

Media Summary: Report of the United Nations Fact Finding Mission on the Gaza Conflict

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This media summary is not intended as an official or comprehensive summary of the Report of the Fact Finding Mission or its findings and recommendations: it is intended for information purposes only.

Findings:

The Mission found that, in the lead up to the Israeli military assault on Gaza, Israel imposed a blockade amounting to collective punishment and carried out a systematic policy of progressive isolation and deprivation of the Gaza Strip. During the military operation, houses, factories, wells, schools, hospitals, police stations and other public buildings were destroyed, with families, including the elderly and children, left living amid the rubble of their former dwellings long after the attacks ended, as no reconstruction has been possible due to the continuing blockade. Significant trauma, both immediate and long-term, has been suffered by the population of Gaza. More than 1400 people were killed. The Gaza military operations were directed by Israel at the people of Gaza as a whole, in furtherance of an overall policy aimed at punishing the Gaza population, and in a deliberate policy of disproportionate force aimed at the civilian population. The destruction of food supply installations, water sanitation systems, concrete factories and residential houses was the result of a deliberate and systematic policy to make the daily process of living, and dignified living, more difficult for the civilian population. Israeli forces also humiliated, dehumanized and carried out an assault on the dignity of the people in Gaza, through the use of human shields, unlawful detentions, unacceptable conditions of detention, the vandalizing of houses, the treatment of people when their houses were entered, graffiti on the walls, obscenities and racist slogans. The Israeli operations were carefully planned in all their phases as 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. Responsibility lies in the first place with those who designed, planned, ordered and oversaw the operations.

Israel failed to take feasible precautions required by international law to avoid or minimize loss of civilian life, injury to civilians and damage to civilian objects. The firing of white phosphorus shells over the UNRWA compound, the intentional strike at the Al Quds hospital using high explosive artillery shells and white phosphorous, the attack against Al Wafa hospital, were violations of international humanitarian law. The kinds of warnings issued by Israel in Gaza cannot be considered as sufficiently effective in the circumstances to comply with customary law. There were 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. Israeli attacks were also launched with the intention of spreading terror among the civilian population. In several cases, Israeli armed forces did not allow humanitarian organisations access to the wounded and medical relief, as required by international law. In one incident investigated, involving the deaths of at least 35 Palestinians, the Mission found that Israeli forces launched an attack which a reasonable

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commander would have expected to cause excessive loss of civilian life. By deliberately attacking police stations and killing large numbers of policemen, most of whom were civilian non-combatants, Israel violated international humanitarian law.

The Mission found that Israel used white phosphorous, flechettes and heavy metal weapons. The use of white phosphorous, flechettes and heavy metal (such as tungsten) is restricted or even prohibited in certain circumstances. Flechettes, as an area weapon, are particularly unsuitable for use in urban settings while the Mission is of the view that the use of white phosphorous as an obscurant should be banned. The Mission also investigated several incidents in which Israeli armed forces used local Palestinian residents as human shields. Israel's questioning of Palestinian civilians under threat of death or injury to extract information constitutes a violation of the Fourth Geneva Convention. Israeli forces in Gaza rounded up and detained large groups of persons protected under the Fourth Geneva Convention. Severe beatings, humiliating and degrading treatment and detention in foul conditions suffered by individuals in the Gaza Strip under the control of the Israeli forces and in detention in Israel, constitute a violation of international humanitarian and human rights law. Israel's treatment of women during detention was contrary to the requirements of international law. Israel's rounding-up of large groups of civilians and their prolonged detention under the circumstances described in the Report constitute a collective penalty and amounts to measures of intimidation or terror prohibited the Fourth Geneva Convention. Israel's attacks against the Palestinian Legislative Council building and the main prison in Gaza constituted deliberate attacks on civilian objects in violation of international humanitarian law. Israeli armed forces unlawfully and wantonly attacked and destroyed without military necessity a number of food production facilities, drinking water installations, farms and animals. Israeli forces carried out widespread destruction of private residential houses, water wells and water tanks unlawfully and wantonly. Israel also disregarded the inviolability of United Nations premises, facilities and staff, and this is unacceptable.

Israel's blockade of Gaza amounts to a violation of Israel's obligations as an Occupying Power under the Fourth Geneva Convention. The deliberate actions of the Israeli forces and the declared policies of the Government indicate the intention to inflict collective punishment on the people of the Gaza Strip. Israel 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.

There is strong evidence that Israeli forces committed grave breaches of the Fourth Geneva Convention in Gaza, including: willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury to body or health, and extensive destruction of property. As grave breaches, these acts give rise to individual criminal responsibility. The use of human shields also constitutes a war crime under the Rome Statute of the International Criminal Court. Israeli 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.

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In the West Bank, with acts of violence by settlers against Palestinians (which have increased), Israel failed to protect the Palestinians, and sometimes acquiesced to the acts of violence. Israel used excessive force against Palestinian demonstrators, including the use of firearms, including live ammunition, and the use of snipers resulting in the deaths of demonstrators, in violation of international law. Israel has 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 international law. Israel has 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. Israel’s removal of residential status from Palestinians could lead to virtual deportation and entail additional violations of other rights.

Israeli practices of detention of Palestinians in Israeli prisons before and during the military operations are generally inconsistent with human rights requirements. The practice of administrative detention by Israel contravenes the right not to be arbitrarily detained, and Israel’s use of secret evidence as a basis for the administrative detention is inconsistent with the ICCPR. The detention of members of the Palestinian Legislative Council by Israel is in violation of the ICCPR also constitutes an instance of collective punishment prohibited under article 33 of the GC IV. The same can be said about the massive detention of adults and children, often in inhuman or degrading conditions and without the guarantees required by international law.

Israeli checkpoints are often a site of humiliation. 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 of the Geneva Conventions. The continued construction of settlements constitutes a violation of article 49 of the Fourth Geneva Convention. 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 *ius cogens* right to self-determination.

The prolonged situation of impunity has created a justice crisis in the OPT that warrants action. 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, has major structural flaws that make the system inconsistent with international standards. 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, lack the required credibility and conformity with international standards. There is little potential for accountability for serious violations of international humanitarian and human rights law through domestic institutions in Israel.

Inside Israel, there has been intolerance for dissent against the war, the authorities placed obstacles in the way of protesters, there were instances of physical violence against protesters, and hostile retaliatory actions against civil society organisations by the Government. Activists were also compelled to attend interviews with the General Security Services. Israel’s denial of media access to Gaza and the continuing denial of access to human rights monitors are an attempt

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to remove the Government's actions from public scrutiny and to impede investigations and reporting.

Palestinian armed groups have launched rockets and mortars into Israel since April 2001. Between 27 December 2008 and 18 January 2009, these attacks have left 4 people dead and hundreds injured, while causing terror, psychological trauma, and erosion of the educational, social, cultural and economic lives of the communities in southern Israel. For its part, Israel has not provided the same level of protection from rockets and mortars to affected Palestinian citizens as it has to Jewish citizens.

In firing rockets and mortars into Southern Israel, Palestinian armed groups operating in the Gaza Strip failed to distinguish between military targets and the civilian population and civilian objects in Southern Israel. 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, which would constitute war crimes and may amount to crimes against humanity. The rocket and mortars attacks have caused terror in the affected communities of southern Israel, causing loss of life and physical and mental injury to civilians as well as damage to buildings and property. Israeli soldier Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention and should be protected, treated humanely and be allowed external communication. The Mission found no evidence to suggest that Palestinian armed groups in Gaza 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. In the one incident the Mission investigated, of an Israeli attack on a mosque, the Mission found that there was no indication that that mosque was used for military purposes or to shield military activities.

The Gaza authorities carried out extrajudicial executions, arbitrary arrest, detention and ill treatment of people, in particular political opponents, which constitute serious violations of human rights. The Palestinian Authority's actions against political opponents in the West Bank also constitute violations of human rights. 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. Reports of torture and other forms of ill treatment during arrest and detention require prompt investigation and accountability. Finally, conflict between Fatah and Hamas is having adverse consequences for the human rights of the Palestinian population.

International law sets obligations on States to ensure compliance by other States (in this case, Israel) with international humanitarian law, and to help protect populations from war crimes and crimes against humanity. 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 in the OPT. The isolation of the Gaza authorities and the sanctions against the Gaza Strip have negatively impacted on the protection of the population. Protection of civilian populations requires respect for international law and accountability for violations.

To deny modes of accountability reinforces impunity. Allegations of violations of international humanitarian law falling within the jurisdiction of responsible Palestinian authorities in Gaza have also not been investigated. Where domestic authorities are unable or unwilling to comply

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with this obligation, international justice mechanisms must be activated to prevent impunity. 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. Longstanding impunity has been a key factor in the perpetuation of violence in the region. Several of the violations referred to in this report amount to grave breaches of the Fourth Geneva Convention, and 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. The serious violations of International Humanitarian Law recounted in this report fall within the subject-matter jurisdiction of the International Criminal Court (ICC). 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.

Recommendations

- ***To the Human Rights Council, that it*** Request the Secretary-General to bring this report to the attention of the Security Council under Art. 99 of the Charter so that the Security Council may consider action; and that it Submit the report to the General Assembly with a request that it should be considered;
- ***To the United Nations Security Council, with regard to Israel, that it*** require the Government of Israel, under Article 40 of the Charter of the United Nations: To take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards; Inform the Security Council, within a further period of three months, of actions taken; 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; Upon receipt of the committee's report the Security Council consider the situation and, in the absence of good faith investigations that are independent and in conformity with international standards, 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.
- ***To the United Nations Security Council, with regard to the relevant Palestinian authorities, that it:*** require the independent committee of experts (referred to in previous paragraph) to monitor and report on any domestic legal or other proceedings undertaken by the relevant authorities in the Gaza Strip; Upon receipt of the committee's report the Security Council consider the situation and, in the absence of good faith investigations that are independent and in conformity with international standards, acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court.
- ***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 ICC from the Government of Palestine, the legal determination should be made by the Prosecutor as expeditiously as possible; The Mission further recommends that the United Nations Human Rights Council formally submit this report to the Prosecutor of the ICC.

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- **To the General Assembly,** The Mission recommends that the General Assembly request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian and human rights law; The GA may consider whether additional action within its powers is required in the interests of justice, including under resolution 377 (V) Uniting for Peace; Establish an escrow fund to be used to pay adequate compensation to Palestinians who have suffered loss and damage, and that the Government of Israel pay the required amounts into such fund; 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 OPT.
- **To Israel,** The Mission recommends that Israel immediately cease the border closures and restrictions of passage through border crossings with the Gaza Strip, cease the restrictions on access to the sea for fishing purposes review its rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel; Allow freedom of movement for Palestinians within the OPT - within the West Bank including East Jerusalem, between the Gaza Strip and the West Bank and between the OPT and the outside world; lifts travel bans currently in place on Palestinians for their human rights or political activities; Release Palestinians who are detained in Israeli prisons in connection with the occupation; Cease the discriminatory treatment of Palestinian detainees. ; Release all members of the Palestinian Legislative Council currently in detention; Cease actions aimed at limiting the expression of criticism by civil society and members of the public Refrain from any action of reprisal against individuals and organizations that have cooperated with the UN Fact Finding Mission; respect the inviolability of UN premises and personnel; Provide reparation to the United Nations fully and without further delay.
- **To Palestinian armed groups,** The Mission recommends that Palestinian armed groups undertake forthwith to respect international humanitarian law, and that Palestinian armed groups who hold Israeli soldier Gilad Shalit in detention release him on humanitarian grounds.
- **To responsible Palestinian authorities,** Ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control; Release without delay all political detainees currently in their power and refrain from further arrests on political grounds.
- **To the international community, States Parties to the Geneva Conventions of 1949** 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; Support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law; States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, ensure that respect for the rule of law, international law and human rights assume a central role in internationally sponsored peace initiatives; Initiate a programme of environmental monitoring under the auspices of the United Nations.

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- ***To the international community and responsible Palestinian authorities,*** Establish appropriate mechanisms to ensure that the funds pledged by international donors for reconstruction activities in the Gaza strip are smoothly and efficiently disbursed.
- ***To the international community, Israel and Palestinian authorities,*** Actors involved in the peace process should involve Israeli and Palestinian civil society and women in devising sustainable peace agreements based on respect for international law.
- ***To the United Nations Secretary General,*** Develop a policy to integrate human rights in peace initiatives in which the United Nations is involved, especially the Quartet.
- ***To the Office of the High Commissioner for Human Rights,*** Monitor the situation of persons who have cooperated with the UN Fact Finding Mission and pay attention to follow up to the Mission's recommendations in its periodic reporting on the OPT to the Human Rights Council.

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