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Amnesty International's assessment of Israeli and Palestinian investigations into Gaza conflict

Introduction

In September 2009, the United Nations Fact-Finding Mission on the Gaza Conflict issued a report concluding that both Israeli forces and Palestinian armed groups had committed grave violations of international law, including war crimes and possible crimes against humanity during the 22-day conflict in Gaza and southern Israel between 27 December 2008 and 18 January 2009.¹ This briefing summarizes and assesses the domestic investigations that have taken place following the publication of the UN report in September 2009 on the basis of criteria which Amnesty International believes the investigations needed to meet to conform to international standards and which it made public in December 2009.² Before that it briefly outlines action taken by the UN to date to encourage credible domestic investigations by the Israeli and Palestinian authorities, as well as the responses received from them.

Amnesty International concludes that both the Israeli government and the relevant authorities in the Gaza Strip have failed to fulfil their obligations to carry out investigations that are credible, independent and in conformity with international law and to demonstrate a commitment to prosecuting perpetrators of crimes under international law. Amnesty International considers that the domestic authorities have been given more than adequate time and opportunity to ensure justice for victims, and that their failure to do so means an international justice solution is required. Amnesty International makes specific recommendations to the Prosecutor of the International Criminal Court (ICC), all states and the UN Human Rights Council in this regard at the end of this briefing.

UN action and Israeli and Palestinian responses

On 22 January 2009, the Palestinian Minister of Justice on behalf of the Palestinian Authority (PA) submitted a declaration to the ICC accepting its jurisdiction over crimes "committed on the territory of Palestine since 1 July 2002".³ The declaration would potentially cover all crimes documented in the Fact-Finding Mission's report. A number of leading international law experts have expressed the view that, although the status of Palestine as a state is disputed, the PA is entitled to make such a declaration. The ICC has not yet reached a decision as to whether or not it has jurisdiction regarding the Gaza conflict.

The appointment of the Mission followed the adoption on 12 January 2009 of resolution S-9/1 by the Human Rights Council at the end of its 9th Special Session.⁴ Although the resolution only gave the Fact-Finding Mission a mandate to investigate alleged violations by Israel, the mandate was subsequently expanded by the President of the Human Rights Council 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.⁵ The panel was comprised of four international experts: Judge Richard Goldstone, former member of the South African Constitutional Court and former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda; Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, University of London; Ms Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary General on Human Rights Defenders; and Colonel (retired from the Irish Armed Forces) Desmond Travers, member of the Board of Directors of the Institute for International Criminal Investigations. The team was supported by staff of the Office of the High Commissioner for Human Rights (OHCHR).

In September 2009, the Fact-Finding Mission completed its work and submitted a report to the Human Rights Council. The report concluded that both Israeli forces and Palestinian armed groups had committed grave violations of international law, including war crimes and possible crimes against humanity during the 22-day conflict in Gaza and southern Israel and made a number of recommendations both to local and international actors to ensure justice and reparations. Among these were recommendations that both the government of Israel and the relevant authorities in the Gaza Strip should be allowed six months in which to conduct good faith investigations. If they proved to be unwilling or unable, then the Report recommended

that the Security Council refer the situation in Gaza to the Prosecutor of the ICC under Article 13 (b) of the Rome Statute.

In November 2009, the UN General Assembly specifically called upon both the government of Israel and the Palestinian side, within a period of three months, to undertake investigations that should be “independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice”.⁶

The General Assembly also requested the UN Secretary-General to report to it on the implementation of the resolution “with a view to considering further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council”.

On 29 January 2010 the Permanent Mission of Israel submitted a document on behalf of the State of Israel entitled *Gaza Operation Investigations: An Update* outlining their investigations to date.⁷

On 29 January 2010, the Permanent Observer Mission of Palestine submitted a copy of a presidential decree issued by PA President Mahmoud Abbas on 25 January 2010 concerning the formation of the Palestinian Independent Investigation Commission to follow up the report of the UN Fact-Finding Mission, as well as a two-page report of the first meeting of the Commission, dated 28 January 2010.⁸

On 2 February 2010 the Ministry of Justice of the Hamas de facto administration in Gaza submitted three documents to an OHCHR official in Gaza: a report entitled *Status of implementation of the recommendations of the International Fact-Finding Mission Report on the Israeli aggression on Gaza 12/2008-1/2009*, along with an executive summary of the report and a document entitled *Photo Documentation of the Israeli War crimes on Gaza, 2008-2009*.⁹

In his report to the General Assembly dated 4 February 2010, UN Secretary-General Ban Ki-moon included submissions received from the Permanent Mission of Israel and the Permanent Observer Mission of Palestine. Material from the Hamas de facto administration was not transmitted by the Permanent Observer Mission of Palestine and was not included in the Secretary-General’s report.

In his statement concerning the domestic investigations by Israel and the PA, the Secretary-General briefly commented: “I note from the materials received that the processes initiated by the Government of Israel... [are] ongoing, and that the Palestinian side initiated its process on 25 January 2010. As such, no determination can be made on the implementation of the resolution by the parties concerned”.¹⁰

On 26 February 2010 the UN General Assembly adopted a further resolution that reiterated its call on the government of Israel and the Palestinians to conduct “independent, credible” investigations into allegations of serious violations of international law during the conflict in Gaza and southern Israel in 2008-2009.¹¹ It was adopted with 98 in favour, seven against and 31 abstentions. The resolution also called on the UN Secretary-General to report to the General Assembly, “within a period of five months, on the implementation of the resolution, with a view to the consideration of further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council”.

In a parallel development, on 25 March 2010, the UN Human Rights Council voted to establish a Committee of Independent Experts to monitor the domestic investigations into war crimes and other serious violations of international humanitarian and human rights law during the conflict.¹² It was mandated to “monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side... including the independence, effectiveness, genuineness of these investigations and their conformity with international standards”. The Committee was requested to report to the Council during its 15th session (13 September to 1 October 2010). This resolution also requested that the Secretary-General present a comprehensive report to the Council at its 15th session on the progress made in implementing the recommendations of the Fact-Finding Mission by all concerned parties.

On 16 July 2010, the Secretariat received a document from the government of Israel entitled *Gaza Operation Investigations: Second Update*.¹³

On 28 July Hamas submitted a second report to the OHCHR entitled *Report on the implementation of the recommendations of the UN Fact-Finding Mission on the situation in Gaza*.¹⁴ The report had been prepared by a body known as the Independent Committee to Follow up the Implementation of the Recommendations of the Report of the United Nations Fact-Finding Mission on the Gaza Conflict. This report was not submitted by the Palestinian Mission at the UN to the Secretary-General and the Secretary-General did not include it in his report.¹⁵

On 12 July 2010, the Secretary-General received a letter of the same date from the Permanent Observer Mission of Palestine to the UN conveying a letter dated 11 July 2010 from President Mahmoud Abbas of the PA and the report of the Palestinian Independent Investigation Commission.¹⁶

On 26 July the UN Secretary-General was due to provide his assessment of the domestic investigations to the General Assembly. In a document dated 26 July 2010, the Secretary-General noted the submissions that he had received from the Israeli and Palestinian missions at the UN but indicated that, due to technical reasons, he was unable to issue the documents or his observations at that time and that he would report further as soon as the technical process of translation was completed.¹⁷

On 11 August the Secretary-General released a report which included the submissions made by the Israeli and Palestinian missions, as well as his own introduction and observations. The report did not include material from the Hamas de facto authority in Gaza. The Secretary-General's report stated that he would request that the High Commissioner for Human Rights transmit to the Committee of Independent Experts established by the Human Rights Council the documents concerning domestic investigations that had been received from the Israeli and Palestinian missions. The observations of the Secretary-General did not constitute in any way a substantive assessment of the domestic investigations.¹⁸

On 22 September 2010, the Committee of Independent Experts issued an advanced version of its report to the Human Rights Council.¹⁹ The Council is scheduled to consider the report on 27 September.

Israeli investigations

According to information submitted by the Israeli authorities to the UN, the Israeli army has opened investigations into 150 incidents involving alleged violations of the laws of war by its forces during Operation "Cast Lead", its 22-day military offensive in Gaza in December 2008 and January 2009.

Amnesty International is concerned that the independence and impartiality of these inquiries is severely compromised by the fact that all these inquiries have been carried out by army commanders or by the military police. In addition, these inquiries are overseen by the Military Advocate General, whose office cannot be considered a disinterested party as it provided legal advice to Israeli forces on their choice of targets and tactics during Operation "Cast Lead". Furthermore, the military investigations preclude the possibility of examining decisions taken by civilian officials and policy makers. This clearly falls short of the essential criteria for credible investigation: an investigating body with broad investigatory powers and access to all relevant information and persons, including government officials.

According to Israel's *Second Update* of July 2010, 47 incidents had been or were being subjected to criminal investigation by the military police. The other incidents were being considered in operational debriefings (referred to as command investigations or special command investigations in the documents submitted by the Israeli authorities). The army commanders conducting these debriefings do not have the necessary professional training for conducting investigations into violations of international law, and cannot be considered independent. Also, problematically, these debriefings are confidential – if the incidents are referred to a criminal investigation, self-incriminatory evidence given by soldiers in the debriefing is not admissible in court. Finally, when the military close operational debriefings without referring the incidents concerned to a criminal investigation, it is not possible for Amnesty International to examine the proceedings or the evidence in order to independently assess their decision.

The Military Advocate General, Major General Avihai Mandelblit, in an interview with the Israeli newspaper *Yedioth Ahronoth*, stated: "I want to clarify once and for all – 500 soldiers were not investigated. If a claim was made that fire was opened at a civilian waving a white flag, I will clarify the matter. In order to do so, I need to take testimonies. So military police investigations will search the force that was there. We need to go through 60 commanders and soldiers. But these people are giving testimonies, not being investigated".²⁰

At the time of writing the only conviction concerned a case in which a credit card belonging to a Palestinian was stolen during the Israeli military operation. One Israeli soldier from the Givati Brigade convicted in November 2009 was sentenced to seven and a half months in jail and ordered to pay compensation.²¹ Criminal charges have been made in two additional cases which have yet to conclude. From the available information, it appears that at least a further five criminal investigations are currently ongoing, three of which relate to the case in which more than 20 members of the extended al-Sammouni family were killed.

The first of the two ongoing cases in which criminal charges have been pressed concerns the treatment of a nine-year-old Palestinian boy (Majed R.) who was allegedly ordered to open bags that Israeli soldiers suspected of being booby-trapped in the Tel al-Hawa neighbourhood in the Gaza Strip.²² On 11 March 2010,

two Israeli soldiers from the Givati Brigade reserves unit were charged with having engaged in “unauthorized conduct”.²³

This case was just one of several cases of alleged use of Palestinian civilians as “human shields” by Israeli soldiers. In the case of Majdi Abed Rabbo (see below, also reported by Amnesty International²⁴) the Israeli military carried out a disciplinary process in which the responsible officer was “warned”. Because of the lack of transparency in the Israeli military investigations it is not clear why criminal charges were not pressed in the other cases.

The second ongoing criminal case concerns the killing of two women, Raya and Majda Abu Hajjaj. In a statement dated 6 July 2010, the Israeli military said: “the Military Advocate General ordered that an IDF Staff Sergeant be indicted with charges of manslaughter by a military court. This decision is based on evidence that the soldier, who was serving as a designated marksman, deliberately targeted an individual walking with a group of people waving a white flag without being ordered or authorized to do so”.²⁵

The killing of Raya and Majda Abu Hajjaj represent just one of a number of cases reported by Amnesty International and other organizations in which civilians waving white flags were fired on by Israeli forces.²⁶

Three other incidents have yielded some disciplinary action from the Israeli military. The first was subjected to a criminal investigation; the latter two were considered via operational debriefings.

The first of these concerns the use of a civilian, Majdi Abed Rabbo, as a “human shield” by Israeli soldiers. In a statement the Israeli military said: “The Military Advocate General indicted the battalion commander because he deviated from authorized and appropriate IDF [Israel Defense Forces] behaviour, and the Israeli Supreme Court jurisdiction regarding the use of civilians during operational activity, when he authorized the Palestinian's request to enter the house”.²⁷ In the disciplinary process the head of the Northern Command, Major General Gadi Eisenkot, found the officer at fault and issued him with a warning.

The second incident concerns an Israeli attack which hit the Ibrahim al-Maqadma Mosque in Beit Lahiya, north of Gaza city. In the *Second Update*, the Israeli authorities stated: “The new special command investigation confirmed that civilian casualties and damage to the mosque which occurred on 3 January 2009 were indeed a result of an IDF missile strike directed at two terrorist operatives standing near the entrance to the mosque”.²⁸

Concerning the action taken against the responsible soldier, the Israeli military said that “the Chief of the General Staff ordered that disciplinary actions be taken against the officer, and that he would not serve in similar positions of command in the future. The officer also stood trial for negligence before the Commander of the Ground Forces Training Center, Brig. Gen. Avi Ashkenazi, who rebuked him for his actions. The findings of the investigation were handed over to the Military Advocate General's Unit. The Military Advocate General decided that the attack did not violate international laws of warfare because the attack did not target the mosque, rather it targeted a terror operative, and when the attack was authorized, no possibility of harming civilians was identified. According to this assessment, the Military Advocate General decided that legal measures were not necessary”.²⁹

According to the Israeli military, they received intelligence minutes prior to the attack that there was a mosque in the vicinity of their planned strike. The captain ignored this and rather than abort the plan proceeded to order the attack, in which 13 people were reportedly killed. From information currently available, it appears this incident was considered through a “command investigation” rather than a criminal investigation.

Even if members of a Palestinian armed group were in the vicinity of the mosque prior to the attack, the officer should have cancelled the attack as soon as he learned of the presence of scores of civilians in and outside the mosque. Customary international humanitarian law requires an attacking force “to do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.³⁰

The third incident concerns an Israeli attack which struck the UNRWA field office in Tel al-Hawa. As noted in the report of the UN Fact-Finding Mission, on 15 January the UNRWA field office was seriously damaged when it was struck by white phosphorus. Between 600 and 700 civilians were sheltering there at the time and were put in grave danger.³¹ Israel's *Update* of January 2010 indicates that this was considered by a command investigation rather than a criminal investigation. The update stated that “the Commander of the Southern Command disciplined a Brigadier General and a Colonel for exceeding their authority in a manner

that jeopardized the lives of others”.³² However, following the publication of the first *Update*, the Israeli military denied that Division Commander Brigadier General Eyal Eisenberg and Givati Brigade Commander Colonel Ilan Malka had been subjected to disciplinary action by the head of the Southern Command, Major General Yoav Gallant.³³ The *Second Update* in July reiterated that two senior officers had been disciplined.³⁴

Other Israeli attacks which resulted in civilian injuries and deaths have been dismissed as “operational errors” following operational debriefings, although the January *Update* acknowledges “some instances” in which Israeli soldiers and officers “violated the rules of engagement”.³⁵

Some of the incidents the Israeli military has decided do not warrant criminal investigation are cases which appear to have been serious violations of international humanitarian law and therefore, in Amnesty International’s view, should have been subjected to prompt, independent, impartial and thorough investigations. These include Israeli attacks on UN facilities, civilian property and infrastructure, attacks on medical facilities and personnel, and incidents in which large numbers of civilians were killed and injured as a result of reckless conduct, disregard for civilian lives and consistent failure on the part of Israeli forces to distinguish between military targets and civilians and civilian objects. It is of major concern that such incidents have not been properly investigated.

Amnesty International is particularly concerned about decisions made not to investigate allegations of patterns of serious violations, such as Israel’s extensive use of white phosphorus in Gaza. Despite the fact that throughout Operation “Cast Lead” Israeli forces repeatedly fired artillery shells containing white phosphorus into densely populated residential areas, causing death and injuries to civilians, the Israeli government’s January 2010 *Update* contends that there are “no grounds to take disciplinary or other measures for the IDF’s use of weapons containing phosphorous”.³⁶ The *Second Update* of July reports that after the shelling of the UNRWA compound “the IDF immediately imposed revised restrictions on the use of smoke-screening munitions containing white phosphorous near sensitive sites (including the requirement of a several hundred meters buffer zone). These restrictions were in place through the remainder of the Gaza Operation”.³⁷ However, Amnesty International notes with concern that these restrictions failed to prevent white phosphorus shells causing further deaths and injuries to civilians in Gaza (including in an UNRWA school in Beit Lahiya, struck by white phosphorus shells on 17 January 2009).

Hamis investigations

The report submitted by the Hamas de facto administration to the OHCHR in February 2010, *Status of implementation of the recommendations of the International Fact-Finding Mission Report on the Israeli aggression on Gaza 12/2008-1/2009*, states that the Hamas de facto administration:

- 1) established a 12-person governmental committee (headed by the Minister of Justice in the Hamas de facto administration, Faraj al-Ghoul) to monitor the implementation of the recommendations of the Fact-Finding Mission’s report;
- 2) established an independent international committee of experts in international law to guarantee the transparency and impartiality of the steps taken by the government;
- 3) commissioned the public prosecutor to investigate all alleged violations of international law reported to him.

The February report reiterates many of the allegations against Israel that were detailed in the report of the UN Fact-Finding Mission. However it does not significantly respond to the UN report’s allegations of violations by Hamas and other Palestinian armed groups.

The committee of experts in international law was established by a decision made by Faraj al-Ghoul and became known as the Independent Committee to Follow up the Implementation of the Recommendations of the Report of the United Nations Fact-Finding Mission on the Gaza Conflict (hereafter referred to as the Gaza Committee). Three of its six members were not based in Gaza and were unable to enter the territory.³⁸ The Committee also stated that it “was not able to reach the armed Palestinian factions or those who represented them”.³⁹ The Committee’s *Report on the implementation of the recommendations of the UN Fact-Finding Mission on the situation in Gaza*, submitted to the UN in July, provides the findings of the Committee’s investigations into alleged violations by the authorities in Gaza.

Regarding the firing of indiscriminate rockets by Palestinian armed groups into southern Israel, the UN Fact-Finding Mission found that “these attacks constitute indiscriminate attacks upon the civilian population of southern Israel and that, where there is no intended military target and the rockets and mortars are launched into a civilian population, they constitute a deliberate attack against a civilian population. These acts would constitute war crimes and may amount to crimes against humanity”.⁴⁰

In respect to the firing of indiscriminate rockets and mortars, the February response from the Hamas de facto administration states: “All Palestinian armed groups have published declarations that they did not target

civilians but rather that they targeted military targets but tried to avoid civilian targets”.⁴¹ The Gaza Committee’s report provides a similar response, noting that: “al-Qassam Brigades [the military wing of Hamas] and other factions have announced that they do not intend to target civilians” and concludes that “it was not apparent... that the armed Palestinian factions carried out a deliberate violation in relation to the principle of distinction”.⁴² The Committee continues: “What was confirmed to the committee was that because of the simple nature of the military technology of the armed Palestinian factions, the missiles and the rocket propelled grenades that were fired by the armed factions failed to reach the military targets and hit civilian targets in some cases, and this is one of the tragedies resulting from wars which are regrettable”.⁴³

Armed groups have an obligation to respect applicable international humanitarian law. The firing of indiscriminate rockets by Palestinian armed groups into Israel during Operation “Cast Lead” killed three Israeli civilians and caused further civilian injuries and damage to civilian property. Whether these attacks were intended to hit military or civilian objects, the use of unguided projectiles which could not be directed at specific targets, places the civilian population at risk. In addition, Amnesty International is concerned that the findings of both the February and July documents submitted on behalf of the Hamas de facto administration in Gaza are contradicted by statements made by armed groups, including the al-Qassam Brigades, before and during the conflict in which they claimed responsibility for rocket attacks which they stated were directed at civilian towns and which killed or injured civilians and damaged civilian homes.⁴⁴

The Gaza Committee’s report states: “This committee could not find what it regards as ‘credible testimony’ on which it can base a ‘charge’ against a specific person in relation to the existence of prior ‘intention’ to target Israeli civilians”.⁴⁵ It further notes: “The UN delegation referred to some statements by leaders of Hamas and other Palestinians factions which... can be interpreted differently”.⁴⁶ The Gaza Committee’s report refers to the televised statement by Mahmoud al-Zahar on Al Jazeera TV on 5 January 2009, in which he said: “They [the Israeli forces] have legitimized the destruction of their synagogues and their schools by hitting our mosques and our schools”.⁴⁷ However the report holds this does not amount to sufficient intention to target Israeli civilians.⁴⁸

The Gaza Committee’s report also states that “a number of accused persons in cases involving attacks against Fatah affiliates have been convicted by the Gaza authorities and sentenced in accordance with the domestic Palestinian laws as follows:

- a) Some of those convicted of attacks against suspected Fatah affiliates have been sentenced to prison terms.
- b) Some victims have accepted the legal *diyah*, which is a sum of money paid to the victim or his/her blood heir in return for dropping the complaint against them [the perpetrators].
- c) All the judicial sentences imposed on the defendants were in accordance with the Palestinian constitution and domestic Palestinian laws.”⁴⁹

The report does not, however, provide any further information regarding these incidents or regarding prosecutions or other steps that would enable independent verification of the information by an external party.

In the absence of such information, Amnesty International considers that Hamas is continuing to fail to carry out adequate investigations into the serious violations alleged to have been committed by its forces and by other Palestinian armed groups. The use of inherently indiscriminate weapons is absolutely prohibited by international humanitarian law. The documents prepared by the Hamas de facto administration fail to address adequately the firing of indiscriminate rockets by Palestinian armed groups into southern Israel.

PA investigations

Noting that the PA in the West Bank was not a party to the conflict in Gaza and southern Israel, that it was not then, and is not now, in a position of effective control over Gaza, and the poor relationship between the PA and the Hamas de facto administration in Gaza, the Palestinian Independent Investigation Commission established by the PA was not able to investigate allegations of serious violations by Palestinians, such as the firing of indiscriminate rockets from Gaza into southern Israel, which was identified as a key concern in the report of the UN Fact-Finding Mission. The Commission acknowledged this shortcoming in its report.⁵⁰

While it did not investigate alleged violations of international humanitarian law by either the Israeli forces or Palestinian armed groups, the PA Committee did open investigations into violations of human rights law in both the West Bank and the Gaza Strip. In the West Bank, the Commission examined detention and torture, violations of what it termed “the right to assume public office”, violations of press freedom, violations of the freedom to form associations, and violations of the freedom to assemble peacefully. In Gaza, it examined, to the extent that it was able, detention and torture, and violations of the right to life. While the Commission in a number of cases found violations of human rights law by both the PA and the Hamas de facto authority, it is

unclear from the report if these findings will result in any further legal process by the PA to ensure accountability.

Conclusion

Based on its analysis of the reports issued by the Israel, the Hamas de facto administration and the PA and the fact that its analysis is largely supported by the advanced report of the Committee of Independent Experts, Amnesty International considers that both the Israeli authorities and the Hamas de facto administration have failed to fulfil their obligation to carry out investigations meeting the required international standards and to demonstrate a commitment to prosecuting suspected perpetrators of crimes under international law. The two authorities are failing to ensure accountability for the victims of the conflict through domestic means. Therefore, an international justice solution must be found.

Recommendations

To the Prosecutor of the ICC

Amnesty International calls on the Prosecutor to seek a determination from the Pre-Trial Chamber as soon as possible on whether the Court has jurisdiction to act pursuant to the declaration of the PA issued on 22 January 2009.

If the Pre-Trial Chamber determines that the declaration triggers the ICC's jurisdiction, Amnesty International urges the Prosecutor to seek authorization to open an investigation into crimes committed by both sides during the Gaza conflict, without delay.

To all states

Irrespective of the findings of the Committee of Experts and the status of the ICC's investigation, Amnesty International notes that under international law all states can and should investigate and prosecute crimes committed during the conflict before their national courts by exercising universal jurisdiction over crimes under international law.

To the Human Rights Council

Amnesty International calls on the Human Rights Council at this session to:

- recognize the failure of the investigations conducted by Israel and the Hamas de facto administration to comply with international standards;
- call on the ICC Prosecutor urgently to seek a determination by the Pre-Trial Chamber on whether the ICC has jurisdiction over the Gaza conflict;
- call on states to investigate and prosecute crimes committed by both sides during the conflict before their national courts by exercising universal jurisdiction;
- refer the Committee's report to the Council's parent body, the General Assembly; and
- request that the UN Secretary-General place the report before the Security Council.

- ¹ UN document A/HRC/12/48, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>
- ² Amnesty International, *Israel/Occupied Palestinian Territories: Credible, Independent and Conforming to International Standards: Criteria for domestic investigations into violations relating to the conflict in Gaza and southern Israel* (Index: MDE 15/032/2009), 22 December 2009, available at: <http://www.amnesty.org/en/library/info/MDE15/032/2009/en>
In December 2009 Amnesty International sent these criteria to both the Israel authorities and the Hamas de facto administration in Gaza, urging them to ensure that their domestic investigations conformed to them.
- ³ Available at: <http://www.icc-cpi.int/NR/rdonlyres/7CFB4B01-0B7E-4590-A8A8-7863E516F0A3/279777/20090122PalestinianDeclaration7.pdf>
- ⁴ UN document A/HRC/S-9/L.1, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/specialesession/9/docs/A-HRC-S-9-L1.doc>
- ⁵ See Human Rights Council press release of 3 April 2009 and transcript of press briefing, available respectively at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8469&LangID=E>
http://www2.ohchr.org/english/bodies/hrcouncil/specialesession/9/docs/PC_Transcript_3_April.doc
- ⁶ General Assembly Resolution A/Res/64/10 of 2 November 2009, available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/10
- ⁷ *Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict, Report of the Secretary General*, UN document A/64/651, Annex 1, available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/651>
- ⁸ UN document A/64/651, Annex 2.
- ⁹ Available at: http://www.gmo.ps/ar/?page=news_det&id=3159
- ¹⁰ UN document A/64/651.
- ¹¹ *Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict*, UN document A/RES/64/254, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/477/07/PDF/N0947707.pdf?OpenElement>
- ¹² UN document A/HRC/RES/13/9, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/128/38/PDF/G1012838.pdf?OpenElement>
- ¹³ Annex 1 of UN document A/64/890, available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/890>
- ¹⁴ http://www.moj.ps/index.php?option=com_content&task=view&id=577
- ¹⁵ On 30 July 2010 Amnesty International wrote to Hamas officials requesting information regarding this report but did not receive a response. The organization subsequently received a copy of the report without its annexes from an alternative source.
- ¹⁶ Annex 2 of UN document A/64/890, available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/890>
- ¹⁷ *Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict Report of the Secretary-General*, UN document A/64/867, available at: <http://unispal.un.org/UNISPAL.NSF/0/F5EBD457E05328F28525776D006CC9FB>
- ¹⁸ *Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict - Report of the Secretary-General*, UN document A/64/890, available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/890>
- ¹⁹ UN document A/HRC/15/50, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.50_AEV.pdf
- ²⁰ *Yedioth Ahronoth*, 9 September 2010. English translation of interview available at: <http://www.ynetnews.com/articles/0,7340,L-3951635,00.html>
- ²¹ <http://www.ynetnews.com/articles/0,7340,L-3760488,00.html>
- ²² This case was documented by the non-governmental organization Defence of Children International, see *Alternative Report for Consideration Regarding Israel's Initial OPAC Periodic Report to the Committee on the Rights of the Child Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)*, submitted 17 July 2009, pages 16-17, available at: http://www.dci-pal.org/English/Doc/Reports/DCI_OPAC_Alternative_Report_17_Jul_2009_FINAL.pdf
- ²³ Available at: <http://idfspokesperson.com/2010/03/11/idf-military-prosecution-indicts-two-idf-soldiers-for-misconduct-during-operation-cast-lead/>
- ²⁴ Amnesty International, *Israel/Gaza: Operation "Cast Lead": 22 Days of Death and Destruction* (Index: MDE 15/015/2009), 2 July 2009.
- ²⁵ Available at: <http://dover.idf.il/IDF/English/News/today/10/07/0602.htm>
- ²⁶ Amnesty International, *Israel/Gaza: Operation "Cast Lead": 22 Days of Death and Destruction* (Index: MDE 15/015/2009), 2 July 2009. See also, Human Rights Watch, *White Flag Deaths: Killings of Palestinian Civilians during Operation Cast Lead*, 2009; and B'Tselem, *Testimony of Nuha a-Najar*, January 2009.
- ²⁷ Available at: <http://dover.idf.il/IDF/English/News/today/10/07/0602.htm>
- ²⁸ *Second Update*, July 2010, para 68.
- ²⁹ Available at: <http://dover.idf.il/IDF/English/News/today/10/07/0602.htm>
- ³⁰ ICRC, *Customary International Humanitarian Law*, Volume I, Rules, Rule 19.
- ³¹ *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, para 520. The *Secretary-General's summary of the Report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December and 19 January 2009* (in para 56) concluded that: "the firing by the IDF of artillery with high explosive and projectiles containing white phosphorous into, over or in such close proximity to the UNRWA Headquarters as to cause injuries to persons and very substantial damage to property was grossly negligent, amounting to recklessness."
- ³² *Update*, January 2010, para 108.
- ³³ <http://www.haaretz.com/hasen/spages/1146638.html>
- ³⁴ *Second Update*, July 2010, para 94.
- ³⁵ *Update*, January 2010, paras 99-100.
- ³⁶ *Update*, January 2010 para 120.

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³⁷ *Second Update*, July 2010, para 96.

³⁸ The members of the Committee are listed as follows: Dr Abdallah al-Ashal, head of the committee (Egypt); Dr Bassem Aalem, member (Saudi Arabia); Mr Mahmoud al-Mubarak, member (Saudi Arabia); Dr Muhammed Numan al-Nahhal, member (Gaza Strip); Attorney Salim al-Saqqa, member (Gaza Strip); Attorney Nathem Uwaida, member (Gaza Strip).

³⁹ *Report on the implementation of the recommendations of the UN Fact-Finding Mission on the situation in Gaza*, para 58

⁴⁰ A/HRC/12/48, para 108.

⁴¹ *Status of implementation of the recommendations of the International Fact-Finding Mission Report on the Israeli aggression on Gaza 12/2008-1/2009*, page 35.

⁴² Gaza Committee's report, para 61.

⁴³ Gaza Committee's report, para 61.

⁴⁴ See, for example, a table listing operations between 1989 and 2008 by al-Qassam Brigades on the group's website in which the Israeli town of Sderot is listed as a target for rocket attacks, available at:

<http://www.alqassam.ps/arabic/statistics1.php?id=58>, accessed 26 September 2010.

⁴⁵ Gaza Committee's report, para 66.

⁴⁶ Gaza Committee's report, para 67.

⁴⁷ Report of statement from Mahmoud al-Zahar available at:

<http://english.aljazeera.net/news/middleeast/2009/01/200915132615532555.html>

⁴⁸ Gaza Committee's report, paras 72-79.

⁴⁹ Gaza Committee's report, para 53.

⁵⁰ Paras 26 and 64.