutional structure and legislation in Israel leaves very little room, if any, for Palestinians to seek compensation. The international community needs to provide an additional or alternative mechanism of compensation by Israel for damage or loss incurred by Palestinian civilians during the military operations. In this regard, the mission notes that the International Commission of Inquiry on Darfur and the Commission of Inquiry on Lebanon expressed similar concerns about the need for compensation for the victims.

## ***PART FIVE: CONCLUSIONS AND RECOMMENDATIONS***

### **XXX. CONCLUSIONS: 1874–1966**

#### ***A. Concluding observations: 1874–1876***

. . .

1876. In carrying out its mandate, the mission had regard, as its only guides, for general international law, international human rights and humanitarian law, and the obligations they place on states, the obligations they place on nonstate actors and, above all, the rights and entitlements they bestow on individuals. This in no way implies equating the position of Israel as the occupying power with that of the occupied Palestinian population or entities representing it. The differences with regard to the power and capacity to inflict harm or to protect, including by securing justice when violations occur, are obvious and a comparison is neither possible nor necessary. What requires equal attention and effort, however, is the protection of all victims in accordance with international law.

***B. The Israeli military operations in Gaza: relevance to and links with Israel's policies vis-à-vis the occupied Palestinian territory: 1877–1879***

1877. The mission is of the view that Israel's military operation in Gaza between 27 December 2008 and 18 January 2009 and its impact cannot be understood or assessed in isolation from developments prior and subsequent to it. The operation fits into a continuum of policies aimed at pursuing Israel's political objectives with regard to Gaza and the occupied Palestinian territory as a whole. Many such policies are based on or result in violations of international human rights and humanitarian law. Military objectives as stated by the government of Israel do not explain the facts ascertained by the mission, nor are they congruous with the patterns identified by the mission during the investigation.

1878. The continuum is evident most immediately with the policy of blockade that preceded the operations and that in the mission's view amounts to collective punishment intentionally inflicted by the government of Israel on the people of the Gaza Strip. When the operations began, the Gaza Strip had been under a severe regime of closures and restrictions on the movement of people, goods and services for almost three years. This included basic necessities of life, such as food and medical supplies, and products required for the conduct of daily life, such as fuel, electricity, school items, and repair and construction material. These measures were imposed by Israel purportedly to isolate and weaken Hamas after its electoral victory in view of the perceived continuing threat to Israel's security that it represented. . . . Prior to the military operation, the Gaza economy had been depleted, the health sector beleaguered, the population had been made dependent on humanitarian assistance for survival and the conduct of daily life. . . . This was the situation in the Gaza Strip when the Israeli armed forces launched their offensive in December 2008. The military operations and the manner in which they were conducted considerably exacerbated the aforementioned effects of the blockade. The result, in a very short time, was unprecedented long-term damage both to the people and to their development and recovery prospects.

1879. An analysis of the modalities and impact of the December-January military operations also sets them, in the mission's view, in a continuum with a number of other pre-existing Israeli policies with regard to the occupied Palestinian territory. The progressive isolation and separation of the Gaza Strip from the West Bank, a policy that began much earlier and which was consolidated in particular with the imposition of tight closures, restrictions on movement and eventually the blockade, are among the most apparent. Several measures adopted by Israel in the West Bank during and following the military operations in Gaza also further deepen Israel's control over the West Bank, including East Jerusalem, and point to a convergence of objectives with the Gaza military operations. Such measures include increased land expropriation, house demolitions, demolition orders and permits to build homes in settlements, greater and more formalized access and movement restrictions on Palestinians, new and stricter procedures for residents of the Gaza Strip to change their residency to the West Bank. Systematic efforts to hinder and control Palestinian self-determined democratic processes, not least through the detention of elected political representatives and members of Government and the punishment of the Gaza population for its perceived support for Hamas, culminated in the attacks on government buildings during the Gaza offensive, most prominently the Palestinian Legislative Council. The cumulative impact of these policies and actions make prospects for political and economic integration between Gaza and the West Bank more remote.

***C. Nature, objectives and targets of the Israeli military operations in Gaza: 1880–1895***

...

1886. In this respect, the mission recognizes that not all deaths constitute violations of international humanitarian law. The principle of proportionality acknowledges that, under certain strict conditions, actions resulting in the loss of civilian life may not be unlawful. What makes the application and assessment of proportionality difficult in respect of many of the events investigated by the mission is that deeds by the Israeli armed forces and words of military and political leaders prior to and during the operations indicate that, as a whole, they were premised on a deliberate policy of disproportionate force aimed not at the enemy but at the “supporting infrastructure.” In practice, this appears to have meant the civilian population.

1887. The timing of the first Israeli attack, at 11.30 a.m. on a weekday, when children were returning from school and the streets of Gaza were crowded with people going about their daily business, appears to have been calculated to create the greatest disruption and widespread panic among the civilian population. The treatment of many civilians detained or even killed while trying to surrender is one manifestation of the way in which the effective rules of engagement, standard operating procedures, and instructions to the troops on the ground appear to have been framed in order to create an environment in which due regard for civilian lives and basic human dignity was replaced with the disregard for basic international humanitarian law and human rights norms.

1888. The mission recognizes fully that the Israeli armed forces, like any army attempting to act within the parameters of international law, must avoid taking undue risks with their soldiers’ lives, but neither can they transfer that risk onto the lives of civilian men, women and children. The fundamental principles of distinction and proportionality apply on the battlefield, whether that battlefield is a built-up urban area or an open field.

1889. The repeated failure to distinguish between combatants and civilians appears to the mission to have been the result of deliberate guidance issued to soldiers, as described by some of them, and not the result of occasional lapses.

1890. The mission recognizes that some of those killed were combatants directly engaged in hostilities against Israel, but many were not. The outcome and the modalities of the operations indicate, in the mission’s view, that they were only partially aimed at killing leaders and members of Hamas, al-Qassam Brigades, and other armed groups. They were also to a large degree aimed at destroying or incapacitating civilian property and the means of subsistence of the civilian population.

***D. Occupation, resilience and civil society: 1896–1899***

...

1896. The accounts of more severe violence during the recent military operations did not obscure the fact that the concept of “normalcy” in the Gaza Strip has long been redefined owing to the protracted situation of abuse and lack of protection deriving from the decades-long occupation.

1897. As the mission focused on investigating and analyzing the specific matters within its mandate, Israel’s continuing occupation of the Gaza Strip and the West Bank emerged as the fundamental factor underlying violations of international humanitarian and human rights law against the protected population and undermining prospects for development and peace. Israel’s failure to acknowledge and exercise its

responsibilities as the occupying power further exacerbated the effects of occupation on the Palestinian people, and continue to do so. Furthermore, the harsh and unlawful practices of occupation, far from quelling resistance, breed it, including its violent manifestations. The mission is of the view that ending occupation is a prerequisite for the return of a dignified life for Palestinians, as well as development and a peaceful solution to the conflict.

...

***I. The need for protection and the role of the international community:  
1912–1917***

1912. International law sets obligations on states not only to respect but also to ensure respect for international humanitarian law. The International Court of Justice stated in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory that “all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”

1913. The 2005 World Summit Outcome document recognized that the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from, inter alia, war crimes and crimes against humanity. The document stressed that the members of the United Nations are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In 2009, the Secretary-General, in his report on implementing the responsibility to protect, noted that the enumeration of these crimes did not “detract in any way from the much broader range of obligations existing under international humanitarian law, international human rights law, refugee law and international criminal law.”

1914. After decades of sustained conflict, the level of threat to which both Palestinians and Israelis are subjected has not abated, but if anything increased with continued escalations of violence, death and suffering for the civilian population, of which the December-January military operations in Gaza are only the most recent occurrence. Israel is therefore also failing to protect its own citizens by refusing to acknowledge the futility of resorting to violent means and military power.

1915. Israeli incursions and military actions in the Gaza Strip did not stop after the end of the military operations of December-January.

1916. The Security Council has placed the protection of civilian populations on its agenda as a regular item, recognizing it as a matter falling within its responsibility. The mission notes that the international community has been largely silent and has to date failed to act to ensure the protection of the civilian population in the Gaza Strip and generally the Occupied Palestinian Territory. Suffice it to notice the lack of adequate reaction to the blockade and its consequences, to the Gaza military operations and, in their aftermath, to the continuing obstacles to reconstruction. The mission also considers that the isolation of the Gaza authorities and the sanctions against the Gaza Strip have had a negative impact on the protection of the population. Immediate action to enable reconstruction in Gaza is no doubt required. However, it also needs to be

accompanied by a firmer and principled stance by the international community on violations of international humanitarian and human rights law and long delayed action to end them. Protection of civilian populations requires respect for international law and accountability for violations. When the international community does not live up to its own legal standards, the threat to the international rule of law is obvious and potentially far-reaching in its consequences.

...

#### *J. Summary of legal findings: 1918–1956*

...

##### *1. Actions by Israel in the context of military operations of 27 December 2008 to 18 January 2009*

...

(g) Grave breaches of the Geneva Conventions and acts raising individual criminal responsibility under international criminal law

1935. From the facts gathered, the mission found that the following grave breaches of the Fourth Geneva Convention were committed by the Israeli armed forces in Gaza: willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury to body or health, and extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly. As grave breaches these acts give rise to individual criminal responsibility. The mission notes that the use of human shields also constitutes a war crime under the Rome Statute of the International Criminal Court.

1936. The mission further considers that the series of acts that deprive Palestinians in the Gaza Strip of their means of subsistence, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their rights to access a court of law and an effective remedy, could lead a competent court to find that the crime of persecution, a crime against humanity, has been committed.

...

##### *4. Actions by Palestinian armed groups*

1950. In relation to the firing of rockets and mortars into southern Israel by Palestinian armed groups operating in the Gaza Strip, the mission finds that the Palestinian armed groups fail to distinguish between military targets and the civilian population and civilian objects in southern Israel. The launching of rockets and mortars which cannot be aimed with sufficient precisions at military targets breaches the fundamental principle of distinction. Where there is no intended military target and the rockets and mortars are launched into civilian areas, they constitute a deliberate attack against the civilian population. These actions would constitute war crimes and may amount to crimes against humanity.

...

1953. The mission also examined whether the Palestinian armed groups complied with their obligations under international humanitarian law to take constant care to minimize the risk of harm to the civilian population in Gaza among whom the hostilities were being conducted. The conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law. However, launching attacks—whether of rockets and mortars at the population of southern Israel or at the Israeli armed forces inside Gaza—close to civilian or protected buildings constitutes a failure to take all

feasible precautions. In cases where this occurred, the Palestinian armed groups would have unnecessarily exposed the civilian population of Gaza to the inherent dangers of the military operations taking place around them. The mission found no evidence to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or that they forced civilians to remain within the vicinity of the attacks. The mission also found no evidence that members of Palestinian armed groups engaged in combat in civilian dress. Although in the one incident of an Israeli attack on a mosque it investigated the mission found that there was no indication that that mosque was used for military purposes or to shield military activities, the mission cannot exclude that this might have occurred in other cases.

#### *5. Actions by responsible Palestinian authorities*

1954. Although the Gaza authorities deny any control over armed groups and responsibility for their acts, in the mission's view, if they failed to take the necessary measures to prevent the Palestinian armed groups from endangering the civilian population, the Gaza authorities would bear responsibility for the damage arising to the civilians living in Gaza.

1955. The mission finds that security services under the control of the Gaza authorities carried out extrajudicial executions, arbitrary arrests, detentions, and ill-treatment of people, in particular political opponents, which constitute serious violations of the human rights to life, to liberty and security of the person, to freedom from torture or cruel, inhuman or degrading treatment or punishment, to be protected against arbitrary arrest and detention, to a fair and impartial legal proceeding; and to freedom of opinion and expression, including freedom to hold opinions without interference.

...

#### ***K. The need for accountability: 1957–1966***

...

1959. After reviewing Israel's system of investigation and prosecution of serious violations of human rights and humanitarian law, in particular of suspected war crimes and crimes against humanity, the mission found major structural flaws that, in its view, make the system inconsistent with international standards. With military "operational debriefings" at the core of the system, there is no effective and impartial investigation mechanism and victims of such alleged violations are deprived of any effective or prompt remedy. Furthermore, such investigations, being internal to the Israeli military authority, do not comply with international standards of independence and impartiality. The mission believes that the few investigations conducted by the Israeli authorities on alleged serious violations of international human rights and humanitarian law and, in particular, alleged war crimes, in the context of the military operations in Gaza between 27 December 2008 and 18 January 2009, are affected by the defects in the system, have been unduly delayed despite the gravity of the allegations, and, therefore, lack the required credibility and conformity with international standards. The mission is concerned that investigations of relatively less serious violations that the government of Israel claims to be investigating have also been unduly protracted.

...

1961. In the light of the information it reviewed and its analysis, the mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The mission is also of the view that the system presents inherently

discriminatory features that make the pursuit of justice for Palestinian victims extremely difficult.

1962. With regard to allegations of violations of international humanitarian law falling within the jurisdiction of responsible Palestinian authorities in Gaza, the mission finds that these allegations have not been investigated.

...

1964. The mission believes that, in the circumstances, there is little potential for accountability for serious violations of international humanitarian and human rights law through domestic institutions in Israel and even less in Gaza. The mission is of the view that long-standing impunity has been a key factor in the perpetuation of violence in the region and in the reoccurrence of violations, as well as in the erosion of confidence among Palestinians and many Israelis concerning prospects for justice and a peaceful solution to the conflict.

1965. The mission considers that several of the violations referred to in this report amount to grave breaches of the Fourth Geneva Convention. It notes that there is a duty imposed by the Geneva Conventions on all high contracting parties to search for and bring before their courts those responsible for the alleged violations.

1966. The mission considers that the serious violations of international humanitarian law recounted in this report fall within the subject-matter jurisdiction of the International Criminal Court. The mission notes that the United Nations Security Council has long recognized the impact of the situation in the Middle East, including the Palestinian question, on international peace and security, and that it regularly considers and reviews this situation. The mission is persuaded that, in the light of the long-standing nature of the conflict, the frequent and consistent allegations of violations of international humanitarian law against all parties, the apparent increase in intensity of such violations in the recent military operations, and the regrettable possibility of a return to further violence, meaningful and practical steps to end impunity for such violations would offer an effective way to deter such violations recurring in the future. The mission is of the view that the prosecution of persons responsible for serious violations of international humanitarian law would contribute to ending such violations, to the protection of civilians and to the restoration and maintenance of peace.

### XXXI. RECOMMENDATIONS: 1967–1979

[*Ed. Note*—Recommendations were also addressed, inter alia, to the Human Rights Council, the Prosecutor of the International Criminal Court, the UN General Assembly, Israel, Palestinian armed groups, and the responsible Palestinian authorities.]

1969. To the United Nations Security Council,

- (a) The mission recommends that the Security Council should require the government of Israel, under Article 40 of the Charter of the United Nations:
  - (i) To take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the mission and any other serious allegations that might come to its attention;
  - (ii) To inform the Security Council, within a further period of three months, of actions taken, or in process of being taken, by the government of Israel to inquire into, investigate and prosecute such serious violations;

- (b) The mission further recommends that the Security Council should at the same time establish an independent committee of experts in international humanitarian and human rights law to monitor and report on any domestic legal or other proceedings undertaken by the government of Israel in relation to the aforesaid investigations. Such committee of experts should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the government of Israel, including their progress, effectiveness, and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary. The committee should be appropriately supported by the Office of the United Nations High Commissioner for Human Rights;
- (c) The mission recommends that, upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities of the State of Israel, again acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to Article 13 (b) of the Rome Statute;
- (d) The mission recommends that the Security Council should require the independent committee of experts referred to in subparagraph (b) to monitor and report on any domestic legal or other proceedings undertaken by the relevant authorities in the Gaza Strip in relation to the aforesaid investigations. The committee should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the relevant authorities in Gaza, including their progress, effectiveness, and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been taken or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary;
- (e) The mission recommends that, upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities in Gaza, acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to Article 13 (b) of the Rome Statute;
- (f) The mission recommends that lack of cooperation by the government of Israel or the Gaza authorities with the work of the committee should be regarded by the Security Council to be obstruction of the work of the committee.

...

1772. To the international community,

- (a) The mission recommends that the states parties to the Geneva Conventions of 1949 should start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions of 1949. Where so warranted following investigation,

alleged perpetrators should be arrested and prosecuted in accordance with internationally recognized standards of justice.

...

#### **D. GOVERNMENT OF ISRAEL, INITIAL RESPONSE TO THE GOLDSTONE REPORT (SUMMARY), TEL AVIV, 24 SEPTEMBER 2009.**

*On 24 September, the Israeli government issued a 24-page document with a detailed critique of the advance version of the Goldstone report issued on 15 September, of which the following summary is carried on the Israeli Ministry of Foreign Affairs' Web site dedicated to the Israeli government's defense of OCL. A number of the points enumerated in the summary—and the longer version—were taken up in the U.S. House of Representatives resolution on the report (Doc. F) and were rebutted by Justice Goldstone himself in his response to that resolution (Doc. G). The reference to former high commissioner for human rights Mary Robinson was addressed by Robinson in her 30 September statement endorsing the Goldstone report, in which she complained that "comments I made previously are now being used as part of the effort to undermine wrongly Judge Goldstone and his important work." The summary and the full report can be found online at [www.mfa.gov.il/gazafacts](http://www.mfa.gov.il/gazafacts).*

##### ***General***

Israel is appalled and disappointed by the report published on 15 September 2009 by the Gaza Fact-Finding Mission. The report effectively ignores Israel's right of self-defense, makes unsubstantiated claims about its intent, and challenges Israel's democratic values and rule of law.

At the same time the report all but ignores the deliberate strategy of Hamas of operating within and behind the civilian population and turning densely populated areas into an arena of battle. By turning a blind eye to such tactics it effectively rewards them.

The report barely disguises its goal of instigating a political campaign against Israel and, in its recommendations, seeks to involve the Security Council, the General Assembly, the International Criminal Court, the Human Rights Council, and the entire international community in such a campaign.

##### ***The Mandate of the Mission***

The one-sided mandate of the Gaza Fact-Finding Mission, and the resolution that established it, gave serious reasons for concern both to Israel and to the many states on the Council which refused to support it—including the member states of the European Union, Switzerland, Canada, Korea, and Japan.

It also troubled many distinguished individuals, including former high commissioner for human rights Mary Robinson, who refused invitations to head the mission and admitted that it was "guided not by human rights but by politics."

##### ***The Conduct of the Mission***

These concerns were exacerbated by the conduct of the mission itself, including reports in the Palestinian media that, throughout its visits to Gaza, it was continuously accompanied by Hamas officials, and its refusal to recuse members of the mission with clear political views on the issues under investigation. One mission member signed a letter to the *Sunday Times* saying that Israel's actions against Hamas attacks were acts of "aggression not self-defense," prejudging the investigation before it had even begun.

The unprecedented holding of telecast hearings also gave cause for concern. The fact that all the witnesses were prescreened and selected, and none were asked questions relating to any Palestinian terrorist activity or the location of weaponry and terrorists in civilian areas, only supports concerns that they were part of an orchestrated political campaign.

#### *A "Non-judicial" Document*

Justice Goldstone as head of the mission repeatedly insisted that the mission was not a judicial inquiry and so "could not reach judicial conclusions." On this basis, he justified the inclusion of partisan mission members, admitting that their involvement "would not be appropriate for a judicial inquiry." The report, however, is highly judicial in nature, reaching conclusive judicial determinations of guilt, and including "detailed legal findings" even in the absence of the sensitive intelligence information which Israel did not feel able to provide. These determinations are made notwithstanding the report's admission that it does not "pretend to reach the standard of proof applicable in criminal trials."

#### *Elements Ignored by the Report*

The report all but ignores the deliberate terrorist strategy of operating in the heart of densely populated civilian areas which dictated the arena of battle. Even when the Hamas terrorists mixed among civilians, the report rejects the notion that there was an intention to put the civilian population at risk.

Astonishingly, despite the many widely reported instances in the international press of the abuse of civilian facilities by terrorist groups, and the statements of Hamas's own leaders praising women and children who acted as human shields, the report repeatedly stated that it could find no evidence of such activities. This, despite its admission that those interviewed were "reluctant to speak about the presence or conduct of hostilities by the Palestinian armed groups."

The report also ignores Israel's extensive efforts, even in the midst of fighting, to maintain humanitarian standards. While it does, reluctantly, acknowledge Israel's "significant efforts" to issue warnings before attacks, it does not find any of these efforts to be effective. While the report passes judgment against Israel in respect of almost any allegation, it seeks to absolve the Hamas of almost any wrongdoing. The word "terrorist" is almost entirely absent. Soldier Gilad Shalit, now held incommunicado in captivity for over three years, was "captured during an enemy incursion" and the Hamas members that the mission met with in Gaza are thanked as the "Gaza authorities" for extending their full cooperation and support to the mission.

Even the thousands of rocket attacks against Israelis which necessitated the Gaza Operation are given the most cursory treatment and, indeed, the report indirectly blames Israel even for these by terming them "reprisals."

#### *Rejection of Democratic Values*

In a report which relies so heavily on Israeli human rights organizations and which also petitions on sensitive security issues to Israel's Supreme Court, the report devotes considerable attention to "repression of dissent in Israel." It bases this assertion in large part on the widespread support for the military operation in the Israeli public, assuming that Israel has "created a political climate in which dissent is not tolerated." The notion that the majority of Israelis genuinely supported action to bring years of continuous rocket and missile attacks against Israeli civilians to an end does not appear to have occurred to the members of the mission.

The report is also critical of Israeli internal investigations, even though these compare favorably to investigations of allegations in military matters in most western countries, and have regularly resulted in criminal investigations and convictions.

### ***Recommendations***

The report's recommendations are as one-sided as its findings. It seeks to harness the Human Rights Council, the Security Council, the General Assembly, the Office of the High Commissioner of Human Rights, the International Criminal Court, and the international community as part of its hostile political campaign. Despite token recommendations in respect of the Palestinian side, international pressure is directed solely against Israel.

The true test of such a report can only be whether in future conflicts it will have the effect of increasing or decreasing respect for the rule of law. Regrettably a one-sided report of this nature, claiming to represent international law, can only weaken the standing of law in future conflicts. At the same time, it will broadcast a deeply troubling message to terrorist groups wherever they are that the cynical tactics of seeking to exploit civilian suffering for political ends actually pays dividends.

### **E. HRC, RESOLUTION ENDORSING THE GOLDSTONE REPORT, GENEVA, 16 OCTOBER 2009 (EXCERPTS).**

*The Goldstone report was on the agenda of the HRC's twelfth regular session (14 September–2 October 2009), but when discussion of the report began on 29 September, the United States, which had newly joined the Council in May, expressed strong opposition to the Palestinian draft resolution fully endorsing the Goldstone recommendations. The resolution was nonetheless poised for a vote on 2 October when PA president Mahmud Abbas, under U.S. and Israeli pressure, suddenly withdrew Palestinian support for the resolution "until broader international support" could be reached. As a result, further consideration of the report was deferred to the HRC's next (thirteenth) regular session, scheduled for March 2010.*

*With Abbas reversing his stance several days later in the face of near total domestic outrage, a special session of the HRC (its twelfth) was convened for 15–16 October in Geneva. The draft resolution, introduced by Palestine, Egypt (on behalf of the Non-Aligned Movement), Nigeria (on behalf of the African Group), Pakistan (on behalf of the Organization of the Islamic Conference), and Tunisia (on behalf of the Arab Group), was passed on 16 October as Resolution HRC/S-12/1 on the human rights situation in the occupied Palestinian territory, including East Jerusalem. Part B of the resolution dealt specifically with the final version of the Goldstone report. The final recorded vote was 25 in favor (including China and Russia, all the others being Latin American, Asian, and African states), 6 against (including the United States), and 11 abstentions. Neither France nor the United Kingdom voted. The full resolution can be found online at <http://domino.un.org/unispal.nsf>.*

...

*The Human Rights Council,*

...

*Expressing serious concern at the lack of implementation by the occupying power, Israel, of previously adopted resolutions and recommendations of the Council relating to the human rights situation in the occupied Palestinian territory, including East Jerusalem,*

*Recalling* its resolution A/HRC/S-9/L.1 of 12 January 2009, in which the Council decided to dispatch an urgent, independent international fact-finding mission, and its call upon the occupying power, Israel, not to obstruct the process of investigation and to fully cooperate with the mission,

1. *Condemns* the non-cooperation by the occupying power, Israel, with the independent international fact-finding mission;

2. *Welcomes* the report of the Independent International Fact-Finding Mission (A/HRC/12/48);

3. *Endorses* the recommendations contained in the report of the Independent International Fact-Finding Mission, and calls upon all concerned parties, including United Nations bodies, to ensure their implementation in accordance with their respective mandates;

4. *Recommends* the General Assembly to consider the report of the Independent International Fact-Finding Mission, during the main part of its 64th session;

5. *Requests* the United Nations Secretary-General to submit to the 13th Human Rights Council's session, a report, on the status of implementation of paragraph 3 above;

...

**F. U.S. HOUSE OF REPRESENTATIVES, RESOLUTION CALLING ON THE PRESIDENT AND THE SECRETARY OF STATE TO OPPOSE UNEQUIVOCALLY ANY ENDORSEMENT OR FURTHER CONSIDERATION OF THE GOLDSTONE REPORT, WASHINGTON, 3 NOVEMBER 2009 (EXCERPTS).**

*As part of its campaign to delegitimize the Goldstone report, Israel enlisted the support of members of the U.S. Congress with solid pro-Israel records to encourage the United States to officially oppose both the report and the HRC's recommendations to the General Assembly. H. Res. 867, a nonbinding resolution condemning the report, was introduced by Ileana Ros-Lehtinen (R-FL, ranking Republican on the House Committee on Foreign Affairs), Howard Berman (D-CA, chair of the House Committee on Foreign Affairs), Gary Ackerman (D-NY), and Dan Burton (R-IN) on 23 October. The resolution did not pass through committee consideration but instead went directly to the House floor; a move that opponents of the resolution objected to in the record. The resolution was passed on 3 November by 344 votes in favor and 36 against, with 22 voting present and 30 not voting.*

*The first 16 preambular clauses of the resolution are not included below because Justice Goldstone restates all of them in full in his response (see Doc. G below), except for clause 7 (stating that the fact-finding mission released its report on 15 September 2010) and clause 13 ("Whereas the report usually considered public statements made by Israeli officials not to be credible, while frequently giving uncritical credence to statements taken from what it called the 'Gaza authorities', i.e. the Gaza leadership of Hamas"). The full resolution can be found online at [www.house.gov](http://www.house.gov).*

**Resolution**

Calling on the president and the secretary of state to oppose unequivocally any endorsement or further consideration of the "Report of the United Nations Fact Finding Mission on the Gaza Conflict" in multilateral fora.

...

Whereas even though Israel is a vibrant democracy with a vigorous and free press, the report of the "fact-finding mission" erroneously asserts that "actions of the Israeli

government . . . have contributed significantly to a political climate in which dissent with the government and its actions . . . is not tolerated”;

Whereas the report recommended that the United Nations Human Rights Council endorse its recommendations, implement them, review their implementation, and refer the report to the United Nations Security Council, the Prosecutor of the International Criminal Court, and the United Nations General Assembly for further action;

Whereas the report recommended that the United Nations Security Council:

- (1) require the government of Israel to launch further investigations of its conduct during Operation Cast Lead and report back to the Security Council within six months;
- (2) simultaneously appoint an “independent committee of experts” to monitor and report on any domestic legal or other proceedings undertaken by the government of Israel within that six-month period; and
- (3) refer the case to the Prosecutor of the International Criminal Court after that six-month period;

Whereas the report recommended that the United Nations General Assembly consider further action on the report and establish an escrow fund, to be funded entirely by the State of Israel, to “pay adequate compensation to Palestinians who have suffered loss and damage” during Operation Cast Lead;

Whereas the report ignored the issue of compensation to Israelis who have been killed or wounded, or suffered other loss and damage, as a result of years of past and continuing rocket and mortar attacks by Hamas and other violent militant groups in Gaza against civilian targets in southern Israel;

Whereas the report recommended “that states parties to the Geneva Conventions of 1949 start criminal investigations [of Operation Cast Lead] in national courts, using universal jurisdiction” and that “following investigation, alleged perpetrators should be arrested and prosecuted”;

Whereas the concept of “universal jurisdiction” has frequently been used in attempts to detain, charge, and prosecute Israeli and United States officials and former officials in connection with unfounded allegations of war crimes and has often unfairly impeded the travel of those individuals;

Whereas the State of Israel, like many other free democracies, has an independent judicial system with a robust investigatory capacity and has already launched numerous investigations, many of which remain ongoing, of Operation Cast Lead and individual incidents therein;

Whereas Libya and others have indicated that they intend to further pursue consideration of the report and implementation of its recommendations by the United Nations Security Council, the United Nations General Assembly, the United Nations Human Rights Council, and other multilateral fora;

Whereas the president instructed the United States mission to the United Nations and other international organizations in Geneva to vote against resolution A-HRC-S-12-1, which endorsed the report and condemned Israel, at the special session of the Human Rights Council held on 15–16 October 2009;

Whereas, on 30 September 2009, Secretary of State Hillary Clinton described the mandate for the report as “one-sided”;

Whereas, on 17 September 2009, Ambassador Susan Rice, United States Permanent Representative to the United Nations, expressed the United States’ “very serious

concern with the mandate” and noted that the United States views the mandate “as unbalanced, one-sided and basically unacceptable”;

Whereas the “Report of the United Nations Fact-Finding Mission on the Gaza Conflict” reflects the longstanding, historic bias at the United Nations against the democratic, Jewish State of Israel;

Whereas the “Report of the United Nations Fact-Finding Mission on the Gaza Conflict” is being exploited by Israel’s enemies to excuse the actions of violent militant groups and their state sponsors, and to justify isolation of and punitive measures against the democratic, Jewish State of Israel;

Whereas, on 16 October 2009, the United Nations Human Rights Council voted 25–6 (with 11 states abstaining and 5 not voting) to adopt resolution A-HRC-S-12-1, which endorsed the “Report of the United Nations Fact-Finding Mission on the Gaza Conflict” and condemned Israel, without mentioning Hamas, other such violent militant groups, or their state sponsors; and

Whereas efforts to delegitimize the democratic State of Israel and deny it the right to defend its citizens and its existence can be used to delegitimize other democracies and deny them the same right: Now, therefore, be it

*Resolved*, that the House of Representatives:

- (1) considers the “Report of the United Nations Fact-Finding Mission on the Gaza Conflict” to be irredeemably biased and unworthy of further consideration or legitimacy;
- (2) supports the administration’s efforts to combat anti-Israel bias at the United Nations, its characterization of the “Report of the United Nations Fact-Finding Mission on the Gaza Conflict” as “unbalanced, one-sided and basically unacceptable,” and its opposition to the resolution on the report;
- (3) calls on the president and the secretary of state to continue to strongly and unequivocally oppose any endorsement of the “Report of the United Nations Fact-Finding Mission on the Gaza Conflict” in multilateral fora;
- (4) calls on the president and the secretary of state to strongly and unequivocally oppose any further consideration of the “Report of the United Nations Fact-Finding Mission on the Gaza Conflict” and any other measures stemming from this report in multilateral fora; and
- (5) reaffirms its support for the democratic, Jewish State of Israel, for Israel’s security and right to self-defense, and, specifically, for Israel’s right to defend its citizens from violent militant groups and their state sponsors.

**G. JUSTICE RICHARD GOLDSTONE, LETTER TO THE SPONSORS OF THE U.S. HOUSE OF REPRESENTATIVES RESOLUTION CONDEMNING HIS REPORT, 29 OCTOBER 2009 (EXCERPTS).**

*From September to November 2009, Goldstone defended the fact-finding mission’s mandate and report in a number of fora, including the editorial pages of the New York Times and the Jerusalem Post. His response to the U.S. resolution condemning the mission’s report offers a particularly detailed and thorough rebuttal to the most common and persistent objections to the report. The full letter can be found online at [www.warincontext.org](http://www.warincontext.org).*

Dear Chairman Berman and Ranking Member Ros-Lehtinen,

It has come to my attention that a resolution has been introduced in the United States House of Representatives regarding the United Nations Fact-Finding Mission on the Gaza Conflict, which I led earlier this year.

I fully respect the right of the U.S. Congress to examine and judge my mission and the resulting report, as well as to make its recommendations to the U.S. Executive branch of government. However, I have strong reservations about the text of the resolution in question—text that includes serious factual inaccuracies and instances where information and statements are taken grossly out of context.

I undertook this fact-finding mission in good faith, just as I undertook my responsibilities vis-à-vis the South African Standing Commission of Inquiry Regarding Public Violence and Intimidation, the International War Crimes Tribunal on the former Yugoslavia, the International Criminal Tribunal for Rwanda, the International Panel of the Commission of Enquiry into the Activities of Nazism in Argentina, the Independent International Commission on Kosovo, and the Volker Committee investigation into the UN's Iraq oil-for-food program in 2004/5.

I hope that you, in similar good faith, will take the time to consider my comments about the resolution and, as a result of that consideration, make the necessary corrections.

Whereas clause #1: "Whereas, on 12 January 2009, the United Nations Human Rights Council passed Resolution A/HRC/S-9/L.1, which authorized a 'fact-finding mission' regarding Israel's conduct of Operation Cast Lead against violent militants in the Gaza Strip between 27 December 2008, and 18 January 2009."

This whereas clause ignores the fact that I and others refused this original mandate, precisely because it only called for an investigation into violations committed by Israel. The mandate given to and accepted by me and under which we worked and reported reads as follows:

. . . to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.

Whereas clause #2: "Whereas the resolution prejudged the outcome of its investigation, by one-sidedly mandating the 'fact-finding mission' to 'investigate all violations of international human rights law and international humanitarian law by . . . Israel, against the Palestinian people . . . particularly in the occupied Gaza Strip, due to the current aggression'."

This whereas clause ignores the fact that the expanded mandate that I demanded and received clearly included rocket and mortar attacks on Israel and as the report makes clear was so interpreted and implemented. It was the report carried out under this broadened mandate—not the original, rejected mandate—that was adopted by the Human Rights Council and that included the serious findings made against Hamas and other militant Palestinian groups.

Whereas clause #3: "Whereas the mandate of the 'fact-finding mission' makes no mention of the relentless rocket and mortar attacks, which numbered in the thousands

and spanned a period of eight years, by Hamas and other violent militant groups in Gaza against civilian targets in Israel, that necessitated Israel's defensive measures."

This whereas clause is factually incorrect. As noted above, the expanded mandate clearly included the rocket and mortar attacks. Moreover, chapter XXIV of the report considers in detail the relentless rocket attacks from Gaza on Israel and the terror they caused to the people living within their range. The resulting finding made in the report is that these attacks constituted serious war crimes and possibly crimes against humanity.

Whereas clause #4: "Whereas the 'fact-finding mission' included a member who, before joining the mission, had already declared Israel guilty of committing atrocities in Operation Cast Lead by signing a public letter on 11 January 2009, published in the *Sunday Times*, that called Israel's actions 'war crimes'."

This whereas clause is misleading. It overlooks, or neglects to mention, that the member concerned, Professor Christine Chinkin of the London School of Economics, in the same letter, together with other leading international lawyers, also condemned as war crimes the Hamas rockets fired into Israel.

Whereas clause #5: "Whereas the mission's flawed and biased mandate gave serious concern to many United Nations Human Rights Council member states which refused to support it, including Bosnia and Herzegovina, Cameroon, Canada, France, Germany, Italy, Japan, the Netherlands, the Republic of Korea, Slovakia, Slovenia, Switzerland, Ukraine, and the United Kingdom of Great Britain and Northern Ireland."

This whereas clause is factually incorrect. The mandate that was given to the mission was certainly not opposed by all or even a majority of the states to which reference is made. I am happy to provide further details if necessary.

Whereas clause #6: "Whereas the mission's flawed and biased mandate troubled many distinguished individuals who refused invitations to head the mission."

This whereas clause is factually incorrect. The initial mandate that was rejected by others who were invited to head the mission was the same one that I rejected. The mandate I accepted was expanded by the president of the Human Rights Council as a result of conditions I made.

Whereas clause #8: "Whereas the report repeatedly made sweeping and unsubstantiated determinations that the Israeli military had deliberately attacked civilians during Operation Cast Lead."

This whereas clause is factually incorrect. The findings included in the report are neither "sweeping" nor "unsubstantiated" and in effect reflect 188 individual interviews, review of more than 300 reports, 30 videos, and 1200 photographs. Additionally, the body of the report contains a plethora of references to the information upon which the [mission] relied for our findings.

Whereas clause #9: "Whereas the authors of the report, in the body of the report itself, admit that 'we did not deal with the issues . . . regarding the problems of conducting military operations in civilian areas and second-guessing decisions made by soldiers and their commanding officers 'in the fog of war'."

This whereas clause is misleading. The words quoted relate to the decision we made that it would have been unfair to investigate and make finding on situations where decisions had been made by Israeli soldiers "in the fog of battle." This was a decision made in favor of, and not against, the interests of Israel.

Whereas clause #10: "Whereas in the 16 October edition of the *Jewish Daily Forward*, Richard Goldstone, the head of the 'United Nations Fact-Finding Mission on

the Gaza Conflict,' is quoted as saying, with respect to the mission's evidence-collection methods, 'If this was a court of law, there would have been nothing proven'."

The remark as quoted is both inaccurate and taken completely out of context. What I had explained to the *Forward* was that the report itself would not constitute evidence admissible in court of law. It is my view, as jurist, that investigators would have to investigate which allegations they considered relevant. That, too, was why we recommended domestic investigations into the allegations.

Whereas clause #11: "Whereas the report, in effect, denied the State of Israel the right to self-defense, and never noted the fact that Israel had the right to defend its citizens from the repeated violent attacks committed against civilian targets in southern Israel by Hamas and other Foreign Terrorist Organizations operating from Gaza."

It is factually incorrect to state that the report denied Israel the right of self-defense. The report examined how that right was implemented by the standards of international law. What is commonly called *ius ad bellum*, the right to use military force, was not considered to fall within our mandate. Israel's right to use military force was not questioned.

Whereas clause #12: "Whereas the report largely ignored the culpability of the government of Iran and the government of Syria, both of whom sponsor Hamas and other Foreign Terrorist Organizations."

This whereas clause is misleading. Nowhere that I know of has it ever been suggested that the mission should have investigated the provenance of the rockets. Such an investigation was never on the agenda, and in any event, we would not have had the facilities or capability of investigating these allegations. If the government of Israel [had] requested us to investigate that issue I have no doubt that we have done our best to do so.

Whereas clause #14: "Whereas, notwithstanding a great body of evidence that Hamas and other violent Islamist groups committed war crimes by using civilians and civilian institutions, such as mosques, schools, and hospitals, as shields, the report repeatedly downplayed or cast doubt upon that claim."

This is a sweeping and unfair characterization of the report. I hope that the report will be read by those tasked with considering the resolution. I note that the House resolution fails to mention that notwithstanding my repeated personal pleas to the government of Israel, Israel refused all cooperation with the mission. Among other things, I requested the views of Israel with regard to the implementation of the mandate and details of any issues that the government of Israel might wish us to investigate.

This refusal meant that Israel did not offer any information or evidence it may have collected regarding actions by Hamas or other Palestinian groups in Gaza. Any omission of such information and evidence in the report is regrettable, but is the result of Israel's decision not to cooperate with the fact-finding mission, not a decision by the mission to downplay or cast doubt on such information and evidence.

Whereas clause #15: "Whereas in one notable instance, the report stated that it did not consider the admission of a Hamas official that Hamas often 'created a human shield of women, children, the elderly, and the mujahideen, against [the Israeli military]' specifically to 'constitute evidence that Hamas forced Palestinian civilians to shield military objectives against attack'."

This whereas clause is misleading, since the quotation is taken out of context. The quotation is part of a section of the report dealing with the very narrow allegation that Hamas compelled civilians, against their will, to act as human shields. The statement by the Hamas official is repugnant and demonstrates an apparent disregard for the safety

of civilians, but it is not evidence that Hamas forced civilians to remain in their homes in order to act as human shields.

Indeed, while the government of Israel has alleged publicly that Hamas used Palestinian civilians as human shields, it has not identified any cases where it claims that civilians were doing so under threat of force by Hamas or any other party.

Whereas clause #16: "Whereas Hamas was able to significantly shape the findings of the investigation mission's report by selecting and prescreening some of the witnesses and intimidating others, as the report acknowledges when it notes that 'those interviewed in Gaza appeared reluctant to speak about the presence of or conduct of hostilities by the Palestinian armed groups . . . from a fear of reprisals'."

The allegation that Hamas was able to shape the findings of my report or that it pre-screened the witnesses is devoid of truth. I challenge anyone to produce evidence in support of it.

Sincerely,  
Justice Richard J. Goldstone

#### **H. PALESTINIAN NGOS, STATEMENT ON PROPOSED UN GENERAL ASSEMBLY RESOLUTION ON THE GOLDSTONE REPORT, 4 NOVEMBER 2009.**

*In a 13 October statement, thirteen leading Palestinian human rights NGOs strongly supported the findings of the Goldstone report, lobbying hard for its full endorsement by the HRC and vociferously opposing both the PA's (short-lived) request to postpone the HRC session and the massive Israeli campaign against the report. Once the HRC resolution endorsing the report was passed (see Doc. E), these same organizations shifted their attention to the UN General Assembly (UNGA) and its draft resolution on the report. The following statement enumerates their criticisms of the draft resolution, reflecting the concerns of many Palestinians in the territories and the diaspora. It goes further in its recommendations for strengthening the resolution than the 13 October statement, which only called for the report's endorsement. The UNGA resolution, which was adopted the next day (see Doc. D), was identical to the draft and did not reflect their demands, particularly with regard to suggested UNGA recommendations to the UN Security Council.*

*The thirteen signatories were Adalab—The Legal Center for Arab Minority Rights in Israel, Addameer, Al-Dameer Association for Human Rights, Al-Haq—Law in the Service of Man, Al-Mezan Center for Human Rights, Arab Association for Human Rights, Badil Resource Center for Palestinian Residency and Refugee Rights, Defence for Children International—Palestine Section, Ensan Center for Democracy and Human Rights, Jerusalem Legal Aid Center, Palestinian Center for Human Rights, Ramallah Center for Human Rights Studies, and the Women's Center for Legal Aid and Counseling. The statement can be found online at [www.alhaq.org](http://www.alhaq.org).*

Today, 4 November 2009, the General Assembly will meet to discuss the report of the UN Fact-Finding Mission on the Gaza Conflict (the Goldstone report). A draft resolution has been presented to the General Assembly for debate, and it is evident that those who claim to speak on behalf of human rights and international law are failing in their mandate. The draft resolution is a politically motivated compromise, intended to obtain support for a resolution without substance, one which fails to protect victims' rights or to pursue accountability. While the draft addresses certain demands, it does not

explicitly include operational steps for the implementation of the recommendations of the Goldstone report, and absolutely fails to bring remedy and redress to victims.

There can be no compromise on the fundamental principles of human rights and international law. If international law is to prove capable of protecting civilian populations and of averting future atrocities, then it must be enforced. Each individual's basic human right to equal protection of the law and to an effective judicial remedy must be ensured. Those accused of committing international crimes must be investigated, tried, and prosecuted.

In supporting this draft, the PLO [is] following the traditional policy of attempting to secure a resolution by consensus. Too often have the rights of Palestinians been negotiated away in order to provide the appearance of political progress, and too often has progress manifested itself as mere maintenance of the status quo, which for decades has denied Palestinians their fundamental rights.

Impunity must not be allowed to prevail. International law, and the respect for the fundamental human rights of peoples throughout the world, must not be subject to the whim of powerful states. As Palestinians and representatives of the victims, we demand justice and the possibility of a peaceful future.

The General Assembly must request that the Security Council not only consider the Goldstone report, but also implement its recommendations. Domestic investigations are essential; however, if these are not conducted credibly and in accordance with international standards—as past experience would suggest is the likelihood—then the consequences must be clear. Should attempts be made to shield alleged war criminals from justice, then the Security Council must take appropriate action, and the situation must be referred to the International Criminal Court.

It is also essential that, as recommended in the Goldstone report, the General Assembly act now to ensure reparations for the victims of Operation Cast Lead. It is unacceptable that the illegal blockade of the Gaza Strip continues to this day and that reconstruction and recovery have been denied. The General Assembly must establish an escrow fund to handle reparations owed to the victims by Israel and act to end this illegal blockade. The continued suffering of innocent civilians cannot be condoned by the United Nations.

At the Human Rights Council in September, the political vacillation of the PLO, the anti-accountability agenda of some of the most powerful UN member states, and a callous disregard for the victims of Operation Cast Lead saw the first attempt to bury the Goldstone report. As the representatives of the Palestinians at the UN, the PLO must ensure [that] a second attempt is not successful, and must refocus its efforts toward ensuring that a resolution fully endorsing the Goldstone report and its detailed recommendations be adopted by a majority of the General Assembly; a “consensus” resolution will effectively nullify the decision of the Human Rights Council's special session, repudiate the rule of international law, and implicitly endorse further impunity for those who target civilians.

Palestinians do not want to be part of a consensus that buries the Goldstone report and denies victims' legitimate rights. Palestinians should neither be forced to negotiate on the recommendations of the Goldstone report, nor to compromise their fundamental rights under international law. It is essential—at the risk of condoning impunity and the commission of future international crimes—that the General Assembly:

- (a) fully endorse the report of the Fact-Finding Mission on the Gaza Conflict;
- (b) urge the Security Council to endorse the report, and to expeditiously pursue all accountability mechanisms presented therein; particularly a referral to the

- International Criminal Court in the absence of good faith investigations by the parties to the conflict;
- (c) demand that credible internal domestic investigations and prosecutions be carried out by the parties to the conflict in accordance with international standards of impartiality, independence, promptness, and effectiveness;
  - (d) establish an independent committee of experts in international humanitarian and human rights law to monitor any domestic legal or other proceeding taken by the parties of the conflict and publicly report to the UN [General Assembly] and Security Council;
  - (e) remain fully appraised of the matter until appropriate action is taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators;
  - (f) establish an escrow fund for the purpose of compensating the victims of violations of international law committed during Operation Cast Lead;
  - (g) request Switzerland to convene a conference of the high contracting parties to the Geneva Convention to ensure its respect;
  - (h) promote an urgent discussion on the use of munitions such as white phosphorous (as mentioned in the report) and a moratorium on their use by Israel.

**I. UN GENERAL ASSEMBLY (UNGA), RESOLUTION ON THE FOLLOW-UP TO THE REPORT OF THE UN FACT-FINDING MISSION ON THE GAZA CONFLICT, NEW YORK, 5 NOVEMBER 2009.**

*While the HRC resolution adopted on 16 October (see Doc.E) specifically endorsed the recommendations of the Goldstone report, the UNGA resolution simply endorsed the report, singling out three of its recommendations without reference to the various accountability mechanisms recommended in the report as potential avenues for examining the violations that occurred during OCL, such as universal jurisdiction and the International Criminal Court.*

*The UNGA resolution was adopted by a recorded vote of 114 in favor (including China, India, all Muslim states except Kyrgyzstan and Turkmenistan, which were absent, most of Latin America, much of the developing world, and 4 members of the EU [Cyprus, Ireland, Malta, and Slovenia]) and 18 against (including the United States, Israel, Australia, Canada, and 7 members of the EU [Czech Republic, Germany, Hungary, Italy, the Netherlands, Poland, and Slovakia]). There were 44 abstentions, including Russia, Japan, New Zealand, Norway, and the 16 remaining EU member states (led by France and the United Kingdom). Sixteen member states were absent. The resolution can be found online at <http://domino.un.org/unispal.nsf>. Footnotes have been omitted for space consideration.*

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations,

*Recalling* the relevant rules and principles of international law, including international humanitarian and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the occupied Palestinian territory, including East Jerusalem,

*Recalling also* the Universal Declaration of Human Rights and the other human rights covenants, including the International Covenant on Civil and Political Rights

and the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child,

*Recalling further* its relevant resolutions, including resolution ES-10/18 of 16 January 2009 of its tenth emergency special session,

*Recalling* the relevant Security Council resolutions, including resolution 1860 (2009) of 8 January 2009,

*Recalling also* the relevant resolutions of the Human Rights Council, including resolution S-12/1 of 16 October 2009,

*Expressing its appreciation* to the United Nations Fact-Finding Mission on the Gaza Conflict, led by Justice Richard Goldstone, for its comprehensive report,

*Affirming* the obligation of all parties to respect international humanitarian law and international human rights law,

*Emphasizing* the importance of the safety and wellbeing of all civilians, and reaffirming the obligation to ensure the protection of civilians in armed conflict,

*Gravely concerned* by reports regarding serious human rights violations and grave breaches of international humanitarian law committed during the Israeli military operations in the Gaza Strip that were launched on 27 December 2008, including the findings of the Fact-Finding Mission and the Board of Inquiry convened by the secretary-general,

*Condemning* all targeting of civilians and civilian infrastructure and institutions, including United Nations facilities,

*Stressing* the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to prevent impunity, ensure justice, deter further violations and promote peace,

*Convinced* that achieving a just, lasting and comprehensive settlement of the question of Palestine, the core of the Arab-Israeli conflict, is imperative for the attainment of a comprehensive, just and lasting peace and stability in the Middle East,

1. *Endorses* the report of the Human Rights Council on its twelfth special session, held on 15 and 16 October 2009;

2. *Requests* the secretary-general to transmit the report of the United Nations Fact-Finding Mission on the Gaza Conflict to the Security Council;

3. *Calls upon* the government of Israel to take all appropriate steps, within a period of three months, to undertake investigations that are independent, credible, and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;

4. *Urges*, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible, and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;

5. *Recommends* to the government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to undertake the necessary steps as soon as possible to reconvene a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common article 1;

6. *Requests* the secretary-general to report to the General Assembly, within a period of three months, on the implementation of the present resolution, with a view to

considering further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council;

7. *Decides* to remain seized of the matter.

**J. RICHARD FALK, "THE GOLDSTONE REPORT AND THE BATTLE FOR LEGITIMACY,"**  
*ELECTRONIC INTIFADA*, 22 SEPTEMBER 2009.

*Richard Falk is the current UN Special Rapporteur on the situation of human rights in the occupied Palestinian territories and a visiting distinguished professor in global studies at the University of California, Santa Barbara. The article can be found online at [www.electronicintifada.net](http://www.electronicintifada.net).*

Richard Goldstone, former judge of South Africa's Constitutional Court, the first prosecutor at The Hague on behalf of the International Criminal Court for Former Yugoslavia, and anti-apartheid campaigner, reports that he was most reluctant to take on the job of chairing the United Nations fact-finding mission charged with investigating allegations of war crimes committed by Israel and Hamas during the three week Gaza war of last winter. Goldstone explains that his reluctance was due to the issue being "deeply charged and politically loaded," and was overcome only because he and his fellow commissioners were "professionals committed to an objective, fact-based investigation," adding that "above all, I accepted because I believe deeply in the rule of law and the laws of war," as well as the duty to protect civilians to the extent possible in combat zones. The four-person fact-finding mission was composed of widely respected and highly qualified individuals, including the distinguished international law scholar Christine Chinkin, a professor at the London School of Economics. Undoubtedly adding complexity to Goldstone's decision is the fact that he is Jewish, with deep emotional and family ties to Israel and Zionism, bonds solidified by his long association with several organizations active in Israel.

Despite the impeccable credentials of the commission members, and the worldwide reputation of Richard Goldstone as a person of integrity and political balance, as well as of being an eminent jurist, Israel refused cooperation from the outset. It did not even allow the UN undertaking to enter Israel or the Palestinian territories, forcing reliance on the Egyptian government to allow the UN mission entry to Gaza at the Rafah Crossing. As Israeli peace activist Uri Avnery has observed, however much Israel may attack the commission report as one-sided and unfair, the only plausible explanation of its refusal to cooperate with a UN fact-finding mission of this sort and seizing the opportunity to tell its side of the story was that it had nothing to tell that could hope to overcome the overwhelming evidence of the Israeli failure to carry out its attacks on Gaza last winter in accordance with the international law of war. No credible international commission could reach any set of conclusions other than those reached by the Goldstone report on the central allegations.

In substantive respects the Goldstone report adds nothing new. Its main contribution is to confirm widely reported and analyzed Israeli military practices during the Gaza war. There had been several reliable reports already issued, condemning Israel's tactics as violations of the laws of war and international humanitarian law, including by Amnesty International, Human Rights Watch, and a variety of respected Israeli and Palestinian human rights groups. Journalists and senior UN civil servants had reached similar conclusions. Perhaps most damning of all the material available before the

Goldstone report was the publication of a document entitled "Breaking the Silence," containing commentaries by 30 members of the Israeli army who had taken part in Operation Cast Lead (the official Israeli name for the Gaza war). These soldiers spoke movingly about the loose rules of engagement issued by their commanders that help explain why so little care was taken to avoid civilian casualties. The sense emerges from the testimony of these Israeli soldiers, who were in no sense critical of Israel or even of the Gaza war as such, that Israeli policy emerged out of a combination of efforts "to teach the people of Gaza a lesson for their support of Hamas" and to keep Israeli military casualties as close to zero as possible even if [this] meant massive death and destruction for innocent Palestinians.

Given this background of a prior international consensus on the unlawfulness of Operation Cast Lead, we must first wonder why this massive report of 575 pages has been greeted with such alarm by Israel and given so much attention in the world media. It added little to what was previously known. Arguably, it was more sensitive to Israel's contentions that Hamas was guilty of war crimes by firing rockets into its territory than earlier reports had been. And in many ways the Goldstone report endorses the misleading main line of the Israeli narrative by assuming that Israel was acting in self-defense against a terrorist adversary. The report does describe the success of the cease-fire with Hamas that had cut violence in southern Israel to very low levels, and attributes its disruption to Israel's attack on 4 November 2008, but nowhere does it make the inference that would seem to follow, that the Israeli attacks were an instance of the international crime of aggression. Instead, the report focuses its criticism on Israel's excessive and indiscriminate uses of force. It does this mainly by examining the evidence surrounding a series of incidents involving attacks on civilians and non-military targets. The report also draws attention to the unlawful blockade that has restricted the flow of food, fuel, and medical supplies to subsistence levels in Gaza before, during, and since Operation Cast Lead. Such a blockade is a flagrant instance of collective punishment, explicitly prohibited by Article 33 of the Fourth Geneva Convention setting forth the legal duties of an occupying power.

All along, Israel had rejected international criticism of its conduct of military operations in the Gaza war, claiming that the Israeli army was the most moral fighting force on the face of the earth. The Israeli army conducted some nominal investigations of alleged unlawful behavior that consistently vindicated the military tactics relied upon and the top Israeli political leaders steadfastly promised to protect any Israeli military officer or political leader internationally accused of war crimes. In view of this extensive background of confirmed allegation and angry Israeli rejection, why has the Goldstone report been treated in Tel Aviv as a bombshell that is deeply threatening to Israel's stature as a sovereign state? Israeli president Shimon Peres called the report "a mockery of history" that "fails to distinguish the aggressor and a state exercising the right of self-defense," insisting that it "legitimizes terrorist activity, the pursuit of murder and death." More commonly, Israel's zealous defenders condemned the report as one-sided, biased, reaching foregone conclusions, and emanating from the supposed bastion of anti-Israeli attitudes at the UN's Human Rights Council. This line of response to any criticism of Israel's behavior in occupied Palestine, especially if it comes from the UN or human rights nongovernmental organizations, is to cry "foul play!" and avoid any real look at the substance of the charges. It is an example of what I call "the politics of deflection," attempting to shift the attention of an audience away from the message to the messenger. The more damning the criticism, the more ferocious the response.

From this perspective, the Goldstone report obviously hit the bull's eye! Being willing to level such a harsh attack against a person as deeply sympathetic to Israel as Judge Goldstone indicates that no truth-teller will be exempted from vilification.

Considered more carefully, there are some good reasons for Israel's panicked reaction to this damning report. First, it does come with the backing of an eminent international personality who cannot credibly be accused of anti-Israel bias, making it harder to deflect attention from the findings no matter how loud the screaming of foul play. Any fair reading of the report would show that it was balanced, took full and sensitive account of Israel's arguments relating to security, and indeed gave Israel the benefit of the doubt on some key issues. Secondly, the unsurprising findings are coupled with strong recommendations that do go well beyond previous reports. Two are likely causing the Israeli leadership great worry: the report recommends strongly that if Israel and Hamas do not themselves within six months engage in an investigation and follow-up action that meets international standards of objectivity with respect to these violations of the law of war, then the UN Security Council should be brought into the picture, being encouraged to consider referring the whole issue of Israeli and Hamas accountability to the prosecutor of the International Criminal Court in The Hague. Even if Israel is spared this indignity by the diplomatic muscle of the United States, and possibly some European governments, the negative public relations implications of a failure to abide by this report could be severe.

Thirdly, whatever happens in the UN system, and at the Human Rights Council in Geneva, the weight of the report will be felt by world public opinion. Ever since the Gaza war, the solidity of Jewish support for Israel has been fraying at the edges, and will likely now fray much further. More globally, a very robust boycott and divestment movement has been gaining momentum ever since the Gaza war, and the Goldstone report will clearly lend added support to such initiatives. There is a growing sense around the world that the only chance for the Palestinians to achieve some kind of just peace depends on shaping the outcome by way of the symbols of legitimacy, what I have called the legitimacy war. Increasingly, the Palestinians have been winning this second non-military war. Such a war fought on a global political battlefield is what eventually and unexpectedly undermined the apartheid regime in South Africa, and has become much more threatening to the Israeli sense of security than has armed Palestinian resistance.

A fourth reason for Israeli worry stemming from the report is the green light given to national courts throughout the world to enforce international criminal law against Israeli suspects should they travel abroad. Such suspects could be detained for prosecution or extradition in some third-party country. These Israelis could be charged with war crimes arising from their involvement in the Gaza war, convicted, and sentenced to imprisonment. Such an eventuality is unlikely, but its mere prospect gives rise to deep concern. The report in this way encourages a somewhat controversial reliance on what is known among lawyers as universal jurisdiction, that is, the authority of courts in any country to detain for extradition or to prosecute individuals for violations of international criminal law regardless of where the alleged offenses took place. Universal jurisdiction has long been relied upon to apprehend pirates and their vessels.

Reaction in the Israeli media reveals that Israeli citizens are already anxious about being apprehended during foreign travel. As one law commentator put it in the Israeli press, "From now on, not only soldiers should be careful when they travel abroad, but also ministers and legal advisers." It is well to recall that Article 1 of the Geneva

Conventions calls on states throughout the world "to respect and ensure respect" for international humanitarian law "in all circumstances." The efforts in 1998 of several European courts to prosecute Augusto Pinochet for crimes committed while he was head of state in Chile are a reminder that national courts can be used to prosecute political and military leaders for crimes committed elsewhere than in the territory of the prosecuting state.

Of course, Israel will fight back. It has already launched a media and diplomatic blitz designed to portray the report as so one-sided and inaccurate as to be unworthy of serious attention. The U.S. government has without explanation disappointingly endorsed this view, and apparently rejected the central recommendation in the Goldstone report that the Security Council be assigned the task of implementing its findings. The American ambassador to the UN, Susan Rice, evidently told a closed session of the Security Council on 16 September, just a day after the report was issued, that "[w]e have serious concerns about many recommendations in the report." Elaborating on this, Ambassador Rice indicated that the UN Human Rights Council, which has no implementing authority, is the only proper venue for any action to be taken on the basis of the report. The initial struggle will likely be whether to follow the recommendation of the report to have the Security Council seized of the issue so as to consider referring issues of individual accountability for war crimes to the International Criminal Court. Of course, such a referral could be blocked by a veto from the [United States] or other permanent members, but even a discussion in the Security Council would be a severe setback for Israel.

There are reasons to applaud the forthrightness and comprehensiveness of the report, its care and scrupulous willingness to conclude that both Israel and Hamas seem responsible for behavior that appears to constitute war crimes, if not crimes against humanity. Although Israel has succeeded in having the issue of one-sidedness focus on fairness to Israel, there are also some reasons to insist that the report falls short of Palestinian hopes. For one thing, the report takes for granted the dubious proposition that Israel was entitled to act against Gaza in self-defense, thereby excluding inquiry into whether crimes against the peace in the form of aggression had taken place by the launching of the attack. In this respect, although the report takes notice of the temporary cease-fire that had cut the rocket fire directed at Israel practically to zero in the months preceding the attacks, it seems to avoid drawing any legal conclusions as to the bearing of this context in which the Gaza war was initiated. The report also ignores Hamas's repeated efforts to extend the cease-fire indefinitely provided Israel lifted its unlawful blockade of Gaza. Israel disregarded this seemingly available diplomatic alternative to war to achieve security on its borders. Recourse to war, even if the facts were to justify self-defense, is, according to international law, a last resort. By ignoring Israel's initiation of a one-sided war the Goldstone report implicitly accepts the dubious central premise of Operation Cast Lead, and avoids making a finding of aggression.

Also disappointing was the failure of the report to comment upon the Israeli denial of a refugee option to the civilian population trapped in the tiny, crowded combat zone that constitutes the Gaza Strip. Israel closed all crossings during the period of the Gaza war, allowing only Gaza residents with foreign passports to leave. It is rare in modern warfare that civilians are not given the option to become refugees. Although there is no specific provision of the laws of war requiring a state at war to allow civilians to leave the combat zone, it seems like an elementary humanitarian requirement, and

should at least have been mentioned either as part of customary international law or as a gap in the law that should be filled. The importance of this issue is reinforced by many accounts of the widespread post-traumatic stress experienced by the civilians in Gaza, especially children, who comprise 53 percent of the population. One might also notice that the report accords considerable attention to the one Israeli soldier held prisoner by Hamas in Gaza, recommending his release on humanitarian grounds, while making only a very general recommendation that Israel release some of the thousands of Palestinians being held under conditions of harsh detention, suggesting that children especially should be released.

In the end, the Goldstone report is unlikely to break the intergovernmental refusal to challenge the Israeli blockade of Gaza or to induce the UN to challenge Israeli impunity in any meaningful way. Depending on back room diplomacy, the United States may or may not be able to avoid playing a public role of shielding Israel from accountability for its behavior during the Gaza war or its continuing refusal to abide by international humanitarian law by lifting the blockade that continues to impinge daily upon the health of the entire population of Gaza.

Despite these limitations, the report is an historic contribution to the Palestinian struggle for justice, an impeccable documentation of a crucial chapter in their victimization under occupation. Its impact will be felt most impressively on the growing civil society movement throughout the world to impose cultural, sporting, and academic boycotts, as well as to discourage investment, trade, and tourism with Israel. It may yet be the case that as in the anti-apartheid struggle the shift in the relation of forces in the Palestinian favor will occur not through diplomacy or as a result of armed resistance, but on the symbolic battlefield of legitimacy that has become global in scope, what might be described as the new political relevance of moral and legal globalization.