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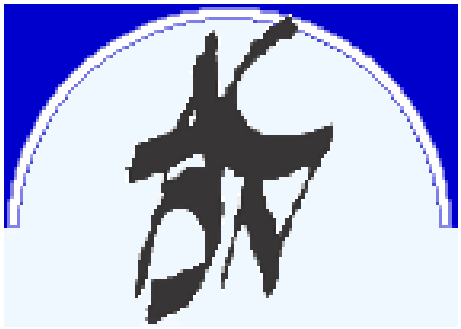

UN Fact Finding Mission on the Gaza Conflict

Goldstone Report: Human Rights in Palestine

Publication date: Sunday 25 October 2009

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The United Nations Human Rights Council had set up a mission of four experts mandated to investigate the facts in relation to the so-called "Cast Lead" operation, the Israeli offensive against the Gaza Strip (27 December 2008 to 18 January 2009). It was headed by the South African judge Richard Goldstone, a man already known for his impartial investigations into Human Rights violations in various countries. After several months of investigation, in Gaza and elsewhere, the mission submitted its report on 29 September 2009 to the UN Human Rights Council, which discussed it and adopted it with a large majority on October 16, before sending it on to the UN Security Council, which is to examine it this week.

At a time when the US Congress is preparing to vote on a joint Republican-Democrat motion asking Barack Obama and Hillary Clinton to categorically reject the Goldstone Report, a document which the movers of this motion accuse of being "unilaterally against Israel" and of "ignoring thousands of rocket launches against Israel" (according to the press agency *Guysen International News*, item dated 25 October 2009), we think it useful to give our readers the chance to read in full - including paragraphs 1950 to 1956 - all the conclusions and recommendations proposed by this 575-page report.

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GE.09-15836
UNITED
NATIONS A
General Assembly Distr.
GENERAL
A/HRC/12/48 (ADVANCE 2)
24 September 2009
Original: ENGLISH

HUMAN RIGHTS COUNCIL
Twelfth session Agenda item 7

HUMAN RIGHTS IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Report of the United Nations Fact Finding Mission on the Gaza Conflict

Conclusions and recommendations

The present document is an advance translation and contains only the conclusions and recommendations of the Fact-Finding Mission. The full report will be issued as A/HRC/12/48 in all languages according to translation capacity of the United Nations translation services.

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PART FIVE: CONCLUSIONS AND RECOMMENDATIONS

XXX. CONCLUSIONS

A. Concluding observations

1874. An objective assessment of the events it investigated and their causes and context is crucial for the success of any effort to achieve justice for victims of violations and peace and security in the region, and as such is in the interest of all concerned and affected by this situation, including the parties to the continuing hostilities. It is in this spirit, and with full appreciation of the complexity of its task, that the Mission received and implemented its mandate.

1875. The international community as well as Israel and, to the extent determined by their authority and means, Palestinian authorities, have the responsibility to protect victims of violations and ensure that they do not continue to suffer the scourge of war or the oppression and humiliations of occupation or indiscriminate rocket attacks. People of Palestine have the right to freely determine their own political and economic system, including the right to resist forcible deprivation of their right to self-determination and the right to live, in peace and freedom, in their own State. The people of Israel have the right to live in peace and security. Both peoples are entitled to justice in accordance with international law.

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 non-State 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. 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

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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. Their effect was compounded by the withholding of financial and other assistance by some donors on similar grounds. Adding hardship to the already difficult situation in the Gaza Strip, the effects of the prolonged blockade did not spare any aspect of the life of Gazans. 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. Men, women and children were psychologically suffering from long-standing poverty, insecurity and violence, and enforced confinement in a heavily overcrowded territory. The dignity of the people of Gaza had been severely eroded. 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. Both Palestinians and Israelis whom the Mission met repeatedly stressed that the military operations carried out by Israel in Gaza from 27 December 2008 until 18 January 2009 were qualitatively different from any previous military action by Israel in the

Occupied Palestinian Territory. Despite the hard conditions that have long been prevailing

in the Gaza Strip, victims and long-time observers stated that the operations were unprecedented in their severity and that their consequences would be long-lasting.

1881. When the Mission conducted its first visit to the Gaza Strip in early June 2009, almost five months had passed since the end of the Israeli military operations. The devastating effects of the operations on the population were, however, unequivocally manifest. In addition to the visible destruction of houses, factories, wells, schools, hospitals, police stations and other public buildings, the sight of families, including the elderly and children, still living amid the rubble of their former dwellings - no reconstruction possible due to the continuing blockade - was evidence of the protracted impact of the operations on the living conditions of the Gaza population. Reports of the trauma suffered during the attacks, the stress due to the uncertainty about the future, the hardship of life and the fear of further attacks, pointed to less tangible but not less real long-term effects.

1882. Women were affected in significant ways. Their situation must be given specific attention in any effort to address the consequences of the blockade, of the continuing occupation and of the latest Israeli military operations.

1883. The Gaza military operations were, according to the Israeli Government, thoroughly and extensively planned. While the Israeli Government has sought to portray its operations as essentially a response to rocket attacks in the exercise of its right to self-defence, the Mission considers the plan to have been directed, at least in part, at a different target: the people of Gaza as a whole.

1884. In this respect, the operations were in furtherance of an overall policy aimed at punishing the Gaza population for its resilience and for its apparent support for Hamas, and possibly with the intent of forcing a change in such support. The Mission considers this position to be firmly based in fact, bearing in mind what it saw and heard on the ground, what it read in the accounts of soldiers who served in the campaign, and what it heard and read from current and former military officers and political leaders whom the Mission considers to be representative of the thinking that informed the policy and strategy of the military operations.

1885. The Mission recognizes that the principal focus in the aftermath of military operations will often be on the people who have been killed - more than 1,400 in just three weeks. This is rightly so. Part of the functions of reports such as this is to attempt, albeit in a very small way, to restore the dignity of those whose rights have been violated in the most fundamental way of all - the arbitrary deprivation of life. It is important that the international community asserts formally and unequivocally that such violence to the most basic fundamental rights and freedoms of individuals should not be overlooked and should be condemned.

1886. In this respect, the Mission recognizes that not all deaths constitute violations of

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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 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.

1891. It is clear from evidence gathered by the Mission that the destruction of food supply installations, water sanitation systems, concrete factories and residential houses was the result of a deliberate and systematic policy by the Israeli armed forces. It was not carried out because those objects presented a military threat or opportunity, but to make the daily process of living, and dignified living, more difficult for the civilian population.

1892. Allied to the systematic destruction of the economic capacity of the Gaza Strip, there appears also to have been an assault on the dignity of the people. This was seen not only in

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the use of human shields and unlawful detentions sometimes in unacceptable conditions, but also in the vandalizing of houses when occupied and the way in which people were treated when their houses were entered. The graffiti on the walls, the obscenities and often racist slogans, all constituted an overall image of humiliation and dehumanization of the Palestinian population.

1893. The operations were carefully planned in all their phases. Legal opinions and advice were given throughout the planning stages and at certain operational levels during the campaign. There were almost no mistakes made according to the Government of Israel. It

is in these circumstances that the Mission concludes that what occurred in just over three weeks at the end of 2008 and the beginning of 2009 was a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability.

1894. The Mission has noted with concern public statements by Israeli officials, including senior military officials, to the effect that the use of disproportionate force, attacks on civilian population and the destruction of civilian property are legitimate means to achieve Israel's military and political objectives. The Mission believes that such statements not only undermine the entire regime of international law, they are inconsistent with the spirit of the Charter of the United Nations and, therefore, deserve to be categorically denounced.

1895. Whatever violations of international humanitarian and human rights law may have been committed, the systematic and deliberate nature of the activities described in this report leave the Mission in no doubt that responsibility lies in the first place with those who designed, planned, ordered and oversaw the operations.

D. Occupation, resilience and civil society

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 analysing 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.

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1898. The Mission was struck by the resilience and dignity shown by people in the face of dire circumstances. UNRWA Director of Operations, John Ging, relayed to the Mission the answer of a Gaza teacher during a discussion after the end of the Israeli military operations about strengthening human rights education in schools. Rather than expressing scepticism at the relevance of teaching human rights in a context of renewed denial of rights, the teacher unhesitantly supported the resumption of human rights education: "This is a war of values, and we are not going to lose it".

1899. The assiduous work of Palestinian non-governmental and civil society organizations in providing support to the population in such extreme circumstances, and in giving voice to the suffering and expectations of victims of violations deserves to be fully acknowledged. Their role in helping to sustain the resilience and dignity of the population cannot be

overstated. The Mission heard many accounts of NGO workers, doctors, ambulance drivers, journalists, human rights monitors, who, at the height of the military operations, risked their lives to be of service to people in need. They frequently relayed the anxiety of having to choose between remaining close to their own families or continuing to work to assist others in need, thereby often being cut off from news about the safety or whereabouts of family members. The Mission wishes to pay tribute to the courage and work of the numerous individuals who so contributed to alleviating the suffering of the population and to report on the events in Gaza.

E. Rocket and mortar attacks in Israel

1900. Palestinian armed groups have launched thousands of rockets and mortars into Israel since April 2001. These have succeeded in causing terror within Israel's civilian population, as evidenced by the high rates of psychological trauma within the affected communities. The attacks have also led to an erosion of the social, cultural and economic lives of the communities in southern Israel, and have affected the rights to education of the tens of thousands of children and young adults who attend classes in the affected areas.

1901. Between 27 December 2008 and 18 January 2009, these attacks left four people dead and hundreds injured. That there have not been more casualties is due to a combination of luck and measures taken by the Israeli Government, including the fortification of public buildings, the construction of shelters and, in times of escalated hostilities, the closure of schools.

1902. The Mission notes, with concern, that Israel has not provided the same level of protection from rockets and mortars to affected Palestinian citizens as it has to Jewish citizens. In particular, it has failed to provide public shelters or fortification of schools, for example, to the Palestinian communities living in the unrecognized villages and some of the recognized villages. It ought to go without saying that the thousands of Palestinian Israelis- including a significant number of children - who live within the range of rocket fire, deserve the same protection as the Israeli Government provides to its Jewish citizens.

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F. Dissenting voices in Israel

1903. While the Israeli military offensive in Gaza was widely supported by the Israeli public, there were also dissenting voices, which expressed themselves through demonstrations, protests, as well as public reporting on Israel's conduct. The Mission is of the view that actions of the Israeli Government during and following the military operations in the Gaza Strip, including interrogation of political activists, repression of criticism and sources of potential criticism of Israeli military actions, in particular NGOs, have contributed significantly to a political climate in which dissent with the Government and its actions in the Occupied Palestinian Territory is not tolerated. The denial of media access to Gaza and the continuing denial of access to human rights monitors are, in the Mission's view, an attempt both to remove the Government's actions in the Occupied Palestinian Territory from public scrutiny and to impede investigations and reporting of the conduct of the parties to the conflict in the Gaza Strip.

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1904. In this context of increased intolerance for dissenting opinions in Israel, the Mission wishes to acknowledge the difficult work of NGOs in Israel, which courageously continue to express criticism of Government action that violates international human rights and humanitarian law. The work of these organizations is essential not only to ensure independent information to the Israeli and international public, but also to encourage a facts-based debate about these issues within Israeli society.

G. The impact of dehumanization

1905. As in many conflicts, one of the features of the Palestinian-Israeli conflict is the dehumanization of the other, and of victims in particular. Palestinian psychiatrist Dr. Iyad al-Sarraj explained the cycle of aggression and victimization through which "the Palestinian in the eyes of the Israeli soldier is not an equal human being. Sometimes [...] even becomes a demon [...]" This "culture of demonization and dehumanization" adds to a state of paranoia. "Paranoia has two sides, the side of victimization, I am a victim of this world, the whole world is against me and on the other side, I am superior to this world and I can oppress it. This leads to what is called the arrogance of power." As Palestinians, "we look in general to the Israelis as demons and that we can hate them, that what we do is a reaction, and we say that the Israelis can only understand the language of power. The same thing that we say about the Israelis they say about us, that we only understand the language of violence or force. There we see the arrogance of power and [the Israeli] uses it without thinking of humanity at all. In my view we are seeing not only a state of war but also a state that is cultural and psychological and I hope, I wish that the Israelis would start, and there are many, many Jews in the world and in Israel that look into themselves, have an insight that would make them, alleviate the fear that they have because there's a state of fear in Israel, in spite of all the power, and that they would start to walk on the road of dealing with the consequences of their own victimization and to start dealing with the Palestinian as a human being, a full human being who's equal in rights with the Israeli and also the other way around, the Palestinian must deal with himself, must respect himself and respect his own differences in order to be able to stand before the Israeli also as a full human being with equal rights and obligations. This is the real road for justice and for peace."

1906. Israeli college teacher Ofer Shinar offered a similar analysis: "Israeli society's problem is that, because of the conflict, Israeli society feels itself to be a victim and to a large extent that's justified and it's very difficult for Israeli society to move and to feel that it can also see the other side and to understand that the other side is also a victim. This I think is the greatest tragedy of the conflict and it's terribly difficult to overcome it [...] I think that the initiative that you've taken in listening to [...] people [...] is very important. The message that you're giving Israeli society is absolutely unambiguous that you are impartial that you should be able to see that the feeling of being a victim is something that characterizes both sides. What requires you to take this responsibility is the fact that you have to understand how difficult it is to get this message through to Israeli society, how closed the Israeli society is, how difficult it is for Israeli society to understand that the other side is not just the party which is infringing our own human rights, but how they are having their human rights infringed, how they are suffering as well."

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1907. The Mission, in fulfilling its mandate to investigate alleged violations of international law that occurred in the context of the December 2008 - January 2009 military operations in Gaza, spoke predominantly to those most affected by the most recent events in a conflict that has spanned decades. As may be expected, the Mission found societies scarred by living in conflict with significant psychological trauma stemming from a life that may rightly seem to those living in more peaceful countries to be unbearable.

1908. Both the Palestinians and the Israelis are legitimately angered at the lives that they are forced to lead. For the Palestinians, the anger about individual events - the civilian casualties, injuries and destruction in Gaza following from military attacks, the blockade, the continued construction of the Wall outside of the 1967 borders - feed into an underlying anger about the continuing Israeli occupation, its daily humiliations and their as-yet-unfulfilled right to self-determination. For the Israelis, the public statements of Palestinian armed groups celebrating rocket and mortar attacks on civilians strengthen a deep-rooted concern that negotiation will yield little and that their nation remains under existential threat from which only it can protect its people. In this way, both the Israelis and the Palestinians share a secret fear - for some, a belief - that each has no intention of accepting the other's right to a country of their own. This anger and fear are unfortunately ably represented by many politicians.

1909. Some Israelis pointed out to the Mission that policies of the Israeli Government relating to the isolation of the Gaza Strip and the tighter restrictions on the movement of Palestinians within the Occupied Palestinian Territory and between the Occupied Palestinian Territory and Israel, have contributed to increasing the distance between Palestinians and Israelis, reducing the opportunities to interact other than in situations of control and coercion such as checkpoints and military posts.

1910. In this context, the Mission was encouraged by reports of exchange and cooperation between Palestinians and Israelis, for example with regard to mental health specialists working with Palestinians from Gaza and southern Israel's communities, and with regard to cooperation between Magen David Adom and the Palestinian Red Crescent Society, especially in the West Bank, as they fulfil a shared commitment to providing humanitarian assistance to the communities in which they work, regardless of the ethnicity of the patient

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who lies before them.

H. The intra-Palestinian situation

1911. The division and violence between Fatah and Hamas, which culminated in the establishment of parallel governance entities and structures in the Gaza Strip and the West Bank, is having adverse consequences for the human rights of the Palestinian population in both areas, as well as contributing to erode the rule of law in the Occupied Palestinian Territory in addition to the threats already linked to foreign occupation. Even with the narrow focus of the Mission on violations relevant to the context of the December-January military operations, the diminishing protections for Palestinians are evident from the cases of arbitrary deprivation of life, arbitrary detention of political activists or sympathizers, limitations on freedom of expression and association, and abuses by security forces. The situation is compounded by the ever reducing role of the judiciary in ensuring the rule of law and legal remedies for violations. A resolution of the internal divisions based on the

free will and decisions of Palestinians and without external interference would strengthen the ability of Palestinian authorities and institutions to protect the rights of the people under their responsibility.

I. The need for protection and the role of the international community

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."

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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.

1917. The Mission acknowledges and emphasizes the impressive and essential role played by the staff of the numerous United Nations agencies and bodies working to assist the population of the Occupied Palestinian Territory in all aspects of daily life. An additional disturbing feature of the December-January military operations was the disregard in several incidents, some of which are documented in this report, for the inviolability of United Nations premises, facilities and staff. It ought to go without saying that attacks on the United Nations are unacceptable and undermine its ability to fulfil its protection and assistance role vis-à-vis a population that so badly needs it.

J. Summary of legal findings

1918. Detailed legal findings by the Mission are included in each of the chapters of the report where specific facts and events are analysed. The following is a summary of those findings.

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

(a) Precautions in launching attacks

1919. The Mission finds that in a number of cases Israel failed to take feasible precautions required by customary law reflected in article 57 (2) (a) (ii) of Additional Protocol I to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. The firing of white phosphorus shells over the UNRWA compound in Gaza City is one of such cases in which precautions were not taken in the choice of weapons and methods in the attack, and these facts were compounded by reckless disregard for the consequences. The intentional strike at al-Quds hospital using high-explosive artillery shells and white phosphorous in and around the hospital also violated articles 18 and 19 of the Fourth Geneva Convention. With regard to the attack against al-Wafa hospital, the Mission found a violation of the same provisions, as well as a violation of the customary law prohibition against attacks which may be expected to cause excessive damage to civilians and civilian objects.

1920. The Mission finds that the different kinds of warnings issued by Israel in Gaza cannot be considered as sufficiently effective in the circumstances to comply with customary law as reflected in Additional Protocol I, article 57 (2) (c). While some of the leaflet warnings were specific in nature, the Mission does not consider that general messages telling people to leave wherever they were and go to city centres, in the particular circumstances of the military campaign, meet the threshold of effectiveness. Firing missiles into or on top of buildings as a "warning" is essentially a dangerous practice and a form of attack rather than a warning.

(b) Incidents involving the killing of civilians

1921. The Mission found numerous instances of deliberate attacks on civilians and civilian objects (individuals, whole families, houses, mosques) in violation of the fundamental international humanitarian law principle of distinction, resulting in deaths and serious injuries. In these cases the Mission found that the protected status of civilians was not respected and the attacks were intentional, in clear violation of customary law reflected in article 51 (2) and 75 of Additional Protocol I, article 27 of the Fourth Geneva Convention and articles 6 and 7 of the International Covenant on Civil and Political Rights. In some cases the Mission additionally concluded that the attack was also launched with the intention of spreading terror among the civilian population. Moreover, in several of the incidents investigated, the Israeli armed forces not only did not use their best efforts to permit humanitarian organizations access to the wounded and medical relief, as required by customary international law reflected in article 10 (2) of Additional Protocol I, but they arbitrarily withheld such access.

1922. With regard to one incident investigated, involving the death of at least 35 Palestinians, the Mission finds that the Israeli armed forces launched an attack which a reasonable commander would have expected to cause excessive loss of civilian life in relation to the military advantage sought, in violation of customary international humanitarian law as reflected in Additional Protocol I, articles 57 (2) (a) (ii) and (iii). The Mission finds a violation of the right to life (ICCPR, article 6) of the civilians killed in this

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incident.

1923. The Mission also concludes that Israel, by deliberately attacking police stations and killing large numbers of policemen (99 in the incidents investigated by the Mission) during the first minutes of the military operations, failed to respect the principle of proportionality between the military advantage anticipated by killing some policemen who might have been members of Palestinian armed groups and the loss of civilian life (the majority of policemen and members of the public present in the police stations or nearby during the attack). Therefore, these were disproportionate attacks in violation of customary international law. The Mission finds a violation of the right to life (ICCPR, article 6) of the policemen killed in these attacks who were not members of Palestinian armed groups.

(c) Certain weapons used by the Israeli armed forces

1924. In relation to the weapons used by the Israeli armed forces during military operations, the Mission accepts that white phosphorous, flechettes and heavy metal (such as tungsten) are not currently proscribed under international law. Their use is, however, restricted or even prohibited in certain circumstances by virtue of the principles of proportionality and precautions necessary in the attack. Flechettes, as an area weapon, are particularly unsuitable for use in urban settings, while, in the Mission's view, the use of white phosphorous as an obscurant at least should be banned because of the number and variety of hazards that attach to the use of such a pyrophoric chemical.

(d) Treatment of Palestinians in the hands of the Israeli armed forces

(i) Use of human shields

1925. The Mission investigated several incidents in which the Israeli armed forces used local Palestinian residents to enter houses which might be booby-trapped or harbour enemy combatants (this practice, known in the West Bank as "neighbour procedure", was called "Johnnie procedure" during the military operations in Gaza). The Mission found that the practice constitutes the use of human shields prohibited by international humanitarian law. It further constitutes a violation of the right to life, protected in article 6 of ICCPR, and of the prohibition against cruel and inhuman treatment in its article 7.

1926. The questioning of Palestinian civilians under threat of death or injury to extract information about Hamas and Palestinian combatants and tunnels constitutes a violation of article 31 of the Fourth Geneva Convention, which prohibits physical or moral coercion against protected persons.

(ii) Detention

1927. The Mission found that the Israeli armed forces in Gaza rounded up and detained large groups of persons protected under the Fourth Geneva Convention. The Mission finds

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that their detention cannot be justified either as detention of "unlawful combatants" or as internment of civilians for imperative reasons of security. The Mission considers that the severe beatings, constant humiliating and degrading treatment and detention in foul conditions allegedly suffered by individuals in the Gaza Strip under the control of the Israeli armed forces and in detention in Israel, constitute a failure to treat protected persons humanely in violation of article 27 of the Fourth Geneva Convention, as well as violations of articles 7 and 10 of the International Covenant on Civil and Political Rights regarding torture and the treatment of persons in detention, and of its article 14 with regard to due process guarantees. The treatment of women during detention was contrary to the special respect for women required under customary law as reflected in the article 76 of Additional Protocol I. The Mission finds that the rounding-up of large groups of civilians and their prolonged detention under the circumstances described in this report constitute a collective penalty on those persons in violation of article 33 of the Fourth Geneva Convention and article 50 of the Hague Regulations. Such treatment amounts to measures of intimidation or terror prohibited by article 33 of the Fourth Geneva Convention.

(e) Destruction of property

1928. The Mission finds that the attacks against the Palestinian Legislative Council building and the main prison in Gaza constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives.

1929. The Mission also finds that the Israeli armed forces unlawfully and wantonly attacked and destroyed without military necessity a number of food production or foodprocessing objects and facilities (including mills, land and greenhouses), drinking-water installations, farms and animals in violation of the principle of distinction. From the facts

ascertained by it, the Mission finds that this destruction was carried out with the purpose of denying sustenance to the civilian population, in violation of customary law reflected in article 54 (2) of the First Additional Protocol. The Mission further concludes that the Israeli armed forces carried out widespread destruction of private residential houses, water wells and water tanks unlawfully and wantonly.

1930. In addition to being violations of international humanitarian law, these extensive wanton acts of destruction amount to violations of Israel's duties to respect the right to an adequate standard of living of the people in the Gaza Strip, which includes the rights to food, water and housing, as well as the right to the highest attainable standard of health, protected under articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.

(f) Impact of the blockade and the military operations on the Gaza population

1931. The Mission concludes that the blockade policies implemented by Israel against the Gaza Strip, in particular the closure of or restrictions imposed on border crossings in the

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immediate period before the military operations, subjected the local population to extreme hardship and deprivations that amounted to a violation of Israel's obligations as an occupying Power under the Fourth Geneva Convention. These measures led to a severe deterioration and regression in the levels of realization of economic and social rights of Palestinians in the Gaza Strip and weakened its social and economic fabric, leaving health, education, sanitation and other essential services in a very vulnerable position to cope with the immediate effects of the military operations.

1932. The Mission finds that, despite the information circulated by Israel about the humanitarian relief schemes in place during the military operations, Israel has essentially violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing that were needed to meet the urgent humanitarian needs of the civilian population in the context of the military operations, which is in violation of article 23 of the Fourth Geneva Convention.

1933. In addition to the above general findings, the Mission also considers that Israel has violated its specific obligations under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, including the rights to peace and security, free movement, livelihood and health.

1934. The Mission concludes that the conditions resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government with regard to the Gaza Strip before, during and after the military operation cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip. The Mission, therefore, finds a violation of the provisions of article 33 of the Fourth Geneva Convention.

(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: wilful

killing, torture or inhuman treatment, wilfully 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.

2. Actions by Israel in the West Bank in the context of the military operations

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in Gaza from 27 December 2008 to 18 January 2009

(a) *Treatment of Palestinians in the West Bank by Israeli security forces, including use of excessive or lethal force during demonstrations*

1937. With regard to acts of violence by settlers against Palestinians, the Mission concludes that Israel has failed to fulfil its international obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law. In some instances security forces acquiesced to the acts of violence in violation of the prohibition against cruel, inhuman or degrading treatment. When this acquiescence occurs only in respect of violence against Palestinians by settlers and not vice versa, it would amount to discrimination on the basis of national origin, prohibited under ICCPR.

1938. Israel also violated a series of human rights by unlawfully repressing peaceful public demonstrations and using excessive force against demonstrators. The use of firearms, including live ammunitions, and the use of snipers resulting in the death of demonstrators are a violation of article 6 of ICCPR as an arbitrary deprivation of life and, in the circumstances examined by the Mission, appear to indicate an intention or at least a recklessness towards causing harm to civilians which may amount to wilful killing.

1939. Excessive use of force that resulted in injury rather than death constitutes violations of a number of standards, including articles 7 and 9 of ICCPR. These violations are compounded by the seemingly discriminatory "open fire regulations" for security forces dealing with demonstrations, based on the presence of persons with a particular nationality, violating the principle of non-discrimination in ICCPR (art. 2) as well as under article 27 of the Fourth Geneva Convention.

1940. The Mission finds that Israel failed to investigate, and when appropriate prosecute, acts by its agents or by third parties involving serious violations of international humanitarian law and human rights law.
1941. The Mission was alarmed at the reported increase in settler violence in the past year and the failure of the Israeli security forces to prevent settlers' attacks against Palestinian civilians and their property. These are accompanied by a series of violations by Israeli

forces or acquiesced by them, including the removal of residential status from Palestinians, which could eventually lead to a situation of virtual deportation and entail additional violations of other rights.

(b) *Detention of Palestinians by Israel*

1942. The Mission analysed information it received on the detention of Palestinians in Israeli prisons during or in the context of the military operations of December 2008-January 2009 and found those practices generally inconsistent with human rights and international humanitarian law. The military court system to which Palestinians from the

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Occupied Palestinian Territory are subjected deprives them of due process guarantees in keeping with international law.

1943. The Mission finds that the detention of members of the Palestinian Legislative Council by Israel violates the right not to be arbitrarily detained, as protected by article 9 of ICCPR. Insofar as it is based on political affiliation and prevents those members from participating in the conduct of public affairs, it is also in violation of its articles 25 recognizing the right to take part in public affairs and 26, which provides for the right to equal protection under the law. Insofar as their detention is unrelated to their individual behaviour, it constitutes collective punishment, prohibited by article 33 of the Fourth Geneva Convention. Information on the detention of large numbers of children and their treatment by Israeli security forces point to violations of their rights under ICCPR and the Convention on the Rights of the Child.

(c) *Violations of the right to free movement and access*

1944. The Mission finds that the extensive restrictions imposed by Israel on the movement and access of Palestinians in the West Bank are disproportionate to any legitimate objective served and in violation of article 27 of the Fourth Geneva Convention and article 12 of ICCPR, guaranteeing freedom of movement.

1945. Where checkpoints become a site of humiliation of the protected population by military or civilian operators, this may entail a violation of the customary law rule reflected in article 75 (2) (b) of Additional Protocol I.

1946. The continued construction of settlements in occupied territory constitutes a violation of article 49 of the Fourth Geneva Convention. The extensive destruction and appropriation of property, including land confiscation and house demolitions in the West Bank, including East Jerusalem, not justified by military necessity and carried out unlawfully and wantonly, amounts to a grave breach under article 147 of the Fourth Geneva Convention.

1947. Insofar as movement and access restrictions, the settlements and their infrastructure, demographic policies vis-à-vis Jerusalem and "Area C" of the West Bank, as well as the separation of Gaza from the West Bank, prevent a viable, contiguous and sovereign Palestinian State from arising, they are in violation of the jus cogens right to selfdetermination.

3. Actions by Israel in Israel

1948. In relation to alleged violations within Israel, the Mission concludes that, although there does not appear to be a policy in this respect, there were occasions when reportedly the authorities placed obstacles in the way of protesters seeking to exercise their right to peaceful assembly and freedom of speech to criticize Israel's military actions in the Gaza Strip. These rights are protected by the International Covenant on Civil and Political Rights. Instances of physical violence against protesters and other humiliations, not rising

to the level of physical violence, of the protesters by the police violated Israel's obligations under article 10 of the Covenant. The Mission is also concerned about activists being compelled to attend interviews with the General Security Services (Shabak), which reportedly creates an atmosphere intolerant of dissent within Israel. Hostile retaliatory actions against civil society organizations by the Government of Israel for criticisms of the Israeli authorities and for exposing alleged violations of international human rights law and international humanitarian law during the military operations are inconsistent with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

1949. The Mission finds that the imposition of a near blanket exclusion of the media and human rights monitors from Gaza since 5 November 2008 and throughout the operations is inconsistent with Israel's obligations with regard to the right to access to information.

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.

1951. The Mission concludes that the rocket and mortars attacks, launched by Palestinian armed groups operating from Gaza, have caused terror in the affected communities of southern Israel. The attacks have caused loss of life and physical and mental injury to civilians as well as damaging private houses, religious buildings and property, and eroded the economic and cultural life of the affected communities and severely affected economic and social rights of the population.

1952. With regard to the continuing detention of Israeli soldier Gilad Shalit, the Mission finds that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-ofwar status under the Third Geneva Convention and should be protected, treated humanely and be allowed external communication as appropriate according to that Convention.

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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.

1956. The Mission also concludes that the Palestinian Authority's actions against political opponents in the West Bank, which started in January 2006 and intensified during the period between 27 December 2008 and 18 January 2009, constitute violations of human rights and of the Palestinians' own Basic Law. Detentions on political grounds violate the rights to liberty and security of person, to a fair trial and the right not to be discriminated against on the basis of one's political opinion, which are all part of customary international law. Reports of torture and other forms of ill-treatment during arrest and detention and of death in detention require prompt investigation and accountability.

K. The need for accountability

1957. The Mission was struck by the repeated comment of Palestinian victims, human rights defenders, civil society interlocutors and officials that they hoped that this would be the last investigative mission of its kind, because action for justice would follow from it. It

was struck, as well, by the comment that every time a report is published and no action follows, this "emboldens Israel and her conviction of being untouchable". To deny modes of

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accountability reinforces impunity, and tarnishes the credibility of the United Nations and of the international community. The Mission believes these comments ought to be at the forefront in the consideration by Members States and United Nations bodies of its findings and recommendations and action consequent upon them.

1958. The Mission is firmly convinced that justice and respect for the rule of law are the indispensable basis for peace. The prolonged situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action.

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.

1960. The Mission noted the pattern of delays, inaction or otherwise unsatisfactory handling by Israeli authorities of investigations, prosecutions and convictions of military personnel and settlers for violence and offences against Palestinians, including in the West Bank, as well as their discriminatory outcome. Additionally, the current constitutional and legal framework in Israel provides very few possibilities, if any, for Palestinians to seek compensation and reparations.

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.
1963. The Mission notes that the responsibility to investigate violations of international human rights and humanitarian law, prosecute if appropriate and try perpetrators belongs in the first place to domestic authorities and institutions. This is a legal obligation

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incumbent on States and State-like entities. However, where domestic authorities are unable or unwilling to comply with this obligation, international justice mechanisms must be activated to prevent impunity.

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. The Mission makes the following recommendations related to:

(a) Accountability for serious violations of international humanitarian law;

(b) Reparations;

(c) Serious violations of human rights law;

(d) The blockade and reconstruction;

(e) The use of weapons and military procedures;

(f) The protection of human rights organizations and defenders;

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(g) Follow-up to the Mission's recommendations.

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1968. To the Human Rights Council,

(a) The Mission recommends that the United Nations Human Rights Council should endorse the recommendations contained in this report, take appropriate action to implement them as recommended by the Mission and through other means as it may deem appropriate, and continue to review their implementation in future sessions;

(b) In view of the gravity of the violations of international human rights and humanitarian law and possible war crimes and crimes against humanity that it has reported, the Mission recommends that the United Nations Human Rights Council should request the United Nations Secretary-General to bring this report to the attention of the United Nations Security Council under Article 99 of the Charter of the United Nations so that the Security Council may consider action according to the Mission's relevant recommendations below;

(c) The Mission further recommends that the United Nations Human Rights Council should formally submit this report to the Prosecutor of the International Criminal Court;

(d) The Mission recommends that the Human Rights Council should submit this report to the General Assembly with a request that it should be considered;

(e) The Mission recommends that the Human Rights Council should bring the Mission's recommendations to the attention of the relevant United Nations human rights treaty bodies so that they may include review of progress in their implementation, as may be relevant to their mandate and procedures, in their periodic review of compliance by Israel with its human rights obligations. The Mission further recommends that the Human Rights Council should consider review of progress as part of its universal periodic review process.

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.

1970. To the Prosecutor of the International Criminal Court, with reference to the declaration under article 12 (3) received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine, the Mission considers that accountability for victims and the interests of peace and justice in the region require that the Prosecutor should make the required legal determination as expeditiously as possible.

1971. To the General Assembly,
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(a) The Mission recommends that the General Assembly should request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts in this report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the Mission's recommendations. The General Assembly may remain appraised of the matter until it is satisfied that appropriate action is taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators. The General Assembly may consider whether additional action within its powers is required in the interests of justice, including under its resolution 377 (V) on uniting for peace;

(b) The Mission recommends that the General Assembly should establish an escrow fund to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during the December-January military operation and actions in connection with it, and that the Government of Israel should pay the required amounts into such fund. The Mission further recommends that the General Assembly should ask the Office of the United Nations High Commissioner for Human Rights to provide expert advice on the appropriate modalities to establish the escrow fund;

(c) The Mission recommends that the General Assembly should ask the Government of Switzerland to convene a conference of the high contracting parties to the Fourth Geneva Convention of 1949 on measures to enforce the Convention in the Occupied Palestinian Territory and to ensure its respect in accordance with its article 1;

(d) The Mission recommends that the General Assembly should promote an urgent discussion on the future legality of the use of certain munitions referred to in this report, and in particular white phosphorous, flechettes and heavy metal such as tungsten. In such discussion the General Assembly should draw inter alia on the expertise of the International Committee of the Red Cross (ICRC). The Mission further recommends that the Government of Israel should undertake a moratorium on the use of such weapons in the light of the human suffering and damage they have caused in the Gaza Strip.

1972. To the State of Israel,

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(a) The Mission recommends that Israel should immediately cease the border closures and restrictions on passage through border crossings with the Gaza Strip and allow the passage of goods necessary and sufficient to meet the needs of the population, for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip;

(b) The Mission recommends that Israel should cease the restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles as provided for in the Oslo Accords. It further recommends that Israel should allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel;

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(c) Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel. The Mission recommends that Israel should avail itself of the expertise of the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights and other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law. In particular such rules of engagement should ensure that the principles of proportionality, distinction, precaution and non-discrimination are effectively integrated in all such guidance and in any oral briefings provided to officers, soldiers and security forces, so as to avoid the recurrence of Palestinian civilian deaths, destruction and affronts on human dignity in violation of international law;

(d) The Mission recommends that Israel should allow freedom of movement for Palestinians within the Occupied Palestinian Territory - within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world - in accordance with international human rights standards and international commitments entered into by Israel and the representatives of the Palestinian people. The Mission further recommends that Israel should forthwith lift travel bans currently placed on Palestinians by reason of their human rights or political activities;

(e) The Mission recommends that Israel should release Palestinians who are detained in Israeli prisons in connection with the occupation. The release of children should be an utmost priority. The Mission further recommends that Israel should cease the discriminatory treatment of Palestinian detainees. Family visits for prisoners from Gaza should resume;

(f) The Mission recommends that Israel should forthwith cease interference with national political processes in the Occupied Palestinian Territory, and as a first step release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning;

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(g) The Mission recommends that the Government of Israel should cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning Israel's policies and conduct during the military operations in the Gaza Strip. The Mission also recommends that Israel should set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory, in terms of both charges and detention pending trial. The results of the inquiry should be made public and, subject to the findings, appropriate remedial action should be taken;

(h) The Mission recommends that the Government of Israel should refrain from any action of reprisal against Palestinian and Israeli individuals and organizations that have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict, in particular individuals who have appeared at the public hearings held by the Mission in Gaza and Geneva and expressed criticism of actions by Israel;

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(i) The Mission recommends that Israel should reiterate its commitment to respecting the inviolability of United Nations premises and personnel and that it should undertake all appropriate measures to ensure that there is no repetition of violations in the future. It further recommends that reparation to the United Nations should be provided fully and without further delay by Israel, and that the General Assembly should consider this matter.

1973. To Palestinian armed groups,

(a) The Mission recommends that Palestinian armed groups should undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities;

(b) The Mission recommends that Palestinian armed groups who hold Israeli soldier Gilad Shalit in detention should release him on humanitarian grounds. Pending such release they should recognize his status as prisoner of war, treat him as such, and allow him ICRC visits.

1974. To responsible Palestinian authorities,

(a) The Mission recommends that the Palestinian Authority should issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control, and end resort to military justice to deal with cases involving civilians;

(b) The Mission recommends that the Palestinian Authority and the Gaza authorities should release without delay all political detainees currently in their power and

refrain from further arrests on political grounds and in violation of international human rights law;

(c) The Mission recommends that the Palestinian Authority and the Gaza authorities should continue to enable the free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Independent Commission for Human Rights.

1975. 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;

(b) International aid providers should step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population;

(c) In view of their crucial function, the Mission recommends that donor countries/assistance providers should continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law;

(d) The Mission recommends that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, should ensure that respect for the rule of law, international law and human rights assumes a central role in internationally sponsored peace initiatives;

(e) In view of the allegations and reports about long-term environmental damage that may have been created by certain munitions or debris from munitions, the Mission recommends that a programme of environmental monitoring should take place under the auspices of the United Nations, for as long as deemed necessary. The programme should include the Gaza Strip and areas within southern Israel close to impact sites. The environmental monitoring programme should be in accordance with the recommendations of an independent body, and samples and analyses should be analysed by one or more independent expert institutions. Such recommendations, at least at the outset, should include measurement mechanisms which address the fears of the population of Gaza and southern Israel at this time and should at a minimum be in a position to determine the presences of heavy metals of all varieties, white phosphorous, tungsten micro-shrapnel and granules and such other chemicals as may be revealed by the investigation.

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1976. To the international community and responsible Palestinian authorities,

(a) The Mission recommends that appropriate mechanisms should be established to ensure that the funds pledged by international donors for reconstruction activities in the Gaza Strip are smoothly and efficiently disbursed, and urgently put to use for the benefit of the population of Gaza;

(b) In view of the consequences of the military operations, the Mission recommends that responsible Palestinian authorities as well as international aid providers should pay special attention to the needs of persons with disabilities. In addition, the Mission recommends that medical follow-up should be ensured by relevant international and Palestinian structures with regard to patients who suffered amputations or were otherwise injured by munitions, the nature of which has not been clarified, in order to monitor any possible long-term impact on their health. Financial and technical assistance should be provided to ensure adequate medical follow-up to Palestinian patients.

1977. To the international community, Israel and Palestinian authorities,

(a) The Mission recommends that Israel and representatives of the Palestinian people, and international actors involved in the peace process, should involve Israeli and A/HRC/12/48 (ADVANCE 2)
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Palestinian civil society in devising sustainable peace agreements based on respect for international law. The participation of women should be ensured in accordance with Security Council resolution 1325 (2000);

(b) The Mission recommends that attention should be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security.

1978. To the United Nations Secretary-General, the Mission recommends that the Secretary-General should develop a policy to integrate human rights in peace initiatives in which the United Nations is involved, especially the Quartet, and request the United Nations High Commissioner for Human Rights to provide the expertise required to implement this recommendation.

1979. To the Office of the United Nations High Commissioner for Human Rights,

(a) The Mission recommends that the Office of the United Nations High Commissioner for Human Rights should monitor the situation of persons who have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict and periodically update the Human Rights Council through its public reports and in other ways as it may deem appropriate;

(b) The Mission recommends that the Office of the High Commissioner for Human Rights should give attention to the Mission's recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council.

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