

## OPERATION CAST LEAD, GAZA STRIP ONE YEAR AFTER

### Accountability A key challenge for peace

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security





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# Foreword

The adoption of the UN Charter marked a willingness by State parties to create a world order wherein “conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”. This mandate stemmed from a collective realization that world peace and security are inseparable from a stringent abidance to principles of accountability and rule of law. The defense of human rights relies on the understanding that we have the right to live in peace and security, and are entitled to justice in accordance with international law.

It is within this context that the fight against impunity for serious violations of international law has become one of the key moral and legal issues within debates about governance and the possibility of sustained world security.

The promotion of accountability to be enacted against all those committing serious crimes is increasingly becoming the tool of both, deterrence against abominable acts, and the primary weapon for justice in the aftermath of their perpetration.

FIDH, pursuant of equal access to justice and unequivocal rule of law in all situations, has a long history of demanding and actually challenging accountability for the violations of international human rights and humanitarian law which occur in Israel and the Occupied Palestinian Territories. The horror caused by Operation Cast Lead conducted by the Israeli army in the Gaza strip between December 2008 and January 2009 has renewed the urgency of the situation, and exposed the real consequences of impunity.

Diligent Israeli and Palestinian human rights organizations monitored the crimes and documented the breaches that occurred making accountability for the first time the common definitive priority among the human rights defenders in Israel and the OPT and a central debate at the national and international levels. The striking report released by the UN Fact Finding Mission led by Justice Goldstone reaffirmed that justice remains the primary guarantee of peace and stability/security.

FIDH continues to push for ensuring accountability for violations taken by all involved parties and for the question of accountability to be seriously considered by the international community and, more importantly, authorities and societies at the domestic levels. For, one year after Operation Cast Lead, meeting the challenge of justice for victims of international crimes may be, more than ever a key condition for peace in the Middle East.

# Assessment on Human Rights Violations committed during the military operation

In the aftermath of Operation “Cast Lead” conducted by the Israeli army in the Occupied Gaza Strip from 27 December 2008 to 17 January 2009 when unilateral ceasefires were announced by both Israel and Hamas, some 1,400 Palestinians had been killed, including some 300 children and hundreds of other unarmed civilians, and large areas of Gaza had been razed to the ground, leaving many thousands homeless and the already dire economy in ruins. The International Federation for Human Rights (FIDH) has been working very closely with its member organizations in Israel (Adalah, Association for Civil Rights in Israel - ACRI, B’Tselem and the Public Committee Against Torture in Israel - PCATI) and in the Palestinian Occupied Territory (Al Haq and the Palestinian Center for Human Rights - PCHR), in conformity with the priorities set forth by the organization in the fight against impunity. “Cast Lead” has prompted reports and fact-finding missions by a very large number of human rights and humanitarian organizations, as well as, for the first time, by inter-governmental regional organizations such as the Arab League. This compilation is an attempt to create a comprehensive reference of FIDH’s own and multi-lateral actions in this regard.

International humanitarian law (IHL), and namely the Geneva Conventions, requires that every state deals with serious violations of the laws of war, including those which are committed by bodies or persons acting on its behalf or with its consent. The devastation brought about by Operation Cast Lead was starkly clear. On January 9, a group of non-governmental organizations (NGOs) including several FIDH member organizations found it necessary to address the contracting parties of the Geneva Convention, due to the obvious destruction that was underway.<sup>1</sup>

*Dear High Contracting Parties to the Fourth Geneva Convention,*

*As local, regional and international human rights organisations concerned with respect for international humanitarian law in the Occupied Palestinian Territory (OPT), and in all situations of armed conflict, it is in both desperation and hope that we write to call for the urgent reconvening of the Conference of High Contracting Parties to the Fourth Geneva Convention. The past two weeks have witnessed the heaviest aerial bombardment of the Gaza Strip since 1967, and the situation of the protected civilian population there is more critical than ever before.*

From: *Joint Open Letter to the High Contracting Parties to the Fourth Geneva Convention*

<http://www.alhaq.org/etemplate.php?id=412>

FIDH in partnership with The Euro-Mediterranean Human Rights Network (EMHRN)<sup>2</sup>, as well as other coalitions of human rights and humanitarian organizations, urged the international

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1. <http://www.alhaq.org/etemplate.php?id=412>

2. [http://www.fidh.org/Ensuring-respect-of-international-Israel & Occupied Palestinian Territories : Ensuring respect of international law to prepare for peace.](http://www.fidh.org/Ensuring-respect-of-international-Israel-&Occupied-Palestinian-Territories-Ensuring-respect-of-international-law-to-prepare-for-peace)

community and the Israeli authorities<sup>3</sup> to intervene in order to halt the humanitarian crises and the death tolls, which continued to raise according to organizations present on the ground<sup>4</sup>.

During the course of the military operation in the Gaza Strip, FIDH, the EMHRN and the International Commission of Jurists (ICJ) conducted a high-level political mission to Israel, the Occupied Palestinian Territories and Egypt to ask for an immediate cease-fire and urge the engagement of the international community in halting the humanitarian crisis. They stated that there were strong reasons to believe that Israel has grossly violated international humanitarian law, including the IVth Geneva Convention on the Protection of Civilian Populations in Times of Conflict and customary international law governing the conduct of hostilities. In a press conference in Cairo<sup>5</sup> on January 20<sup>th</sup>, they released their final statement which called for the urgent establishment of an independent commission of investigation into all the alleged violations of international human rights and humanitarian law, which would bring to light the individual responsibilities involved and pave the way for mechanisms of accountability and redress. All parties to the IVth Geneva Convention have a legal obligation to deploy such investigation. The members of the mission also condemned the inability of the United States and of the European Union, partners of the Israeli government, to take strong measures aimed at preventing or stopping the war.<sup>6</sup>

As the Israeli offensive against the Palestinian Occupied Territory is classified as an international armed conflict, the military operations conducted in Gaza by the Israeli army are regulated by, *inter alia*, the Geneva Conventions of 1949, the Hague Regulations of 1907, and customary international humanitarian law (IHL). While Israel has not ratified the Additional Protocols to the Geneva Conventions, it remains bound by those provisions which form part of customary IHL. Due to the exceptionally large extent of incurred destruction and fatalities, Operation Cast Lead has since been subject to scrutiny from the perspective of IHL<sup>7</sup> In a detailed report by PCHR field evidence indicated that the Israeli army violated all core IHL principles; namely, the principle of distinction, legitimate methods of warfare, prohibitions on destruction of property and collective punishment as well as the protection extended to medical workers

*In the early hours of Sunday, 18 January 2009, Israeli Occupation Forces (IOF) declared a unilateral ceasefire, calling a halt to their military operations against the Gaza Strip. This declaration marked an end to the 23-days offensive known as «Operation Cast Lead»; the most extensive and brutal offensive in history of Israeli occupation. Over the following days, IOF continued to withdraw from the areas they had invaded and redeployed to areas outside the Gaza Strip leaving in their wake extensive destruction. In the aftermath of the IOF's redeployment, the shocking and horrifying outcome of the offensive, and its unprecedented impact on the civilian population, were revealed. Despite PCHR's continuous field investigations during the offensive, it was difficult to follow up all details of the offensive and the extensive destruction in real-time due to the massive and wide-scale attacks which targeted the whole Gaza Strip. Moreover, it was difficult to reach many areas in the Gaza Strip, especially those controlled by Israeli troops and thus completely isolated from the rest of the Gaza Strip. However, consequent to the ceasefire, PCHR began to comprehensively document all crimes committed by IOF against Palestinians and their property. PCHR's work in relation to the Israeli offensive against the Gaza Strip took place over two phases. The first phase was the offensive itself, which lasted from 27 December 2008 –the beginning of the wide-scale air bombardments – until 18 January 2009, the day on which Israel unilaterally declared the end of*

3. <http://www.fidh.org/OPEN-LETTER-TO-THE-ISRAELI,5886>

4. <http://www.gisha.org/index.php?intLanguage=2&intSiteSN=113&intItemId=1453>

5. <http://www.cihrs.org/english/newssystem/details.aspx?id=946>

6. <http://en.emhrn.net/pages/560/news/focus/68859>

7. [http://pchrgaza.org/files/Reports/English/pdf\\_spec/gaza%20war%20report.pdf](http://pchrgaza.org/files/Reports/English/pdf_spec/gaza%20war%20report.pdf)

*military operations in the Gaza Strip. During this period, PCHR worked under very complicated and dangerous conditions that posed threats to the lives and safety of its staff. PCHR's work during that period was essentially focused on observation, reporting and advocacy at local and international levels. The objective of these efforts was to refute Israeli allegations about the nature of «Operation Cast Lead» and claims that IOF did not target civilians and respected international humanitarian law (IHL). The first track was investigation and documentation of all war crimes and violations of IHL perpetrated by IOF against Palestinian civilians and their property. This track was carried out during the three months that followed the ceasefire. The second track is legal assistance for victims and survivors, which includes preparing legal files for the most serious crimes in order to prosecute war criminals in domestic and international courts. This track may take years of continuous and persistent work.*

From: *Targeted Civilians: Report on the Israeli Military Offensive on the Gaza strip: 27 Dec 2008 – 18 Jan 2009*  
[http://pchrghaza.org/files/Reports/English/pdf\\_spec/gaza%20war%20report.pdf](http://pchrghaza.org/files/Reports/English/pdf_spec/gaza%20war%20report.pdf)

By the end of the hostilities, it became clear for several members of the international community and actors within Israel and the Occupied Palestinian Territories (OPT) that Operation Cast Lead had involved grave violations of human rights amounting at least to war crimes.

Extensive field research and documentation to prove such allegations were carried out by FIDH member organizations such as PCHR, Al Haq and B'tselem<sup>8</sup>. Assessments such as the following made by FIDH member organizations give insight into the nature of the destruction that occurred and qualify the assault.

*The extent of civilian fatalities does not, in itself, prove that Israeli violated the laws of war. However, the figures must be considered within the context of the numerous testimonies given by soldiers and Palestinians during and after the operation, which raise grave concerns that Israel breached fundamental principles of international humanitarian law and caused excessive harm to civilians. The magnitude of this harm requires Israel to conduct an independent and credible investigation, and not make do with military debriefings. Shortly after the operation, B'Tselem published guidelines for such an investigation and sent the Judge Advocate General's Office some twenty illustrative cases, in which a total of about 90 Palestinian civilians were killed, demanding that they be investigated.*

*B'Tselem's list of fatalities in Operation Cast Lead has been sent to the IDF Spokesperson's Office for comment.*

From: *B'Tselem publishes complete fatality figures from Operation Cast Lead*  
[http://www.btselem.org/English/Press\\_Releases/20090909.asp](http://www.btselem.org/English/Press_Releases/20090909.asp)

## **Civilian casualties**

“According to B'Tselem's research, Israeli security forces killed 1,387 Palestinians during the course of the three-week operation. Of these, 773 did not take part in the hostilities, including 320 minors and 109 women over the age of 18. Of those killed, 330 took part in the hostilities, and 248 were Palestinian police officers, most of whom were killed in aerial bombings of police stations on the first day of the operation. For 36 people, B'Tselem

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8. [http://www.btselem.org/English/Press\\_Releases/20090909.asp](http://www.btselem.org/English/Press_Releases/20090909.asp)

could not determine whether they participated in the hostilities or not.”<sup>9</sup>

In an analytical report, Al Haq provides great detail of its methodology to ensure accuracy and credibility stating that:

*“30,000 copies of questionnaires were prepared in order to collect data on the damage inflicted during the attack, and the fieldworkers went from site to site meticulously documenting the details of each incident. Sworn affidavits were taken from witnesses and victims, as well as supportive visual evidence in the form of photographs and videos. Medical reports were obtained from hospitals where relevant. Details were verified and cross-checked, and all the information was entered into a single database.”*

From: *Operation Cast Lead: A statistical Analysis*

<http://www.alhaq.org/pdfs/gaza-operation-cast-Lead-statistical-analysis%20.pdf>

The report indicated that over 83% of those killed by the Israeli forces during Operation Cast Lead were civilians.<sup>10</sup> This proportion is confirmed by PCHR documentation,

*“According to PCHR’s documentation, 1,419 Palestinians were killed during the Israeli military offensive on the Gaza Strip. This number includes 1,167 non-combatants (82.2%) and 252 resistance activists (17.8%). The non-combatants include civilians and civil police officers who were not involved in hostilities, the ‘protected persons’ of IHL. The civilian victims include 318 children (22.4 % of the total number of victims and 34.7% of the number of civilian victims) and 111 women (7.8% of the total number of victims and 12.1% of the number of civilian victims). Thus, 429 women and children were killed (30.2% of the total number of victims and 46.7% of the total number of civilian victims).*



Widespread destruction of private residential houses by the Israeli army in the Gaza strip.

*According to sources of the Ministry of Health in Gaza, at least 5,300 Palestinians were wounded during the Israeli military offensive on the Gaza Strip. This number includes at least 1,600 children (30%). According to PCHR’s data 1,600 children were wounded, constituting 30% of the total number of the wounded. In some instances they were targeted directly, in others they were killed when IOF (Israeli Occupation Forces) bombarded mosques, public facilities or residential complexes, or extra-judicially-executed Palestinian activists. Some women were directly targeted, murdered by IOF soldiers, others were killed inside their homes, while seeking refuge, or while hiding inside UNRWA Schools turned into shelters for families forced to flee their homes.”<sup>11</sup>*

Al Haq also qualified impeding Medical Relief in the Gaza Strip as a war crime committed by Israel against the injured:<sup>12</sup>

*Al-Haq is dismayed by the failure of Israeli occupying forces to allow medical assistance to thousands of stranded Palestinians who have been critically wounded in its attacks during “Operation Cast Lead” in the besieged Gaza Strip. Incidents in which medical*

9. [http://www.btselem.org/English/Press\\_Releases/20090909.asp](http://www.btselem.org/English/Press_Releases/20090909.asp)

10. <http://www.alhaq.org/pdfs/gaza-operation-cast-Lead-statistical-analysis%20.pdf>

11. [http://pchr-gaza.org/files/Reports/English/pdf\\_spec/gaza%20war%20report.pdf](http://pchr-gaza.org/files/Reports/English/pdf_spec/gaza%20war%20report.pdf)

12. <http://www.alhaq.org/etemplate.php?id=419>

*aid is denied to persons protected under international humanitarian law, such as that which follows, present prima facie cases of war crimes for which individuals should be held criminally responsible.*

From: *Impeding Medical Relief in the Gaza Strip: Israel's War Crimes against the Injured*

<http://www.alhaq.org/etemplate.php?id=419>

similar concerns had also been expressed by B'tselem who reported that wounded civilians found themselves trapped in the conflict zone.<sup>13</sup>

*In the last few hours, B'Tselem learned of civilians who are trapped in the following places in the Gaza Strip, all under the army's control:.....*

*B'Tselem demands that the army immediately allow ambulances to evacuate the dead and wounded and to enable civilians to be freed from areas under its control.*

From: *Army must allow evacuation of wounded and trapped civilians*

[http://www.btselem.org/English/Press\\_Releases/20090108.asp](http://www.btselem.org/English/Press_Releases/20090108.asp)

The direct targeting of civilian objects is also defined as a war crime, as per Article 8(2)(b)(ii) of the Rome Statute.<sup>14</sup> There is evidence to support that the Israeli army deliberately targeted the water and sewage infrastructure; for example, water tanks, wells, sewage pipes, waste water treatment plants, switching boards, and administrative buildings and vehicle inflicting damage estimated at US\$ 6 million to those sectors alone<sup>15</sup>. ACRI, PCATI and Adalah among others have thoroughly scrutinized and pointed out the error in the Israeli army's logic which legitimizes targeting civilian infrastructure as " Hamas-controlled" institutions thus considered as military targets. On January 9<sup>th</sup>, based on urgent petition submitted by these organizations, the Israeli Supreme Court had ordered the State to explain why it was delaying permitting evacuation of those wounded in Gaza and why it was not permitting electricity supply to Gaza's crumbling infrastructure<sup>16</sup>.

***Friday, January 9, 2009:*** *In a hearing in two court petitions submitted by human rights groups in Israel, the Supreme Court today ordered the state to explain why it was delaying permitting evacuation of those wounded in Gaza and why it was not permitting electricity supply to Gaza's crumbling infrastructure. The court issued its interim decision following a hearing in which the human rights groups argued that Israel was failing to fulfill its commitment to the civilian population of Gaza, suffering from a collapse of humanitarian services, including medical care, water supply, and basic sanitation. The court gave the state four days, until January 13, to provide explanations.*

From: *Israeli Supreme Court Orders State to Explain Gaza Civilian Policy:*

*1. Why Not Permitting Evacuation of Wounded*

*2. Why Not Providing Electricity for Sewage and Water System*

<http://www.gisha.org/index.php?intLanguage=2&intSiteSN=113&intItemId=1456>

The Israeli government denied FIDH's request introduced on April 22, 2009 to enter Gaza through the Erez entry point, to conduct a mission from May 24 to May 31, composed of prominent judges and lawyers from France and Germany.<sup>17</sup> Nevertheless, FIDH relies on factual analysis made by

13. [http://www.btselem.org/English/Press\\_Releases/20090108.asp](http://www.btselem.org/English/Press_Releases/20090108.asp)

14. [http://pchrghaza.org/files/Reports/English/pdf\\_spec/gaza%20war%20report.pdf](http://pchrghaza.org/files/Reports/English/pdf_spec/gaza%20war%20report.pdf)

15. [http://pchrghaza.org/files/Reports/English/pdf\\_spec/report%20sewage.pdf](http://pchrghaza.org/files/Reports/English/pdf_spec/report%20sewage.pdf)

The Impact of the Israel Offensive (27 Dec 08 – 18 Jan 09) on the Sewage and Water Sectors in the Gaza Strip.

16. <http://www.gisha.org/index.php?intLanguage=2&intSiteSN=113&intItemId=1456>

Israel's Supreme Court orders State of Israel to explain Gaza Civilian Policy

17. [http://www.fidh.org/Israeli-authorities-must-authorize?debut\\_visite\\_commpress=80](http://www.fidh.org/Israeli-authorities-must-authorize?debut_visite_commpress=80)

its member organizations on the ground and bears into account the observations put forth by the UN Fact-Finding Mission in Gaza, which among other observations concluded the following:

*The Mission concludes that the events which 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.*

*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 [to the Geneva Conventions]. 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. 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.<sup>18</sup>*

## **Illegal use of certain weapons**

It was revealed in the course of national and international inquiries that Israel also used certain weapons in a manner that contravene IHL. This was in reference particularly to the use of white phosphorus<sup>19</sup>, of flechette missiles, of so-called dense inert metal explosive (DIME) munitions and depleted uranium. The use of such dangerous weapons in densely populated civilian areas and against civilian objects and persons, is a grave violation of Israel's obligation to evade causing harm to civilians. On January 14<sup>th</sup> a coalition of Israeli NGOs including all FIDH member organizations, Btselem, Adalah, PCATI and ACRI urged the Prime Minister, Defense Minister and Attorney General of Israel for immediate cessation of the use of such weapons and to adhere to methods of warfare that abide by the IHL<sup>20</sup>.

*The laws of war which were designed to minimize the horrors of war, if only a little, are the fruits of international effort through generations and were designed to protect both civilians and soldiers. The protective shield they create is delicate and fragile. Breaking the rules may bring about an irreparable breach. The military's temptation to erode this protective shield is great – despite the fact that soldiers on the battleground are the first people who need its protection. The price of the erosion of obedience to the laws of war cannot be enumerated, and its toll may not be limited to Gaza. In light of the above, and inasmuch as use was made of the abovementioned means, we demand Israel cease the use of the latter means of warfare and any other means with similar effects forthwith and desist from harming protected civilians*

From: Immediate Cessation of Use of Means of Warfare in Contravention of International Humanitarian Law  
[http://www.hamoked.org.il/items/110983\\_eng.pdf](http://www.hamoked.org.il/items/110983_eng.pdf)

The UN mission made clear that “the risks that the use of white phosphorus posed to the civilian

18. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48\\_ADVANCE2.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48_ADVANCE2.pdf)

19. <http://www.hrw.org/en/news/2009/01/10/q-israel-s-use-white-phosphorus-gaza>  
Q&A on Israel's Use of White Phosphorus in Gaza.

20. [http://www.hamoked.org.il/items/110983\\_eng.pdf](http://www.hamoked.org.il/items/110983_eng.pdf)

population and civilian objects in the area under attack were excessive in relation to the specific military advantages sought”<sup>21</sup>. Furthermore, “the Israeli armed forces were systematically reckless in determining to use white phosphorus in built-up areas and in particular in and around areas of particular importance to civilian health and safety”. The mission emphasized that it was concerned not only with the inordinate risks the Israeli army took in using white phosphorus, but also with the damage it caused. Having spoken to medical experts and practitioners, the mission was impressed by the severity and sometimes incurable nature of the burns caused by the substance.

Regarding the use of flechettes, the UN mission recalled that “they are incapable of discriminating between objectives after detonation. They are therefore, particularly unsuitable for use in urban settings where there is reason to believe civilians may be present”.<sup>22</sup>

## **Human rights violations allegedly perpetrated by Palestinian armed groups**

PCHR released a special report about the rise of inter-Palestinian violence during the conflict and urged the government of Gaza to intervene immediately. The organization documented human rights violations including killings of fugitives, prisoners and detainees, injuries caused by severe physical violence, torture and misuse of weapons, the imposition of house arrest, and other restrictions that have been imposed on civilians. Dozens of other people reportedly sustained injuries after being shot or severely beaten by unidentified gunmen who in some cases claimed to be members of the Palestinian Security Services.

Within Gaza, the UN fact-finding mission found that security services working under Gazan authorities were implicated in grave violations of human rights such as “extra judicial” 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, 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.”<sup>23</sup>

In examining the accountability violations of international humanitarian law allegedly perpetrated by Palestinian groups, the fact-finding mission found that targeting civilian objects in Southern Israel constituted a war crime. By launching attacks (including rockets) close to civilian or protected buildings, Palestinian groups failed to take all feasible precautions.

An aggregation of different NGO statements made during the course of the hostilities can be found on the FIDH website and on the blog: “gazaeng.blogspot.com”



*A Palestinian rocket launched from the Gaza Strip landed on the city of Sderot, Southern Israel.*

21. A/HRC/12/48, September 15, 2009, p 249.

22. A/HRC/12/48, September 15, 2009, p 251.

23. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48\\_ADVANCE2.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48_ADVANCE2.pdf)

# The National Prospects of Justice in Israel and Gaza

Despite the obvious need to conduct an independent inquiry into the events of Operation Cast Lead, there was no initiative from the Israeli government to do so. Organizations like B'Tselem released detailed and informative guidelines for the conduct of such a mission including the main questions that need to be answered,<sup>24</sup> but these were largely overlooked.

*B'Tselem today (Sunday, 8 February) issued a position paper detailing the issues that Israel must investigate regarding its conduct during the operation in Gaza. Israeli military and government officials declare with confidence that the military acted according to International Humanitarian Law and that responsibility for the harm to the civilian population rests exclusively with Hamas. B'Tselem's initial survey of the military operation calls these statements into question.*

*B'Tselem continues to research Israel's conduct in the Gaza Strip during the operation and will publish its findings. However, the information the organization has already collected raises grave suspicions that soldiers and commanders breached international humanitarian law. These suspicions relate not only to the conduct of individual soldiers, but primarily to questions of policy.*

From: *B'Tselem Publishes Guidelines for Israel's Investigation into Operation Cast Lead*  
[http://www.btselem.org/Download/200902\\_Operation\\_Cast\\_Lead\\_Position\\_paper\\_Eng.pdf](http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf)

Meanwhile, other signs of impunity at the national level were discouraging indicators of the possibility of ever obtaining the necessary accountability at the national level (on the Palestinian or the Israeli side).

At the beginning of the al-Aqsa intifada, the Judge Advocate General's (JAG) office changed its policy regarding the opening of Military Police investigations for cases in which the Israeli Defense Forces (IDF) soldiers kill Palestinian civilians. In the first intifada, the IDF investigated every case in which a Palestinian was killed except for those in which the person killed was involved in the fighting. When the current intifada began, the JAG's office decided that Military Police investigations would only be opened for those cases in which soldiers "severely violate the open-fire regulations and cause bodily injury or loss of life." Under the

new procedure, the army unit investigates every incident in which a soldier from that unit kills a Palestinian civilian. The findings are forwarded to the JAG's office which then decides whether the findings warrant a Military Police investigation. This change in policy has led to a drastic fall in the number of Military Police investigations opened. In justifying the change in policy, the JAG's office contends that since the beginning of the al-Aqsa intifada, an "armed conflict" has been taking place in the territories, and that the Israeli army, therefore, is not automatically required to investigate every attack on civilians. But this argument is untenable under international humanitarian law: even if the situation is one of armed conflict, the army is



© PCHR  
White phosphorus attack  
over Gaza City.

24. [http://www.btselem.org/English/Press\\_Releases/20090208.asp](http://www.btselem.org/English/Press_Releases/20090208.asp)

still required to investigate attacks on civilians. Armed conflict has rules, and intentional attacks on the civilian population are forbidden. To ensure that soldiers comply with these rules, such incidents must be investigated.

Nevertheless, considering the extensive media coverage, five Colonels who were not directly in the chain of command for the operations in question were appointed to hold five field investigations into 17 separate allegations made by NGOs and international institutions. All these investigations found that the IDF had acted reasonably and had not been beyond the limits of international humanitarian law. Many more investigations are said to be still underway. In July 2009, the Israeli Government published a 159-page-long report entitled “The Operation in Gaza 27 December 2008 – 18 January 2009, Factual and Legal Aspects” which concludes that the allegations of deliberate breaches of IHL are unfounded and that everything possible had been done to minimize damage to civilians, medical facilities, so that the laws of armed conflict had not been breached<sup>25</sup>. B’Tselem’s figures, the result of months of meticulous investigation and cross-check with numerous sources, sharply contradict those published by the Israeli military. Israel stated that 1,166 Palestinians were killed in the operation and that 60% of them were members of Hamas and other armed groups. According to the Israeli military, a total of 295 Palestinians who were “not involved” in the fighting were killed. As the military refused to provide B’Tselem with its list of fatalities, it has not been possible to cross-check names. However, the blatant discrepancy between the numbers is intolerable.<sup>26</sup> Several Israeli organizations have highlighted the reasons why such investigations conducted at the national level could not constitute appropriate local accountability mechanisms, mainly because it is the army, and not an external body, that investigated itself and reported to the Military Advocate General.

During Operation Cast Lead, FIDH member organizations sent several letters to Israeli Attorney General (AG) Mr. Mazuz, raising their concerns over the perpetration of grave violations of IHL perpetrated by the Israeli army in the Gaza strip, and asking him to communicate those concerns to the relevant officials, so as to clearly inform them that attacks may not be aimed at civilian objects, as well as of the consequences of acts carried out in contravention of IHL.

It was clearly expressed in the letters that “at the end of the hostilities, the time will come for the investigation on this matter, and accountability will be demanded of those responsible for the violations”.

On 28 January 2009 after the hostilities ceased, PCATI reported that “seven Israeli Human Rights organizations appealed to the Military Judge Advocate General, Brigadier General Avichai Mandelblit, and to Attorney General Meni Mazuz concerning the appalling conditions in which Palestinians arrested during the fighting in Gaza were held, and the humiliating and inhuman treatment to which they were subjected from the time of their arrest until their transfer to the custody of the Israel Prison Service”<sup>27</sup>.

*The reports indicate, among other things, that many detainees – minors as well as adults – were held for many hours – sometimes for days - in pits dug in the ground, exposed to bitter cold and harsh weather, handcuffed and blindfolded. These pits lacked basic sanitary facilities which would have allowed the detainees appropriate toilet facilities, while food and shelter, when provided, were limited, and the detainees went hungry. More seriously, some of the detainees were held near tanks and in combat areas, in gross violation of international humanitarian law which prohibits holding prisoners and captives in areas exposed to danger. Inappropriate treatment of the detainees continued after they were removed from the pits in which they had been held. For example: Some were held overnight in*

25. [http://www.fidh.org/GAZA-Accountability-Impunity?debut\\_visite\\_commpress=10#nb4](http://www.fidh.org/GAZA-Accountability-Impunity?debut_visite_commpress=10#nb4)

26. [http://www.btselem.org/English/Press\\_Releases/20090909.asp](http://www.btselem.org/English/Press_Releases/20090909.asp)

27. <http://www.stop torture.org.il/en/node/1384> [http://www.btselem.org/english/gaza\\_strip/20090423\\_response\\_to\\_idf\\_investigation\\_of\\_operation\\_cast\\_lead.asp](http://www.btselem.org/english/gaza_strip/20090423_response_to_idf_investigation_of_operation_cast_lead.asp)

*a truck, handcuffed, with one blanket for every two people; some were held for a long time in the rain; there was a lack of blankets, food and water; and there were also incidents involving extreme violence and humiliation by soldiers and interrogators, regarding which complaints will be submitted separately. Detainees continued to be held in humiliating conditions even after being transferred to an IDF prison facility (located, apparently, at the Sdeh Tayman base) where, for example, they were not provided with toilets or showers. In view of these harsh accounts, the organizations demand an independent, comprehensive investigation to insure that such treatment of detainees is not repeated. The organizations also request that a number of additional steps be taken to preserve these detainees' rights and insure appropriate conditions of incarceration wherever the army may hold prisoners in the future.*

From: *Israel held many Gaza prisoners in harsh and humiliating conditions and threatened their lives and their health*  
<http://www.stoptorture.org.il/en/node/1384>

These letters have remained unanswered.

Considering the established Israeli legal jurisprudence regarding accountability (very few complaints actually result in an indictment), as well as the first conclusions of the investigations conducted by the Israeli army following the January 2009 offensive on Gaza, there is very little chance for Palestinian victims to obtain justice before Israeli courts. B'Tselem, among others, has criticized the effectiveness of Israel's internal redress channels, based on the quite simple reasoning that "the army cannot investigate itself"<sup>28</sup>, especially after it was forced, for example, to take back its initial denial that illegal weapons, namely phosphorus, had been used throughout the conflict.<sup>29</sup>

FIDH has since urged all involved parties to take immediate action to implement the recommendations presented in the UN fact-finding mission's report (the "Goldstone report") to achieve effective accountability and the prevention of further devastation of such severe proportion.

The "Goldstone" report also concluded that Israeli channels for investigating and prosecuting violations of international humanitarian and human rights law contain major structural flaws that make the system inconsistent with international standards, leaving little chance for effective and impartial investigation mechanisms and/or prompt remedy for victims of such alleged violations. The report states "that the system presents inherently discriminatory features that make the pursuit of justice for Palestinian victims extremely difficult."<sup>30</sup> This finding is reinforced by the experience of previous Israeli commissions of inquiry. Specifically, the Or commission which was convened to investigate the killing of 13 Palestinian citizens of Israel by police in 2000, did not result in a single indictment.

The experience of the Or Commission is discouraging for civil society actors hoping for the fulfillment of the UN Mission's recommendations of a thorough investigation and independent prosecution of potential war criminals. Adalah drew a startling comparison in this regard:

*"If the killing of Palestinian citizens of Israel during civil protest demonstrations did not lead to any indictments, can anyone imagine the Attorney General indicting a single soldier or officer for actions undertaken during Operation Cast Lead? The AG did not respect the Or Commission's recommendations. What, then, can we realistically expect from an examination committee that will have less power and a lower status than an official commission, and*

28. [http://www.btselem.org/English/Gaza\\_Strip/20090423\\_Response\\_to\\_IDF\\_investigation\\_of\\_Operation\\_Cast\\_Lead.asp](http://www.btselem.org/English/Gaza_Strip/20090423_Response_to_IDF_investigation_of_Operation_Cast_Lead.asp)

29. [http://www.btselem.org/English/Gaza\\_Strip/20090521\\_BTselem\\_to\\_JAG\\_Army\\_must\\_stop\\_using\\_White\\_Phosphorus.asp](http://www.btselem.org/English/Gaza_Strip/20090521_BTselem_to_JAG_Army_must_stop_using_White_Phosphorus.asp)

30. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48\\_ADVANCE2.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48_ADVANCE2.pdf)

*after the AG's office has already 'legalized' all the military actions carried out by the army during Cast Lead by giving it legal advice and support throughout the operation?"*

From: *From the Or Commission to Goldstone*  
<http://www.adalah.org/newsletter/eng/oct09/oct09.html>

The Palestinian party to the conflict also have their burden of violations and those responsible for them must be brought to account. 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.<sup>31</sup> Armed groups within the Gaza strip have violated the right to life and possibly committed war crimes against Palestinian and Israeli civilians.

As even less potential may exist within Gaza,<sup>32</sup> for ensuring the accountability of those who perpetrated grave violations of human rights and humanitarian laws, FIDH supports the assertion 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 and the fact that the serious violations of international humanitarian law recounted in this report fall within the subject-matter jurisdiction of the International Criminal Court<sup>33</sup>.

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31. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48\\_ADVANCE2.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48_ADVANCE2.pdf)

32. Independent Commission for Human Rights (ICHR), annual report 2008, pp 89-97.

33. *Ibid.*, p20.

# Avenues for Extraterritorial Justice

BT'selem, together with Physicians for Human Rights and Hamoked, released a position paper in which, after stressing the need for laying the foundations for local and international justice mechanisms for purposes of accountability, they encourage Israel and the Palestinians to establish impartial and independent local investigations and justice mechanisms for the Gaza offensive. The organizations affirmed that should the parties to the conflict fail in their obligation to investigate and prosecute violations of the laws of war, the establishment of international justice mechanisms should be established to ensure the above process of accountability. If accountability for the human rights violations and war crimes perpetrated during Operation Cast Lead cannot be achieved by national courts, there are two means available for victims seeking justice: foreign national courts implementing universal jurisdiction for serious crimes, and a referral to the International Criminal Court (ICC).

The principle of “universal jurisdiction” recognizes that individuals suspected of serious international crimes such as genocide, war crimes, crimes against humanity, torture and enforced disappearances, could be prosecuted in any country, irrespective of where the crimes are said to take place. Although criminal jurisdiction is normally linked to territorial and personal ties, the reason justifying the exercise of universal jurisdiction is the extreme gravity of the crimes, the recognition that these crimes affect the international community as a whole and the commitment that they must not go unpunished.

Regarding the violations that occurred in the Gaza Strip, the ICC may examine the case either through a UN Security Council Resolution or the referral of the situation to the Prosecutor of the ICC by a State party to the Statute or a State not party to the Statute but nevertheless accepting the Court's exercise jurisdiction on its territory. It is important to distinguish the two possible avenues for an ICC action in this case: 1) the Goldstone Report could lead to a Security Council referral to the ICC; 2) the Palestinian Declaration accepting the Court's jurisdiction (see below) could also trigger an ICC investigation, should the declaration be considered valid. These two are separate tracks, which are independent from one another.

The following are some relevant factors which should be taken into consideration when assessing the credibility of domestic investigations and prosecutions. Those investigations and prosecutions must be genuine. As such, they must be independent. Independence is affected when there are political interference in the decision-making process or in the appointment of judges. The fact that potential perpetrators and the judicial body involved belong to the same entity (e.g. military tribunals) also undermines independence and impartiality of the relevant accountability mechanism. Other elements to be considered are whether the judicial organ(s) in charge of investigations and prosecutions are equipped with sufficient resources and enjoy support from other branches of the State in the conduct of inquiries and judicial proceedings. Proportionality between the sentence and the crimes committed is also relevant to avoid mock trials.

## **The International Criminal Court**

Since the creation of the ICC, FIDH -together with its member organizations in the relevant countries- has constantly contributed to the ICC Office of the Prosecutor's preliminary analyses and investigations, by submitting communications providing information on the crimes

committed on certain States' territories, and on the lack of adequate domestic investigations and prosecutions. Regarding the situation in the Gaza Strip, immediately after Operation Cast Lead, FIDH called the UN Security Council to refer the situation to the ICC prosecutor, considering the alleged perpetration of grave human rights violations<sup>34</sup>. FIDH has also supported the preliminary examination conducted by the ICC Prosecutor following the Palestinian Authority's declaration accepting the Court's jurisdiction in accordance with Article 12(3) of the ICC Statute, which was lodged on 21 January 2009.

*FIDH welcomed UN Security Council Resolution 1860 (2009) adopted on January 8, 2009, expressing « grave concern at the escalation of violence and the deterioration of the situation, in particular the resulting heavy civilian casualties » and « condemn[ing] all violence and hostilities directed against civilians ».*

*Unfortunately, the resolution failed to include any operational aspect, in particular the deployment of an international commission of investigation. The situation nevertheless requires action, not just words.*

*As the only international organ in charge of maintaining international peace and security, the UN Security Council has the responsibility to decide on concrete actions aiming at preventing the repetition of these crimes, in particular through the deployment of independent judicial proceedings, prosecution and condemnation, at least of those who bear the highest responsibility in the crimes.*

*Considering that the crimes perpetrated by the Israeli army in the Gaza strip obviously fall within the material jurisdiction of the International Criminal Court (ICC), noting that Israel has not ratified the Statute of the ICC, activating the ICC jurisdiction for these crimes implies for the UN Security Council to refer the situation to the ICC.*

*Accordingly, the FIDH urges the UN Security Council to refer the situation to the ICC Prosecutor in compliance with Article 13(b) of the ICC Statute in order for the Prosecutor to initiate an investigation into crimes within its jurisdiction and to bring the perpetrators to justice.*

From: *Open Letter to Members of the UN Security Council*

<http://www.fidh.org/FIDH-urges-the-UN-Security-Council>

FIDH, together with member organizations, have made available to the Office of the Prosecutor, information which they believe is relevant to assess the Court's jurisdiction over the situation. FIDH representatives are in contact with the ICC Office of the Prosecutor and hold a regular dialogue in relation to the evolution of the preliminary analysis. During the last meetings between FIDH delegations and the Prosecutor and other organs of the ICC, the three main axes to be considered under the Prosecutor's analysis, were addressed, namely: 1) the Court's jurisdiction over the situation; 2) the gravity of the crimes committed; 3) the admissibility of the situation in the ICC system, i.e. the willingness and capacity of national tribunals to conduct domestic proceedings for crimes under ICC jurisdiction.<sup>35</sup>

The determination of the Court's jurisdiction over the situation is a complex issue. According to the ICC Statute<sup>36</sup>, States not party to the Statute can accept the Court's jurisdiction. As recalled above, the Palestinian Authority lodged such a declaration. The declaration relates not only to crimes committed during the Operation Cast Lead but, more broadly, to all crimes committed on the Palestinian Territories since July 1, 2002 (date of the entry into force of the ICC Statute).

34. <http://www.fidh.org/FIDH-urges-the-UN-Security-Council>

35. <http://www.fidh.org/FIDH-Delegation-meets-with-ICC-Prosecutor-to>

36. Article 12.3 of the Rome Statute.

In analyzing jurisdiction over the case, the ICC Prosecutor will not have to assert whether Palestine is a State under international law or not, but rather whether it has the capacity to lodge such a declaration in accordance with the ICC Statute. Arguments have been made both for and against the validity of the declaration, but this is something that only the ICC Prosecutor and judges will have to ultimately decide upon.

Converging in their struggle against impunity, FIDH member organizations call for immediate domestic investigations into all alleged crimes. But they also recall that, should the parties fail to conduct such domestic investigations in an impartial, independent, credible and timely manner, justice must be sought through extranational and international mechanisms.

## **Universal Jurisdiction**

FIDH pursues avenues of universal jurisdiction wherever action is possible if there is a lack of action of national authorities or no conditions are met to have fair trials in the state where the crimes were committed. PCHR has started several years ago to file complaints under the principle of universal jurisdiction in European countries. In 2009, FIDH has been working in close cooperation with PCHR together with a team of European lawyers to collect accurate information and affidavits to represent the interests of Palestinian victims abroad, in particular in Spain. FIDH and the Asociación por Derechos Humanos de España (APDHE) welcomed the decision taken on 29 January, 2009 by the Central Investigative Judge N°4 of the Spanish National Court, which received a PCHR backed up complaint for war crimes and crimes against humanity, concerning the Al Daraj bombing committed in Gaza in 2002, a targeted assassination which caused the death of 14 Palestinian civilians. The investigation was opened on the basis of war crimes, with a possible extension to crimes against humanity, should a wide spread and systematic pattern be revealed by the investigation. This investigation targets seven Israeli officials, including Benjamin Ben-Eliezer, former Defense Minister and currently Infrastructure Minister, Dan Halutz, Commander of the Israeli Air Force when the crimes were committed, Doron Almog, former Commander of the Israeli Defence Forces in Gaza, Giora Eiland, President of the Israeli National Security Council, Michael Herzog, military secretary at the Ministry of Defence, Moshe Yaalon, Commander-in-chief of the armed forces and Abraham Dichter, former Director of the Shin Beth.<sup>37</sup> The pressure reportedly exercised by Israel on Spain in response to this opening of investigation led the Spanish Parliament to adopt a resolution on 19 May 2009 designed to limit Spain's universal jurisdiction legislation and to prevent victims of serious human rights abuses to access justice in Spain. The Spanish courts will have to interpret this law, which entered into force on 5 November 2009 and determine in which ways it will affect the ongoing investigations, including the Al Daraj case.

Besides, in mid-June 2009, FIDH member organization Al Haq announced that on 18 and 19 June 2009, the UK Divisional Court in London would be hearing the preliminary motions of the case brought by Al-Haq, in cooperation with solicitor Phil Shiner of Public Interest Lawyers (PIL), challenging the UK government over its failure to fulfill its obligations under international law with respect to Israel's activities in the Occupied Palestinian Territory. The decision is still pending.

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37. <http://www.fidh.org/Spanish-judiciary-asserts-its>

# International assessments of human rights violations during Cast lead Operation

## Goldstone Report

The events that unraveled around the mandate of a fact-finding mission headed by Justice Richard J. Goldstone have yet to be concluded. FIDH has supported the work of the mission and urged all involved parties to cooperate with the mission.

Based on Mr. Goldstone's own declared intentions of impartiality and professionalism, the President of the Human Rights Council accepted to broaden the mandate of the fact-finding mission. On 3 April 2009, he established the international independent Fact Finding Mission with the mandate "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."

Several FIDH member organizations in Israel and the OPT have testified before the "Commission" in the course of its mission. A lawyer from PCATI testified that detainees were used as human shields by Israeli soldiers. Among other things he relayed "instances of physical and verbal violence, threats and sleep deprivation and painful shackling during interrogations by Israel's General Security Service (GSS)."<sup>38</sup>

The FIDH intervention to the Human Rights Council during its twelfth session reiterated that considering the methodology and the conclusions of the report presented to the Council, there were no grounds to deny the report's legitimacy; it must be acknowledged that the fact-finding mission was conducted with professionalism and impartiality.<sup>39</sup> FIDH member organization Al Haq stated that the appropriate judicial bodies to bring the perpetrators to justice are either the International Criminal Court or an immediately established international, impartial, credible and transparent Tribunal with complete personal, territorial and subject-matter jurisdiction. On September 29<sup>th</sup>, Al Haq partnered with a joint panel of Israeli, Palestinian and international NGOs including FIDH for a side event on the presentation on the Goldstone report. United in their support of the report and their demand for accountability on all sides, the participating organizations discussed various views on follow-up and mechanisms for justice<sup>40</sup>.

Other statements made by several FIDH member organizations (ACRI, PCATI, B'tselem and Adalah) have advocated Israel to desist from its current policy of casting doubt upon the credibility of anyone who does not adhere to the establishment's narrative.<sup>41</sup>

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38. <http://www.stoptorture.org.il/en/node/1457>

39. <http://www.fidh.org/Gaza-UN-fact-finding-mission>

40. <http://www.alhaq.org/etemplate.php?id=477>

41. [http://www.btselem.org/english/press\\_releases/20090915.asp](http://www.btselem.org/english/press_releases/20090915.asp)

*With the publication of the Goldstone Committee report today, human rights organizations in Israel are studying the report and its conclusions, and they call upon the Israeli Government to take the report seriously and to refrain from automatically rejecting its findings or denying its legitimacy.*

*Already it is clear that the findings of the report - written after gathering extensive information and testimonies from Israeli and Palestinian victims - will join a long series of reports indicating that Israel's actions during the fighting in Gaza, as well as the actions of Hamas, violated the laws of combat and human rights law.*

*Human rights organizations in Israel believe that the State of Israel must conduct an independent and impartial investigation into these suspicions and to cooperate with an international monitoring mechanism that would guarantee both the independence of that investigation and the implementation of its conclusions. The organizations have written to Israel's Attorney General to demand that he establish such an independent body to investigate the military's activities during "Cast Lead", but he rejected their request.*

*The groups expect the Government of Israel to respond to the substance of the report's findings and to desist from its current policy of casting doubt upon the credibility of anyone who does not adhere to the establishment's narrative.*

From: *Human Rights groups in Israel in response to Goldstone Report: Israel Must Investigate 'Operation Cast Lead'*

[http://www.btselem.org/english/press\\_releases/20090915.asp](http://www.btselem.org/english/press_releases/20090915.asp)

The recommendations of the UN fact-finding mission's report were endorsed by the UN Human Rights Council in a resolution (A/HRC/RES/S-12/1) adopted on 21 October 2009, during the 12<sup>th</sup> Special session. By this resolution, the Human Rights Council:

*“ - 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;*

*- Recommends that the General Assembly consider the report of the Independent International Fact-Finding Mission, during the main part of its sixty-fourth session;*

*Requests the United Nations Secretary-General to submit to the Council, at its thirteenth session”*

On 5<sup>th</sup> November 2009, the UN General Assembly adopted Resolution 64/10 “giving Israel and the Palestinians three months to undertake “independent, credible investigations” into serious violations of international humanitarian and human rights law committed during the conflict in Gaza that broke in late December 2008”. By its decision, the GA endorsed the report of Human Rights Council on its twelfth special session, which had considered, on 15 and 16 October 2009, the output of the United Nations Fact Finding Mission on the Gaza Conflict.

Finally, in a letter dated 10 November 2009, the UN Secretary-General transmitted the report of the UN fact-finding mission to the Security Council, pursuant to the request by the GA, contained in paragraph 2 of its resolution of 5 November.

## The UN Office of the High Commissioner of Human Rights

A report was submitted by the Office of the UN High Commissioner for Human Rights to the Human Rights Council in August 2009. This is the first periodic report by the OHCHR mandated by Council resolution S-9/1 in which the Council requested the High Commissioner “to report on the violations of human rights of the Palestinian people by the occupying power, Israel, by submitting period reports of the Council. In her conclusions and recommendations entitled “the need for accountability”, the High Commissioner stresses that “*prima facie* evidence indicates that serious violations of international humanitarian law as well as gross human rights violations occurred during operation “Cast lead”. ..”While these violations are of deep concern in their own right, the nearly total impunity that persists for such violations (regardless of the responsible duty bearer) is of grave concern, and constitutes a root cause for their persistence.

In this context, the High Commissioner made the following recommendations:

“All allegations of violations of international humanitarian law and human rights violations during the Gaza military operations must be investigated by credible, independent and transparent accountability mechanisms, taking fully into account international standards on due process of law. Equally crucial is upholding the right of victims to reparation. All parties concerned, as well as States and the international community as a whole, should render full support and cooperation to all such accountability efforts. The High Commissioner stresses in particular the need for full cooperation with and support to the ongoing work of the independent fact-finding mission mandated by the Human Rights Council and headed by Justice Richard Goldstone”;

In the wider OPT context, addressing the persisting impunity for human rights and international humanitarian law violations committed by all parties is vital for preventing a further deterioration of the human rights situation. In particular, reported instances of arbitrary detentions, torture and ill-treatment and extra judicial executions should be investigated. A key obstacle in this regard is the widespread recourse to military justice systems, which do not meet international standards of due process, by all parties. This should be curtailed;[...]

There can be no lasting peace without respect for human rights and without accountability for human rights violations.<sup>42</sup>

## The League of Arab States

For the first time a fact-finding mission was mandated by the Arab League. The mission was conducted by very-high level international experts in international humanitarian and human rights law. FIDH was able to contribute to designing this mission thanks to the strong input from its member organization the Palestinian Center for Human Rights in Gaza. The Independent Fact Finding Committee on Gaza to the League of Arab States was established in February 2009; it was charged with the task of investigating and reporting on violations of human rights law and international humanitarian law committed during the Israeli military offensive against Gaza from 27 December 2008 to 18 January 2009, as well as with collecting information on the responsibility for the commission of international crimes by both parties during the operation. The Committee was comprised of Professor John Dugard (South Africa: Chairman), Professor Paul de Waart (Netherlands), Judge Finn Lynghjem (Norway), Advocate Gonzalo Boye Chile/Germany), Professor Francisco Corte-Real (Portugal: forensic body damage evaluator) and Ms Raelene Sharp, solicitor (Australia: Rapporteur).

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42. [http://www.humanrights-geneva.info/IMG/pdf/gaza\\_roport\\_2009.pdf](http://www.humanrights-geneva.info/IMG/pdf/gaza_roport_2009.pdf)

The Committee was in Gaza from 22 to 27 February. The program for its visit was organized by the PCHR, which provided logistical support to the Committee. The Committee met with a wide range of persons, including victims of operation Cast Lead, witnesses, members of the Hamas Authority, doctors, lawyers, businessmen, journalists and members of NGOs and United Nations agencies. It visited the sites featuring the scale of destruction, including hospitals, schools, universities, mosques, factories, businesses, police stations, government buildings, United Nations premises, private homes and agricultural land.

The Committee collected a wealth of information from many sources, including the websites of the Israeli Foreign Ministry and IDF, Israeli newspapers and NGO reports, the reports of Palestinian and international NGOs, United Nations publications, Palestinian official documents and the testimony of witnesses to the violations. On three occasions, the Committee wrote to the Government of Israel requesting its co-operation. Such letters were faxed to the Government in Israel and later delivered to the Israeli embassies in the Netherlands and Norway. The Committee received no response to its requests for co-operation, which compelled it to rely on official websites, publications and the media for information about the Israeli perspective.

After establishing the facts, the report focuses on accountability of those responsible for grave violations of human rights and international humanitarian law and the remedies to the violations. The set of recommendations includes recommendations to:

The UN: requesting the Security Council to refer the situation to the ICC Prosecutor

The High contracting parties of the Geneva Conventions: to take action under Article 146 of the Fourth Geneva Convention to ensure that those suspected of having committed grave breaches of the Convention under Article 147 be investigated and prosecuted.

The Arab League member States: to prosecute persons responsible for the international crimes identified in the mission's report before their national courts (where universal jurisdiction laws so permit).

## **The European Union**

The official positions adopted by the EU in the last 10 months illustrate the incoherence of EU Member States on their support to an effective fight against impunity. On the one hand, the European Union has clearly expressed that the fight against impunity was a top priority<sup>43</sup>:

*“One of the European Union’s overarching human rights priorities is combating impunity. On this basis, we call upon both parties to fully adhere to international humanitarian and human rights law. The EU emphasises the importance of appropriate and credible investigations into possible violations of international human rights law and international humanitarian law by the parties to the conflict in accordance with international standards, noting in this regard that the Mission directs its recommendations to both Israel and Palestinian actors. The Human Rights Council should ensure appropriate follow up, in particular by assessing whether credible investigations have been conducted by both sides. We will, during the continued consideration in the Human Rights Council, engage constructively in the search of a consensual resolution.”*

On the other hand, while the EU committed to “*assess the (Goldstone) report and its recommendations seriously*”<sup>44</sup> none of the EU Member States supported the UN Human

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43. EU presidency Statement – United Nations Security: debate on the situation in the Middle East, including the Palestinian question. 14 October 2009, New York, [http://www.europa-eu-un.org/articles/en/article\\_9105\\_en.htm](http://www.europa-eu-un.org/articles/en/article_9105_en.htm)

44. EU presidency Statement – United Nations Security: debate on the situation in the Middle East, including the Palestinian question. 14 October 2009, New York.

Rights Council resolution (A/HRC/RES/S-12/1) endorsing the report and its recommendations adopted on 21 October 2009, during the 12th Special session. Hungary, Italy, the Netherlands, and Slovakia voted against the resolution. Belgium abstained. France and the UK did not take part in the vote.

FIDH has promoted the fight against impunity through regional and intergovernmental bodies notably through the EU-Israel association agreement.<sup>45</sup> The Euro Mediterranean Human Rights Network released a report analyzing the EU policies in relation to the of Israel's military offensive in the Gaza Strip. The report described the policy as "active but acquiescent"<sup>46</sup>.

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45. Aid Agencies Call for Suspension of enhanced EU-Israel agreement <http://www.fidh.org/Aid-agencies-call-for-suspension>

46. [http://en.euromedrights.org/index.php/publications/emhrn\\_publications/emhrn\\_publications\\_2009/3812.html](http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2009/3812.html)

# Recommendations

The actions and statements described above have included recommendations to promote the rule of law, accountability, and the pursuit of justice. FIDH reiterates its support to the recommendations of the Goldstone report regarding all parties. Notably, FIDH believes that the following measures should be taken with the least possible delay.

## **To the UN Security Council:**

Relevant UN bodies must unequivocally support the findings and recommendations of the fact-finding mission and follow up by implementing its recommendations as appropriate.

## **The UN Security Council should:**

- endorse the recommendations of the UN fact-finding mission and, if the parties fail to investigate and prosecute alleged perpetrators within six months of the release of the report, the Council should refer the situation to the Office of the Prosecutor of the ICC;
- Meanwhile it should monitor the efforts undertaken at the national level by Israeli and Palestinian authorities to ensure accountability is being pursued at the domestic levels in an effective, genuine and viable way.

## **To the European Union and its Member States**

Make the effective implementation of the Goldstone report a key condition for any further deepening or upgrading of EU-Israel relations.

Refrain from putting political obstacles to the investigations undertaken by their national judicial authorities into the crimes committed during the Operation Cast Lead, following complaints filed on the basis of universal jurisdiction, as long as no substantial effort is made by Israeli and Hamas authorities to hold those responsible accountable for the crimes committed.

Revisit the EU's position on the Goldstone report with a view to actively engage in the follow-up of its recommendations, notably on the fight against impunity at all levels, including the UN Human Rights Council, the General Assembly and the Security Council.

## **To the Palestinian National Authority and Hamas**

- The Palestinian Authority must ensure a prompt and independent investigation into all allegations of serious human rights violations and violations of international humanitarian law by security forces under its control. In this respect, we note the declaration made by

Hamas on October 16, 2009 endorsing the Goldstone Report, and committing to conduct effective investigations into all alleged violations<sup>47</sup>;

- The Palestinian Authority and Hamas should establish practices of good conduct based on human rights principles and IHL for security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments,
- Hamas must ensure that no armed group operating in the areas under its *de facto* control carries out rocket attacks against Israeli civilians or commits other violations of international and humanitarian law.

## **To the State of Israel**

- Immediately launch an impartial and effective investigation into the evidence presented by the Goldstone report of war crimes and potential crimes against humanity, prosecute those responsible, and ensure redress for the victims
- Cease its policy exasperation of resources and allow the Palestinian citizens in Gaza to pursue sources of livelihood in a safe and free environment in which freedom of mobility, assembly and expression are unequivocally guaranteed.
- Immediately end the blockade on the Gaza Strip, which is collectively punishing the entire population of Gaza, in breach of Israel's obligations under international humanitarian and human rights law.

## **To the ICC Prosecutor**

- To make a decision on the Court's jurisdiction over the situation in Gaza and conclude the preliminary examination phase as soon as practicable.

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47. <http://www.pchrgaza.org/files/PressR/English/2009/107-2009.html>

# Annexes

Since the beginning of Operation Cast Lead on 27 December 2008 until the adoption of the UN fact-finding mission's report by the Human Rights Council in October 2009, FIDH has published the following documents:

- 29/12/ 2008: Press release “ Ensuring respect of international law to prepare for peace”
- 07/01/2009: Joint press release “EU/Israel: Aid agencies call for the suspension of enhanced EU-Israel agreements”
- 07/01: letter to Switzerland, Depositary State of the Geneva Conventions
- 08/01: Open letter to the UN Security Council
- 13/01: Open letter to the UN Security Council « FIDH urges the UN Security Council to refer the situation to the ICC Prosecutor »
- 16/01: Joint Press release FIDH/EMHRN/ICJ on the sending of a high level mission to Gaza
- 23/01: Press release final statement of the high level mission
- 04/02: joint press release FIDH/APDHE/PCHR « Spanish Judiciary asserts its competence for inquiry into war crimes committed in Gaza in 2002- The Prosecutor did not appeal the decision »
- 07/05: Press release « Spanish Judiciary confirms its jurisdiction to investigate war crimes allegedly committed in Gaza in 2002 »
- 23/05: Press release « Israeli authorities must authorize access to the Gaza Strip »
- 15/09: Press release “FIDH welcomes the conclusions of the Goldstone fact-finding mission”
- 15/09: publication of a position paper “GAZA- Impunity/accountability”
- 28/08: Press release “Gaza conflict: the UN HRC should endorse the recommendations of the Goldstone report”
- 28/09: open letter to the UN security council “ Peace and Justice Are Indivisible: The UN Security Council Bears the Primary Responsibility to Enforce the Goldstone Report’s Recommendations, in the Interest of all Israelis and Palestinians »
- 28/09: publication of an oral intervention before the human rights council
- Submission of the open letter to the UN security Council + FIDH position paper to the Representations of the 27 EU member states in Brussels
- 29/09: FIDH oral intervention before the Human Rights Council

- 15/10: Press Release “Israel & Occupied Palestinian Territories : FIDH Delegation meets with ICC Prosecutor to discuss the Palestinian situation”

- 05/11: Press Release “Israel & Occupied Palestinian Territories : Palestinian and Israeli human rights organizations in the Hague”

Furthermore, a special file was created on FIDH website gathering all the publications by the Israeli human rights NGOs coalition since January 2009 (<http://gazaeng.blogspot.com/>) as well as a link to the website of each one of FIDH member organization in Israel and Palestine.

A second special file was created on FIDH website in September 2009 on “Accountability/ fight against impunity” in which are available FIDH position paper on the issue and publications by FIDH member organizations on the same issue ([www.fidh.org/Accountability-fight-against](http://www.fidh.org/Accountability-fight-against)) .

## **Documents published by FIDH member organizations**

### **Al Haq**

‘Operation Cast Lead’: A Statistical Analysis aug. 2009  
<http://www.alhaq.org/pdfs/gaza-operation-cast-lead-statistical-analysis%20.pdf>

Al-Haq position paper on “Operation Cast Lead and the Distortion of International Law” April 2009  
<http://www.alhaq.org/pdfs/OperationCastLeadandtheDistortionofInternationalLaw.pdf>

Joint Open Letter to the High Contracting Parties to the Fourth Geneva Convention  
<http://www.alhaq.org/etemplate.php?id=412>

Legal Aspects of Israel’s Attacks on the Gaza Strip during “Operation Cast Lead” Jan 2009  
[http://www.alhaq.org/pdfs/Legal\\_Brief\\_Gaza\\_Cast\\_Lead\\_Jan.pdf](http://www.alhaq.org/pdfs/Legal_Brief_Gaza_Cast_Lead_Jan.pdf)

### **Palestinian Center for Human Rights**

Targeted Civilians: A PCHR Report on the Israeli offensive on the Gaza strip (Dec. 27 2008 – Jan 18<sup>th</sup> 2009)  
[http://pchrghaza.org/files/Reports/English/pdf\\_spec/gaza%20war%20report.pdf](http://pchrghaza.org/files/Reports/English/pdf_spec/gaza%20war%20report.pdf)

Special Report, February 2009  
Inter-Palestinian Human Rights Violations in the Gaza Strip  
[http://www.pchrghaza.org/files/Reports/English/pdf\\_spec/Increase\\_rep.pdf](http://www.pchrghaza.org/files/Reports/English/pdf_spec/Increase_rep.pdf)

### **Aftermath**

In this new series of personal testimonies, PCHR looks at the aftermath of Israel’s 22 day offensive on the Gaza Strip, and the ongoing impact it is having on the civilian population.

<http://pchrgaza.org/files/campaigns/english/aftermath/main.html>

- Aftermath (8) Life is blind 05 May 2009
- Aftermath (7) “I know every inch of this land...” 30 March 2009
- Aftermath (6) “The only BMW shop in Gaza” 29 March 2009
- Aftermath (5) Coming home 18 March 2009
- Aftermath (4) Hammad’s death barely made the news 04 March 2009
- Aftermath (3) “Is this not forbidden?” 19 February 2009
- Aftermath (2) Gaza’s forgotten elderly 15 February 2009
- Aftermath (1) “We Never Feel Safe” 09 February 2009

Through Women’s Eyes: A Gender-Specific Impact on the Consequences of Operation Cast Lead”

[http://pchrgaza.org/files/Reports/English/pdf\\_spec/through-women%27s%20eyes.pdf](http://pchrgaza.org/files/Reports/English/pdf_spec/through-women%27s%20eyes.pdf)

The Impact of the Israeli offensive (27 December 2008 – 18 January 2009) on the Water and Sewage Sectors in the Gaza Strip

[http://pchrgaza.org/files/Reports/English/pdf\\_spec/report%20sewage.pdf](http://pchrgaza.org/files/Reports/English/pdf_spec/report%20sewage.pdf)

War Crimes Against Children :A PCHR investigation into Palestinian children killed by Israeli Forces in the Gaza Strip . 27 Dec. 2008 - 18 Jan. 2009

[http://pchrgaza.org/files/Reports/English/pdf\\_spec/War%20Crimes%20Against%20Children%20Book.pdf](http://pchrgaza.org/files/Reports/English/pdf_spec/War%20Crimes%20Against%20Children%20Book.pdf)

## **Association for Civil Rights in Israel (ACRI)**

Organizations Present Goldstone Team with Grave Report on Gaza

<http://www.acri.org.il/pdf/goldstone1.pdf>

Background: Human Rights Violations in Israel and Gaza  
Israeli organizations produce information sheet on current conflict  
Update: 15/01/2009

<http://www.acri.org.il/eng/story.aspx?id=599>

## **ADALAH**

SPECIAL REPORT: Israeli Attack on Gaza

<http://www.adalah.org/eng//israeli%20attack%20on%20gaza.php>

Position Paper – Israeli Military Attacks on the Civilian Police Force and Government Buildings and Institutions of Hamas in Gaza

<http://adalah.org/newsletter/eng/feb09/feb09.html?navi=%2Fnewsletter%2Feng%2Ffeb09%2Ffeb09.html>

## **Btselem**

Guidelines for Israel’s Investigation into Operation Cast Lead

Position Paper, February 2009

[http://www.btselem.org/Download/200902\\_Operation\\_Cast\\_Lead\\_Position\\_paper\\_Eng.pdf](http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf)

Accountability for the violation of human rights in the Occupied Territories : <http://www.btselem.org/English/Accountability/>

## **PCATI**

PCATI testifies before the UN Goldstone commission, press release, 14 July 2009

- “Shackling as a form of torture and abuse”, Report, 24 June 2009

“Israel held many Gaza prisoners in harsh and humiliating conditions and threatened their lives and their health”, press release 28 January 2009



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Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

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FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

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FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

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#### mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

## ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- A universal movement

FIDH was established in 1922, and today unites 155 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

- An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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International Federation for Human Rights

Find information concerning FIDH 155 member organisations on [www.fidh.org](http://www.fidh.org)