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**Extended Fact Sheet**

## **A Working Paper on the Goldstone Report**

### **Did Israel Violate International Law in the Invasion of Gaza (Dec. 2008 — Jan. 2009, Operation Cast Lead)?**

The Goldstone Report — more formally, the Report of the United Nations Fact Finding Mission on the Gaza Conflict, Human Rights in Palestine and Other Occupied Arab Territories — has been a major source of controversy since it was issued in September 2009.

To us the Report seemed a major missed opportunity for public education, a lost "teachable moment" for promoting a wide understanding of the content and mechanics of International Law. In that light the critical sections of the Report are not those relating to "facts" (which seem inappropriately conclusive) but those relating to "law" — especially as it applies to problems in Israeli law relating to investigations and reparations; and a major problem is the way in which the Report was presented: a very long document, never released in hard copy and never accompanied by short non-technical explanations of the larger legal context.

Here is our summary of the Report, with comments.

#### **United Nations Fact Finding Mission On The Gaza Conflict, Human Rights In Palestine And Other Occupied Arab Territories, Report (15 September 2009)**

##### **Summary**

The mandate of the Fact Finding Mission covered all violations of international human rights law and international humanitarian law committed at any time -- before, during and after -- in the "context" of the military operations in Gaza from December 27, 2008 to January 18, 2009 (p.41).

In practice, the focus of the Mission's report is on conduct during the Gaza war. However, other topics are also covered:

- events in Gaza between June 18 and December 27 (Ch. III);
- Israeli policy toward Palestinians generally: treatment of Palestinians in the West Bank (Ch. XX), detention of Palestinians in Israeli prisons (Ch. XXI), violations of the right to free movement and access (Ch. XXII);
- Palestinian Authority conduct: internal violence, targeting of Hamas supporters and restrictions on freedom of assembly and expression (Ch. XXIII).

On applicable law: the report contains chapters on Applicable Law (Ch. IV). Universal Jurisdiction (Ch. XXVIII), and the limitations of the Israeli legal system (Ch. XXVI)

## **1) Israeli Conduct**

The Report considers the following position as “firmly based in fact”: Israel’s plan was directed, “at least in part,” at “the people of Gaza as a whole,” punishing them for their “resilience” and “apparent support for Hamas” (p. 406). It finds that the “deeds” and “words” of Israeli leaders indicate a deliberate policy of “disproportionate force” aimed not at “the enemy” but at the “supporting infrastructure,” which in practice “appears to mean the civilian population” (pp. 406-407).

## **2) Limitations of Israeli Law and the Israeli Legal System**

### *a. Investigations*

The Report considers Israel’s system for dealing with allegations of serious wrong-doing by armed forces personnel (pp. 383-394) and “holds” that it does not comply with “internationally recognized principles” of independence, impartiality, effectiveness and promptness (pp. 393-394).

This is the Israeli system, as described in the report:

- “Operational debriefings” by IDF officers follow “every military operation” (pp. 386-387);
- “special investigations” by IDF officers may be ordered by the Minister of Defense and the Chief of the General Staff for “sensitive matters” (pp. 387); and
- a “full criminal investigation” may be ordered by the Military Advocate General, but only after completion of the operational debriefing or special investigation (pp. 387,393).

However, the materials of an operation debriefing cannot be used as evidence in subsequent proceedings (including criminal investigations) and the material gathered in a special investigation cannot be used as evidence in court proceedings (p. 387).

### *b. Reparations*

The report considers Israel's provisions for reparations for innocent victims of war and concludes that current Israeli law leaves “very little room, if any,” for Palestinians to seek compensation and calls on the International Community to provide an “additional” or “alternative” mechanism for compensation (p.403).

[**Note:** It’s not clear why the Commission focuses primarily on civil claims for “compensation” by individual victims (pp. 402-403). The relevant section of the report is titled “Reparations,” which is defined to include “restitution” and “satisfaction” and “may also include measure of rehabilitation for victims and guarantees of non-repetition” (p. 401).]

## **3) Referrals to the Prosecutor of the International Criminal Court**

The Mission, among many recommendations (pp. 422-429), recommends these actions relating to the Prosecutor of the International Criminal Court:

- the Human Rights Council should formally submit the Mission's Report to the Prosecutor (p. 423); and
- the Security Council should refer “the situation in Gaza” to the Prosecutor if “good faith investigations that are independent and in conformity with international standards” are not undertaken within six months of an appropriate Security Council Resolution, by Israel (p.424) and/or by the “appropriate authorities” in Gaza (p. 424).

## **Universal Jurisdiction**

The Report notes that it is “uncontroversial today” that states may give their courts the right to exercise universal jurisdiction over international crimes, citing Customary International Humanitarian Law Rule 157 (pp. 398): universal jurisdiction is established under certain international conventions (e.g. the Fourth Geneva Convention and the Convention Against Torture) and under national law in Australia, Bangladesh, Belgium, Costa Rica and Spain (pp. 398).

## **Comments**

### **1) A Missed Opportunity**

The Goldstone Report is a “teachable moment” that could still be used to illuminate the meaning and mechanics of “international law.”

In that light, the critical sections of the Report are not those relating to “fact” (which seem to be inappropriately conclusive) but those relating to “law”:

- applicable law (IV)
- the limitations of the Israeli legal system (XXVI)
- universal jurisdiction (XXVII).

Unfortunately, however, the Report's description of applicable international law is confusing and unclear.

### **2) Accessing the Report**

For the interested public, there are significant problems accessing the Report. The final report, 429 pages long, is available to the public only as an on-line pdf, at the website of the UN Human Rights Council

(<http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm>).

The final Report has not been published in hard copy according to the United Nations Bookstore, unlike many less significant reports, including reports of the HRC.

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