

**Report of the
Independent Fact Finding Committee
On Gaza:**

No Safe Place.

**Presented to the League of Arab States.
30 April 2009.**

Executive Summary.

1. The Independent Fact Finding Committee on Gaza to the League of Arab States (**the Committee**) was established in February 2009 with the tasks of investigating and reporting on violations of human rights law and international humanitarian law during the Israeli military offensive (hereinafter operation *Cast Lead*) against Gaza from 27 December 2008 to 18 January 2009 and collecting information on the responsibility for the commission of international crimes during the operation. The Committee comprised 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).
2. The Committee held an initial meeting with the Secretary-General of the Arab League and his staff in Cairo on 21 February. It then travelled to Gaza on 22 February, which it entered at the Rafah crossing. The Committee was accompanied by three representatives of the League: Mr Radwan bin Khadra, Legal Advisor to the Secretary General and Head of the Legal Department, Mrs Aliya Ghussien, Head of Palestine Department, and Ms Elham Alshejani, from the Population Studies and Migration Department. The Committee was also accompanied by Mr Omar Abdallah from the Egyptian Foreign Ministry.
3. The Committee remained in Gaza from 22 to 27 February. The programme for its visit was organized by the Palestinian Centre for Human Rights, 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 of much of the destruction, including hospitals, schools, universities, mosques, factories, businesses, police stations, government buildings, United Nations premises, private homes and agricultural land.
4. The Committee collected a wealth of information from many sources, including the websites of the Israeli Foreign Ministry and Israel Defense Forces (**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 conflict. 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. The Committee regrets the decision of the Government of Israel to withhold co-operation.
5. The Committee's visit to and experiences in Gaza inevitably influenced and shaped its opinions and assisted it in making its findings. The Committee's impressions and the inferences that it drew from what it saw and heard were corroborated by information from other sources. However, it could not have carried out its mandate without the visit to Gaza which allowed it to see for itself the destruction and devastation caused by operation *Cast Lead* and to speak to those who had experienced and suffered through the offensive.
6. The Committee's report is divided into three main parts: a factual description and analysis; a legal assessment and possible remedies; and recommendations. The factual

description includes a report by the body damage evaluator, who examined 10 individuals who sustained injuries during operation *Cast Lead*. Operating under internationally recognised standards, the report documents the injuries suffered and their alleged causes.

The Facts

7. The Committee saw, heard and read evidence of great loss of life and injury in Gaza. Statistics accepted by the Committee show that over 1,400 Palestinians were killed, including at the very least 850 civilians, 300 children and 110 women. Over 5,000 Palestinians were wounded. The Committee was unable to accept the figures given by Israel, which claim that only 295 of those killed were civilians, as they do not provide the names of the dead (unlike Palestinian sources). Moreover, Israel includes policemen as combatants, whereas they should be considered as civilians, and it asserts that only children below the age of sixteen qualify as such, whereas the accepted international age for children is eighteen. The Committee heard disturbing accounts of cold-blooded killing of civilians by members of the IDF, accounts which were later confirmed by Israeli soldiers at the Oranim military college.
8. Four Israeli civilians were killed by Palestinian rockets during operation *Cast Lead* and 182 wounded. Ten Israeli soldiers were killed (three by friendly fire) and 148 wounded.
9. Palestinian fighters had only unsophisticated weapons - Qassam rockets and Grads- whereas Israel was able to employ the most sophisticated and modern weaponry to bombard the population of Gaza from the air, land and sea. Although Israel initially denied it had used white phosphorous in the offensive it later admitted its use but denied it had been used unlawfully. The Committee is, however, satisfied on the available evidence that white phosphorous was used as an incendiary weapon in densely populated areas.
10. There was substantial destruction of, and damage to property during the offensive. Over 3,000 homes were destroyed and over 11,000 damaged; 215 factories and 700 private businesses were seriously damaged or destroyed; 15 hospitals and 43 primary health care centres were destroyed or damaged; 28 government buildings and 60 police stations were destroyed or damaged; 30 mosques were destroyed and 28 damaged; 10 schools were destroyed and 168 damaged; three universities / colleges were destroyed and 14 damaged; and 53 United Nations properties were damaged.
11. It was clear to the Committee the IDF had not distinguished between civilians and civilian objects and military targets. Both the loss of life and the damage to property were disproportionate to the harm suffered by Israel or any threatened harm. There was no evidence that any military advantage was served by the killing and wounding of civilians or the destruction of property.
12. The Committee received evidence of the bombing and shelling of hospitals and ambulances and of obstructions placed in the way of the evacuation of the wounded.
13. The 22-day offensive with bombing and shelling from the air, sea and land traumatized and terrorised the population. Israel dropped leaflets warning the population to evacuate, but in most cases failed to give details of the areas to be targeted and conversely which areas were safe. Phone calls were equally confusing. Generally, the leaflets and phone calls simply served to confuse the population and to cause panic.

14. Israel has defended its actions by arguing that buildings were used to store munitions and hide militants and that the Palestinians made use of women and children as human shields. The Committee received evidence of human shields being used by both Hamas and Israel and has not been able to verify the truth of these allegations. Nevertheless it does not believe that such large scale killing and wounding can be attributed to the use of human shields. Similarly, Israel has produced no credible evidence of buildings being used to harbour munitions and militants. Again, it is likely that this did occur in some cases but it could not possible justify the type and amount of killing and wounding and damage to property that occurred.
15. The IDF conducted an internal investigation into allegations that its forces committed international crimes. It found that although there were a few irregularities international crimes were not committed by its forces. The Committee is unable to accept those findings. The Committee finds the IDF investigation to be unconvincing as it was not independent. There is also no suggestion that it considered Palestinian sources.

Legal Assessment

16. Before making its legal assessment, the Committee considered a number of issues that might affect criminal responsibility for any crimes that were committed. The Committee found that:
 - (1) Gaza remains occupied territory and that Israel is obliged to comply with the Fourth Geneva Convention in its actions in Gaza.
 - (2) Due to the uncertain meaning of ‘aggression’ it could make no finding on the question whether Israel’s offensive constituted aggression.
 - (3) Israel’s actions could not be justified as self-defence.
 - (4) It could not examine the criminal responsibility of either Israel or Hamas in the context of international terrorism as the meaning of both state terrorism and terrorism by non-state actors is too uncertain; consequently, criminal responsibility was best measured in accordance with the rules of international humanitarian law.
 - (5) Principles of proportionality should be applied in assessing criminal responsibility.
17. The focus of the report is on international crimes and the available remedies for prosecuting such crimes. Consequently little attention is paid to violations of human rights law and international humanitarian law that do not constitute international crimes. Nevertheless, the Committee found that there had been serious violations of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. There were also violations of the Fourth Geneva Convention and its Additional Protocols, particularly in respect of the prohibition on collective punishment.
18. The Committee then turned to the question of international criminal responsibility arising from the conflict. Here it considered war crimes, crimes against humanity and genocide.

War Crimes

19. The Committee examined the responsibility of parties to the conflict for the commission of only of those war crimes which are generally accepted and whose meaning and content is clear.
20. The Committee found that the IDF was responsible for the crime of indiscriminate and disproportionate attacks on civilians. In reaching this conclusion the Committee had regard to the number of civilians killed and wounded and to the extent of the destruction to civilian property. It rejected Israel's determination of who is a civilian. Members of the Hamas civil government responsible for administering the affairs of Gaza are not combatants as claimed by Israel. Nor are members of the police force responsible for maintaining law and order and controlling traffic.
21. The Committee also found that Palestinian militants who fired rockets into Israel indiscriminately, committed the war crime of indiscriminate and disproportionate attacks on civilians.
22. The Committee found that the IDF was responsible for the crime of killing, wounding and terrorizing civilians. The Committee based this finding on the number of civilians killed by 22 days of intense bombardment by air, sea and land. The Committee also found the weapons used by the IDF, particularly white phosphorous and flechettes, caused superfluous and unnecessary suffering.
23. The Committee rejected Israel's claim that it had warned civilians to evacuate their homes by leaflets and phone calls. The leaflets and phone calls generally failed to tell civilians which targets were to be bombed and where they might find safety. As a result they only served to cause confusion and panic. Incessant bombing and misleading warnings of this kind served to terrorize the population.
24. The Committee found that Palestinian militants who fired rockets indiscriminately into Israel which killed four civilians and wounded 182 committed the war crime of killing, wounding and terrorizing civilians.
25. The Committee found that the IDF was responsible for the wanton destruction of property and that such destruction could not be justified on grounds of military necessity. The number of civilian properties destroyed was completely disproportionate to any harm threatened and there was no credible evidence that the destruction served any military advantage.
26. There was considerable evidence that the IDF and its members had bombed and shelled hospitals and ambulances and obstructed the evacuation of the wounded. In the opinion of the Committee this conduct also constituted a war crime. The Committee was not able to accept the findings of the IDF internal investigation on this subject as it took no account of Palestinian allegations.

Crimes Against Humanity

27. A crime against humanity comprises acts of murder, extermination, persecution and similar other inhumane acts committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack. The Committee found that Israel's offensive met the legal requirements for this crime and that the IDF was responsible for committing this crime.

Genocide

28. Genocide is considered the “crime of crimes”. It has been singled out for special condemnation and opprobrium. The very suggestion that a state has committed genocide should therefore be approached with great care. Nevertheless the Committee believes that operation *Cast Lead* was of such gravity it was compelled to consider whether this crime had been committed.
29. The Committee found Israel’s actions met the requirements for the *actus reus* of the crime of genocide contained in the Genocide Convention, in that the IDF was responsible for killing, exterminating and causing serious bodily harm to members of a group - the Palestinians of Gaza. However, the Committee had difficulty in determining whether the acts in question had been committed with a special intent to destroy in whole or in part a national, ethnical or religious group, as required by the Genocide Convention. It rejected the argument that Israel had carried out operation *Cast Lead* in self-defence. However, it found the main reason for the operation was not to destroy a group, as required for the crime of genocide, but to engage in a vicious exercise of collective punishment designed either to compel the population to reject Hamas as the governing authority of Gaza or to subdue the population into a state of submission.
30. The Committee found although operation *Cast Lead* had not been carried out by the IDF to destroy the Palestinians of Gaza as a group, individual soldiers may well have had such an intent and might therefore be prosecuted for this crime. This finding was based on the brutality of some of the killing and reports that some soldiers had acted under the influence of rabbis who had encouraged them to believe that the Holy Land should be cleansed of non-Jews.

State Responsibility For Genocide

31. Under international law a state may be held responsible for the commission of internationally wrongful acts that are attributable to it. Such responsibility may arise from customary international law or in terms of treaty obligations. It is clear internationally wrongful acts were committed by Israel in operation *Cast Lead*.
32. Most human rights and international humanitarian law treaties do not confer jurisdiction on the International Court of Justice for the commission of internationally wrongful acts under such conventions. However, the Genocide Convention, in Article 9, confers such jurisdiction on the International Court of Justice in respect of the responsibility of a state for violation of the Convention, at the request of any other state party. It is not necessary for the other state party to show that it has a national interest in the dispute as the prohibition on genocide is an obligation *erga omnes*.
33. Proof of the commission of genocide is a prerequisite for bringing a claim under the Genocide Convention. It has already been shown that the Committee was not able to find that the state of Israel acting through the IDF had the necessary specific intent to destroy a group as required for the crime of genocide. On the other hand, there is a prospect that such a claim might succeed if it can be proved that individual members of the armed forces committed acts of genocide while they were acting under the direct control of the Government of Israel. Such a scenario would allow Israel to be held responsible under the Genocide Convention for failure to prevent or to punish genocide.

Responsibility Of Israel

34. The Committee has found that members of the IDF committed war crimes, crimes against humanity and, *possibly*, genocide in the course of operation *Cast Lead*. Those responsible for the commission of such crimes are individually responsible for their actions, as are those who ordered or incited the commission of such crimes or participated in a common purpose to commit such crimes. Military commanders and political leaders are likewise responsible for crimes committed under their effective command, authority or control where they knew or should have known the forces were committing such crimes and they failed to prevent or repress the commission of such crimes or to investigate and prosecute those responsible.

Responsibility Of Hamas

35. As the governing de facto authority of Gaza, Hamas may be held responsible for violations of international humanitarian law attributed to it. Individuals who have fired rockets indiscriminately into Israel are criminally responsible for their actions and must be held accountable for them under the law governing the commission of war crimes. In assessing the responsibility of Hamas and individual Palestinian militants there are a number of factors that reduce their moral blameworthiness but not their criminal responsibility. Such factors include the fact Palestinians have been denied their right to self-determination by Israel and have long been subjected to a cruel siege by Israel.

Remedies

36. There are a number of remedies in the criminal law field that may be invoked by states, NGOs and individuals to secure redress for crimes committed in Gaza. These include prosecutions for violation of the Fourth Geneva Convention in national courts in accordance with Articles 146 and 147 of the Convention, prosecutions pursuant to universal jurisdiction statutes which allow a person to be prosecuted in a third country for an international crime committed extraterritorially, and referral to the International Criminal Court. On 22 January 2009 the Palestinian Minister of Justice, Mr Ali Kashan, lodged a declaration with the Registrar of the International Criminal Court on behalf of the Government of Palestine recognizing the jurisdiction of the Court for international crimes committed in Palestine since 1 July 2002 under Article 12(3) of the Rome Statute. At this time the Registrar is still considering her decision. The Committee believes that the International Criminal Court should accept the declaration lodged by the Government of Palestine and investigate the commission of international crimes in the course of operation *Cast Lead*.
37. There are also a number of civil law remedies available to states, NGOs and individuals. As shown above, states may be able to initiate proceedings against Israel for failure to prevent or to punish the commission of the crime of genocide if it can be established that members of its armed forces were responsible for the commission of that crime.
38. The American Alien Tort Act, which allows American Federal Courts to exercise jurisdiction in any civil action brought by an alien for violation of a peremptory norm of international law outside the United States, is another remedy that may be considered.
39. Procedures within the United Nations may also be invoked. States may request the Security Council to refer the situation in Gaza to the International Criminal Court in

the same way that such a referral was made in the case of Darfur in Resolution 1593 of 31 March 2005. States may also request the General Assembly to request the International Court of Justice for an Advisory Opinion on the legal consequences of operation *Cast Lead* for Israel and other states. In 2005 the General Assembly adopted the Summit Outcome Document in which the United Nations undertakes the responsibility to protect states against genocide, war crimes and crimes against humanity. The General Assembly, and possibly the Security Council, might be approached to take action under this commitment.

Recommendations

40. The Committee makes the following recommendations:

Recommendations to Organs of the United Nations.

- (1) The League of Arab States should request the General Assembly of the United Nations to request the International Court of Justice to give an advisory opinion on the legal consequences for states, including Israel, of the conflict in Gaza between 27 December 2008 and 18 January 2009 (**the Conflict in Gaza**).
- (2) The League of Arab States should request the Security Council to refer the situation in Gaza, arising from Operation Cast Lead, to the Prosecutor of the International Criminal Court under Article 13(b) of the Rome Statute.
- (3) The League of Arab States should request the Security Council, failing which, the General Assembly, to exercise its Responsibility to Protect, affirmed in the Summit Outcome Document of 2005 in respect of Gaza.

Recommendations involving the International Criminal Court.

- (4) The League of Arab States should endorse Palestine's declaration accepting jurisdiction of the International Criminal Court under Article 12(3) of the Rome Statute. If the Security Council fails to refer the situation in Gaza to the International Criminal Court under Article 13(b) of the Rome Statute (Recommendation 2), the League of Arab States should request the General Assembly to endorse Palestine's declaration under Article 12(3) of the Rome Statute in a meeting convened under the Tenth Emergency Special Session, constituted in terms of the Uniting for Peace Resolution 377 A (V).

Recommendations relying on the Geneva Conventions.

- (5) The League of Arab States should request the Swiss Government to convene a meeting of the State Parties to the Fourth Geneva Convention to consider the findings of the present Report.
- (6) The League of Arab States should request states to consider taking 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.
- (7) The League of Arab States should remind State Parties to the Geneva Conventions that they are obliged by Article 1 of the Fourth Geneva Convention "to ensure respect" for the Convention. This obligation was confirmed by the International Court of Justice in its 2004 Advisory Opinion

on “*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*”. It may be argued that the obligation contained in Article 1 “to respect and to ensure respect for the present convention in all circumstances” includes an obligation on all states to render whatever assistance they can to a state subjected to violations of the Convention.

Recommendations to other States.

- (8) The League of Arab States should recommend to its members that they consider instituting legal proceedings against Israel in accordance with Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide, with due regard to the caution expressed in the present Report.
- (9) The League of Arab States should encourage states to prosecute persons responsible for the international crimes identified in the present Report before their national courts (where universal jurisdiction statutes so permit).
- (10) The League of Arab States should recommend to states that incurred damage to their property in the conflict in Gaza that they claim compensation from Israel for such losses.

Recommendations for action by the League of Arab States directly.

- (11) The League of Arab States should facilitate negotiations between Fatah and Hamas in order to ensure that the welfare of the people of Gaza is not affected by the conflict between these two parties, particularly in the medical field.
- (12) The League of Arab States should establish a documentation centre to keep a record of breaches of international humanitarian law in Palestine. Such an historical archive would ensure that a record is kept of crimes against the Palestinian people, and may assist any future action(s) taken by the League or other bodies.
- (13) This report should be referred to the United Nations, the European Union, the African Union, the Organization of American States, the Organization of Islamic Conference, the Association of South East Asian Nations and the International Criminal Court; and distributed to relevant NGO’s and the general public.

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Part I: Introduction

A *The Establishment of the Committee.*

Initiative of the League of Arab States.

1. The independence and sovereignty of Palestine have been the subject of constant concern for the League of Arab States (**the League**) since its foundation in 1945 and particularly since Palestine was admitted to full membership in 1976.¹ Motivated by this concern the Council of the League convened an extra-ordinary session at the level of the Permanent Representatives to discuss the havoc among the population of the Gaza Strip caused by the Israeli military operation *Cast Lead* in Gaza from 27 December 2008 to 18 January 2009.
2. On 26 January 2009, for the first time in its history, the Council of the League decided to establish an independent fact finding committee to investigate allegations of the commission of serious violations of international humanitarian law during the conflict. The need to do so was imperative because the ban that Israel had imposed on international media on 5 November 2008,² as well as the restrictions imposed on international organizations in accessing Gaza during the assault, had placed limitations on the availability of first hand credible assessments.
3. The Council requested the Secretary General of the League, His Excellency Amre Moussa, to invite a committee of independent experts to gather facts to allow the League to recommend legal ways and means to hold any violators of international humanitarian law accountable for their actions. The fact finding Committee would address the actions of all parties to the conflict in Gaza between 27 December 2008 and 18 January 2009, in the context of the Israeli-Palestinian conflict, and particularly the situation in Gaza since Israel's disengagement from the Gaza strip in 2005.

Composition and terms of reference.

4. On 21 February 2009 the Secretary General convened the inaugural meeting of the Independent Fact Finding Committee on Gaza (the Committee) at the Headquarters Building in Cairo. The members of the Committee are: 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). A short Curriculum Vitae of each member appears at **Annexure 9**. The Committee confirmed the terms of reference, which are reproduced at **Annexure 1**.
5. The League endorsed the Committee's decision to perform its investigations in an impartial manner which meant meeting with all parties, particularly the Government of Israel and the Hamas authority. Since the League has no diplomatic relations with Israel the Committee approached the Government of Israel directly, as described below.

¹ Mufeed Shihab, 'Arab States, League of' in R. Bernhardt (ed.) *Encyclopedia of Public International Law*, Volume I (1992), pp. 202-207, at 202, 203 and 206; Charter League of Arab States, Annex on Palestine, International Organization and Integration, Annotated Basic Documents and Descriptive Directory of International Organizations and Arrangements, Martinus Nijhoff Publishers, 1983 II G.1a, p. 4.

² See: <http://www.fpa.org.il/?categoryId=406>, accessed 6 April 2009.

6. The Committee started its work on 21 February 2009. On 22 February it travelled from Cairo to the Gaza Strip by road via the Rafah border crossing. The Committee was accompanied in Gaza by three representatives of the League: Mr Radwan bin Khadra, Legal Advisor to the Secretary General and Head of the Legal Department, Mrs Aliya Ghussien, Head of Palestine Department, and Ms Elham Alshejini, from the Population Studies and Migration Department.³ The Committee was also accompanied by Mr Omar Abdallah from the Egyptian Foreign Ministry.
7. It was agreed the Committee would submit its report to the Secretary-General of the League as soon as possible, and not later than the end of April 2009. However, at the request of the Secretary General, the Committee submitted an interim memorandum in order to inform the Arab Summit in Doha at the end of March 2009.

B The Committee's Working methods.

Collecting information

8. The Committee consulted a broad range of sources of information, but most of the information contained in this report was obtained during the mission to Gaza. The information collected by the Committee, together with this report has been given to the League for future reference if required.
9. Logistical support was provided by the League together with the Palestinian Centre for Human Rights (PCHR). The director of PCHR Mr Raji Sourani, and his staff, rendered the Committee excellent services in organizing the schedule of meetings with medical doctors in hospitals, government officials, journalists, lawyers, business persons, women's organizations, NGO's, university administrators, independent interlocutors, UN officials and ordinary people who had been affected by the conflict.⁴
10. The PCHR provided interpretation services during the Committee's mission to Gaza, including the interpretation of the oral evidence provided to the Committees during its various meetings. The League provided translations from Arabic/Hebrew into English of written statements, reports and news coverage in the media, which give evidence of the development of operation *Cast Lead* from the perspective of international law.
11. The medical expert, Professor Francisco Corte Real, arranged his own program for applying body damage evaluation methods on the injuries of war victims and taking tissue and soil samples for laboratory research into the nature and cause of the physical injuries. He examined ten patients with their permission which provided a profile of the wounds they suffered during the conflict. The medical report is a separate but integrated part of the present report.
12. In collecting and weighing evidence the Committee was guided by the statement of the International Court of Justice in its 27 June 1986 Judgment in the Case *Concerning Military and Paramilitary Activities in and against Nicaragua*:⁵

The Court has not treated as evidence any part of the testimony given which was not a statement of fact, but a mere expression of opinion as to the probability or otherwise of the existence of such facts, not directly known to the witness. Testimony of this kind, which may be highly subjective, cannot take the place of

³ Ms Alshejini also provided valuable administrative support to the Committee.

⁴ See **Annexure 2** Schedule of Meetings Gaza Strip 22-26 February 2009.

⁵ 1986 I.C.J. Reports , p. 42 (paragraph 68 and 69).

evidence. An opinion expressed by a witness is a mere personal and subjective evaluation of a possibility which has yet to be shown to correspond to a fact; it may, in conjunction with other material, assist the Court in determining a question of fact, but is not proof in itself. Nor is testimony of matters not within the direct knowledge of the witness, but known to him only from hearsay, of much weight: (...). The Court has had to attach considerable significance to the declarations made by the responsible authorities of the States concerned in view of the difficulties which it has had to face in determining the facts.

Requests to Israel

13. On 20 February 2009, the Committee sought to have a letter transmitted to the Israeli Government of Israel by the ICRC, in the absence of a protecting power. The ICRC was not able to assist, and so on 23 February 2009, the Committee wrote directly to the Government of Israel indicating the Committee's purpose and requesting information from the Israeli Government. Having received no response, the Committee wrote again to the Israeli Government on 28 February 2009. In April 2009, the Committee again wrote to the Foreign Ministry of Israel, via its embassies in the Netherlands and Norway, requesting a copy of the report of their inquiry into the conflict in Gaza and inviting it to make submissions to the Committee. A copy of all three letters can be found at **Annexure 3**.
14. The Committee received no response from the Government of Israel to any of its letters before the submission of its report. The Committee did everything it could to secure the co-operation of the Israeli authorities. The refusal of Israel to co-operate meant that the Committee was unable to visit Israel to speak to members of the Israeli government, the IDF and possibly the residents of Sderot and neighbouring towns. As a consequence the Committee was compelled to rely on government statements and reports, the Ministry of Foreign Affairs website,⁶ NGO reports and the media for information about the conflict from the Israeli perspective and about the impact of Palestinian rockets on the Israeli population. The Committee regrets that the Israeli government prevented the Committee from obtaining such information from within Israel itself.

Assessing responsibility

15. The Committee decided that in assessing individual and state responsibility for violations of international humanitarian law and human rights law during conflict it was necessary to bear in mind the special status of the Gaza Strip under international law as an occupied territory.
16. Although the terms of reference focus on identifying and reporting on the situation in Gaza and on alleged violations of international humanitarian law and human rights law during operation *Cast Lead*, the Committee is of the view the present situation goes back to the Israeli disengagement from Gaza in 2005. Therefore the factual and legal assessment of operation *Cast Lead* as well as the recommendations for legal redress for any violations of international humanitarian law will be preceded by a brief discussion of the Israeli disengagement from Gaza.

⁶ <http://www.mfa.gov.il/MFA/>

C The Israeli disengagement from Gaza.

17. Palestine has a population of 3.9 million, 2.4 million of whom live in the West Bank.⁷ The Gaza Strip with its population of over 1.5 million people, 56% of whom are aged under 18,⁸ on barely 360 square kilometres⁹ is one of the most densely populated areas in the world. In 2003 the then Israeli Prime Minister Ariel Sharon introduced Israel's Disengagement Plan as a unilateral step to enable progress toward resolution of the conflict with the Palestinians. Sharon said "in light of the other challenges we are faced with, if the Palestinians do not make a similar effort toward a solution of the conflict, I do not intend to wait indefinitely." He also noted that the plan did not prevent the implementation of the Roadmap: "Rather, it is a step that Israel will take in the absence of any other option, in order to improve *its* security. The Disengagement Plan will be realized only in the event that the Palestinians continue to drag their feet and postpone implementation of the Roadmap."¹⁰
18. According to the Israeli Guide to the Peace Process there was renewed optimism the Disengagement Plan would succeed in advancing peace efforts where previous attempts had failed; the Guide stated the death of Yasser Arafat and the election of Mahmoud Abbas as the Palestinian Authority (PA) Chairman opened the possibility of coordinating key aspects of the plan with the Palestinian side. It was hoped that renewed dialogue and coordination between Israel and the PA, together with Palestinian steps to end terrorism and dismantle its infrastructure [read Hamas], would promote an orderly transition of security and would "ensure that the Disengagement Plan's implementation does indeed improve conditions on the ground, serving as a platform for renewed negotiations between the sides."¹¹
19. In September 2005 Israel completed its disengagement from the Gaza Strip, which was approved by the Israeli Government on 6 June 2004.
20. The unilateral Israeli disengagement from the Gaza Strip was originally welcomed by the European Union and the United States. On 14 April 2005 the Quartet – the European Union, the Russian Federation, the United Nations and the United States – appointed the then president of the World Bank James D. Wolfensohn as special envoy for Gaza Disengagement. He assumed his duties on 1 June 2005. His focus was to be on the method of withdrawal, including the disposition of assets, and on economic issues related to the post-withdrawal revival of the Palestinian economy, including investment and financing issues.¹²

⁷ <https://www.cia.gov/library/publications/the-world-factbook/geos/we.html>, accessed 6 April 2009.

⁸ <http://www.un.org/children/conflict/pr/2009-02-05207.html>, accessed 14 April 2009.

⁹ <https://www.cia.gov/library/publications/the-world-factbook/geos/gz.html>, accessed 6 April 2009.

¹⁰ Israel Ministry of Foreign Affairs, 'Israel's Disengagement Plan: Renewing the Peace Process' of 20 April 2005, (*italics added*).

<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israels+Disengagement+Plan-+Renewing+the+Peace+Process+Apr+2005.htm/>

¹¹ *Ibid.*

¹² United Nations Information System on the Question of Palestine (UNISPAL), 14 April 2005, Statement by World Bank President James D. Wolfensohn on His Appointment as Special Envoy for Gaza Disengagement, <http://unispal.un.org/unispal.nsf/3d14c9e5cdad296d85256cbf005aa3eb/be86f5a326ac250d85256fe7006550bb!OpenDocument>.

21. On 1 May 2006, Wolfensohn stepped down, saying:¹³
- ... the political events are such that I think the issue's above my pay grade, these are issues between the Israelis and the United States, the principals if you like, and with the government of Hamas having taken over with the Palestinians, it's a very difficult moment to be able to try and negotiate any independent type of arrangements that would affect the future of Gaza and the West Bank, because of the emphasis that Hamas puts on the destruction of the state of Israel and the less than communicative relationship with that state.
22. It appears that Wolfensohn based his resignation not only on Hamas but also on Israel's less than communicative relationship with him in the context of the intended revival of the Palestinian economy after the completion of the Israeli withdrawal from the Gaza Strip in September 2005. Wolfensohn's position was also affected by the exclusion of Hamas from the peace process after it had gained victory in the 2006 election in Palestine despite its generally recognized democratic quality.
23. In January 2006 Hamas won the Palestinian parliamentary elections, which by all accounts were free and fair, securing 76 of the 132 seats in the Legislative Council. In June 2007, after the failure of a government of national unity in Occupied Palestine, Hamas seized control of Gaza, while Fatah took power in the West Bank. This led to the imposition of a siege on Gaza by Israel and the intensification of rocket fire from Gaza into Israel. A six-month cease-fire between Israel and Hamas brokered in June 2008 came to an end in November 2008 when Israel carried out a military incursion into Gaza. On 27 December 2008 Israel commenced operation *Cast Lead* into Gaza.

D Structure of the Report.

24. Part II of this report contains the Committee's factual assessment. The first part refers to publicly available information and the second part contains the information and evidence obtained by the Committee during its visit to Gaza. Also included are factual assessments, by topic, which are based on both the publicly available information, and the information collected by the Committee.
25. Part III of the report contains the Committee's legal assessment. In this part the Committee examines violations of human rights law and international humanitarian law arising from the conflict, and the question of criminal responsibility for such violations. The Committee's conclusions and recommendations are contained in Part IV, together with the available remedies.
26. A list of all the abbreviations used in the report can be found at **Annexure 8**.

¹³ UNISPAL 1 May 2006, Remarks after Meeting with Special Envoy for Gaza Disengagement James Wolfensohn,
<http://unispal.un.org/unispal.nsf/3d14c9e5cd85256cbf005aa3eb/1b7c339492ed515e85257162005536b6!OpenDocument>.

Part II: Factual Assessment.

27. The factual assessments made by the Committee are based on both open source information and the information gathered during its visit to the Gaza strip. There exists a wealth of information published by Israeli, Palestinian and international sources, as well as the international media. Although the Committee has attempted to cite the major reports on the conflict, there is simply too much information available to refer to each and every report and article that has been published.
28. As noted above, what follows is a summary of publicly available information about the conflict. The report then examines the information received by the Committee during its visit to Gaza. Factual assessments are made by topic.

A The conflict in Gaza: 27 December 2008 to 18 January 2009.

29. On 27 December 2008 the Israel Defence Forces (the **IDF**) launched Operation Cast Lead in the Gaza strip allegedly in response to Palestinian rocket and mortar attacks of Hamas into southern Israel. Operation Cast Lead consisted of aerial, naval and ground artillery fire (from outside Gaza) from 27 December 2008.
30. On 3 January 2009 the IDF announced that operation *Cast Lead* was to expand to include a ground offensive. IDF Spokesman Brigadier General Avi Benayahu stated “The object of this phase of the operation is to intensify the heavy blow already dealt to Hamas and to take control of the area from where most of the rocket attacks against Israel originate, in order to reduce those rocket attacks.”¹⁴
31. On 17 January 2009 Prime Minister Olmert announced that “the conditions have been created so that our targets, as defined when we launched the operation, have been fully achieved and more so ...”¹⁵ The offensive ceased at 2:00am on 18 January 2009,¹⁶ with the last IDF soldiers leaving Gaza on 21 January 2009.¹⁷

¹⁴ http://www.mfa.gov.il/MFA/Government/Communiques/2009/Second_stage_Operation_Cast_Lead_begins_3-Jan-2009.htm, accessed 10 April 2009.

¹⁵ http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2009/Statement_PM_Ehud_Olmert_17-Jan-2009.htm, accessed 10 April 2009.

¹⁶ http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Aerial_strike_weapon_development_center%20Gaza_28-Dec-2008, accessed 10 April 2009.

¹⁷ http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_strikes_back_against_Hamas_terror_infrastructure_Gaza_27-Dec-2008.htm

32. The **IMFA** reports the rocket and mortar fire into Israel since 2001 as follows:¹⁸

Year	No. of Rockets	Comments	No. of Mortar bombs	Total
2001	4		245	249
2002	35		257	292
2003	155		265	420
2004	281		876	1157
2005	179	108 until the withdrawal, 71 afterwards	238	417
2006	946		22	968
2007	896	421 until the Hamas takeover, 475 afterwards	749	1645
2008	1,571	571 rockets and 205 mortar shells during Operation Cast Lead	1,531	3102
2009	473	Jan 1 - Apr 13	178	651

Figure 1: Rocket fire into Israel from Gaza, 2001 – 2009.

33. The period before the conflict included a stricter blockade on Gaza and negotiations about the truce between Hamas and the Israeli Government. Although the Committee is not charged with directly considering this period, it is nonetheless relevant to the overall assessment of the conflict.

The situation in Gaza prior to 27 December 2008.

34. Since June 2007, when Hamas took over control of the Gaza Strip, Israel has imposed a blockade on Gaza, limiting the quantity and type of goods that were permitted to be transferred into Gaza.¹⁹ **B'Tselem** reported that the closure “greatly limited the entry of goods, including fuel, medical equipment, and replacement parts. Only goods Israel deemed “humanitarian” and basic foodstuffs such as flour, sugar, oil, rice, and salt, were allowed in.”²⁰

35. In June 2008 Hamas and Israel agreed to a six month ceasefire in Gaza. The agreement was brokered with Egyptian assistance. Gazans undertook to stop firing rockets and Israel undertook to cease offensive operations in Gaza.²¹ The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Professor Richard Falk (United States of America), reported the number of rockets fired from

¹⁸ <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Missile+fire+from+Gaza+on+Israeli+civilian+targets+Aug+2007.htm#statistics>, accessed 17 April 2009. TOTAL column added.

¹⁹ http://www.ochaopt.org/documents/Gaza_Special_Focus_December_2007.pdf, and http://www.ochaopt.org/documents/HM_July07_02.pdf, accessed 6 April 2009.

²⁰ http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf, accessed 14 April 2009, page 18.

²¹ http://news.bbc.co.uk/2/hi/middle_east/7459200.stm, accessed 6 April 2009.

Gaza into Israel during 2008. The month by month graph, from Israeli sources, shows a reduction during the ceasefire from 19 June until 4 November 2008.²²

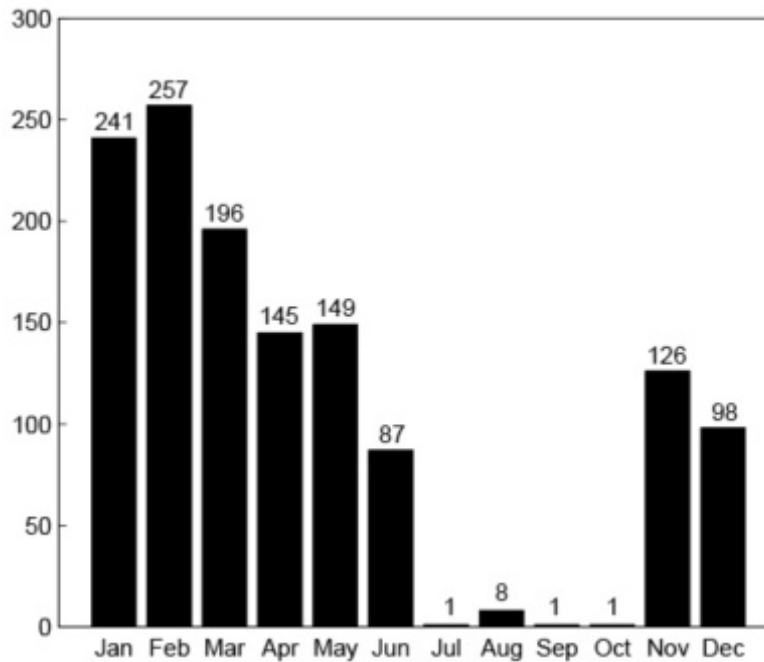


Figure 2: Rocket fire into Israel from Gaza in 2008, by month.

36. On 4 November 2008, before the cease fire agreement was due to expire, Israel sent ground troops into Gaza, killing 6 and injuring 7 others.²³ After this incursion, rocket fire recommenced from Gaza into Israel.
37. Following the incursion, the borders with Israel were also completely closed. The Office for the Coordination of Humanitarian Affairs in the Occupied Territories (OCHA) reported that:²⁴

The severe closure imposed since 5 November halted the delivery of basic supplies, fuel and humanitarian assistance, to the Gaza Strip. Gaza crossings were opened only on six days following the 5 November closure, constraining imports to limited amounts of food, medical supplies, industrial fuel, animal feed and a few other basic items.
38. This closure included a ban on international media entering Gaza.²⁵
39. On 18 December 2008, UNRWA was forced to suspend its aid activities due to a lack of items to distribute.²⁶
40. There were attempts to broker a further ceasefire in December 2008, however these failed, and on 27 December 2008 operation *Cast Lead* was launched. Israeli Defence Minister Ehud Barak formally announced the beginning of the operation in a press conference and outlined the three objectives for the offensive: “dealing Hamas a

²² <http://daccessdds.un.org/doc/UNDOC/GEN/G09/122/19/PDF/G0912219.pdf?OpenElement>, accessed 16 April 2009. Page 8.

²³ http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_2008_11_08_english.pdf, accessed 6 April 2009.

²⁴ http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_12_1_15_english.pdf

²⁵ <http://www.fpa.org.il/?categoryId=406>, accessed 6 April 2009.

²⁶ http://www.un.org/unrwa/news/releases/pr-2008/gaz_18dec08.html

forceful blow, fundamentally changing the situation in Gaza, and the cessation of rocket attacks against Israeli citizens.”²⁷

41. Special Rapporteur Professor Richard Falk stated that the population of Gaza was already weakened by the siege prior to the conflict.²⁸ The Human Rights Council Independent Expert on the question of Human Rights and Extreme Poverty, Mr Adrian Severin (Romania), reported that “... prior to the recent conflict 78.9% of Gaza residents were already living below the official poverty line.”²⁹
42. In relation to the situation of the medical facilities, Physicians for Human Rights (**PHR**) reported:³⁰

Before the 27th of December there was a severe shortage of medical drugs. One hundred and five drugs out of a list of one hundred and eighty were unavailable (105/180; over 50% shortage). From the consumables 250 out of a list of approximately 10000 was out of stock (25%) additionally there is a list of 70 essential laboratory materials missing present in the Gaza strip.

43. **B’Tselem** reported that prior to the conflict:³¹

Hospitals and medical clinics continued to operate, but the level of their services was severely impaired. Most had to rely on generators because of the power cuts. The shortage of replacement parts and raw materials resulted in poor maintenance of medical equipment, and physical infrastructure could not be repaired.

44. Two Norwegian Doctors who have a long history of working in Gaza since the mid 1980s said, of the Al-Shifa Hospital:³²

The long-standing siege of Gaza has led to a critical shortage of nearly everything from essential infrastructure such as lifts, ventilation systems, and power supply, to patient-handling systems such as [Operating Room] tables, beds, trolleys, and all types of medical equipment. During the past 18 months of harsh siege on Gaza, the supply lines to the hospital have completely dried-up.

45. It was in this context that the conflict began.

The Weapons Used.

46. The IMFA stated that the Israeli Air Force alone carried out “over 2,744 attacks” during the conflict. The IMFA also reported that 571 rockets and 205 mortar shells landed in Israel from the Gaza strip.³³

²⁷ [http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel strikes back against Hamas terror infrastructure Gaza 27-Dec-2008.htm](http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel+strikes+back+against+ Hamas+terror+infrastructure+Gaza+27-Dec-2008.htm), accessed 11 March 2009.

²⁸ <http://daccessdds.un.org/doc/UNDOC/GEN/G09/122/19/PDF/G0912219.pdf?OpenElement>, accessed 16 April 2009. Page 9.

²⁹ The Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009. Para 26.

³⁰ Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights.

http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Page 67.

³¹ http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf, accessed 14 April 2009, page 19.

³² <http://www.bricup.org.uk/documents/Gaza/Inside-Gazas-Al-Shifa-hosp.pdf>, accessed 16 April 2009. Page 2 (of 3), printed as page 201.

47. It has also been reported by both Amnesty International and the Mines Advisory Group that an amount of mortar and rocket fire from Palestinians intended for Israel failed to reach their targets and landed within Gaza.

The Weapons used by the IDF.

48. On 23 February 2009 Amnesty International published a report: Fuelling Conflict: Foreign Arms Supplies to Israel/Gaza (**the Amnesty Report**).³⁴ The Amnesty report details the types of weapons used by both the IDF and Palestinians during the conflict.
49. The Amnesty Report outlines evidence of the use of the following weapons by the IDF:

Air delivered munitions:

- 20mm cannon, Hellfire and other missiles from helicopters and drones
- Large laser-guided and other bombs from F-16 warplanes
- Cube-shaped shrapnel, a new type of missile containing large numbers of small metal cubes between 2 and 4mm square

Anti-tank mines:

- Unexploded anti-tank mines were found in homes

Artillery and other mortars:

- 155mm white phosphorous shells
- 155mm illuminating shells
- flechettes
- mortar shells
- other artillery shells

Tank ammunition:

- 120mm tank rounds, including High Explosive Multi Purpose Cartridges

50. In relation to the use of white phosphorous, the Amnesty Report outlined several instances of its use, finding carrier shells “throughout Gaza”. In particular the Amnesty Report states that white phosphorous was used at:

1. the UNRWA primary school in Beit Lahiyeh where approximately 1,600 people were seeking shelter from the ongoing fighting. Two brothers were killed (aged five and seven) and 14 others were injured when a white phosphorous shell landed in a second floor classroom;
2. the UNRWA field operations head quarters where tens of tons of medicines, food and non-food items was destroyed;
3. the residential areas in and around Gaza city and in the north (at Jabalya refugee camp) and the south (at Khuzaa, east of Khan Younis) of the Gaza Strip.

51. On 23 February 2009 the Israeli Government responded to the Amnesty Report,³⁵ but it did not deny the allegation of the use of white phosphorous during the conflict.

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³³ <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Missile+fire+from+Gaza+on+Israeli+civilian+targets+Aug+2007.htm>

³⁴ http://www.amnesty.org.au/images/uploads/news/Gaza-Fuelling_conflict_report.pdf

³⁵ http://www.mfa.gov.il/MFA/About+the+Ministry/MFA+Spokesman/2009/Spokesman+statements/Israel_respo_nse_Amnesty_International_report_23-Feb-2009.htm

52. The Mines Advisory Group³⁶ (**MAG**) arrived in Gaza in February 2009. The MAG indicated that due to the lack of international journalists present during the conflict, they are unable to report on the weapons systems that were used. They further indicated that one cannot necessarily determine from a particular bomb which system it came from, as the various systems (aerial, naval and ground) can carry a wide range of ammunitions.
53. MAG confirmed, however, that they had found evidence of the following munitions and weaponry used by the IDF:

Aerial delivery (from F15 and F-16 planes, Apache helicopters and drones):

- dumb bombs (unguided bombs)
- guided bombs
- M129 leaflet bombs

Naval rounds:

- 76mm naval rounds
- 62mm naval rounds

Artillery:

- 155mm artillery (white phosphorous, high explosives and illumination charges)
- mines used as explosives

Tanks:

- Markava Tanks

White phosphorous.

54. In March 2009, Human Rights Watch (**HRW**) published a report entitled “Rain of Fire. Israel’s Unlawful Use of White Phosphorous in Gaza.”³⁷ The report details the confirmed uses of white phosphorous in Gaza during the conflict. HRW classifies the use of white phosphorous according to its proximity to the civilian population, citing cases where it was used “in densely populated areas”, at the “edges of populated areas” and “in open areas.”³⁸
55. HRW reported six cases where white phosphorous was allegedly used in both urban and outlying areas.
- (1) In Urban Areas:
- in the Tel al-Hawa Neighbourhood, Gaza City on 15 and 16 January 2009
 - at the Al-Quds Hospital, Tel al-Hawa Neighbourhood, Gaza City on 15 January 2009
 - at the UNRWA Headquarters Compound, Gaza City on 15 January 2009
 - at the Beit Lahiyeh UNRWA School on 17 January 2009
- (2) In Outlying Areas:
- Siyafa Village, Beit Lahiyeh on 10 January 2009³⁹
 - Khuza’a Village, on between 11 and 13 January 2009

³⁶ <http://www.maginternational.org/> MAG provided an oral briefing only; this information is yet to be confirmed.

³⁷ <http://www.hrw.org/sites/default/files/reports/iotp0309webwcover.pdf>

³⁸ <http://www.hrw.org/sites/default/files/reports/iotp0309webwcover.pdf>, pages 3-4.

³⁹ During this attack, members of the Abu Halima family were killed. The Committee interviewed Mr Abu Halima, see paras 236 – 238, and **Annexure 4** paras 17 – 19.

56. **HRW** concluded that the use of white phosphorous in “densely populated neighbourhoods, including downtown Gaza City, violated international humanitarian law (the laws of war), which requires taking all feasible precautions to avoid civilian harm and prohibits indiscriminate attacks.”⁴⁰
57. **B’Tselem** reported that on 29 March 2009, some 10 weeks after she was injured by a white phosphorous attack, Ghada Abu Halima died in an Egyptian hospital.⁴¹
58. The IDF has confirmed that white phosphorous was used in Gaza, but has asserted at all times that its use was legal. The **HRW** report *Rain of Fire* contains a section on the various Israeli statements in relation to the use of white phosphorous during operation *Cast Lead*. Initially, between 5 and 13 January 2009 the IDF, through its spokesperson and Chief of Staff, denied that white phosphorous was being used in Gaza during Operation *Cast Lead*. However, there were also statements on 13 January 2009 in which it was not denied that white phosphorous had been used. It was stated that the IDF uses weapons in accordance with international law. Ultimately, on 23 January 2009, a spokesperson from the Israeli Foreign Ministry confirmed that white phosphorous had been used.⁴²
59. Neither the Amnesty Report nor the MAG found evidence of the use of Dense Inert Metal Explosives (**DIME**), although there were some injuries described by doctors which may have been caused by DIME weapons.

Allegations made by Israeli Soldiers.

60. On 19 March 2009, *Haaretz* began reporting on the contents of the Oranim Academic College bulletin, published on 18 March 2009. The bulletin contained transcript of discussions with graduates from the College, both soldiers and officers, about their experiences during Operation *Cast Lead*, and *Haaretz* published “extensive excerpts” from the transcript (changing the names of the soldiers).⁴³
61. A squad commander was reported as detailing how towards the end of the operation:⁴⁴

... they started to talk to us about orders for opening fire. ... We were supposed to go in with an armored personnel carrier ... to burst through the lower door, to start shooting inside and then ... we were supposed to go up floor by floor, and any person we identified - we were supposed to shoot.

... anyone who remained in the sector and inside Gaza City was in effect condemned, a terrorist, because they hadn’t fled.
62. This same commander said that he had difficulty with the orders because “On the one hand they don't really have anywhere to flee to, but on the other hand they're telling us they hadn't fled so it's their fault ...” He decided to amend the orders so that when they

⁴⁰ Rain of Fire, <http://www.hrw.org/sites/default/files/reports/ipt0309webwcover.pdf>, accessed 9 April 2009, page 1.

⁴¹ http://www.btselem.org/English/Testimonies/20090104_Abu_Halima_home_set_on_fire_by_shelling.asp, accessed 15 April 2009.

⁴² Rain of Fire, <http://www.hrw.org/sites/default/files/reports/ipt0309webwcover.pdf>, accessed 9 April 2009, pages 57-59.

⁴³ “IDF in Gaza: Killing civilians, vandalism, and lax rules of engagement”, Amos Harel, *Haaretz* 19 March 2009. <http://www.haaretz.com/hasen/spages/1072040.html>, accessed 14 April 2009. and “Shooting and Crying” by Amos Harel, *Haaretz* 20 March 2009, <http://www.haaretz.com/hasen/spages/1072475.html>, accessed 14 April 2009.

⁴⁴ “Shooting and Crying” by Amos Harel, *Haaretz* 20 March 2009. <http://www.haaretz.com/hasen/spages/1072475.html>, accessed 14 April 2009.

entered a building the occupants were informed and given five minutes to leave, but after the five minutes any persons remaining would be legitimate targets. He relayed a conversation he had with one of his soldiers who had asked him why this was being done:⁴⁵

... We don't want to kill innocent civilians. ' He goes, 'Yeah? Anyone who's in there is a terrorist, that's a known fact. ' I said, 'Do you think the people there will really run away? No one will run away. ' He says, 'That's clear,' and then his buddies join in: 'We need to murder any person who's in there. Yeah, any person who's in Gaza is a terrorist,'

63. The same commander also reported a case of the shooting of civilians.⁴⁶

One of our officers, a company commander, saw someone coming on some road, a woman, an old woman. She was walking along pretty far away, but close enough so you could take out someone you saw there. If she were suspicious, not suspicious - I don't know. In the end, he sent people up to the roof, to take her out with their weapons ... That's what is so nice, supposedly, about Gaza: You see a person on a road, walking along a path. He doesn't have to be with a weapon, you don't have to identify him with anything and you can just shoot him. With us it was an old woman, on whom I didn't see any weapon. The order was to take the person out, that woman, the moment you see her.

64. Another soldier relayed a second incident of shooting.⁴⁷

I serve in an operations company in the Givati Brigade. ... A few days after we went in, there was an order to release the family. They had set up positions upstairs. There was a sharpshooters' position on the roof. The platoon commander let the family go and told them to go to the right. One mother and her two children didn't understand and went to the left, but they forgot to tell the sharpshooter on the roof they had let them go, and it was was [sic] okay and he should hold his fire and he ... he did what he was supposed to, like he was following his orders.

65. That same soldier also outlined the information that was provided by the IDF rabbinate during the operation: “ ... their message was very clear: We are the Jewish people, we came to this land by a miracle, God brought us back to this land and now we need to fight to expel the gentiles who are interfering with our conquest of this holy land. This was the main message, and the whole sense many soldiers had in this operation was of a religious war.”⁴⁸

66. One pilot reported the process that was sometimes used to warn the occupants of houses: “They would ... fire a missile from a helicopter into the corner of some house, just to shake up the house a bit so everyone inside would flee. These things worked. The families came out ...” and soldiers then entered houses that were “pretty empty.”⁴⁹

67. One soldier stated that rather than leaving houses in good order, in “most of the houses graffiti was left behind”. He went on to detail the orders in relation to residential properties that were occupied:⁵⁰

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

We got an order one day: All of the equipment, all of the furniture - just clean out the whole house. We threw everything, everything, out of the windows to make room. The entire contents of the house went flying out the windows.

68. *Haaretz* also reported the contents of a documentary from Israeli Channel 10, which purported to show a company commander giving his troops a security briefing prior to entering Gaza. *Haaretz* published the following statement by the commander:⁵¹

"We're going to war," he told his soldiers. "We're not doing routine security work or anything like that. I want aggressiveness - if there's someone suspicious on the upper floor of a house, we'll shell it. If we have suspicions about a house, we'll take it down." "There will be no hesitation," the commander continued. "If it's us or them, it'll be them. If someone approaches us unarmed, shoot in the air. If he keeps going, that man is dead. Nobody will deliberate - let the mistakes be over their lives, not ours."

69. On 2 April 2009, the IDF reported that the rules of engagement during the conflict "were to fire at armed terrorists, but to avoid causing harm to uninvolved civilians." And that the guidelines outlined for soldiers "demanded that civilians were given time to leave before forces fired at any building that contained terror operatives or weaponry." The IDF also published the experiences of "Lt. A" who described an occasion where he tried to evacuate women and children from a house, but said that "not all of them wanted to go." He outlined how he had shared his rations with Palestinians and denied permission for one of his soldiers to eat some strawberries from a strawberry field. He also outlined an occasion where they declined to return fire: "I remember a incident in which we were shot at, but we knew that there were a lot of civilians around, and so we left the area."⁵²

The IDF Investigation.

70. On 21 March 2009 an investigation into the allegations published in *Haaretz* was ordered.⁵³ On 30 March 2009 the IDF announced the conclusion of that investigation. IDF Chief of Staff Gabi Ashkenazi was quoted on 3 April 2009 as saying that "the IDF is the most moral army in the world". And "[The Army] is awaiting the results of the investigation, but my impression is that the IDF acted morally and ethically. If there were incidents like these, they were isolated."⁵⁴ The army barred those soldiers whose discussions were reported from speaking with the media.⁵⁵

71. *Haaretz* later reported that "In a press release issued [30 March 2009] the army said that the preliminary Military Police investigation into the testimonies revealed that they "were based on rumors and not first-hand experience."⁵⁶ Ashkenazi wrote to IDF

⁵¹ "Testimonies on IDF misconduct in Gaza keep rolling in", Amos Harel, *Haaretz*, 23 March 2009.

<http://www.haaretz.com/hasen/spages/1072811.html>, accessed 14 April 2009.

⁵² "IDF Commanders Discuss Soldiers' Behaviour in Operation Cast Lead", IDF, 2 April 2009.

http://dover.idf.il/IDF/English/News/the_Front/09/08/0201.htm, accessed 16 April 2009.

⁵³ <http://www.haaretz.com/hasen/spages/1072511.html>, accessed 14 April 2009.

⁵⁴ "I don't believe IDF harmed Gaa civilians in cold blood", *Haaretz* Service, 3 April 2009.

<http://www.haaretz.com/hasen/spages/1073208.html>, accessed 14 April 2009.

⁵⁵ IDF ends Gaza war crimes probe, says claims are 'rumors' By Anshel Pfeffer and Amos Harel, *Haaretz* Correspondents, *Haaretz* 30 March 2009. <http://www.haaretz.com/hasen/spages/1074981.html>, accessed 14 April 2009.

⁵⁶ IDF ends Gaza war crimes probe, says claims are 'rumors' By Anshel Pfeffer and Amos Harel, *Haaretz* Correspondents, *Haaretz* 30 March 2009. <http://www.haaretz.com/hasen/spages/1074981.html>, accessed 14 April 2009.

soldiers saying “It greatly disturbed me, and everyone, the ‘testimonies’ of soldiers that have been published about inappropriate acts and the apparently intentional harming of the civilian population. ... These testimonies have been fully examined and investigated by the Military Police and Military Advocate’s Office, and have been found, to my joy, to be completely unfounded and lacking in any evidential basis.”⁵⁷ Then Defence Minister Ehud Barak also stated that Israel has “the most moral army in the world.”⁵⁸

Factual Assessment.

72. The stories relayed by the Commander in paras 59-61 seem to indicate broad orders to kill all persons occupying a building that was to be raided, without further inquiry as to their status. Also apparent from his account was the view held by soldiers that all persons present in Gaza were ‘terrorists’ and therefore lawful targets.
73. The shooting incident described in para 62 may not in itself reveal any intentional shooting of civilians as there appears to have been a lack of or a miscommunication with the soldiers holding position on the roof. However what appears evident is that the sharpshooter had orders to shoot individuals in the street, seemingly without having to confirm their status.
74. The firing of a helicopter missile onto the corner of a house may be an example of ‘roof knocking’. However, it preceded the advance of ground troops, which is different to the roof knocking discussed above which preceded further aerial bombardment.
75. The Committee notes with surprise that the IDF investigation was conducted for a number of days only.

The Weapons used by the Palestinians.

76. The Amnesty Report details the use of a number of types of rockets and mortars, noting that the types of weapons used by Palestinians cannot accurately be directed at specific targets. A percentage of the weapons used by Palestinians also land within the Gaza Strip.
77. The Amnesty Report states that the weapons used by Palestinians include:
 - 122mm Grads or multiple-launched rockets, which have a range of about 35km
 - home-made short range 60, 90 or 120mm “Qassam” rockets
 - 60, 90 or 120mm “Quds” with a range of approximately 20km
78. MAG found evidence of:
 - 52-120mm home made mortars
 - 40mm launched grenades
 - home made ground rockets

⁵⁷ “IDF chief, Troops’ Gaza testimonies are completely unfounded”, *Haaretz*, 6 April 2009.

<http://www.haaretz.com/hasen/spages/1076556.html>, accessed 14 April 2009. See also: Israel Closes Investigation into Alleged War Crimes Committed in the Gaza Strip.

<http://www.pchrgaza.org/files/PressR/English/2008/45-2009.html>, accessed 15 April 2009.

⁵⁸ As reported in “Gaza Offensive: Israeli military says no war crimes committed.” *The Guardian* (UK), 31 March 2009. <http://www.guardian.co.uk/world/2009/mar/31/israeli-military-denies-war-crimes-gaza>, accessed 15 April 2009.

The Civilian Population.

79. The Israeli Ministry of Foreign Affairs (**IMFA**) reported that during the conflict there were four Israeli civilian casualties (all adults). These occurred between 27 and 29 December 2008. There were also four severely, eleven moderately and 167 lightly wounded. The **IMFA** also reported that a further 584 individuals suffered from shock and “anxiety syndrome”.⁵⁹ The Special Representative of the Secretary-General for Children and Armed Conflict, Ms Radhika Coomaraswamy (Sri Lanka), reported that in Southern Israel “3 Israelis were killed and 182 people injured, although specific information on children is currently unavailable.”⁶⁰ Special Representative Coomaraswamy also reported:⁶¹

The intensity of Operation Cast Lead has resulted in many psychosocial difficulties for children ... This is also true in southern Israel, where the days of conflict resulted in a high incidence of psycho-social complaints on the part of children there.

80. The **IMFA** also reported that nine soldiers were killed, 13 were critically or severely injured, and 135 soldiers lightly to moderately wounded. All of the casualties occurred between 4 and 19 January 2009.⁶² Three of the soldiers were killed in a ‘friendly fire’ incident on 5 January 2009. Hamas stated that during the conflict they killed 80 IDF soldiers.⁶³

81. The **IDF** reported they had confirmed 1,166 names of Palestinians who were killed during operation *Cast Lead*. “709 of them are identified as Hamas terror operatives, amongst them several from various other terror organizations. Furthermore, it has been found that 295 uninvolved Palestinians were killed during the operation, 89 of them under the age of 16, and 49 of them women. In addition, there are 162 names of men that have not yet been attributed to any organization.”⁶⁴

82. The Palestinian Ministry of Health (**PMOH**) reported that as at 12 February 2009, the total Palestinian deaths from the conflict were 1,455, including 404 children and 115 women. The **PMOH** reported that just over 5,300 people were injured, with 35% of those being children (1,815) and 15% being women (785). The **PMOH** includes police within its definition of the civilian casualties, and the **PMOH** does not declare the number of fighters or combatants.⁶⁵ Under-Secretary-General for Humanitarian Affairs, Mr John Holmes, reported to the Security Council on 27 January 2009 that the **PMOH** figures had “not been seriously challenged.”⁶⁶

83. In the Special Report on Gaza and southern Israel prepared by Special Representative Coomaraswamy, it was relayed that in Gaza “1,440 people were reported killed,

⁵⁹http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_strikes_back_against_Hamas_terror_infrastructure_Gaza_27-Dec-2008.htm.

⁶⁰ Para 1 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

⁶¹ Para 3 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

⁶² http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-+Aerial_strike_weapon_development_center+Gaza_28-Dec-2008.htm

⁶³ <http://www.alarabiya.net/articles/2009/01/19/64513.html>

⁶⁴ <http://dover.idf.il/IDF/English/News/today/09/03/2602.htm>, accessed 17 April 2009.

⁶⁵ Genocide carried out in Gaza Strip by Israeli military forces. 12 February 2009.

⁶⁶ <http://www.un.org/apps/news/story.asp?NewsID=29690&Cr=gaza&Cr1=holmes>, accessed 14 April 2009.

including at least 314 children, as verified by the inter-agency working group, and 5,380 injured, including 1,872 children.”⁶⁷ Special Representative Coomaraswamy also outlined a number of specific attacks which targeted children, including shootings, cases where children were stranded with their dead mothers without medical assistance or evacuation, and children who were killed by shelling. She also relayed a report by Handicap International which estimated that “up to 50% of people injured have sustained severe injuries that, without proper rehabilitation, could result in permanent disability.”⁶⁸

84. The Al Mezan Centre for Human Rights (**Al Mezan**) reported that during the conflict 1,342 people were killed, including: 318 children; 109 women; 127 elderly people; and 235 fighters. In relation to the ‘fighters’, Al Mezan indicated this number included 27 persons who were allegedly killed while unarmed and not involved in fighting activities. There were also 210 policemen and security apparatus members who were killed while performing their regular duties included in the civilian tally.⁶⁹ On 7 March 2009, **Al Mezan** published a list of the names of the 1,342 deceased.⁷⁰
85. The Palestinian Centre for Human Rights (**PCHR**) reported that during the conflict 1,417 people were killed, with 926 of those being civilians, including 255 civilian police force members who were not engaged in fighting. 313 of the dead were children and 116 women. The **PCHR** reported the number of combatants as 236.⁷¹ On 19 March 2009, **PCHR** published a list of the names of all the deceased.⁷²
86. The Palestinian National Early Recovery and Reconstruction Plan for Gaza reported that **167** police officers were killed during the conflict. They do not state whether this includes other (non officer) members of the police force.⁷³
87. Palestinian fighter deaths are reported by Palestinian organisations to total 235 or 236. Hamas stated on 19 January 2009 that they had lost a total of 48 fighters.⁷⁴ The Popular Front for the Liberation of Palestine has refused to make public the number of fighters killed, but acknowledged being active during the conflict.⁷⁵ The Democratic Front for the Liberation of Palestine stated that it lost 34 fighters and Islamic Jihad 38.⁷⁶
88. The figures from the various Palestinian organisations and authorities do not distinguish between the severely, moderately or lightly wounded, and there is no indication of the number who suffered from anxiety or shock. The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (**UNRWA**), Ms Karen Abu-Zayd, who was present in Gaza during the first eight days of the conflict,

⁶⁷ Para 1 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

⁶⁸ Paras 8-10 and 14-17, and Para 5 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

⁶⁹ http://www.mezan.ps/en/details.php?id=8552&ddname=gaza%20destruction&id_dept=14&p=center Figures as at **7 March 2009**, accessed 14 April 2009.

⁷⁰ http://www.mezan.org/en/details.php?id=8552&ddname=gaza%20destruction&id_dept=14&p=center, accessed 15 April 2009.

⁷¹ Press Release 36/2009. 12 March 2009. <http://www.pchrgaza.org/files/PressR/English/2008/36-2009.html>

⁷² <http://www.pchrgaza.org/files/PressR/English/2008/list.pdf>, accessed 15 April 2009.

⁷³ Report of the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, Sharm El-Sheikh, Arab Republic of Egypt, March 2, 2009, page 42.

<http://www.undp.ps/en/focusareas/crisis/paermar09.pdf>, accessed 15 April 2009.

⁷⁴ <http://www.alarabiya.net/articles/2009/01/19/64513.html>

⁷⁵ <http://www.pflp.ps/english/?q=pflp-interview-ma-news-agency-israeli-aggression-g>

⁷⁶ http://news.bbc.co.uk/2/hi/middle_east/7855070.stm

delivered the keynote speech at the United Nations Seminar on Assistance to the Palestinian People in March 2009 in which she noted that “every civilian resident in Gaza was affected by profound anxiety and fear, if not by injury or bereavement.”⁷⁷ In late January 2009, **OCHA** quoted a report by Near East Consulting, which concluded that 96 per cent of Gaza residents suffer from depression, with intense depression being experienced by 81 per cent of the residents of North Gaza and Rafah areas.⁷⁸ Physicians for Human Rights also reported that there was “severe psychological damage to many of the child witnesses interviewed.”⁷⁹

89. The Human Rights Council Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Mr Anand Grover (India), reported that the conflict, in particular, “has affected the psychosocial well-being of the population and has been particularly challenging for women, children and disabled persons. ... Signs of extreme psychosocial distress and related psychosocial conditions have also increased.”⁸⁰ Special Representative Coomaraswamy reported that:⁸¹

The intensity of Operation Cast Lead has resulted in many psychosocial difficulties for children; so much so that UNICEF has made psycho-social support one of its emergency priorities in Gaza.

90. In its report published in April 2009, Physicians for Human Rights (**PHR**) relayed reports that there were “several cases of pregnant women no longer feeling fetal[sic] movement or ... bleeding because of psychological trauma caused by the attacks. Four cases of intrauterine death occurred during the attacks, which could not be attributed to any other reason.”⁸² The Human Rights Council Special Rapporteur on Violence Against Women, its Causes and Consequences, Dr Yakin Ertürk (Turkey), reported that United Nations Population Fund findings for the period of the conflict “showed a 40% increase in cases of miscarriage ... a 50% increase in neonatal deaths and an important increase in the number of premature deliveries.”⁸³
91. The **PCHR** reported that during the conflict at least **32** Palestinians were killed by members of the Palestinian Security Services and other unidentified gunmen. There were also tens of people either shot and or beaten by unidentified assailants, some of whom claimed to be members of the Palestinian Security Services.⁸⁴ Human Rights Watch also reported on the actions of Hamas against the Palestinian population during

⁷⁷ Keynote Speech by UNRWA Commissioner-General, United Nations Seminar on Assistance to the Palestinian People. Cairo, 10 and 11 March 2009.

⁷⁸ http://www.ochaopt.org/gazacrisis/admin/output/files/ocha_opt_gaza_humanitarian_situation_report_2009_01_26_english.pdf, accessed 6 April 2009.

⁷⁹ Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights. http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Page 77.

⁸⁰ Human Rights Situation in Palestine and Other occupied Arab Territories, Para 59. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

⁸¹ Para 3 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

⁸² Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights. http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Page 66.

⁸³ Human Rights Situation in Palestine and Other occupied Arab Territories, Para 76. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

⁸⁴ PCHR Special Report, February 2009. Inter-Palestinian Human Rights Violations in the Gaza Strip. 3 February 2009.

the conflict. Human Rights Watch reported that during the conflict 14 people were the subject of extra-judicial executions, and that between 28 December 2008 and 31 January 2009 more than 49 were injured suffering bullet wounds to their legs and 73 others were physically abused.⁸⁵

Relevant definitions.

Children.

92. The **IMFA** defines children as those aged under 16,⁸⁶ whereas the Palestinian Government, NGOs and the United Nations define children as those aged under 18, in accordance with the Convention on the Rights of the Child.⁸⁷ The IDF, however, only conscripts men and women aged 18 and over.⁸⁸
93. **B'Tselem** reported that of the 315 children stated to have been killed, 235 of them were under the age of 16 (ie 75%), and further that of the other casualties at least 83 were men over the age of 50.⁸⁹

Combatants.

94. The **IMFA** includes civilian defence personnel (ie police) in their definition of non-civilians, listing police stations among the Hamas 'targets'. The **IDF** stated that:⁹⁰

... the IDF will continue to act against anyone who harbors terrorists in their residence, provides support to terrorists and their activities, and forces their children and spouses to act as human shields.
95. The **IMFA** indicated that it arrived at its figures of casualties, including the proportion of combatants versus civilians, "after the names and numbers were thoroughly cross-referenced and examined."⁹¹ The **IMFA** has not published a list of names of the deceased.
96. Police are included in the lists of the **PMOH**, the various Palestinian NGOs and the United Nations as civilians.
97. The **PCHR** labelled the IMFA's inclusion of police as combatants as illegal and a 'distortion' of the figures. The PCHR explained their definition of combatants as follows:⁹²

⁸⁵ "Under Cover of War. Hamas Political Violence in Gaza." Published April 2009.

<http://www.hrw.org/sites/default/files/reports/iopt0409webwcover.pdf>, accessed 20 April 2009.

⁸⁶ See: http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Vast_majority_Palestinians_killed_Operation_Cast_Lead_terror_operatives_26-Mar-2009.htm

⁸⁷ Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990, in accordance with article 49. <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

⁸⁸ http://www.jewishvirtuallibrary.org/jsource/Society_&_Culture/IDF.html, accessed 17 April 2009.

⁸⁹ http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf, accessed 14 April 2009, page 3.

⁹⁰ http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Aerial_strike_weapon_development_center+_Gaza_28-Dec-2008.htm, accessed 9 April 2009.

⁹¹ http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Vast_majority_Palestinians_killed_Operation_Cast_Lead_terror_operatives_26-Mar-2009.htm, accessed 9 April 2009.

⁹² <http://www.pchrgaza.org/files/PressR/English/2008/44-2009.html>, accessed on 9 April 2009.

Hamas is a multi-faceted organisation, exercising de facto governmental control of the Gaza Strip. As an organisation, it cannot be considered an armed group. Rather, a distinction must be made between Hamas' armed and political/civil components. The Izz ad-Din al-Qassam Brigades are the military wing of the Hamas organisation, they are an armed group, and are considered as combatants according to IHL. However, Hamas' political and civil wings are comprised of civilians, who are legally entitled to the protections associated with this status, provided they do not take an active part in hostilities. Civil police, and governmental officials cannot be considered combatants.

98. In its *Guidelines for Israel's investigation into Operation Cast Lead: 27 December 2008 – 18 January 2009*, **B'Tselem**, The Israeli Information Center for Human Rights in the Occupied Territories, argued the Israeli explanation in relation to Government buildings "cannot justify attacks on all government ministries or justify treating them as legitimate military objects." The explanation offered by a representative of the Judge Advocate General's office was:⁹³

When a terrorist organization controls the government, all government ministries are used to fulfill the objectives of the terrorist organization. Why do you assume that the Palestinian transportation ministry serves only to set bus routes? Maybe it serves other purposes? ... Hamas does not make the separation that is customary in an orderly-run country. The apparatuses and positions are completely intermixed there. There are commanders who command an official force and also a secret combat force. Commanders of official forces have declared that they are part of the "resistance." This connection between forces has created a situation in which separation is non-existent. Also, there was information that cannot be revealed.

Factual Assessment.

99. There was a far greater number of casualties on the Palestinian side of the conflict, regardless of the classification of police as civilians or otherwise and regardless of the categorisation of children as being below 16 or 18 years of age. Of the 1,342 reported deaths (the minimum), if police are included as combatants then 490 would be combatants (235 + 255 (the least number of Palestinian combatants and greatest number of police)), and if children were those aged under 16 then 235 of the casualties were children, leaving 852 civilian deaths, of which 235 were children under 16. Aside from the military capabilities of both sides, the Israeli population had the opportunity to flee the fighting, while Palestinians were unable to flee from Gaza. It should be stressed that the **IDF** took steps to ensure that it suffered the minimum number of casualties. It is not clear to the Committee how the **IDF** was able to ascertain and confirm the names of all the casualties in particular when international organisations required much more time to achieve this goal. The **OCHA** had still not published its final analysis of the number of casualties at the time of finalising the present report, a task OCHA has been working on since the ceasefire on 18 January 2009. The Committee also notes the **IDF** did not publish a list of the names of the deceased.

⁹³ http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf, accessed 14 April 2009. Page 12.

Internally Displaced Persons.

100. Amnesty International relayed Israeli reports that up to 40% of Ashkelon's 122,000 residents (48,800) left their homes during the conflict. They stayed in other areas of Israel. Sderot and other Israeli villages in the area were also similarly affected.⁹⁴
101. The Israeli Prime Minister, Ehud Olmert, stated that the civilian population affected by rocket fire is in the "hundreds of thousands".⁹⁵
102. The Representative of the Secretary-General on the human rights of Internally Displaced Persons, Mr Walter Kalin, reported that as at 14 January 2009 "the Under-Secretary-General for the Humanitarian Affairs and Emergency Relief coordinator estimated that up to 100,000 Palestinians could be displaced."⁹⁶ Special Representative Coomaraswamy reported that "up to 200,000 people, including 112,000 children, [were reported] displaced and movement for the majority of the population severely restricted."⁹⁷ Special Rapporteur Falk reported a "total of 51,000 people were internally displaced in makeshift shelters that provided minimal protection, while others fled to homes of friends and relatives that seemed slightly safer."⁹⁸
103. **UNRWA** reported to the Committee that, at the height of the conflict, there were at least 50,000 people sheltering in UNRWA schools, however it was noted that the United Nations sites were viewed as a last resort, people were only there because they had no other option.
104. The **PHR** reported that despite the leaflets that were dropped many people remained in their areas as they were "used to minor attacks and did not at all expect such a heavy attack. Furthermore they did not know where to go, also because the same leaflets were also dropped in other areas, where they possibly might have gone. In the beginning only 10% of residents left, at the end only 10% remained."⁹⁹
105. **Al Mezan** reported that as at 15 January 2009 at least 200,000 Palestinians were displaced. The United Nations reported that surveys conducted just days after the ceasefire indicated that up to 38% of the population of Gaza, ie over 500,000 people, had fled their home at some stage during the conflict.¹⁰⁰ The World Health Organisation (**WHO**) reported an estimated 100,000 were 'newly displaced'.¹⁰¹

⁹⁴ http://www.amnesty.org.au/images/uploads/news/Gaza-Fuelling_conflict_report.pdf

⁹⁵ http://www.mfa.gov.il/MFA/Government/Communiques/2009/Cabinet_communique_25-Jan-2009.htm

⁹⁶ Human Rights Situation in Palestine and Other occupied Arab Territories, Para 81.

<http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

⁹⁷ Para 1 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

⁹⁸ <http://daccessdds.un.org/doc/UNDOC/GEN/G09/122/19/PDF/G0912219.pdf?OpenElement>, accessed 16 April 2009. Page 7.

⁹⁹ Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights.

http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Page 72.

¹⁰⁰ UNDP, Attitudes and perceptions of the Gaza Strip residents in the aftermath of the Israeli military attacks, February 2009, p.16; Near East Consulting Group, Monthly monitor of Palestinian perceptions towards politics and economics, January 2009. "The results of both surveys are likely to be biased downward as they were conducted through telephone landlines, thus not capturing people who do not have telephones or who did not return to their houses." As reported in the Humanitarian Monitor, occupied Palestinian territory, Number 33, January 2009, page 3.

¹⁰¹ Gaza Strip: Initial Health Needs Assessment. Gaza, 16 February 2009. Prepared by the Health Cluster, World Health Organisation.

Factual Assessment:

106. Figures vary as to the number of Palestinians that were internally displaced during the conflict. However, it is clear that a very large percentage of the Palestinian population were compelled to leave their homes at some stage of the conflict. It must, again, be stressed that because of the closure of all crossings into Israel and Egypt, Palestinians were unable to seek safety in areas outside the conflict zone.

The Humanitarian Situation.

Humanitarian Aid.

107. In addition to weekly updates, the **OCHA** reports monthly on the humanitarian situation in the Occupied Palestinian Territories in its Humanitarian Monitors.
108. The Humanitarian Monitor from December 2008 reported the humanitarian situation as follows:¹⁰²

Overall for the month, until 26 December, the Israeli authorities, citing security risks, allowed a daily average of 30 truckloads to enter Gaza (compared to 475 truckloads before the Hamas takeover). Beginning the day before the Israeli military operation and lasting through the end of the month the daily average of truckloads more than doubled. The compounded effects of the low truckload imports and the December closure culminated on 18 December when UNRWA suspended its food assistance program to 750,000 residents of Gaza due to the depletion of its wheat grain stocks.

109. The Humanitarian Monitor from January 2009 reported the humanitarian situation as follows:¹⁰³

The humanitarian situation deteriorated rapidly from the onset of the hostilities: hundreds of thousands people in Gaza were displaced at some point during the conflict, due to damage or destruction of their homes or out of fear; no one in Gaza had daily running water during the three weeks of the operation; at the height of the fighting, most Gazans were without electricity due to damage to the network and lack of fuel to operate Gaza's power plant; despite the large influx of medical supplies into Gaza, the health system struggled to cope with the massive number of severe and complex injuries; livelihoods, already devastated by 18 months of blockade, were further eroded by the deaths and injury of breadwinners, the destruction of homes and workplaces and damage to the agriculture and fishing industries.

110. Specifically in relation to the arrival of food and non-food items, **OCHA** reported that:

Despite the hostilities taking place during the first 18 days of January, there was a significant increase in the number of truckloads allowed entry into Gaza, compared to the previous two months: a total of 3,053 truckloads entered Gaza, constituting a daily average of 122 truckloads. This represents a three and five fold increase respectively, compared to the parallel figures for December (35 truckloads) and November 2008 (23 truckloads). January imports included 273 truckloads, which entered Gaza from Egypt through the Rafah crossing, most

¹⁰² http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_12_1_15_english.pdf

¹⁰³ http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2009_01_15_english.pdf

carrying medical supplies. This is the first time since September 2005 that goods entered Gaza through Rafah crossing. Exports continue to be prohibited.

111. On 12 February 2009, however, a truckload of cut flowers (nearly 50,000 flowers) was permitted to leave Gaza. This was the first export allowed out of Gaza since 18 September 2008.¹⁰⁴
112. Israel controls the border crossings from Gaza into Israel and the coastal region of Gaza. The Rafah crossing between Gaza and Egypt is governed by the Agreement of 15 November 2005. The Agreed Principles for the Rafah Crossing state that “Use of the Rafah Crossing will be restricted to Palestinian ID Card holders and others by exception in agreed categories with prior notification to the [Government of Israel] and approval of senior [Palestinian Authority] leadership”.¹⁰⁵ Egypt opened its side of the crossing during the whole period of the conflict and several weeks after the announcement of ceasefires. This allowed for the evacuation of over 1,200 wounded and the entry of 8,000 tons of medical aid as well as 164 ambulance vehicles and 194 mobile clinics. 23,000 tons of food aid and other material were driven by Egyptian convoys to the strip through other entry points.

Medical Aid.

113. As described below, medical installations, including hospitals, medical centres and ambulances were impacted by the conflict.
114. The **IMFA** announced that on 18 January 2009, an emergency treatment centre was established at the Erez Crossing to treat “uninvolved civilians from Gaza.”¹⁰⁶

Daily Ceasefires.

115. On 7 January 2009, the **IMFA** announced it would hold a daily ceasefire to permit the civilian population to access aid.¹⁰⁷
116. **PHR** reported that on 16 January 2009, during the time of the daily ceasefire, the Shurrab family were attacked.¹⁰⁸

Water and Sewage.

117. **PHR** reported “One of the dams of the water treatment plant South of Gaza City was hit by a bomb from a F-16 aircraft during the attacks in December 2008 / January 2009, flooding an area which was partly occupied by Bedouin residences.”¹⁰⁹ This plant is reported to have treated the raw sewage from 400,000 people. As a result of the attack “The torrent of raw, untreated sewage flowing into residential areas, agricultural land and the sea was visible from outer space, according to satellite images released by the

¹⁰⁴ http://www.ochaopt.org/gazacrisis/admin/output/files/ocha_opt_gaza_humanitarian_situation_report_2009_02_16_english.pdf

¹⁰⁵ <http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Agreed+documents+on+movement+and+access+from+and+to+Gaza+15-Nov-2005.htm>, accessed 6 April 2009.

¹⁰⁶ http://www.mfa.gov.il/MFA/Government/Communiques/2009/Emergency_treatment_center_Erez_crossing_1_7-Jan-2009.htm, accessed 17 April 2009.

¹⁰⁷ http://news.bbc.co.uk/2/hi/middle_east/7815266.stm, accessed 14 April 2009.

¹⁰⁸ Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights.

http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Section 1, pages 9 – 20.

¹⁰⁹ Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights.

http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Page 65.

UN.” It was also reported that the “ICRC and CMWU have been coordinating efforts to repair the plant but have been hampered by delays in obtaining the necessary approval from the Israeli authorities to bring in pipes and spare parts.”¹¹⁰

118. **B’Tselem** reported that “At the peak of the hostilities, more than 800,000 people were without running water. Sewage from Gaza City flowed onto farmland; in Beit Hanun, sewage flooded the streets.”¹¹¹
119. The Special Representative of the Secretary-General for Children and Armed Conflict reported that “at least 2,200,000 litres of sewage have leaked out of Gaza’s waste water system due to damage from shelling, affecting at least 91,727 people, including 51,367 children.”¹¹²
120. The Palestinian National Early Recovery and Reconstruction Plan for Gaza reported widespread destruction to water, sanitation and hygiene facilities, including wells, sewage treatment plants, pipelines, private water tanks, solar water heaters and house based sanitation installations. “The information collected to date shows that 5,708 roof storage tanks were destroyed and 2,985 damaged; 2,204 solar heaters were destroyed and 1,762 damaged; and 500 household connections were destroyed.”¹¹³ And that “both the primary sewer line and one of the main anaerobic lagoons” of the main wastewater treatment plant were targeted, resulting in 250,000m³ wastewater being released which flowed over approximately 50,000m² of productive agricultural land which has now been taken out of use.¹¹⁴

The alleged use of human shields.

121. There are allegations that both Israel and Palestinians were using Palestinian civilians as human shields. Although on one analysis this information could form part of the ‘weapons used’ by the parties to the conflict, it has been included here as an element of the impact of the conflict on the civilian population because in the Committee’s view it has more of a personal than military impact.¹¹⁵
122. Israeli Prime Minister Ehud Olmert stated on 17 January 2009:¹¹⁶

Hamas’s methods are incomprehensible. It placed its military system in crowded residential neighborhoods, operated among a civilian population which served as a human shield and operated under the aegis of mosques, schools and hospitals, while making the Palestinian population a hostage to its terrorist activities, with the understanding that Israel – as a country with supreme values – would not act.

¹¹⁰ <http://www.globalissues.org/news/2009/03/17/908>, accessed 14 April 2009. Gazans Struggle for Clean Drinking Water By Mel Frykberg, 17 March 2009.

¹¹¹ http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf, accessed 14 April 2009, page 17.

¹¹² Para 32 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

¹¹³ Report of the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, Sharm El-Sheikh, Arab Republic of Egypt, March 2, 2009, page 29. <http://www.undp.ps/en/focusareas/crisis/paermar09.pdf>, accessed 15 April 2009.

¹¹⁴ Report of the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, Sharm El-Sheikh, Arab Republic of Egypt, March 2, 2009, page 43. <http://www.undp.ps/en/focusareas/crisis/paermar09.pdf>, accessed 15 April 2009.

¹¹⁵ In the offensive, or artillery sense.

¹¹⁶ <http://www.pmo.gov.il/PMOEng/Archive/Speeches/2009/01/>, accessed 14 April 2009.

123. The Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center published a report in January 2008 entitled: Hamas Exploitation of Civilians as Human Shields.¹¹⁷ Research for the report began in mid 2008, however it also contains allegations from the first week of operation *Cast Lead*. The majority of the allegations are from the period before operation *Cast Lead*; however the writers noted that the same activities were or were likely to be undertaken by Hamas and other organisations during the conflict.
124. The report details eight ways in which Hamas uses the civilian population in Gaza as human shields:

1. The order of battle of Hamas and the other terrorist organizations and their deployment in the Gaza Strip.

This section claims that the structures of Hamas include the police which are deployed throughout the Gaza strip.

2. Situating the military infrastructure in the midst of population concentrations.

This section alleges the stockpiling and development of weapons in civilian properties including in residential homes and areas, and universities, as well as the locating of tunnels – for movement of both personnel and materials – in residential areas and under homes.

Specifically, the report states:¹¹⁸

The police and security force bases are located in Gaza City and in other population concentrations throughout the Gaza Strip, and were targeted by the Israeli Air Force during the first week of Operation Cast Lead. They include buildings, caravans and containers. There are also operations rooms, weapons stores and facilities for detention and interrogation. There are security force positions at junctions and along streets which serve as checkpoints, preserve public order and protect senior Hamas and terrorist organization leaders.

During the first week of Operation Cast Lead, Hamas security force bases and operatives were moved to public institutions. For example, the Hamas police force operations room in the northern Gaza Strip was moved to the Kamal Adwan hospital, and operatives of Hamas's naval police were situated in a school in Khan Yunis.

3. Civilians as human shields in Hamas's defensive and offensive strategy.

This section details the basis for the strategy of deploying the majority of their forces in the urban or built up areas with a secondary force in the open areas with the aim of exhausting the IDF rather than preventing them from entering the Gaza strip.

4. Offensive strategy: Rocket and mortar shell fire from within populated areas.

¹¹⁷ http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hamas_e028.pdf, accessed 16 April 2009.

¹¹⁸ Paragraph 30. http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hamas_e028.pdf, accessed 16 April 2009.

There are many examples of the extensive use of civilians as human shields: attacking from inside residences or mosques, schools and other public facilities; shooting from or near groups of civilians and sometimes children and adolescents; concealing weapons in civilian dwellings; terrorists operatives wearing civilian clothing; exploiting civilians (including children) for auxiliary missions (logistical and intelligence) and using civilian ambulances for military operations.¹¹⁹

5. Defensive strategy (A): Using civilians as human shields to prevent attacks on terrorist operatives.

This section alleges that Hamas and other organisations actively encourage the participation of civilians by requesting their presence at houses which they suspect would be attacked by the IDF.

6. Defensive strategy (B): Fighting the IDF from within civilian residences and public institutions.

This section alleges that by operating from residential areas and mosques, Hamas compels the IDF to have to fight in those areas. It is further alleged that Hamas operatives dress in civilian clothes to blend in with the civilian population, and that ambulances are used to evacuate armed terrorists from battles.

7. Holding training, exercises and combat displays in the middle of residential neighbourhoods.

The Palestinian terrorist organizations' military training is held throughout the Gaza Strip. They exploited the six-month lull arrangement for additional, intensive training, including women. Some training is held in populated areas, where the terrorist organizations feel more secure than in open areas near the Israeli border. They also hold military displays in populated areas as a show of strength and in order to send a deterrent message to Israel.¹²⁰

8. Using women and children as human shields and exploiting them in combat against the IDF and for launching terrorist attacks.

This section alleges women and children (adolescents) participate in active combat, including suicide bombings.

125. The Intelligence and Terrorism Information Center published a further report on 4 February 2009 entitled:¹²¹

Evidence of the Use of the Civilian Population as Human Shields: Hamas operatives detained during Operation *Cast Lead* related that weapons were situated in schools, mosques and residential dwellings, that operatives shot from within residential neighborhoods, and that Hamas operatives stole the humanitarian aid for their own use.

126. The Intelligence and Terrorism Information Center reported information obtained from "dozens of terrorist operatives" who were detained during Operation *Cast Lead* and interrogated by the Israel Security Agency. As stated in the title of the report, the

¹¹⁹ Paragraph 43. http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hamas_e028.pdf, accessed 16 April 2009.

¹²⁰ Paragraph 72. http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hamas_e028.pdf, accessed 16 April 2009.

¹²¹ http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/html/hamas_e055.htm

detainees reported that various civilian buildings were used to store weapons and also as launching locations for rockets.

127. The Special Representative of the Secretary-General for Children and Armed Conflict reported “there have also been allegations of Hamas effectively using civilians as human shields. In addition there have been reports of Hamas firing from densely populated places and near protected areas. The working group is currently investigating these reports.”¹²²
128. The Special Representative of the Secretary-General for Children and Armed Conflict reported that on 15 January 2009 an 11 year old boy was made to walk in front of a group of IDF soldiers as they walked through the town of Tal Al Halwa. “Later while moving through the town the IDF met with resistance and were shot at, the boy remained in front of the group.”¹²³
129. In its report “Hiding Behind Civilians: April 2009”, **Al Mezan** reported the following case studies alleging that the IDF used Palestinians as human shields during the conflict.¹²⁴

(1) Case study Two: 10-year-old child used as human shield and physically abused

The report alleges that the child was detained together with his family members and others in a house. He was taken outside alone and ordered to open the bags of the other people he was being held with. He is reported to have said to his mother: “Mama, the soldier told me to open the bag, so I opened it. Then the soldier told me to open a second bag but I didn't know how to open it, so he grabbed me and slapped me, and pulled me away from the bag and shot it. Mama, I urinated on myself because I was so scared.”¹²⁵

(2) Case Study Four: IOF force civilian man to give instructions to Palestinian fighters

The report alleges that a man was forced to enter a house where Palestinian fighters were present to check and see if they were still alive. On the first occasion they were still alive. The house was bombed and he was again sent in to see if they were alive. The house was bombed a third time and he was sent in a third time. Ultimately the fighters were still alive, but buried under rubble. The man was released.

(3) Case Study Five: IOF kill one civilian and maim another while using them as human shields

The report alleges that two brothers who had been sheltering on the upper floor of the building with their family members were taken apart from the rest of their family members. “One of the soldiers said to me: “Come with us,” and three of the soldiers ... moved. He told me to show him the ground floor and signaled for

¹²² Para 11 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

¹²³ Para 10 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

¹²⁴ Available at: <http://www.mezan.ps/upload/8632.pdf>, accessed 16 April 2009.

¹²⁵ The Special Representative on Children in Armed Conflict also reported this incident at Para 10 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

me to walk in front of them. They were pointing their weapons towards me. I felt the barrel of a rifle touching my back. I showed them all the rooms on the ground floor; then they took me to the apartment, and made me go in.”

The other brother was taken separately and was severely injured. He later died.

(4) Case Study Six: IOF beats and use young man as a human shield

The report alleges that on 12 January 2009, the young man went to the Zeitoun area to watch the fighting. He was detained by the IDF, beaten and held overnight. The next day he was taken to another house and sent up the stairs. He was told to stand in front of the window and then sit and then stand again. He was then tied up again and secured to a column in the house. Following this he was arrested and taken to Israel where he was held for two months.

(5) Case Study Seven: IOF uses elderly man as a human shield

The report alleges that this man was detained having stayed in his house. He was blindfolded and forced to walk in front of the IDF entering houses and along a street. His statement reads (in part):

I walked for a long distance, for around two hours during which they were stopping and trying to find people inside the houses. They were calling: “Who is in the house?” Then they would open fire; then they would make me go into the house while they were gathering behind me, then they would go out; and so on. I went into around five houses in the same way. We didn’t find anyone in any of the houses. They left the houses after a short while.

My eyes were still blindfolded. I could see through the blindfold a little. They kept walking with me in front of them on a long road, then on a second long road, then on a third. The route was very difficult because of the damage caused by the tanks and other vehicles. I could only hear the words: “Ta'tzor...Tamsheakh.” Which means: “Stop.... Walk,” and so on.

Factual Assessment

130. The Committee is of the view that both the IDF and Hamas may have used civilians as human shields: the IDF in a direct way and Hamas at least in an indirect way by firing from within civilian areas. The Committee notes, however, that due to the size of Gaza and the density of the population the majority of the area is civilian. Without access to the witnesses who allege these actions and the information and available to the IDF it is difficult to determine the accuracy of the allegations.

Damage to buildings and infrastructure.

131. During the conflict there was damage to a large range and number of civilian and public properties, including hospitals and medical centres, schools and universities, mosques, United Nations premises, government buildings, factories, cultural buildings and private homes.
132. **B’Tselem** reported “[i]n statements released during the operation, the IDF Spokesperson claimed regarding most of these buildings that they had been attacked

because Hamas was using them to store weapons, manufacture weapons, or plan attacks on Israeli soldiers or civilians.”¹²⁶

Residential Areas.

133. A United Nations Development Programme (**UNDP**) survey found 3,354 houses were “completely destroyed” during the conflict, with more than 11,100 being partially damaged.¹²⁷
134. The **PCHR** reported that at least 2,400 houses were destroyed, with 490 of those by air strikes.¹²⁸ In relation to other civilian property, the **PCHR** reported the following buildings were destroyed:
- 21 private projects including cafeterias, wedding halls, tourist resorts and hotels.
 - The offices of ten charitable societies.
 - 121 industrial and commercial workshops were completely destroyed, and 200 others were damaged.
 - Six factories (five concrete factories and one juice factory).
 - Five media institutions.
 - Thousands of donums of agricultural land.¹²⁹
135. **B’Tselem** reported that “[t]ens of thousands of persons were left homeless” and that according to the United Nations Institute for Training and Research more than 1,200 buildings were destroyed.¹³⁰
136. The Human Rights Council Special Rapporteur on Adequate Housing, Ms Raquel Rolnik (Brazil), quoting numerous cited sources, reported:¹³¹
- Initial estimates indicate over 4,240 residences were destroyed and 44,306 were damaged, most of them rendered inhabitable without considerable rehabilitation. An estimated 2.6 percent of homes in Gaza were completely destroyed, an additional 20 percent sustained serious damages, reportedly forcibly evicting an estimated 80 to 90,000 people who have been rendered homeless, many forced to live in open space.
137. The Special Representative of the Secretary-General for Children and Armed Conflict reported at least 4,100 residential structures were destroyed and another 17,000 were severely damaged.¹³²

Hospitals, Health Care Centres and Ambulances.

138. The **WHO** reported that during the conflict over half (15 of 27) of the hospitals in Gaza were damaged. Of the fifteen hospitals damaged, nine were PMOH facilities. The Al-Wafa Rehabilitation Hospital managed by an NGO, and the Fatah General Hospital

¹²⁶ http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf, accessed 14 April 2009, page 4.

¹²⁷ Humanitarian Monitor, occupied Palestinian territory, Number 33, January 2009, page 7.

¹²⁸ IOF Offensive on the Gaza Strip Makes it Like Earthquake Zone and Claims Civilian and Property. PCHR. 22 January 2009. Reference: 19/2009.

¹²⁹ Each donum is equal to 1,000 metres squared.

¹³⁰ http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf, accessed 14 April 2009, page 1.

¹³¹ Human Rights Situation in Palestine and Other occupied Arab Territories, Para 38.

<http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009. .

¹³² Para 36 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

were also damaged. The Al-Quds Hospital, managed by the Palestinian Red Crescent Society was damaged severely to the extent that all of its patients were evacuated to another hospital (the Al-Shifa Hospital). At least 43 primary health care clinics were also damaged or destroyed by either direct or indirect shelling.¹³³ The **PCHR** reported that two health institutions were completely destroyed.¹³⁴

139. The **IMFA** reported the preliminary investigations in relation to the attack on the Al-Quds Hospital indicated the **IDF** was fired on from “inside or adjacent to” the hospital, and that the **IDF** was responding.¹³⁵
140. The **WHO** also reported that of the 148 ambulances in Gaza, at least 29 (just under 20%) were damaged or destroyed. Two ambulance stations were also destroyed, however replacements were provided.¹³⁶ **PHR** reported that 16 Palestinian Red Crescent Society ambulances were destroyed and 13 Ministry of Health ambulances were damaged.¹³⁷
141. The **PMOH** reported 16 ‘health staff’ were killed and 28 were injured. Fifteen ambulances were destroyed and 28 health facilities (hospitals and health centres) were targeted.¹³⁸ **PHR** reported that the 16 health staff casualties occurred when those staff were working or travelling home from work.¹³⁹
142. Special Rapporteur Grover, on the right of everyone to the enjoyment of the highest sustainable standard of physical and mental health, reported that:¹⁴⁰

Hospitals were running on back-up generators, and medical personnel worked under tremendous strain, as many of them assumed consecutive 12 to 24 hours shifts to attend medical emergencies. The number of hospital beds has been insufficient to attend to the mounting number of injured civilians, causing many health centers to have to send gravely ill and wounded people home before completing the necessary treatment.

143. The Special Representative of the Secretary-General for Children and Armed Conflict reported:¹⁴¹

damage was reported in 14 of the 27 hospitals in Gaza and at least 38 clinics were damaged by IDF fire. ... eight UNRWA health centres sustained light damage. Of the 148 ambulances in Gaza, at least 29 have been damaged or destroyed. Two ambulance stations (Gaza and Jabalia) were also destroyed.

¹³³ Gaza Strip: Initial Health Needs Assessment. Gaza, 16 February 2009. Prepared by the Health Cluster, World Health Organisation.

¹³⁴ IOF Offensive on the Gaza Strip Makes it Like Earthquake Zone and Claims Civilian and Property. PCHR. 22 January 2009. Reference: 19/2009.

¹³⁵ http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_Spokesman_Israeli_fire_incidents_Gaza_17-Jan-2009.htm

¹³⁶ Gaza Strip: Initial Health Needs Assessment. Gaza, 16 February 2009. Prepared by the Health Cluster, World Health Organisation.

¹³⁷ Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights.

http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Page 9.

¹³⁸ Genocide carried out in Gaza Strip by Israeli military forces. 12 February 2009.

¹³⁹ Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights.

http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Page 67.

¹⁴⁰ Human Rights Situation in Palestine and Other occupied Arab Territories, Para 56.

<http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

¹⁴¹ Para 25 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

144. In relation to the situation of medical attention, on both 8 and 13 January 2009, the ICRC stated in press releases they were not permitted access to a number of injured and dead for a period of four days and demanded the Israeli military to grant access to both the ICRC and Palestinian Red Crescent Society.¹⁴²

145. Two Norwegian doctors, Mads Gilbert and Erik Fosse, who made their way into Gaza on 31 December 2009 at the beginning of the conflict, reported an incident on 8 January 2009 during which a coordinated ICRC led medical convoy was refused passage to Rafah, and during which shots were fired in front of the leading ICRC vehicle. They stated:¹⁴³

We accompanied one patient each together with a Palestinian nurse. Both patients had undergone lifesaving surgery at Al-Shifa hospital and were now intubated intensive care-unit cases. ... They were marginally stable, and the remaining 14 [patients] also had serious war injuries needing hospital treatment abroad.

The convoy was led by a large white ICRC truck clearly marked with ICRC insignia[sic] and a white ICRC car carrying two ICRC flags. All 16 ambulances were uniformed and ran their flashlights. When approaching Netzarim south of Gaza City on our way to Rafah, the convoy halted for a moment, when machine-gun fire erupted across the road just in front of the ICRC truck. Moments later, a new round was shot, very clearly telling us not to proceed. Each vehicle in the convoy turned on the narrow road before rushing back to Al-Shifa only to reoccupy 16 badly needed beds.

146. The Norwegian doctors described their core experience in Gaza as being of “a shattered, attacked, and drained health-care system trying to help an overwhelming amount of casualties”, during which health workers were also the subject of attack.¹⁴⁴

147. In relation to requests for coordination of medical vehicles, the **PHR** reported:¹⁴⁵

In total 160 coordination requests were received for ambulances. ICRC has documented all these cases and is at present analysing how many authorizations were given and how many refused and under which circumstances this happened. These figures, however, will not be published, only discussed with the Israeli authorities. 1160 people were evacuated, not all of them injured. In Al Zeitoun 103 people were evacuated by four ambulances with one ICRC vehicle as escort. 16 ambulances of PRCS and 13 of the Ministry of Health were damaged.

148. **PHR** also detailed eight case studies where there was a denial of evacuation and five case studies of attacks on medical emergency personnel.¹⁴⁶ In relation to the denial of evacuation, the **PHR** reported the following cases:

¹⁴² <http://www.icrc.org/Web/eng/siteeng0.nsf/html/palestine-news-080109> (News Release 09/04) and <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/palestine-2-news-130109?opendocument>, (News Release 09/10).

¹⁴³ <http://www.bricup.org.uk/documents/Gaza/Inside-Gazas-Al-Shifa-hosp.pdf>, accessed 16 April 2009. Page 2 (of 3), marked as page 201.

¹⁴⁴ <http://www.bricup.org.uk/documents/Gaza/Inside-Gazas-Al-Shifa-hosp.pdf>, accessed 16 April 2009. Page 2 (of 3), marked as page 201.

¹⁴⁵ Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights. http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Page 9.

- (1) **The Shurrab Family:** members of the family were shot at on 16 January 2009 during the daily ceasefire. They waited 23 hours for medical attention, during which time one man who survived the initial attack died.
- (2) **The Samouni Family:** 29 members of the extended family died during bombardments overnight on 3 January 2009. They waited between 3 and 4 days for medical evacuation.¹⁴⁷
- (3) **The Family of Dr Al-Addin Abu AlAish:** four of Dr AlAish's daughters were killed by aerial bombing. The ambulances could not get closer than 1km from the location of the attack.
- (4) **The Abed Rabbo Family:**¹⁴⁸ members of the family were shot at close range and three young girls were killed. No ambulances were allowed to enter the area and the surviving members of the family had to walk to an ambulance. On the way to an ambulance some friends offered assistance, and they were shot; one of them was killed.
- (5) **Helicopter shooting prevents ambulance evacuation:** on 12 January 2009 a group of five was targeted by an Apache helicopter. Whenever the ambulance approached the injured it was fired upon.
- (6) **Helicopter shooting prevents ambulance evacuation:** on 7 January 2009 a house was subject to aerial bombardment from drones and Apaches. Ambulances could not reach the area until four hours later, as they were being fired upon when they tried to approach the area.
- (7) **Iyad and Doa'Al Banna:** on 12 (or 14) January 2009, a house was targeted killing a number of members of the same family. There were two rockets which landed on the house and a third landed once the medical team had arrived.
- (8) **The Abu Halima Family:**¹⁴⁹ on 4 January 2009 the family home was shelled with white phosphorous. The survivors of the attack were forced to walk to an ambulance.

149. In relation to attacks on medical emergency personnel, the **PHR** reported the following case studies:¹⁵⁰

- (1) **Denial of evacuation: PCRS Ambulances, Rafah 15 Jan 09:** on 15 January 2009 two brothers were hit as they drove their motorcycle towards Gaza. The ambulance was called. Before the ambulance arrived some 5 hours later, another car was shot at. One of the brothers and the two occupants of the car survived the initial attacks but had died before the ambulance arrived.

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¹⁴⁶ Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights.

http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Section 1, pages 9 – 20.

¹⁴⁷ The Committee also interviewed members of the Samouni Family. See Paras 232 – 233 and **Annexure 4**, Paras 9 – 12, below.

¹⁴⁸ The Committee also interviewed members of the Abed Rabbo Family. See Paras 228 – 229 and **Annexure 4**, Paras 1 – 4, below.

¹⁴⁹ The Committee also interviewed members of the Abu Halima Family. See Paras 236 – 238 and **Annexure 4**, Paras 17 – 19, below.

¹⁵⁰ Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights.

http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Section 1,2, pages 17-20.

- (2) **Abu Al-Kheir mosque evacuation: shooting prevents evacuation and injures driver:** on 7 January 2009 an ambulance with a driver and a medic was en route to the AlKheir mosque. When the ambulance arrived at the site it was fired upon and the driver was shot in the leg. The Ambulance returned to the hospital to treat the injured driver and the evacuation did not take place at that time.
- (3) **Al Atatra 30 Dec 2008: Shooting prevents evacuation:**¹⁵¹ on 30 December 2008 two ambulances were dispatched to an area that had been hit. When they arrived at the area the ambulances were shot at by the IDF and so they left the area.
150. **PHR** also reported three cases of individuals who were forced to walk to ambulances or medical care as well as situations where the medical care was itself coming under fire.¹⁵²
151. **OCHA** also reported on the bisection of the Gaza strip, effectively isolating the population from access to medical care. On 6 January 2009 it published the following map, showing the dividing line:¹⁵³

¹⁵¹ The Committee also visited the Alatatra area.

¹⁵² Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights. http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Case Study 3, pages 12 – 13, Case Study 4, pages 13 – 14 and Case Study 8, pages 16 – 17.

¹⁵³ http://www.ochaopt.org/gazacrisis/admin/output/files/ocha_opt_gaza_crisis_bisection_map_2009_01_06.pdf, accessed 15 April 2009.



Figure 3: The Bisection of Gaza Strip.

Education Facilities.

152. A number of educational facilities appear to have been specifically targeted, as described below, including the American School,¹⁵⁴ the Al-Quds University, the Islamic University, the Al-Aqsa Agricultural college and the UNRWA school in Beit Lahiyeh. The Special Representative of the Secretary-General for Children and Armed Conflict reported “Seven Ministry of Education schools were destroyed and 157 schools were damaged by air strikes and related bombardment in Gaza, in addition damage to 36 UNRWA schools.”¹⁵⁵ The Palestinian National Early Recovery and Reconstruction Plan for Gaza reported:¹⁵⁶

Of the **407** public and private schools in Gaza prior to the military incursion, a total of **180** were affected. Eight public and two private schools were destroyed, and a further **156** public and **12** private schools were damaged. Five kindergartens were destroyed and 60 were partially damaged, while seven universities and colleges were also affected, with six buildings totally destroyed and 16 partially damaged.

153. The **PCHR** reported that 29 educational institutions were either completely or partially destroyed.¹⁵⁷ News reports relaying information from the Communications Officer of **Al Mezan** reported that “14 of the 15 higher education institutions in the Strip (most are in and around Gaza City) were damaged by Israeli forces. Six came under direct attack. Three colleges - Al-Da’wa College for Humanities in Rafah, Gaza College for Security Sciences in Gaza City, and the Agricultural College in Beit Hanoun (part of Al-Azhar University) - were destroyed”.¹⁵⁸
154. On 27 December 2008, the first day of Operation Cast Lead, shells also landed at the entrance to the UNRWA vocational training facility, killing eight students and injuring 20 others.¹⁵⁹
155. The United Nations reported that on 6 January 2009 several mortar shells landed outside the UNRWA Al-Fakharra school in Jabalya, which was serving as an emergency shelter. There were reportedly more than 1,300 people sheltering inside. UNRWA reported more than 40 people were killed while staying just outside the shelter.¹⁶⁰ The Special Representative of the Secretary-General for Children and Armed Conflict reported there were at least 37 fatalities at the Prep C Boys School, including 14 children, and 55 injured, 15 of them critically.¹⁶¹

¹⁵⁴ See: Was the Gaza school bombed by IAF a 'legitimate target?', Amira Hass, *Haaretz* 26 April 2009.

Available at: <http://www.haaretz.com/hasen/spages/1081048.html>, accessed 26 April 2009.

¹⁵⁵ Para 22 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

¹⁵⁶ Report of the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, Sharm El-Sheikh, Arab Republic of Egypt, March 2, 2009, page 23.

<http://www.undp.ps/en/focusareas/crisis/paermar09.pdf>, accessed 15 April 2009.

¹⁵⁷ IOF Offensive on the Gaza Strip Makes it Like Earthquake Zone and Claims Civilian and Property. PCHR. 22 January 2009. Reference: 19/2009.

¹⁵⁸ <http://www.irinnews.org/Report.aspx?ReportId=83655>, accessed 16 April 2009.

¹⁵⁹ <http://www.wsws.org/articles/2008/dec2008/bomb-d30.shtml>, accessed 10 April 2009.

¹⁶⁰ Humanitarian Monitor, occupied Palestinian territory, Number 33, January 2009, page 2.

¹⁶¹ Para 23 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

156. In relation to the attack on the Al-Fakharra school the **IMFA** stated:¹⁶²

Hamas terrorists fired mortar bombs from the area of the school towards Israeli forces, who returned fire towards the source of the shooting. The Israeli return fire landed outside the school. Intelligence indicates that among those killed were Immad Abu Iskar and Hassan Abu Iskar, two known Hamas mortar crewmen.

The **IMFA** also asserted Hamas operatives were using those sheltering in the school as human shields, by firing from around their location.

157. On 17 January 2009, the last day of the conflict, the UNRWA school in Beit Lahiyeh was the subject of aerial bombardment, and according to the HRW report, it was hit with white phosphorous. **HRW** reported statements made by an attendant at the school, who asserted “No shooting was coming from the school.” HRW also reported that to its knowledge “the IDF did not conduct ground operations in the vicinity of the school”.¹⁶³

Religious Buildings.

158. The **PCHR** reported 30 mosques were completely destroyed and 15 were partially destroyed during the conflict.¹⁶⁴ The Palestinian National Early Recovery and Reconstruction Plan for Gaza reported “14 mosques were totally destroyed. Thirty-eight other mosques were damaged in the Israeli attack, as were two churches and a cemetery.”¹⁶⁵

159. The Special Representative of the Secretary-General for Children and Armed Conflict reported that on 29 December 2008 “an IDF missile struck Aimad Aqel Mosque in the centre of the densely crowded Jabalia camp, damaging the surrounding houses. A family house was hit, and five sisters aged 4 - 17 years were killed in their sleep when their bedroom was completely destroyed. Four children, aged 2 – 16 years, were injured in the same attack.”¹⁶⁶

160. The United Nations reported that on 3 January 2009, an IDF aircraft fired a rocket hitting the Al Maqadmah mosque while many people were praying. Fifteen people were killed as a result and 30 were injured. There were no warnings prior to the attack and the IDF did not provide any reason for the attack.¹⁶⁷

161. The Palestinian National Authority (**PNA**) Ministry of Endowments and Religious Affairs reported that 45 mosques were completely destroyed during the conflict and another 44 were partially destroyed to the extent that they cannot be used for prayer. A further 52 mosques were slightly damaged. The Ministry also reported that five

¹⁶² http://www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/Ttragedy_school_Jebaliya_6-Jan-2009.htm, accessed 6 April 2009.

¹⁶³ Rain of Fire, <http://www.hrw.org/sites/default/files/reports/ipt0309webwcover.pdf>, accessed 9 April 2009. Pages 45-48.

¹⁶⁴ IOF Offensive on the Gaza Strip Makes it Like Earthquake Zone and Claims Civilian and Property. PCHR. 22 January 2009. Reference: 19/2009.

¹⁶⁵ Report of the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, Sharm El-Sheikh, Arab Republic of Egypt, March 2, 2009, page 27. <http://www.undp.ps/en/focusareas/crisis/paermar09.pdf>, accessed 15 April 2009.

¹⁶⁶ Para 12 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

¹⁶⁷ Humanitarian Monitor, occupied Palestinian territory, Number 33, January 2009, page 2.

cemeteries were also bombed, which resulted in bodies being unearthed and thrown onto the roofs of neighbouring houses in some cases.¹⁶⁸

162. The Report of the Ministry of Endowments and Religious Affairs also detailed the damage to Government buildings of the Ministry.
163. The IMFA reported that during the conflict the IDF targeted a number of mosques (13) and alleged that they found three others which were used as weapons stores and that firing from the area near a mosque was the subject of bombing.¹⁶⁹

United Nations Premises.

164. United Nations facilities were also targeted during the conflict. Five UNRWA staff and three UNRWA contractors were killed while on duty. Another eleven UNRWA staff and four contractors were injured. In all, 53 United Nations buildings were damaged, 28 of those during the first three days of the conflict.¹⁷⁰
165. On 5 January 2009, the UNRWA Asma Elementary School in Beit Lahiyeh was directly hit. There were over 400 people sheltering in the school having fled their homes in the Beit Lahiyeh region. Three men (all from the same family) were killed.¹⁷¹
166. On 14 January 2009, the main UNRWA store house was attacked with a number of shells, some of which were white phosphorous. Three people were injured and tons of emergency food and medicines were destroyed.¹⁷²
167. At the time of writing, the United Nations inquiry¹⁷³ into the attacks on United Nations premises had not published its report.
168. The IMFA daily update on the conflict makes no mention of the attack on the UNRWA storehouse as such.

Government buildings.

169. The PCHR reported the following loss of public buildings during the conflict:¹⁷⁴
 - 28 facilities, including a number of ministries, municipalities, governorates, fishing harbours and the building of the Palestinian Legislative Council.
 - 60 police stations.
170. The Palestinian National Early Recovery and Reconstruction Plan for Gaza states:¹⁷⁵

During the bombardment the Palestinian Legislative Council was destroyed, seven government institutions were either completely or partially leveled (including the Government Palace, the Archives building, the General Personnel Council, and the

¹⁶⁸ mosques destroyed by the Israeli aggression on Gaza during the period from 27/12/2008 to 18/1/2009. 2009-1430.

¹⁶⁹ http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Aerial_strike_weapon_development_center+_Gaza_28-Dec-2008.htm, accessed 15 April 2009.

¹⁷⁰ Humanitarian Monitor, occupied Palestinian territory, Number 33, January 2009, page 4.

¹⁷¹ http://www.un.org/unrwa/news/releases/pr-2009/jer_6jan09.html

¹⁷² <http://domino.un.org/unispal.nsf/3822b5e39951876a85256b6e0058a478/b974aca8e8fe201d85257540004ffedc!OpenDocument>

¹⁷³ <http://www.un.org/News/Press/docs/2009/sgsm12099.doc.htm>, accessed 15 April 2009.

¹⁷⁴ IOF Offensive on the Gaza Strip Makes it Like Earthquake Zone and Claims Civilian and Property. PCHR. 22 January 2009. Reference: 19/2009.

¹⁷⁵ Report of the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, Sharm El-Sheikh, Arab Republic of Egypt, March 2, 2009, page 41. <http://www.undp.ps/en/focusareas/crisis/paeremar09.pdf>, accessed 15 April 2009.

Presidential Compound), and the Ministries of Interior, Justice, and Culture were either partially or entirely destroyed, along with their associated compounds.

171. **B'Tselem** reported that in an interview given by representatives of the military Judge Advocate General's Office, the following explanation was given for the targeting of government buildings:¹⁷⁶

When a terrorist organization controls the government, all government ministries are used to fulfil the objectives of the terrorist organization. Why do you assume that the Palestinian transportation ministry serves only to set bus routes? Maybe it serves other purposes? ... Hamas does not make the separation that is customary in an orderly-run country. The apparatuses and positions are completely intermixed there. There are commanders who command an official force and also a secret combat force. Commanders of official forces have declared that they are part of the "resistance." This connection between forces has created a situation in which separation is non-existent. Also, there was information that cannot be revealed.

Commercial Buildings.

172. The **UNDP** together with the Palestinian Private Sector Coordination Counsel reported that around 700 private sector establishments were damaged during the conflict. They estimate the value of direct losses to be approximately US\$140 million. This does not include agricultural losses.¹⁷⁷
173. The Palestinian Federation of Industries reported that 215 factories and workshops were destroyed or seriously damaged. Over half the cement factories in Gaza could no longer operate and one third of the metal workshops were destroyed. Food manufacturing factories also came under fire, including the largest flour mill in Gaza and two soft drink bottling plants: the Pepsi-Cola and the local Mecca Cola.¹⁷⁸ And the only BMW spare parts store in Gaza was destroyed.¹⁷⁹

Agricultural areas.

174. The Special Rapporteur on the Right to Food, Mr Olivier De Schutter (Belgium), reported:¹⁸⁰

An estimated 80 percent of agricultural land and crops has been damaged during recent hostilities, as evidenced by 395 impact craters resulting from shelling. Arable land has been contaminated by spills of sewage and toxic munitions.

175. The Palestinian National Early Recovery and Reconstruction Plan for Gaza reported the agricultural sector was damaged extensively during the conflict, resulting in widespread

¹⁷⁶ http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf, accessed 14 April 2009, page 12.

¹⁷⁷ <http://www.met.gov.ps/MneModules/epapers/PostWarStatusNeed.pdf>

¹⁷⁸ <http://abcnews.go.com/International/wireStory?id=6771944> "Gaza's Economy in Tatters, Can It Be Rebuilt?" 30 January 2009.

¹⁷⁹ "The only BMW shop in Gaza." 29 March 2009 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://www.pchrgaza.org/files/campaigns/english/aftermath/6.html>, accessed 14 April 2009.

¹⁸⁰ Human Rights Situation in Palestine and Other occupied Arab Territories, Para 46. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

destruction. A preliminary damage assessment estimated the direct losses at over \$180million US.¹⁸¹

176. **PHR** reported that following the bombardment of an agricultural area, cows which had eaten grass from the area shortly after the attack had died.¹⁸²

The Tunnels.

177. The **IMFA** stated that one of the purposes of the conflict was to destroy the tunnels which it alleged were being used smuggle weapons into Gaza. In its daily reporting about operation *Cast Lead*, the **IDF** reported a number of attacks on tunnels all over Gaza, stating it targeted more than 400 tunnels, some of them underneath houses.¹⁸³

International Media.

178. A ban on was imposed international media entering Gaza from 4 November 2008 until after the conclusion of operation *Cast Lead*.¹⁸⁴ Consequently there is no international footage and few international press reports of the conflict sourced from within Gaza.
179. This was reported to be the first time that there had been a ban on international media entering the Gaza Strip.¹⁸⁵

The situation post 18 January 2009.

180. The situation in Gaza continues to be difficult. In their combined report to the Human Rights Council, the various Special Rapporteurs noted that “Even after the ceasefire was declared on 18 January 2009, restrictions on movement of people and goods as well as humanitarian assistance have continued, thus hampering efforts for recovery and return to normalcy.”¹⁸⁶ And that the “conflict, the occupation and the 19 month blockade imposed by Israel on Gaza have exasperated the situation [of 78.9% of Gaza residents living below the official poverty line] and had a devastating effect on the economy and the infrastructure ...”¹⁸⁷
181. **OCHA** reported in relation to February 2009:¹⁸⁸

The blockade of the Gaza Strip continues. Access into the Gaza Strip remained nearly the same this month - a daily average of 127 truckloads. While this amount is much higher compared to the pre-war figures (November- 30 truckloads, December- 23 truckloads), it is well below imports in May 2007 (475), one month before the Hamas take-over. As a result, the level of imports remains insufficient

¹⁸¹ Report of the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, Sharm El-Sheikh, Arab Republic of Egypt, March 2, 2009, pages 34-35.

<http://www.undp.ps/en/focusareas/crisis/paermar09.pdf>, accessed 15 April 2009.

¹⁸² Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights.

http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. Pages 65-66.

¹⁸³ <http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Aerial+strike+weapon+development+center+Gaza+28-Dec-2008.htm>

¹⁸⁴ <http://www.nowhite.phosphoruspublic.com/world/israel-lifts-gaza-international-press-ban-after-troop-departure>, accessed 6 April 2009.

¹⁸⁵ <http://www.commondreams.org/headline/2008/11/25-8>, accessed 16 April 2009.

¹⁸⁶ The Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009. Para 8.

¹⁸⁷ The Human Rights Situation in Palestine and Other occupied Arab Territories.

<http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009. Para 26.

¹⁸⁸ http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2009_02_01_english.pdf

to meet market needs; over 80% of the truckloads in February carried food stuffs. Other major essential supplies, such as construction materials, spare parts for water and wastewater infrastructures, industrial inputs and livestock have not entered. There was no significant improvement in access of patients to treatment abroad during the month of February. Out of 324 permit applications submitted during the month, only 183 (56. 5%) were approved in a timely manner. One truckload of flowers was exported in February- the first time a Gazan product has been allowed out since January 2008.

182. And in relation to ongoing injuries, **OCHA** reported:

Overall, casualty figures among Palestinians during February are close to those recorded during the two months that preceded the launching of the Israeli offensive on 27 December; there were 15 fatalities and 24 injuries in November 2008 and ten fatalities and four injuries in the first three weeks of December. However, casualty figures remain below those recorded in the months prior to the “calm” agreement brokered by Egypt, which entered into force on 19 June 2008 (in May 2008 there were 41 fatalities and 107 injuries).

183. In summary, **OCHA** stated “Despite the influx of goods into Gaza, the overall level of imports remains insufficient to meet market needs.”

184. More recently, in his 25 March 2009 report to the Security Council, the Under Secretary General for Political Affairs, Mr Lynn Pascoe, reported:¹⁸⁹

From 15 February to 21 March a total of 3,633 truckloads, a weekly average of 727, entered Gaza through the various crossing points from Israel along with Rafah. Roughly 85% of all imports consisted of foodstuffs and medical supplies, whereas construction materials, spare parts and other industrial goods remain almost totally banned. While there has been an increase in the amount of goods getting in to Gaza, and the Israeli Cabinet announced on 22 March that foodstuffs from relevant sources would be allowed into Gaza without restriction, the quality and quantity of imports are insufficient compared to needs.

185. The **ICRC** also reported to the Fifth World Water Forum the ongoing problems of access to water in Gaza. Following the conflict the Palestinians are attempting to repair the systems, however the lack of materials is hindering their work. The **PMOH** also reported that 20% of the population has no direct access to drinking water.¹⁹⁰

186. The Special Representative of the Secretary-General for Children and Armed Conflict reported that on 20 January 2009 two children were killed by unexploded ordnance in Zeitoun.¹⁹¹

¹⁸⁹ Briefing to the Security Council on the Situation in the Middle East, 25 March 2009, Para 7.

<http://www.unsco.org/Documents/Statements/MSCB/2008/SCB%2025%20March%202009.pdf>, accessed 15 April 2009.

¹⁹⁰ Gazans Struggle for Clean Drinking Water By Mel Frykberg. 17 March 2009. <http://ipsnews.net/news.asp?idnews=46135>, accessed 10 April 2009.

¹⁹¹ Para 21 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

187. In relation to the humanitarian situation, **OCHA** reported that in March:¹⁹²

... the number of truckloads that entered the Gaza Strip through the official crossings increased by 17 percent in comparison with the parallel figure for February (3,587 compared to 3,053), constituting a daily average of 132 truckloads. This represents a more than four and five-fold increase compared to the parallel figures during November and December 2008 when the blockade intensified, with a daily average of 23 and 30 truckloads respectively. However, it remains well below imports in May 2007 (475), one month before the Hamas take-over of the Gaza Strip. Approximately one-quarter of all truckloads that entered Gaza during March were imported by humanitarian agencies, including 147 truckloads that entered through Rafah Crossing, while the rest were imported by the commercial sector.

Ongoing military actions: Palestinian rocket fire and Israeli incursions.

188. An attempt to secure a ceasefire has been hindered by Israel's insistence that the Israeli soldier Gilam Shalit be released as a condition for a ceasefire without the release of Palestinian prisoners. In the meantime, there is continuing rocket fire into Israel from Gaza and sporadic incursions by Israel into Gaza.

189. On 2 March 2009 the **IMFA** submitted a letter of complaint about the ongoing rocket fire from Gaza to the Secretary General of the United Nations. The letter alleges that there are ongoing attacks and that since 18 January 2009 there have been nearly 100 rockets and mortars fired into southern Israel.¹⁹³

190. Under Secretary-General Pascoe stated that during his reporting period 100 rockets and mortars were fired from Gaza into Israel, and that there were 12 Israeli airstrikes into Gaza, killing 5 and injuring 30.¹⁹⁴ As at 16 April 2009, the IMFA main website stated "Since the end of operation *Cast Lead*, 99 rockets and 59 mortar shells have been fired into Israel."¹⁹⁵

191. **OCHA** reported that in March 2009:¹⁹⁶

... seven Palestinian (all militants) were killed and 19 injured, among them, nine unarmed civilians, four police officers and six militants, as a result of Israeli-Palestinian violence. This is compared to February, when nine Palestinians were killed (including three unarmed civilians) and 24 were injured (including 17

¹⁹² The Humanitarian Monitor, March 2009. Page 10.

http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2009_15_03_english.pdf, accessed 16 April 2009.

¹⁹³ http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_submits_letter_complaint_UN_continuing_rocket_fire_2-Mar-2009.htm, accessed 16 April 2009.

¹⁹⁴ Briefing to the Security Council on the Situation in the Middle East, 25 March 2009, Para 11.

<http://www.unsco.org/Documents/Statements/MSCB/2008/SCB%2025%20March%202009.pdf>, accessed 15 April 2009.

¹⁹⁵ http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_strikes_back_against_Hamas_terror_infrastructure_Gaza_27-Dec-2008.htm#violations, accessed 16 April 2009.

See also: <http://www.bicom.org.uk/background/research-and-analysis/spotlight--iran/operation-cast-lead/facts-and-figures/bicom-statistics--total-number-of-identified-rocket-and-mortar-shell-hits-since-2001--daily-tally-for-2008-and-2009>, BICOM: The Britain Israel Research and Communications Centre, accessed 25 April 2009.

¹⁹⁶ The Humanitarian Monitor, March 2009. Page 7.

http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2009_15_03_english.pdf, accessed 16 April 2009.

unarmed civilians). Rocket fire at Israel did not lead to any casualties, while one Israeli soldier was reportedly injured during an armed clash, which involved the firing of RGBs and mortar shells.

And “the Israeli Air Force continued to carry out strikes targeting the tunnels area near the Egypt-Gaza border in March” up until 12 March 2009.¹⁹⁷

Israeli Investigation into specific allegations against operation *Cast Lead*.

192. On 22 April 2009, the IDF publicised the results of an internal investigation into five specific allegations made about IDF conduct during operation *Cast Lead*, on the IMFA website.¹⁹⁸ The five investigative teams considered:

- (1) Claims regarding incidents where UN and international facilities were fired upon and damaged during Operation Cast Lead. The investigation was conducted by Col. Itzik Turgeman.
- (2) Incidents involving shooting at medical facilities, buildings, vehicles and crews. The investigation was conducted by Col. Erez Katz.
- (3) Claims regarding incidents in which many uninvolved civilians were harmed. The investigation was conducted by Col. Tamir Yedai.
- (4) The use of weaponry containing phosphorous. The investigation was conducted by Col. Shai Alkalai.
- (5) Damage to infrastructure and destruction of buildings by ground forces. The investigation was conducted by Col. Adam Zusman.

193. The communication stressed that these five investigations were additional to the normal post operation investigation which will consider the whole of the operation. The results of the five investigations were described as follows:

The investigations showed that throughout the fighting in Gaza, the IDF operated in accordance with international law. The IDF maintained a high professional and moral level while facing an enemy that aimed to terrorize Israeli civilians whilst taking cover amidst uninvolved civilians in the Gaza strip and using them as human shields. Notwithstanding this, the investigations revealed a very small number of incidents in which intelligence or operational errors took place during the fighting. These unfortunate incidents were unavoidable and occur in all combat situations, in particular of the type which Hamas forced on the IDF, by choosing to fight from within the civilian population.

194. The IDF also confirmed its attempts to warn the public in Gaza:

... the IDF invested an enormous effort and huge resources to warn civilians in the Gaza Strip away from harm. The IDF dropped more than 2,250,000 leaflets during the fighting, used Palestinian radio, made personal telephone warnings to more than 165,000 Gaza residents and carried out a special warning shot procedure ("A knock on the roof"), in order to ensure that Palestinian civilians could avoid harm.

¹⁹⁷ The Humanitarian Monitor, March 2009. Page 8.

http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2009_15_03_english.pdf, accessed 16 April 2009.

¹⁹⁸ http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/IDF_Conclusion_of_investigations_Operation_Cast_Lead_22-Apr-2009.htm, accessed 25 April 2009.

195. The communication later asserts:

The IDF operated in accordance with moral values and international laws of war, trained its soldiers to act in accordance with the values and norms which bind the IDF, and made an enormous effort to focus its fire only against the terrorists whilst doing the utmost to avoid harming uninvolved civilians.

Factual assessment

196. The Committee does not find the above internal investigation conducted by the IDF convincing for a number of reasons. First, it was conducted internally by the IDF and was not an independent investigation. Secondly, it examines only a few incidents and fails to consider the magnitude of the destruction or the number of deaths and injuries. Thirdly, the individual reports are written in sweeping terms which fail to address most of the accusations that have been made against the IDF. Fourthly, it has not considered Palestinian sources and the critical reports of NGOs, both Israeli and international.

B The Committee's Visit To Gaza.

197. During its five days in the Gaza Strip, the Committee met with a number of victims and witnesses. It visited both Gaza City and Rafah and numerous other areas including Juhor Al-Dik, Beit Lahiyeh, Zeitoun and Al-Atra. The following OCHA map¹⁹⁹ shows the various neighbourhoods in Gaza, including all of those visited by the Committee.

¹⁹⁹ http://www.ochaopt.org/gazacrisis/admin/output/files/ocha_opt_gaza_crisis_neighbourhoods_map_2009_01_26.pdf, accessed 15 April 2009.

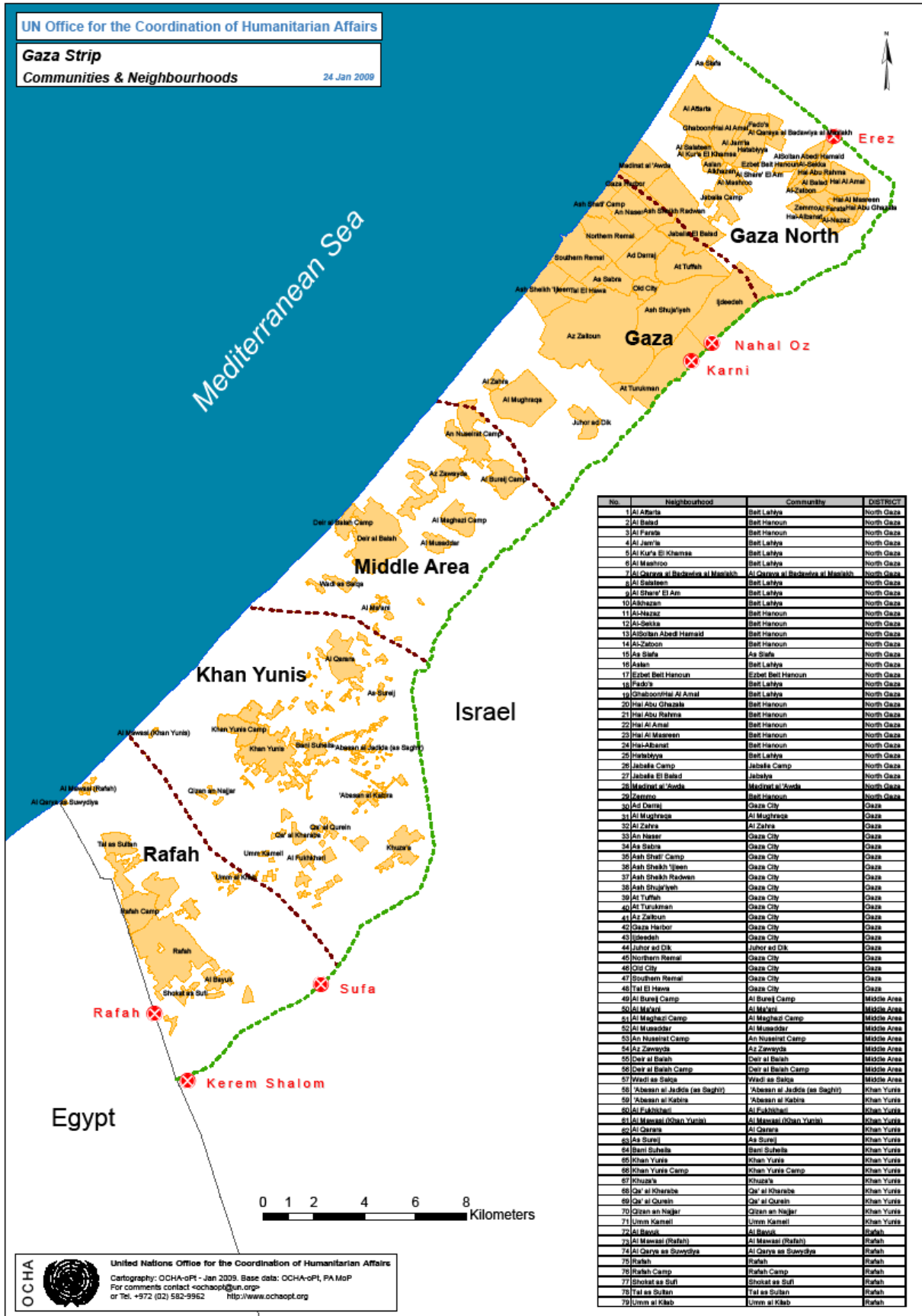


Figure 4: OCHA Map of Communities and Neighbourhoods in Gaza.

198. The Committee met with a large number of NGOs and international organisations, as well as representatives from all the political factions. It also met with representatives from Hamas and the relevant Government ministries and departments. The Committee visited hospitals, factories, education facilities and Government buildings which were damaged and destroyed.²⁰⁰
199. The following is a description of what the Committee saw, and the information and evidence provided by the various victims, witnesses and agencies in Gaza.. The Factual Assessments are based both on the information obtained during the Committee's visit and on information and reports published about the conflict described above.
200. The Committee's experiences during its time in Gaza inevitably shaped its opinions and helped in making its findings. These impressions are corroborated by the above factual reports about the conflict. Although the Committee is aware many of the facts can be collected from publicly available sources, the mission to the Gaza Strip was essential in assisting the Committee to make its assessment of the factual situation.
201. The Committee received no response from the Israeli Government to requests for co-operation and as a result it was not able to visit Israel to speak with victims and witnesses or to see the damage caused by Palestinian rocket fire. The Committee deeply regrets the decision of the Government of Israel to withhold co-operation.
202. All of the photographs presented in this report were taken by members of the Committee during their visit to the Gaza Strip.

The Weapons Used

203. The Committee did not include a weapons expert and so it was obliged to rely on the reports of others as to the type and quantity of weapons used.

The Weapons Used by the IDF

204. As described above, the IDF used a number of weapons from different weapons systems, including aerial, naval and ground delivery, as well as bulldozers and explosives, and the small arms of individual soldiers.
205. Perhaps the most controversial element of the weaponry used was white phosphorous.

White Phosphorous

206. It was reported by a number of sources, and ultimately confirmed by the IDF, that the IDF used white phosphorous in Gaza. The Committee saw a number of buildings which were completely burnt out, including the UNRWA warehouse and a factory (which was still smouldering), as a result of the use of white phosphorous.

Factual Assessment

207. White phosphorous is intended for use as a smoke screen for advancing troops and to mark targets, and according to the IDF white phosphorous was used as a smokescreen in Gaza. The Committee is, however, of the opinion that white phosphorous was used as an incendiary weapon and not for a proper military purpose. This opinion is based on the fact that the IDF used white phosphorous in densely populated areas such as Beit Lahiyeh and on UNRWA's Gaza City warehouse where there were no advancing troops

²⁰⁰ See **Annexure 2** for the Schedule of Meetings.

to protect by means of a smokescreen. The Committee's further findings on the use of white phosphorus appear in the section on War Crimes below.

The Weapons Used by the Palestinians

208. Members of the Palestinian Legislative Council (**PLC**) and Fatah confirmed that Rocket Propelled Grenades (**RPGs**) are used in Gaza. The PLC member also confirmed that the Palestinians have rockets and grenades, but asserted that they are all home made.
209. Home made rockets and RPGs cannot be guided and are fired into Israel without regard for the status of the targets. Some of the weapons also fail to make their targets and land within Gaza.

The Presence of Palestinian Fighters.

210. Despite repeated requests, the Committee found it difficult to obtain comprehensive first hand information on the presence of Palestinian fighters. Rather than confirm or deny the presence of fighters either generally or in specific locations, the majority of people the Committee met with simply asserted the Palestinians' right to defend themselves and resist the occupation of their land.
211. The various political factions confirmed the following losses: Islamic Jihadists 34, Fatah 38, Democratic Front for the Liberation of Palestine 31 and Hamas 49. The Popular Front for the Liberation of Palestine has not made its figures public. The **PCHR** reported that 236 combatants were killed, and **Al Mezan**: 235.
212. The Committee met with a group of Palestinian journalists who were present during the conflict. They reported that during the first days of the conflict, all of the casualties were civilian. They said the heaviest resistance activity was in Zeitoun and in the north of Gaza. The Palestinians used RPG-7s, AK-47s, Qassams and other home made weapons. However it was noted that the RPG-7s were 'first generation' weapons, over 10 years old. Generally, however, the fighters were not seen by the public.
213. The journalists confirmed resistance activity began at some point after the ground offensive began. It was reported to the Committee that all the political groups have combatant and armed personnel and further that there was some sort of coordination among all the groups. However they do not wear uniforms.
214. A representative of Fatah was clear on the level of resistance, describing it as sporadic, independent, and ineffectual: there was not one case in which the resistance fighters had managed to disable a tank so severely that it could not be removed.
215. Others reported to the Committee that although there was some fighting, for example in the North, there was no fighting in the cities. One case was reported in which militants fired from an open area, which the Israelis could see, but the Israelis returned fire five or ten minutes later, only after the militants had moved. As a result civilians were attacked.

Factual assessment.

216. Based on the above reports, and the level and type of destruction, including burnt buildings, razed houses, flattened fruit orchards and ruined neighbourhoods seen by the Committee, it concludes that the IDF deployed a significant range of weapons and weapons systems, including aerial, naval and ground launched missiles and rockets (some containing white phosphorous), bulldozers and small arms. The Committee is not aware of any concrete evidence confirming that DIME weapons were used.

217. As reported to the Committee, Palestinians had at their disposal grenades, including rocket propelled grenades, home made rockets and small arms. Based on the reporting to the Committee and publicly available information, the Committee concludes that the Palestinians had minimal arms capability.
218. The Committee believes that it did not hear the full story of the level of resistance fighting. The Committee is of the view that there was a level of resistance fighting, sometimes in open areas, sometimes in built up areas. However given the duration of the Committee's mission and the lack of access to IDF information, the Committee was unable to fully establish whether the 'hand to hand' fighting in residential areas was instigated by Palestinian fighters or whether the Palestinian fighting was a response to the IDF incursion. The Committee is, however, of the view that it is more likely the Palestinian fighters acted in response to the incursion.
219. The Committee is of the view the weapons and infantry of the Palestinians are no match for the IDF's armoury, weaponry, naval and air capability. The Palestinians have no air force or navy and no advanced anti aircraft ability. Nor can Palestine match the size and facilities of the IDF's infantry, including medical facilities for evacuation and treatment.²⁰¹ It will later be shown that the Palestinians seriously lacked proper facilities for the evacuation of wounded civilians. The Committee found no evidence that the situation for Palestinian fighters was any different, or indeed that there were any medical or logistical facilities dedicated to Palestinian fighters.

The Civilian Population in Israel.

220. Although the Committee did not receive a response from the Israeli Government to its requests for information, or visit Israel, the impact of indiscriminate rocket fire on the civilian population in Israel falls within its mandate and must be considered.
221. As described above, it was reported by the **IMFA** that during the conflict 571 rockets and 205 mortar shells landed in Israel from the Gaza Strip.²⁰² The rocket fire during, and preceding, the conflict must have created a sense of panic and fear as civilians did not know when or where the next shell would land. Indeed the number of people suffering from shock and anxiety reported by the **IMFA** was considerable. The **IDF** has, however, implemented a warning system when rockets are fired which might have ameliorated the situation.
222. It was also reported civilians in the areas surrounding Gaza were advised to evacuate the areas within range of Palestinian weapons during the conflict.
223. Special Representative Coomaraswamy (for Children in Armed Conflict) reported:²⁰³
- [During the conflict], two schools in Ashkelon, southern Israel were damaged by rocket fire from Gaza. One "Grad" rocket hit the Tzvia school, a religious girl's school and another hit at the entrance to the Newe Dkaim school. Due to preparations made in both schools there were no casualties.

²⁰¹ See <http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Aerial+strike+weapon+development+center+Gaza+28-Dec-2008.htm>, which details the evacuation and treatment of killed and injured IDF soldiers.

²⁰² <http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Hamas+war+against+Israel/Missile+fire+from+Gaza+on+Israeli+civilian+targets+Aug+2007.htm>

²⁰³ Para 24 of the Annex to the Human Rights Situation in Palestine and Other occupied Arab Territories. <http://domino.un.org/pdfs/AHRC1022.pdf>, accessed 15 April 2009.

224. The Committee concludes, on the basis of the limited information available to it, that indiscriminate rocket fire from Gaza into Israel killed four and wounded 182 civilians and caused great distress and fear to many innocent civilians. Yet again, the Committee expresses its regret that the Government of Israel failed to co-operate with the Committee, as such co-operation would have allowed the Committee to obtain more information on this subject.

The Civilian Population in Gaza.

225. The Committee met with a number of persons affected by the conflict in Gaza, including witnesses and victims. Some were met at the site of the attacks on them, some in hospitals and others in the offices of the PCHR. Professor Corte Real met with ten victims and conducted a forensic examination of each in accordance with the Istanbul Protocol.²⁰⁴

226. The Committee saw evidence of the destruction of private homes, and residential areas, particularly in Beit Lahiyeh, Zeitoun and Juhor Al-Dik. Unlike southern Israel, Gaza has no warning systems, nor do Gazans have the freedom of movement to be able to evacuate the area being shelled.

Wilful Killings.

227. The Committee heard several reports of what could only be described as wilful killings. Extensive statements, reports, affidavits and other materials on this subject are held by the human rights organisations in Gaza, as well as the PNA Central Commission for Documentation and Pursuit of Israeli War Criminals.

228. The Committee interviewed a number of victims and witnesses. **Annexure 4** contains detailed accounts of these interviews. It has also studied interviews conducted by other organisations. These accounts are inevitably representative and illustrative only of the impact of the conflict on the civilian population. They do, however, provide an indication of the suffering experienced by the people of Gaza.

The Abed Rabo Family, East Jabalya

229. On 7 January 2009, two young girls were shot dead by the IDF: Souad, aged 7 and Amal, aged 2. The Committee met with their father Mr Khaled Mohamed Muneeb Abed Rabo at the location where his daughters died.²⁰⁵

230. Mr Abed Rabo stated he was at home with his wife, their three daughters and his mother. They were told to leave their house by the IDF and so they went outside. Once outside there was a tank about 10 metres away. Two soldiers were on the tank, one was eating chips, the other chocolate. Mr Abed Rabo waited for further instructions. A third soldier came out of the tank and opened fire on him and his family with an M16. Souad and Amal were both killed. The third daughter, Samar aged 4 was also shot, as well as Mr Abed Rabo's mother (aged 60). The family tried to call for an ambulance but nobody was able to attend. Later a neighbour who was assisting with their evacuation was also shot and killed. Two or three days later the ambulance came to evacuate the bodies.

²⁰⁴ <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>, as adapted.

²⁰⁵ See **Annexure 4**, paragraphs 1 – 4. This case was also reported by Physicians for Human Rights, in their Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights. http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009, at page 13.

The Al-Dir Family, East Jabalya

231. On 3 January 2009, five members of the one family were killed. Mr Lahid Mohamed Al-Dir's wife Iman, aged 26, father Mohamed, aged 46, brothers Rakan, aged 4 and Ibrahim aged 12, and sister Fidah, aged 19 were all killed. The Committee met with him at the location where his family members died.²⁰⁶
232. Mr Al-Dir stated that on the evening of 3 January 2009 there were sixteen members of his family at home. A missile fell near the house and so the family decided to leave the house. The family were gathered around a cart outside the house preparing to leave when a second missile landed near them, killing five members of the family. Mr Al-Dir contacted the ICRC and other ambulances, but they were unable to enter. He left on foot and was taken to the Al-Awda hospital. It was only five days later that an ambulance was able to enter the area to evacuate the wounded and the bodies. His mother who was injured stayed in the area with the bodies of her husband, children and daughter in law. Mr Al-Dir was only able to enter the area after the ground troops withdrew. It took him three days to find the body of his father as it had been buried.

The Samouni Family, Zeitoun

233. On 4 January 2009 houses were raided in the Zeitoun area and 29 members of the wider Samouni family were killed. The Committee met with surviving members of the extended family, Faraj Attiya Helmi Samouni and 13 year old Almaza Ibrahim Helmi Samouni, in the area where their relatives died. The Committee saw the destruction to the houses, including a mosque, situated across the street from the houses, which was also destroyed.²⁰⁷

²⁰⁶ See **Annexure 4**, paragraphs 5 – 8.

²⁰⁷ See **Annexure 4**, paragraphs 9 – 12. This case was also reported by Physicians for Human Rights, in their Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights.
http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009, at pages 38-43.



Picture 1: The Samouni family home.

234. The surviving members of the family described how the first house was entered by the IDF and people were shot. As a result all the relatives gathered in another house, belonging to an uncle of the family. There were a large number of family members gathered in the second house, having left the first house which had been raided. This second house was then hit by a number of missiles, which killed at least 20 members of the family. Ambulances were unable to attend to evacuate the injured and wounded. The surviving family members remained in the house for at least 3 days with the bodies.

The Hajjaj family, Juhor Al-Dik

235. On 4 January 2009, two members of the Hajjaj family were killed in Juhor al-Dik, east of Gaza city. Juhor Al-Dik is a residential and agricultural area which suffered aerial bombardment and earth moving by tanks.
236. The Committee visited the area and spoke with Mr Yousif Abdul Karim Baraqa Hajjaj and his brother, Mr Saleh Abdul Karim Baraqa Hajjaj. They told the Committee they were in a group of 27 people including 17 children and 5 women. Leaflets were dropped in the area, and there were Israeli ‘interventions’ on the radio so the family decided to leave. They gathered together and some of them were carrying white flags. The group was in an open area where the tanks could see them. They had been walking maybe 300 metres when a nearby tank opened fire on the group killing their mother and sister. The family tried to arrange for the bodies to be evacuated, but this was not possible. The bodies remained in the area for 16 days. When they were finally able to return the area was completely changed. They found their mother’s body buried in sand, and their sister’s body under some tin, which had been run over by a tank.



Picture 2: The area in front of the Hajjaj family home.

The Abu Halima Family, Al Atra area.

237. On 4 January 2009, the Abu Halima family home was shelled with white phosphorous. Three brothers Abdul Rahim, aged 14, Sayed, aged 11 and Hamza, aged 8, their sister Sha'et, aged 15 months, and their father Saad Allah Abu Halima aged 45, were all killed. The Committee met with Mahmoud Abu Halima, whose brothers, sister and father had been killed, in the area where his family members died.²⁰⁸
238. Mr Abu Halima stated that he left the house with one of his brothers in the afternoon. Shortly after, they heard an explosion and went back to the house and saw there was smoke pouring from it. He tried to enter the house but the smell and smoke were so bad he had to jump out a window. His brothers and father were burning and they were all together. He put water on them to stop the burning, but the water appeared to burn.
239. On 29 March 2009 Ghada Abu Halima, a daughter in law of Saad Allah Abu Halima, also died from the injuries she received on 4 January 2009.²⁰⁹

The Al-Dayer Family, Zeitoun

240. On 6 January 2009, 22 members of the extended Al-Dayer family were killed, including thirteen children aged between 11 years and 5 months. Six women were killed, one of

²⁰⁸ See **Annexure 4**, paragraphs 17–19. This case was also reported on by Physicians for Human Rights, in their Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights, at page 13. http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009. And HRW in their Rain of Fire report at pages 49 – 53.

<http://www.hrw.org/sites/default/files/reports/iopt0309webwcover.pdf>, accessed 9 April 2009,

²⁰⁹ http://www.btselem.org/English/Testimonies/20090104_Abu_Halima_home_set_on_fire_by_shelling.asp, accessed 15 April 2009.

whom was pregnant, and three men. Mr Al-Dayer was the only person in the house to survive. The Committee met with him at the offices of the PCHR.²¹⁰

241. Mr Al-Dayer stated the family was at home and had all gathered together in the one room because of some earlier shelling they had heard. The house was attacked, and all of Mr Al-Dayer's family members there were killed. He was unconscious and was taken to a hospital shortly after the attack. The bodies were evacuated 36 hours later. Mr Al-Dayer stated that there were IDF ground forces approximately 1 kilometre from his house.

The Al-Deeb Family, Beit Lahiyeh

242. On 6 January 2009, 11 members of the Al-Deeb family were killed. The family was sitting outside their house, thinking that the area was safe because of its proximity to the UNRWA school located at the end of the street. There was some shelling in a nearby agricultural area and a few seconds later a shell hit the family. The grandmother of the family, aged 67, one of her sons, one of his sons and two of his daughters, a daughter in law of the grandmother and her five children were all killed. The Committee met with Mr Ziad Samir Al-Deeb and Mr Mu'in Al-Deeb. Mr Ziad Al-Deeb was in a wheelchair having had a double leg amputation as a result of the attack. He lost his father, a brother and two sisters, his aunt, five cousins and his grandmother. Mr Mu'in Al-Deeb, Ziad Al-Deeb's uncle, was not injured but lost his wife, five of his children, his brother, his mother and a nephew and two nieces.²¹¹
243. Professor Corte Real also examined Mr Ziad Al-Deeb for the purposes of his report. Mr Al-Deeb's case is reported as **Case 4 of Attachment A**.

The Rayyan Family, Jabalya

244. On 1 January 2009 at 2:40pm Nazar Rayyan – a senior Hamas member, his four wives and eleven of his children were killed when their house was bombed. The children were aged between 1 and 16 years. Rayyan is survived by four adult sons aged between 18 and 25. The Committee met with two of his sons at the PCHR Offices.²¹²
245. They confirmed their father was a political leader of Hamas, and a professor at the Islamic University. He was not in hiding as he believed that he would not be targeted. On the day of the attack, two of his sons left the house to go to the market. They passed their father in the street who was heading home. Thirty minutes later the house was shelled. None of those who were present in the house survived. The two sons who met with the Committee denied there were any weapons stored in the house.
246. The **IMFA** reported the incident as follows:²¹³

Thursday afternoon, in a joint IDF and [Israeli Securities Authority] operation, IAF forces struck the house of the senior Hamas operative Nizar Rayyan, in Jabaliya - northern Gaza Strip. Many secondary explosions also occurred following the strike, indicating weapons stores in the house. The house was used as massive weapons storage facility, as well as a military communications center.

²¹⁰ See **Annexure 4**, paragraphs 20 – 22.

²¹¹ See **Annexure 4**, paragraphs 23 – 27.

²¹² See **Annexure 4**, paragraphs 28 – 29.

²¹³ http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Aerial_strike_weapon_development_center+Gaza_28-Dec-2008.htm

Located underneath the house was an escape tunnel for terror operatives of Hamas's military branch.

The Abouyasha Family, Al-Naser area

247. On 5 January 2009 between 1:30 and 2:00am, five people were killed when the building housing the extended Abouyasha family was destroyed. The Committee met with Rashad Rizik Sabr Abouyasha and his niece, aged 13, at the PCHR Offices. Mr Abouyasha's brother, sister in law and three of their children were killed. His niece is the only surviving member of her immediate family.²¹⁴
248. Mr Abouyasha's family lived on the top floor of the family building, his brother lived on the ground floor. Mr Abouyasha was woken by an explosion. He went to check what it was and a few minutes later there was a second explosion which he described as being "very heavy". Mr Abouyasha and his family were buried by falling bricks. He was able to find all of his children, but some of them were unconscious. His brother who lived on the first floor, died together with his wife and three of their children. Their daughter (Mr Abouyasha's niece) survived as she was not at home that night, but at the house of another cousin who had also been killed.

The Abed-Diam Family, eastern border area of North Gaza

249. At approximately 7:30am on 5 January 2009, five people were killed and 17 were injured when flechette bombs landed on a condolence gathering at the house of Mohamed Deeb Abed-Diam. Condolences were being offered for Mr Abed-Diam's son who had been killed. He (Mr Abed-Diam's son) was a teacher but volunteering as an ambulance driver during the conflict. The Committee met with Mr Abed-Diam at the offices of the PCHR.²¹⁵
250. Mr Abed-Diam stated that his house had been targeted and he had been taken to hospital. He returned from the hospital 45 minutes later. After that six shells landed at and around his house with flechette bombs. The flechette bombs exploded in the air. All of those who died were killed by the shrapnel.

Forensic examination of injuries

251. Professor Corte Real examined ten victims, documenting their injuries and the circumstances in which they received them. His report appears as an attachment (**Attachment A**) to the present document, forming an integral part of the Committee's findings.
252. Professor Corte Real examined 10 patients. His report is produced as **Attachment A**. Of the 10 victims he examined, three suffered burns, two blindness (one victim losing one eye and another losing both eyes), and two suffering amputations. One of the victims had to hold her intestines into her stomach as they were outside her abdomen. Of the 10 victims, six described being hit by shelling, two by tank shelling and two by shooting.
253. Case study 4 of **Attachment A**, details the injuries suffered by Mr Al-Deeb, as detailed in paras 236-237 above.

Factual Assessment

²¹⁴ See **Annexure 4**, paragraphs 31 – 32.

²¹⁵ See **Annexure 4**, paragraphs 33 – 34.

254. On the testimonies received by the Committee, there was no apparent military necessity for the majority of the incidents described above, save possibly for the Rayyan family. And, again save possibly for the Rayyan family, there was no evidence that any of the victims or their families were directly associated with Hamas or were themselves fighters. The Committee is, however, aware that it received testimony from the persons themselves in a situation where it was not possible to confirm each and every allegation or statement that was made. Having reviewed other versions provided by the same witnesses to various international bodies (United Nations, Human Rights Watch and Amnesty International), Palestinian human rights organisations (**PCHR** and **Al Mezan**), the PNA Central Commission for Documentation and Pursuit of Israeli War Criminals, and international media outlets, the Committee is of the view that the witnesses provided consistent accounts to all groups.
255. The attacks on family homes, in the case of the Al-Dayer, Abouyasha, Abd-Diam, Samouni and Abu Halima families, appear to have served no military necessity. The Samouni family incident was well publicised both during and after the conflict. Although there are some inconsistencies between the evidence provided by the surviving members of the family, the Committee is of the view that the members of the family gathered together as directed in an attempt to remain safe, that they did not leave their house for days and that ultimately the building where they were gathering was shelled, notwithstanding that the IDF had directed them there and therefore must have been aware of their presence.
256. The aerial bombardments described by the Al-Dir, Al-Deeb and Abd-Diam witnesses appear to be wanton bombardments in residential areas, although they were outside their houses when they were attacked. On Mr Al-Dir's account there was no fighting in the area. What he described could be an example of 'roof knocking'; however the second, larger weapon, seems to have missed the building and landed on those acting on the warning.
257. The shooting attacks on the Samouni and Abed Rabo families and the farming family in Juhor Al-Dik (by tank fire), also appear to have served no military advantage. The Committee heard no evidence that Mr Abed Rabo was a fighter. However, even if he had been a fighter at some stage, at the point when he was shot at and his children killed he had been ordered out of his house with his children and other family members, and was complying with that order. The proximity of the tank (some 10 metres away) was such that the soldiers must have been able to see the children. The attack on the farming family in Juhor Al-Dik took place as they were trying to vacate the area in accordance with the leaflets which had been dropped. The family also stated they were carrying white flags, but were nonetheless shot at.
258. Nazar Rayyan was the only victim the Committee heard evidence about who was known to be a member of Hamas. The Committee is of the view that the IDF were specifically targeting Rayyan. From the timing of the attack (30 minutes after he arrived home) it appears the IDF were aware of Rayyan's movements, and that they were targeting him in his home. On that basis, the Committee is of the view that the IDF must have been aware that Rayyan's family members, including his wives and children, were also present at the time of the attack.
259. Assuming it is correct that there was no resistance until the beginning of the ground offensive, the deaths which occurred prior to that time are arguably all civilian, or at least not active combatants.

Inhumane treatment

260. The Committee heard several instances of what could best be described as inhumane treatment. Most of the incidents described above under ‘Wilful Killings’ also involved the inhumane treatment of civilians.
261. For instance, the Abed Rabo family, described above, waited days for medical assistance. Once the ambulance arrived in the area, the IDF stopped the ambulance, forced the driver out of the vehicle and forced him to take off his clothes. He was then beaten and forced to leave the area. The ambulance was run over and pushed into the remains of a destroyed house. The Committee saw the ambulance, which was under the rubble of the remains of a building.



Picture 3: The ambulance buried in the rubble.

262. The Committee also met with the ambulance driver’s brother who told the Committee there were 17 people in the house when the IDF forced his brother to get out of the ambulance. He was forced to strip naked and was beaten. The IDF then seized the ambulance. They destroyed a house and then put the ambulance in the destroyed house.
263. Mr Hajjaj reported to the Committee that as he was carrying his wounded mother, and others were carrying other wounded, “They told us to drop the wounded, we were told to take our clothes off. They pointed their guns at us and we said “We want to go to Gaza”. The soldier said no.”

The Humanitarian Situation

Food Aid

264. As described above, more aid was permitted to enter Gaza during the conflict; however it was reported to still be far from the level of aid that was required.
265. It was also reported to the Committee that during February 2009, there were ongoing restrictions on the import of various types of products. For example, UNRWA received specific rejections for macaroni, noodles, spaghetti, lentils, pulses, candy, fruit juice, paper and nylon pellets. There were also a large list of items for which UNRWA was waiting for clearance to import, and an even larger list of items which were previously approved, but whose status was at that time unclear.

Limitations on Medical Relief

266. All the ambulances in Gaza are clearly marked (be they Red Crescent, Ministry of Health, or private), and during the conflict all movements were fully coordinated with the ICRC.
267. It was reported to the Committee that at the Netzarim junction on 8 January 2009, a fully coordinated medical convoy lead by an ICRC vehicle came under direct fire. On other occasions it was reported to the Committee that medical evacuations were coordinated, the ambulances were loaded and the patients left the hospital. However some of those convoys were not allowed to complete their journey, and so the patients returned to the hospital. This created further difficulties because of the limited number of hospital beds. Once evacuations were confirmed the beds of those who were leaving were already filled. When they were not able to evacuate, hospitals had to find more space for the patients.
268. It was reported to the Committee that on 4 January 2009, Samir Rashed Mohamed was killed inside his home in the Juhor Al-Dik area. Medical crews coordinated three times through UNRWA and the ICRC but the IDF fired on the ambulances. On the third attempt the body was evacuated. This was ten days later on 14 January 2009.
269. As described above, an injured woman from the Al-Dir family had to stay in the area for five days together with the bodies of her dead husband, her three children and her daughter in law.
270. As detailed in **Annexure 4**, Mr Samouni told how his brother was shot and was bleeding for a whole day before he died. No medical attention was able to reach him.
271. Gaza was bisected by the ground incursion. The majority of hospitals and medical centres are located in the North of Gaza, meaning that the population south of the IDF occupation line could not easily reach them. This also had an impact for evacuations of the injured through the Rafah crossing, who had to pass the occupation line.
272. On 13 January 2009 the President of the ICRC called for the fighting parties to ‘spare civilians and let humanitarian workers do their work’. He was quoted as saying “Injured people cannot wait for days, or even for hours, before being treated. The work of medical personnel must be respected – and this is not negotiable.”²¹⁶

²¹⁶ <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/palestine-2-news-130109?opendocument>, (News Release 09/10).

273. It was reported to the Committee that in Gaza there are approximately 2,000 hospital beds. During the conflict there were more than 5,000 injured, so the hospitals could not cope. People with chronic sicknesses were sent home. There was also no space to maintain the dead bodies, so they had to be buried immediately. There was also a lack of medicine and supplies because of the blockade.
274. The limited number of hospital beds was further compounded when hospitals themselves were targeted. When the Al-Quds hospital was hit on 15 January 2009, towards the end of the conflict, all the patients there had to be evacuated to other medical facilities which were already overcrowded.
275. Despite the statements that the Israelis opened an emergency treatment centre at Erez, as described above, it was reported to the Committee that although tents were prepared, no injured were taken there because no one was allowed to cross the border. Medical evacuations were done through the Rafah border crossing.
276. Medical workers reported that there was no cooperation with the Israeli Government in relation to the medical treatment during the conflict.

Factual Assessment.

277. Medical units in Gaza during the conflict faced many impediments. There were direct attacks on medical units, including firing on them, the seizure of ambulances and the mistreatment of drivers. Medical units faced long delays in gaining approval to attend to the wounded and to be able to evacuate the deceased. Further, there was an issue of access to health care as the majority of the hospitals are located in the north of Gaza and movement across the bisection line was restricted.
278. The Committee concludes the Palestinian medical services were incapable of coping with the medical impact of the conflict for the following reasons:
- (1) Lack of facilities: the injured far outnumbered the available beds, doctors and nurses.
 - (2) Lack of access: by splitting the Gaza strip in two, a large portion of the population did not have access to medical attention.
 - (3) Lack of movement: the restrictions placed on the movement of ambulances and the refusal of coordination resulted in delays in treating those injured during the fighting.
 - (4) Lack of power: the power station in Gaza has not been fully operational since it was targeted by the IDF in 2006. As a result hospitals are reliant on generators. Since July 2007 there has also been a blockade on fuel coming in to the Gaza Strip. As a result the standard of care hospitals can provide is limited by their access to electricity.
279. The Committee is also of the view that during the conflict there was more that the IDF could have done to ensure adequate medical care for the civilian population in Gaza, in particular by allowing medical crews access to the wounded and killed, allowing passage for medical crews transporting the injured, and by desisting from shooting and shelling ambulances, hospitals and other medical installations.

Daily Ceasefires

280. During the conflict, the IDF announced that it would respect a daily ceasefire of between three and four hours.²¹⁷ It was reported to the Committee that this time was not fixed; it could be in the morning or the afternoon. It was also not well communicated to the general public.
281. The daily ceasefire in Gaza was also subject to rockets being fired into Israel, and so if there were rockets fired the ceasefire would cease.

Factual Assessment

282. Given the changing times of the cease fire and the cancellation of the ceasefire based on rocket fire into Gaza, the Committee is of the view that the daily ceasefires had little, if any, impact on the humanitarian situation. On the contrary, given that civilians were killed during the ceasefire,²¹⁸ possibly believing they would have been safe to leave their houses, the ceasefire may have had a negative impact on the civilian population.

Warnings: The Use of Leaflets and Phone Calls, and ‘roof knocking’.

283. The Committee heard reports of leaflets being dropped over the whole of the Gaza Strip, and the use of telephone calls to warn the population.
284. The leaflets were dropped in a large number of areas across the Gaza Strip, including on United Nations installations. Attached as **Annexure 6** are copies of some of the leaflets. They ranged from the general:

To the residents of the Gaza Strip: The Israeli Defence Forces (IDF) take actions against the movements and the members who implement terrorist operations against the citizens of the State of Israel. The IDF will strike and destroy any building or site that contains ammunition and military equipment.

Starting from the moment of the dissemination of this notice, everyone who has ammunition and military equipment in his house will be at risk, and accordingly he must leave the site for his safety and for the safety of his family.

Due notice.

IDF leadership

285. And:

To the residents of the region:

Due to the terrorist actions that the terrorist members launch from your vicinity against the State of Israel.

The Israeli Defence Forces (IDF) were forced to immediately respond and take actions in your vicinity.

For your safety, you are demanded to evacuate the area immediately.

IDF leadership.

²¹⁷

http://www.mfa.gov.il/MFA/Government/Communiques/2009/Cessation_IDF_activities_Gaza_humanitarian_activities_7-Jan-2009.htm, accessed 6 April 2009.

²¹⁸ See, in particular, **Case 3** of the **Attachment A**, the report of Professor Corte Real.

286. To the specific:

To the residence of Rafah

Because your houses are used by Hamas for military equipment smuggling and storing, the Israeli Defence Forces (IDF) will attack the area between the Sea Street up to the Egyptian border.

All the Residents of the following neighbourhoods:

Block O – al-Barazil Neighbourhood – al-Shuáraá – Keshta – al-Salam Neighbourhood

Should evacuate their houses, until beyond the Sea Street. The evacuation enters into force from now until tomorrow at 08:00am.

For your safety and for the safety of your children, obey this notice.

IDF leadership.

287. Gazans also received telephone calls to both mobiles and landlines saying to “evacuate soon”, or “you should get away from the resistance”. Some of the calls were from actual people, however some were automated, recorded messages. It was reported the telephone calls from actual people were real warnings and preceded attacks, however the automated messages that were received by a large number of the population were categorised as being fake – in that there was no bombing that followed.
288. It was also reported to the Committee that a large number of people received phone calls first thing in the morning simply saying “this is not a nightmare”. The Al-Wafa hospital also received “many” phone calls from the IDF saying that they were going to destroy the hospital. The hospital contacted the ICRC who said it was not possible to evacuate the whole hospital.
289. The borders were closed to individuals and had been so since 5 November 2008. The borders were only opened for the evacuation of some severely injured, some dual passport holders and to allow in humanitarian aid. However the civilian population was not allowed to leave the area. As for moving within Gaza, there was extensive aerial bombardment across the whole of the Gaza Strip, bombardment from the sea and bombardment from tanks both in and out of Gaza, as well as from ground troops in the Gaza Strip. There appears to have been no where for the civilian population to have gone.
290. Some sought shelter in United Nations schools, traditionally and typically a safe place. However, during the conflict United Nations schools were also targeted.
291. The IDF was aware not only of the location of all United Nations installations, by virtue of the “Joint Coordination Map addressed to the International Organisations and the International Community” prepared in Israel,²¹⁹ but they were also being updated on a daily basis as to the specific use being made of installations, in particular their changing nature (from schools to shelter).

²¹⁹ Produced by the Gaza Coordination and Liaison Administration: GIS and International Organisation Departments.

292. The phone calls to the hospital could be indicative either of an intention to target the hospital directly or they could be evidence that the IDF were not aware of the identity of the person receiving the telephone calls.
293. In order to provide a meaningful warning by telephone, the IDF would have to be aware not only of the telephone numbers of the residents of Gaza, but more importantly of the numbers of the residents in a particular building or area. The Committee is not aware of how the IDF managed to obtain and confirm this information when the majority of telephones in Gaza are mobile or cell phones and are not associated with a particular address or location, and when the utility of advising someone to vacate on their mobile phone requires knowledge of their actual location.
294. The Committee also heard from some witnesses about a new tactic called the ‘roof knock’, where a small rocket is dropped on a house indicating to the residents that they should leave. Later, a larger rocket fired by an F-16, for example, will destroy the house. It was stated that there was often not enough time between the first and second rockets. On one occasion a family got a warning and two women and the three children were killed as they made their way out of the house. As described above, in the allegations by IDF soldiers reported by *Haaretz*, one of the pilots described a process consistent with ‘roof knocking’, where a small mortar is fired at the corner of a house, which resulted in the occupants leaving the building.

No safe place

295. It was reported to the Committee in practically every meeting that during the conflict there was no safe place in Gaza, and that not since 1948 had the population of Gaza experienced such a violent conflict.
296. Leaflets were dropped and people received phone calls. This, and other warning mechanisms including radio interventions, was confirmed by the IDF in their communication regarding their five investigations into operation *Cast Lead*, as detailed in para 193 above. But, as someone said to the Committee: “Leave Rafah to go where?”
297. It was described to the Committee as a ‘Catch 22’, a no win, situation: ‘You have white phosphorous in the house. You cannot stay in the house because you will be burnt, but you cannot leave the house because you may be hit. People were killed in the streets by artillery and tank shells when they were trying to flee’.
298. With the closure of the borders, preventing relocation to avoid the conflict, civilians were forced to remain in an enclosed area which was the subject of ongoing aerial, naval and ground based shelling.
299. In previous Israeli operations, the 2006 *Summer Rains* and *Autumn Clouds*, the military operations were intense and included the bombing of the Power Station. However, operation *Cast Lead* was reported to be on a different scale. In 2006 the fighting was focussed, thus allowing the population to move to avoid it. However this time because of the aerial bombardment, including the repeated shelling of the same areas, and the ground offensive there was nowhere to go; there was, in the Committee’s view, no safe place in Gaza.

Destruction of and Damage to buildings and infrastructure.

300. It was reported to the Committee that 90% of the destruction to buildings and infrastructure was in the last days of the conflict and in areas fully controlled by the IDF

where there was limited resistance. Houses were destroyed in their dozens by explosives, and there was destruction in the industrial areas.

301. It was confirmed to the Committee the IDF were aware of the location of all international installations, schools, hospitals and other buildings. During the conflict, updated information was provided by the United Nations (and forwarded by the Department of Safety and Security) on a daily basis as to the status of its installations (for example schools being used as shelters).
302. Israel also prepares a “Joint Coordination Map addressed to the International Organisations and the International Community.” This map is prepared in consultation with the international community in Gaza and details the locations of all international installations in Gaza as well as schools and hospitals.
303. As shown above, there was a massive destruction of and damage to various types of property.

Residential Areas.

Beit Lahiyeh

304. More than 250 houses were destroyed in the Beit Lahiyeh area. Another 220 houses were partially destroyed and 450 houses were damaged in the area. The Committee visited a tent city which has been established by the PNA. Comprising approximately 90 tents, it is providing some relief; however, with each tent housing only six or seven people, there were still a number of people without shelter.



Picture 4: Destruction in Beit Lahiyeh.

305. Leaflets were dropped in the area and some residents received telephone calls warning them that the bombardment was coming. Some of the residents then sought shelter at the local UNRWA school; however, that was also targeted.
306. There were reports of fierce resistance in the Beit Lahiyeh area. IDF Special Units were attacked in two houses, one tank was destroyed and there were some snipers. However, the tank was still able to be evacuated when the IDF withdrew.

Zeitoun

307. The Committee visited the Zeitoun area and saw the destruction of homes and agricultural land.

Juhor Al-Dik

308. The Committee visited the Juhor Al-Dik area east of the town of Jabalya. The area is approximately 1.5 – 2km from the border. It is a residential area with some apartment buildings and some small houses. At the edge of the area there are some factories and workshops. Juhor Al-Dik suffered aerial bombardment and earth moving by tanks.
309. Of the 300 to 350 houses here, between 200 and 220 were destroyed. It was reported to the Committee that many Palestinians were killed, including civilians and resistance fighters: approximately 60 – 65 civilians were killed and 17 resistance fighters.
310. Following the IDF ceasefire, medical crews came in to evacuate 31 bodies. Most of the bodies were decayed because they had been there more than 12 days. Five members of one family were killed and their bodies remained until after the withdrawal. It was not possible to evacuate the wounded and dead; people simply fled the fighting.

The Hajjaj family, Juhor Al-Dik

311. On 4 January 2009, two members of the Hajjaj family were killed in Juhor al-Dik, east of Gaza city.
312. The Committee spoke with Mr Youssef Abdul Karim Balaqa Hajjaj who described the destruction to the agricultural land, as well as the death of two of his family members. His house was hit by a shell, and so they fled the area. When they returned the olive groves had all been cleared by tanks. When the family returned to the house, all of their belongings had been removed from the house and buried. When the Committee met with him, his family still had not been able to locate their belongings.

The houses of “ Hamas operatives ”

313. During the conflict the IMFA reported that the IDF targeted and killed a number of Hamas operatives in their homes. As described above, the Committee met with two sons of Nizar Rayyan, who indicated that in addition to their father, his four wives (their mothers) and eleven of his children were also killed in the attack which destroyed their house and others around it.
314. In total, the IMFA reported that the IDF targeted the “house[s] of” ten named Hamas ‘operatives’ during the conflict. The IMFA also reported that the IDF targeted the buildings in which some Hamas operatives were residing. There was no indication as to

whether any family members of the operatives or other persons were also located in the houses or residences at the time.²²⁰

315. The IMFA also reported targeting a number of other installations, including weapons stores and manufacturing sites, and tunnels located in the houses of Hamas operatives. Again there was no indication as to whether any persons were also located in these homes when they were targeted.

Factual assessment.

316. As reported directly to the Committee, during the conflict there was a large amount of damage to and destruction of residential areas. The reports of graffiti and the removal of belongings from houses are consistent with the reports of soldiers, as published by *Haaretz*. The Committee saw examples of obscene and racist graffiti on some of the damaged walls it visited.

Hospitals and Medical Personnel.

The Al-Wafa Hospital

317. The Al-Wafa hospital is the only recognised centre for in-patient rehabilitation for spinal cord injuries and strokes. It is located in the east of Gaza, north of Gaza city, close to the Israeli border.
318. It was reported to the Committee that on 12 January 2009 there was white phosphorous fired into the area around the hospital. Some of it landed on the roof at Al-Wafa and there was a fire, but because there was no civil defence the hospital had to deal with the fire itself. Then on 15 January 2009 eight tank shells and two missiles targeted the hospital. Because of the shelling in the area, two hours prior to the attack all the patients were moved, so there were no casualties.
319. The hospital director denied that any militants were at the hospital. He stated they had civilian police security, but that they cannot prevent militants from being “around the hospital”.
320. The Committee saw the damage to the main hospital building, including a shell that went through the word ‘HOSPITAL’ on the side of the building, as well as the damage to the new hospital buildings (not yet in use) where three shells landed.

²²⁰ http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Aerial_strike_weapon_development_center+Gaza_28-Dec-2008.htm, accessed 15 April 2009.



Picture 5: Damage to the Al-Wafa Hospital. The letters “EL W AL” can be seen.

321. The Committee also spoke with two hospital employees who were working on 15 January 2009 when the hospital was shelled. They reported that on that night the hospital was out of fuel for the generators. As the ICRC could not come because of active operations, they decided to go to the new building, which was not yet open, to get some fuel. On their way to the new buildings, Apache helicopters began shelling them.



Picture 6: Damage to the new buildings of the Al-Wafa Hospital.

322. The hospital director stated there had been fighting approximately 1km from the hospital for the first 20 days of the conflict. The IDF did not manage to get across the area in that time. He surmised that maybe they were frustrated and so began targeting the hospital. He noted that previously the Israelis had been very careful about hospitals. He said there were no explanations, just a blanket claim that there were no civilians involved.
323. When asked whether there were any Hamas leaders sheltering in the hospital, the director responded: “Why would they leave the city and go to the borders?”

The Al-Quds Hospital

324. On 15 January 2009 the Al-Quds hospital was hit. The Committee saw the damage to the hospital, and the damage to the pharmacy and the building housing the ambulances of the hospital. The buildings were first attacked by air and then by tank shells.
325. The Minister of Health reported to the Committee that they tried to coordinate the evacuation of the patients from the hospital with the IDF via the ICRC. They tried this for three hours, but the ICRC said it was a military area therefore there was no coordination. The Hospital Director made an independent decision to take the patients outside. The ambulances arrived between three and five hours later.
326. The IMFA reported the preliminary investigations in relation to this attack indicated that the IDF was fired on from “inside or adjacent to” the hospital, and that the IDF was responding.²²¹



Picture 7: Damage to the Al-Quds Hospital.

²²¹ http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_Spokesman_Israeli_fire_incidents_Gaza_17-Jan-2009.htm

The Al-Awda Hospital

327. The Al-Awda hospital was visited by Professor Corte Real. Documents held by the PNA Central Commission for Documentation and Pursuit of Israeli War Criminals indicate that the hospital was hit directly on 4 January 2009 by fire from tanks, on 5 January 2009 by artillery shelling, and on 6 January 2009 by gunfire from tanks. On 6 January 2009, the hospital coordinated with the ICRC and placed flags on its roof. However, on 13 January 2009, three missiles landed on the hospital. On 15 January 2009 there was shelling in the area, including white phosphorous, which had an impact on the patients in the hospital and at that time all the patients were evacuated. The hospital was hit again on 16 January 2009 by fire from Israeli tanks. According to the Hospital Director, there were no fighters in the hospital or indeed in the areas around the hospital.

The Al-Shifa Hospital

328. The Committee visited the grounds of the Al-Shifa hospital. The hospital was not attacked directly, but the mosque across the street was attacked and other buildings at the borders / edges of the hospital complex were attacked. A technician was killed when the Mosque collapsed on him. As a result of the attacks on the surrounding buildings, a large number of the hospital's windows were shattered. These are yet to be repaired as there is no glass available in Gaza to repair them. Presently they are covered with plastic. However, this is causing difficulty for ongoing treatment and hygiene.

Ambulances / Medical Transports.

329. The Committee heard allegations of a number of incidents in which ambulances were impacted by the conflict. There were allegations of the obstruction of passage for ambulances, delays in ambulances arriving to evacuate the injured and deceased, mistreatment of ambulance drivers and the direct targeting of ambulances. The Committee members saw several ambulances which had been destroyed, and the ambulance that was seized and then destroyed when it went to assist the Abed Rabo family.

330. The Minister of Health stated 13 or 14 ambulances were destroyed.



Picture 8: Destroyed ambulance, located at the Al-Shifaa Hospital when seen by the Committee.

331. The Minister of Health described one incident relating to two ambulances from the Al-Awda hospital. There was an attack and the victims sought medical assistance. Two ambulances were sent to evacuate the injured. On the return journey, one of the ambulances was attacked, the driver, the rescuer and the injured were all killed.
332. There were also attempts to transport the injured to Rafah for transfer to hospitals in Egypt and other countries. On 8 January 2009, a move was coordinated with the IDF via the ICRC. The Minister of Health said that there was a fully coordinated convoy of a number of vehicles headed by the ICRC, which was not allowed past the military line bisecting Gaza. It was also reported the IDF fired shots across the front of the convoy.
333. Save for the announcement in relation to the targeting of the Al-Quds hospital, IMFA daily updates make no mention of the attacks on hospitals and or medical units or transports.

Education facilities.

334. **UNRWA** reported to the Committee that UNRWA managed around 120 school buildings in Gaza, and around 200,000 students. Of the 120 school buildings, 36 were damaged. Of UNRWA's 16 health installations, seven were damaged. In total, 51 installations suffered damage. There are other education facilities in Gaza, including Government, international and private schools and universities.

The American School.

335. On 4 January 2009, the American School was bombarded. The school was closed at the time, but the school guard was killed during the attack. The Committee inspected the ruins of the school, which had been completely destroyed.



Picture 9: The destroyed American School showing the main building from the street.

336. It was reported there was some rocket fire from the area around the school prior to the bombardment. However, the IDF made no direct mention of this attack.



Picture 10: The destroyed American School showing the rear of the main building and the sports oval.

The UNRWA Training Facility.

337. On 27 December 2009 the area at the entrance to the UNRWA vocational / training centre was shelled as the students were trying to leave. Eight students were killed and twenty were injured.²²² The Committee saw the craters and mortar damage around the gates to the training centre.

Al-Fakharra School.

338. By January 2009 this UNWRA school was being used as a shelter. Between 2,000 and 3,000 people were housed there. Most of the refugees were from the Al-Atra and Beit Lahiyeh areas.

339. Information about the changed status of the facility was provided to the IDF via the United Nations Department of Security and Safety.

340. At approximately 3pm on 6 January 2009, three artillery shells hit the area surrounding the school, a fourth one hit an area in a neighbouring street. 24 people were killed in the immediate area around the school, and 11 slightly further away (the Al-Deeb family).

341. Some witnesses stated the shells came from tanks, but one witness said the bombs had come from drones.

The Islamic University.

342. At midnight on 28 December 2009, the chemical laboratories of the Islamic University in Gaza City were bombarded. In total 74 laboratories were destroyed in both the Engineering and Science faculties. There were no casualties from the attack.

343. The Committee visited the University grounds and witnessed the ongoing demolition of the Engineering faculty in preparation for rebuilding the laboratories. The estimated cost to rebuild the buildings is US\$4 million, with US\$11 million required to replace the equipment. The Centre for Architectural Heritage was also destroyed, and the library was damaged because the laboratory building fell on it.

²²² <http://www.wsws.org/articles/2008/dec2008/bomb-d30.shtml>, accessed 10 April 2009



Picture 11: The destroyed Engineering Faculty building.

344. The destroyed laboratories were used by the Faculties of Science, Engineering and Medicine. The facilities were also the only facility in Gaza for advanced laboratory analysis. They were also used by the private sector, in particular engineering companies.
345. The President of the University was asked about the University's relationship with Hamas. He said: "Simply because we are an Islamic University the connections are alleged. We are an open university and recruit students from everywhere." He said no weapons were allowed onto the campus. However, he could not say that no resistance fighters were ever present on the campus.
346. Regarding the activities on 28 January 2009, the IMFA published the following comment on its website which probably relates to the attack on the Islamic University.²²³

The Israeli Air Force attacked a number of Hamas targets during the night, including Hamas outposts, weapon manufacturing facilities and a center for weapon research and development. The center, located in the Rimel neighborhood of Gaza City, was targeted in a combined IDF and the Israel Security Agency operation.

Factual assessment.

347. The Committee is unable to fully evaluate the claims of the IDF there were weapons stores in schools or that there were rockets being fired from the areas surrounding schools. However, the unreliability of IDF explanations for firing on schools is

²²³ http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Aerial_strike_weapon_development_center+Gaza_28-Dec-2008.htm

illustrated by the fact that the IDF was compelled to retract its claim that the UNRWA school in Jabalya that had been fired on was harbouring militants and to admit that its evidence was based on photos of militants in the school from 2007.²²⁴

348. In relation to the UNRWA schools, the IDF has admitted that the targeting of those buildings was a ‘grave error’. In relation to the American School, even if the Committee accepted the assertion there was a fighter firing rockets from the area, there appears to have been no military necessity for destroying the school completely, something that required more fire power than is required to remove one rocket firer.

Religious Buildings.

349. The Committee saw extensive damage to a number of mosques, some of which were completely destroyed. These mosques were located in both residential areas and in the cities.



Picture 12: A destroyed mosque.

350. The Committee also saw the specific destruction of the minarets of a large number of mosques. It was reported to the Committee the minarets which were destroyed were not large enough to hold people, and did not have stairs allowing access, which makes it impossible for these minarets to accommodate snipers.

²²⁴ “UNRWA: Army admitted bombed school did not harbor militants”, by Barak Ravid and Akiva Eldar, 11 January 2009. *Haaretz*. Available at: <http://www.haaretz.com/hasen/spages/1054139.html>, accessed 20 April 2009.



Picture 13: A targeted minaret.

351. The **IMFA** reported mosques were being used to house weapons and as launching areas for rockets and missiles into Israel. However, it was also reported that one mosque was attacked during prayer time. Twenty-three people were reported to have been killed when the Aimad Aql Mosque was hit. It was acknowledged that there were Hamas supporters in the Mosque; however, the mosque was hit at prayer time and so the persons were praying not fighting.
352. The Committee also saw the destruction of a mosque just outside Beit Lahiyeh. The Committee spoke with a man who lived next to the mosque. His 13 year old son was killed when the mosque was hit with what he said was white phosphorous, and his wife is still in hospital. He had never seen anything like white phosphorous before and said that when he put water on the flames this only increased them.

Factual Assessment

353. A large number of mosques were targeted specifically (the minarets) and destroyed. This damage has been reported by a number of sources. Given the limited reporting of Palestinian fighters in the city areas, the Committee is of the view that the targeting of the mosques, in particular the minarets, had little or no military purpose. It seemed highly likely that mosques, and more particularly the minarets, had been deliberately targeted on the grounds that they symbolized Islam.

United Nations Premises.

354. The Committee visited the UNRWA headquarters in Gaza city and saw the destruction to the warehouse.



Picture 14: The destroyed UNRWA warehouse.

355. On 15 January 2009 over a period of at least two hours, at least 10 missiles were dropped on the [UNRWA] facility, including a number of white phosphorous shells. During the attack the United Nations reported to the IDF that they were under fire. Pharmaceuticals, food and non-food items (including fixed assets and vehicles) valued at around US\$6.4 million were all destroyed. **UNRWA** reported that the estimated cost of rebuilding the destroyed warehouse and workshop is US\$3.98 million.



Picture 15: The destroyed UNRWA warehouse.

356. In the immediate aftermath it was stated in Israel, not by the IDF, that there were militants firing from there, but this was later withdrawn. The Secretary-General of the United Nations, Mr Ban Ki Moon, reported that the Israeli Minister of Defence said the targeting of the warehouse was a ‘grave mistake’.²²⁵
357. The **IMFA** reported the preliminary investigations in relation to this attack indicated that the IDF was fired on from “inside or adjacent to” the UNRWA facilities, and that the IDF was responding to that fire.²²⁶
358. Other UNRWA installations were also hit, including the school at Beit Lahiyeh and the vocational training centre in Gaza city.

Government Buildings.

359. The Committee saw evidence of the destruction of a number of Government buildings, including:
- The Ministry of the Interior, which included the office of civil registration, for registering births, deaths and marriages. This building was destroyed together with its entire records.
 - The taxation office.
 - The Ministries Compound which housed a number of different Ministries.
 - The Guest House of the President, which was 50 years old and formerly the home of the Egyptian Governor.

²²⁵ http://www.un.org/unrwa/news/statements/SecGen/2009/headquarters_15jan09.html

²²⁶ http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_Spokesman_Israeli_fire_incidents_Gaza_17-Jan-2009.htm It was emphasised though that these events are still under investigation.



Picture 16: The destroyed President's Guest House.

360. The Minister of Justice reported that the following Ministries were completely destroyed:

- Interior Ministry
- Ministry of Justice
- Ministry of Finance
- Ministry of Education
- Foreign Ministry

361. On the night of 28 January 2009, the Parliament building itself was also targeted. It was hit directly by three bombs. There are 152 members of parliament in the whole of Palestine, and 15 of those are located in Gaza. The main meeting room of the Parliament was destroyed and as a result there is no possibility to conduct joint sessions with the parliament in the West Bank via video link.

Factual Assessment

362. The IDF has not denied that government buildings were engaged in government, that is the administration of the civil affairs of Gaza. It has not claimed that they were engaged in military activities but has suggested that as they serve the Hamas government they are legitimate targets. The Committee concludes that their destruction served no military advantage, and there is no evidence to contradict this conclusion.



Picture 17: The destroyed parliament building, showing where joint sittings were formerly held.

Civil Defence – Police and Prisons

363. On 27 December 2009, the first day of the conflict, tens of police stations were hit simultaneously across Gaza. The Committee visited the main police headquarters in Gaza where more than 80 police were killed within the first minutes of the conflict. The majority were cadets on the first day of their training. Uniformed and unarmed they were standing in a parade yard. The parade was an official parade and had been well publicised.
364. The first of three shrapnel bombs to land on the headquarters that day landed in the parade yard. 53 cadets were in the area and 48 were killed instantly. Another two cadets died later. There were only three survivors of the 53: one is now disabled, one was only lightly wounded and the third was not injured. Another 28 officers were killed after they gathered in the rescue department following the first bomb. More than 120 police were also wounded.



Picture 18: The parade yard where the first shell landed. Remnants of clothing and shrapnel were still present on the site when the Committee took this picture.

365. The then Chief of Police, a former Fatah member, was also killed. It appears he was not targeted personally, but happened to be at the headquarters when it was attacked. Other units which suffered losses on 27 December 2009 included the guards of the headquarters, the traffic police, the drug combating department, the administration and rescue departments and the police band. The last of the bombs to fall on the headquarters landed near an exit gate and killed at least three people as they were trying to leave the headquarters.



Picture 19: The damage caused from the final shell which hit the headquarters near an exit. The shrapnel damage can be seen on the walls.

366. There is also an Explosives Engineering building at the police headquarters which was not hit. On 27 December 2009 there were no explosives there; it was reported they had been removed for destruction one week before during a periodic removal of the explosives. The explosives that are collected there are unexploded ordnance from previous incursions.
367. Throughout the conflict a large number of the police stations throughout Gaza were attacked, and the Committee saw a number of them. It was reported to the Committee that of the 9,000 police in Gaza 250 were killed and a further 250 were injured to the point that they were unable to work. All of the police that were killed died when they were on duty at police stations: none were killed in combat with the IDF. It was also reported a number of civilians were killed when the police stations were targeted.
368. The fire brigade was also reportedly hit during the conflict.
369. On 28 December 2008 the Saariyah prison complex was also targeted. It was the same complex that was used by the British, the Egyptians and the Israelis when they were on the ground in Gaza. The complex also has some military installations on the same site. This was the only place of confinement in Gaza. It was reported that the PNA is now having difficulties in respecting the human rights of prisoners and detainees. Security forces are being forced to use other properties for detention purposes as the majority of police stations were also targeted, so any cells located in those officers are also not available. As one human rights worker reported: "Israel has debilitated Hamas and removed their opportunity to comply with human rights law. Human Rights organisations have no idea where these people are now being held."

Factual assessment

370. The locations of all the police stations were reported to the IDF and the location of the Saariyah prison complex was well known.

371. The police were functioning in accordance with the parameters set in the Oslo Agreements. They were generally armed, with prescribed weapons. It must be stressed the police were all uniformed. This is in contradiction with the reports about Palestinian fighters, none of whom wear any formal uniforms.

Commercial Buildings.

372. The Committee visited the industrial area of Gaza and saw a number of factories which had been destroyed and damaged in the last days of the conflict. In particular there was a juice factory which suffered substantial damage, several concrete factories that were completely destroyed and furniture and processing plants that were shelled with white phosphorous. There were also attacks on ice cream and biscuit factories and an air attack on the Pepsi-Cola factory.



Picture 20: Destroyed factories in the industrial area. The blue metal and yellow silo was the cement factory.

373. The Committee saw the destruction of and damage to factories across the whole of Gaza, from the northern border to Rafah.

The Palestine Food Industries Gaza Juice Factory

374. Sometime between 15 and 18 January 2009, the Gaza Juice Factory was targeted: it was vacant at the time. The Committee visited the factory and saw the remnants of the rockets and other weapons which had been collected on the site following the attack. One of the rockets had written on it in Hebrew “Gift from the IDF.”



Picture 21: Part of a weapon found at the Juice Factory. The text reads “Gift from the IDF”.

375. The Committee spoke with Mr Ayed Abu-Ramadan, the Managing Director, who showed the Committee a presentation on the destruction and took the Committee members around the factory to see the damage. Since 15 January 2009, the factory had been partially restored and production was continuing, however on a limited scale.
376. The evaporator (used to make concentrate) was completely destroyed. It was valued at US\$1.2 million. US\$600,000 worth of goods was also lost and the storage facility was damaged. It will cost \$2.5m to repair.



Picture 22: One of the destroyed buildings at the juice factory.

377. Outside the main factory building, a staircase on the outside of the cooling facility had been targeted. It was suspected that white phosphorous had been used on the cold storage because of the nature of the burning – it burnt from the top down. Also there was no shrapnel or fragments of weapons, as opposed to in the factory.
378. When this factory was targeted, the area was under the control of the IDF.

Fayez Abu 'Akar Limited Warehouse

379. On 15 January 2009 at 9:00am the Fayez Abu Limited Warehouse was hit with white phosphorous. This warehouse distributed food packaging to the Gaza Strip. There was nobody present as all the workers had left because of the ground operation.
380. The Committee visited the remains of the warehouse on 24 February 2009, which were still smouldering.

Muhana Factory for Furniture Production

381. On 15 January 2009, Muhana Factory was bombed with white phosphorous. Prior to the recent closures the factory employed 50 people and exported to both Israel and to some Arab countries; however in recent times it has only marketed its products within Gaza.
382. The Committee visited the factory. The factory owner denied that the factory was being used to build rockets, and stated they built wooden furniture.



Picture 23: The destruction at the Muhana Factory. It is clear that the building was burnt.

'Adnan Saleh 'Ajjour Carpentry

383. On 15 January 2009, the 'Adnan Saleh 'Ajjour Carpentry factory was also attacked. The Committee visited the remains of the factory and saw a substance (which appeared to be white phosphorous) still burning on the floor of the factory.
384. One of the owners of the factory, Mr Rami 'Ajjour, reported that he was in contact with the guard who was at the site when it was bombed. The guard said that militants fired on a tank and the tank opened fire indiscriminately in response. The factory owner denied having any links with any resistance fighters.²²⁷
385. The Committee also saw the destruction of some villas in the area and the results of tanks moving through the area.
386. The **IMFA** did not report on the targeting of any factories as such, but reported attacks on numerous weapons manufacturing locations.

Factual Assessment

387. The damage to these factories occurred toward the end of the conflict as the IDF troops were withdrawing or preparing to withdraw. The Committee heard little evidence of fighting, although the guard from the 'Adnan Saleh 'Ajjour Capentry factory admitted to some fighting in the area. Assuming there were fighters in the area, there appears

²²⁷ **PHR** also reported a case where an IDF tank was fired upon by Palestinian fighters and responded "with heavy artillery." Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009, April 2009. Physicians for Human Rights. http://www.phr.org.il/phr/files/articlefile_1239020519406.pdf, accessed 9 April 2009, page 29.

nonetheless to have been a large and disproportionate amount of destruction of property. There is no evidence that such destruction might have been demanded by military necessity or served any military advantage.

Destruction of Agricultural Lands.

388. The Committee saw evidence of the destruction of vast areas of agricultural land throughout Gaza, including in Juhor al-Dik. This appeared to have been done with bulldozers, and indeed a number of witnesses told the Committee about bulldozers clearing areas. At times this destruction was carried out behind the front line of the Israeli advance.



Picture 24: The damage to the Hajjaj family home and the damage to the surrounding land.

389. The Agricultural Union reported 40% of the agricultural land of Gaza was destroyed. Thirty-two nurseries and a number of greenhouses were also destroyed. The Union believes that agricultural land was destroyed simply because this is where the ground troops were located. Again, there is no likelihood that the destruction of agricultural land could have served any military purpose.

The Tunnels.

390. Prior to and during the conflict the **IMFA** consistently alleged that tunnels that had been dug under the southern border of Gaza, around the Rafah area, were being used to smuggle weapons into Gaza.²²⁸ The **IMFA** reported targeting the tunnels on a daily basis, targeting more than 400.

²²⁸ http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Aerial_strike_weapon_development_center+Gaza_28-Dec-2008.htm

391. Humanitarian organisations and NGOs within Gaza all acknowledged the tunnels exist and that although they could be used to smuggle weapons into Gaza, their primary purpose was financial. The siege of Gaza has resulted in a ban on many of the most basic necessities, ranging from fuel to food, and the tunnels ensure that these goods are brought into Gaza for sale. It was acknowledged there are no figures as to the number of the tunnels or the proportion of them that are used to bring weapons in or what proportion of the items brought in are weapons. However, it was generally agreed that without the tunnels, the humanitarian situation in Gaza would be even more desperate. Indeed it is clear that the tunnels serve a vital need in Gaza.
392. All of the groups the Committee spoke with about the tunnels confirmed that despite the IMFA reports that they had largely destroyed the tunnels, they continued to operate throughout and since the conflict. Proof of that was the availability of Egyptian fuel on the streets, when the Rafah border had been closed since prior to the conflict.



Picture 25: One of the tunnels seen by the Committee.

Factual assessment

393. The Committee visited some tunnels in the Rafah area that had not been targeted, and which were continuing to operate. They were very easy to see, and find. All the tunnels the Committee saw were protected by some kind of awning and were easily discernible from the surrounding area. Far from being concealed and difficult to find, the Committee was able to simply drive up to them. Construction of the tunnels was also continuing in broad daylight. Heavy digging machinery was in the vicinity and it was reported the pole diggers were being used to dig more tunnels.



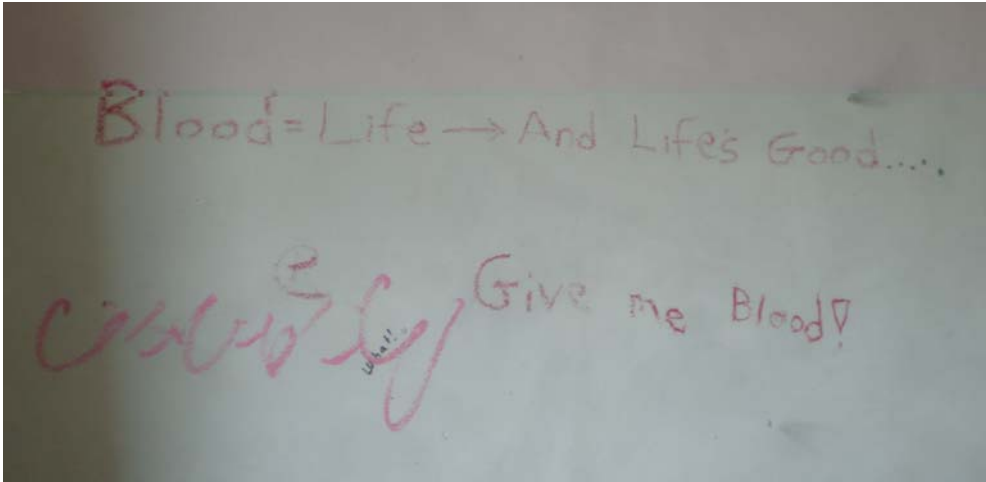
Picture 26: The tents or awnings over the tunnels. Each one of these constructions covers the entrance to a tunnel.

394. The Committee is of the view that had the IDF wanted to completely destroy the tunnels this would have been relatively easy to achieve. They are easily discernible and given the IDF's aerial surveillance capability, they must have been aware of the exact location of the tunnels. However it was clear to the Committee they had not all been destroyed during the conflict. In the Committee's view this raises questions about the Israeli claim that it acted in self-defence against the smuggling of weapons through the tunnels.

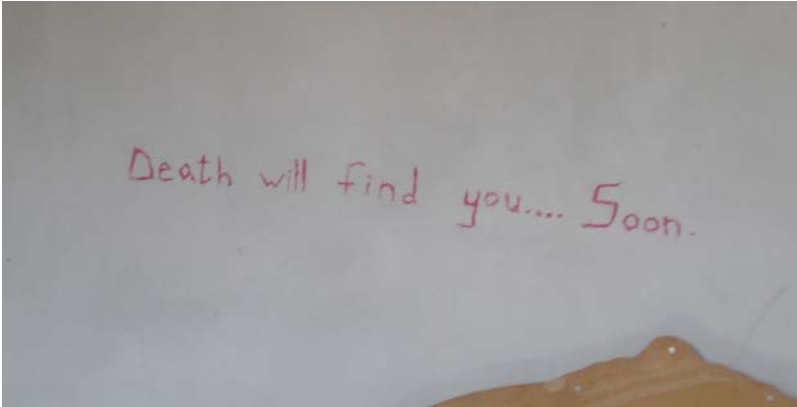
Israeli Graffiti.

395. The Committee witnessed graffiti in houses that had been occupied by the IDF, on buildings the IDF had been surrounding and even on munitions. Some of the graffiti was in Hebrew some in English. This graffiti ranged between the directional / operational (advising soldiers where the rest rooms and bathrooms were) to threats and obscenities.

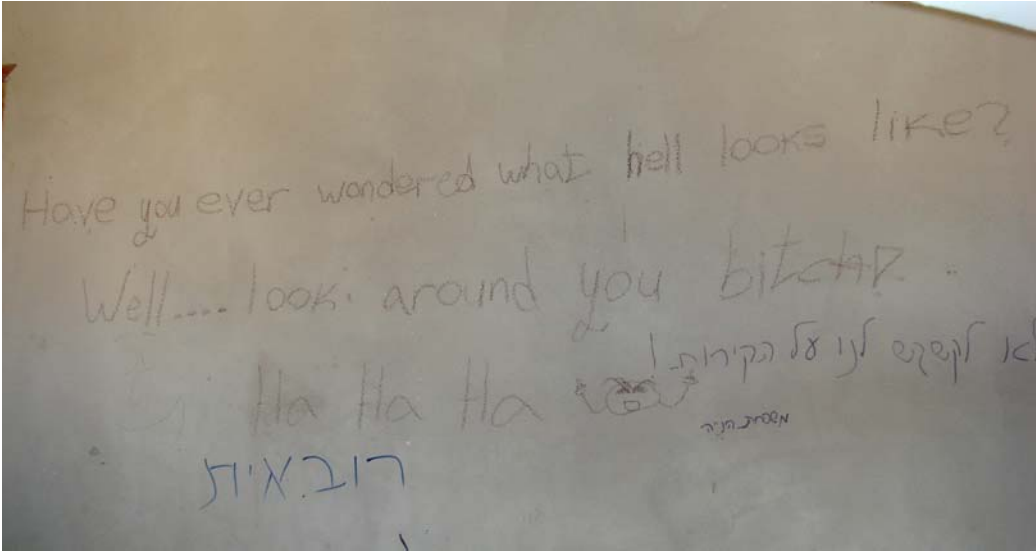
396. Some of the more extreme English examples included:



Picture 27: Graffiti in Juhor Al-Dik: “Blood = Life → And Life's Good”.



Picture 28: Graffiti in Juhor Al-Dik: “Have you ever wondered what hell looks like? Well ... look around you bitch! Ha Ha Ha”.



Picture 29: Graffiti in Juhor Al-Dik: “Death will find you ... Soon”.

Factual Assessment.

397. The Committee is of the view the graffiti is a form of property damage. Directional information (for example: toilets this way, rest room that way) relate to the operational needs of the IDF. However, in addition to damaging property, graffiti provides vivid evidence of the attitudes and mental state of the IDF soldiers who were occupying the houses.

C Conclusion.

398. The above facts and information obtained from reliable sources within both Gaza and Israel, together with the Committee's own observations and information gathered during the course of its visit to Gaza from 22 to 27 February 2009, allow the Committee to make an assessment of violations of human rights and international humanitarian law and to draw certain conclusions. The Committee will first examine violations of human rights law and international humanitarian law that do not clearly constitute international crimes. It will then examine the question of criminal responsibility that may arise from the conflict in Gaza between 27 December 2008 and 18 January 2009.

Part III: Legal Assessment

A Introduction.

399. In order to assess the facts presented in Part II from the point of view of international law, the Committee has first to consider a number of issues that play an important role in assessing the legal context of the preparation, launching and aftermath of the Israeli military operation *Cast Lead*. These are the legal concepts of occupation, aggression, self-defence, terrorism and proportionality.

Occupation.

400. Israel has been in military occupation of Palestine for over 41 years. This was reaffirmed by the International Court of Justice in its 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, when it held that the Palestinian territories (including East Jerusalem) “remain occupied territories and Israel has continued to have the status of occupying Power”.²²⁹ The consequence of this, in the opinion of the International Court, is that the Convention relative to the Protection of Civilian Persons in Time of War²³⁰ applies to the Occupied Palestinian Territory, as do the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the Convention on Rights of the Child.²³¹ Furthermore, Israel’s obligations have not diminished as a result of the prolonged nature of the occupation.²³² On the contrary, they have increased as a result of it. It is even argued that Israel’s occupation has become unlawful as a result of the numerous violations of international law that have occurred during the occupation.²³³
401. That Gaza remains an integral part of the Occupied Palestinian Territory was reaffirmed by the Security Council in resolution 1860 of 10 January 2009.²³⁴
402. Since Israel withdrew its settlers and armed forces from Gaza in 2005, it has claimed that Gaza is no longer occupied territory. On 19 September it went further and declared that Gaza was “hostile territory” and proceeded to tighten its siege of the territory.
403. The test for determining whether a territory is occupied under international law is effective control,²³⁵ and not the permanent physical presence of the Occupying Power’s military forces in the territory in question. Judged by this test it is clear that Israel remains the Occupying Power as technological developments have made it possible for

²²⁹ 2004 ICJ Reports 136, 167 (para 78).

²³⁰ Fourth Geneva Convention.

²³¹ Ibid 177 (para 101), 180-181 (paras 111-113).

²³² See Adam Roberts, “Prolonged military occupation: the Israeli occupied territories since 1967” (1990), 84 *American Journal of International Law*, 55-57 and 95.

²³³ O. Ben-Naftali, A.M. Gross and K. Michaeli, “Illegal occupation: framing the Occupied Palestinian Territory”, (2005) 23 *Berkeley Journal of International Law*, 551-614

²³⁴ See **Annexure 6** for the full text of the Resolution.

²³⁵ See *United States of America v Wilhelm List et al (The Hostages case)* United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol III, 1949, p. 56; *Democratic Republic of Congo v. Uganda*, 2005 ICJ Reports, and 174.

Israel to assert control over the people of Gaza without a permanent military presence.²³⁶ Israel's effective control is demonstrated by the following factors:

- (1) Effective control of Gaza's six land crossings;
- (2) Complete control of Gaza's airspace and territorial waters;
- (3) Control through military incursions, rocket attacks and sonic booms: sections of Gaza have been declared "no-go" zones in which residents will be shot if they enter;
- (4) Control on the Palestinian Population Registry which determines who may reside in Gaza and who may leave and enter the territory.

404. In the opinion of the Committee it is therefore clear that in law Gaza is a territory occupied by Israel.

Aggression.

405. The Committee takes the view that Israel's attack in Gaza was heinous and inhuman. Moreover, it does not accept that Israel's actions were taken in the legitimate or lawful exercise of self-defence, as detailed below. Nevertheless the Committee has, after careful consideration, decided not to make any finding on the question whether Israel's attack constituted aggression.

406. Aggression is recognized as a crime under customary international law,²³⁷ but there is uncertainty over the definition of the crime. The Rome Statute of the International Criminal Court declares that aggression is a crime falling within the jurisdiction of the Court²³⁸ but fails to provide a definition of the crime. At present there is a dispute over the definition of the crime and whether the ICC should itself be allowed to determine a situation to constitute aggression or whether the situation must first be determined as aggression by the Security Council. Questions of this kind are to be considered by the first Review Conference of the ICC. The most satisfactory definition of aggression is to be found in General Assembly Resolution 3314,²³⁹ which describes aggression as "the use of armed force by a state against the sovereignty, territorial integrity or political independence of *another state*...". The definition adds that the term State is "used without prejudice to questions of recognition as to whether a state is a member of the United Nations". The legal personality of Palestine is, however, uncertain: that is whether it can accurately be described as a state or not.

407. Uncertainty over the definition of aggression, and the statehood of Palestine have compelled the Committee to take no position on the question of whether Israel's assault on Gaza could *in law* be described as aggression.²⁴⁰

Self-Defence.

408. Israel has consistently maintained that its offensive was action taken in self-defence to rockets fired from Gaza into Israel and the smuggling of weapons into Gaza by means

²³⁶ See further on this subject, Sari Bashi and Kenneth Mann, *Disengaged Occupiers: the Legal Status of Gaza*, Gisha: Legal Center for Freedom of Movement, January 2007; S.D. Dikker Hupkes, *What Constitutes Occupation? Israel as the Occupying Power in the Gaza Strip after the Disengagement* (Jongbloed 2008).

²³⁷ *R v Jones* [2006] UKHL 16.

²³⁸ Article 5.

²³⁹ XXIX-1974

²⁴⁰ Professor Richard Falk, Special Rapporteur to the Human Rights Council on the Human Rights Situation in Palestine likewise takes no position on this subject in his Report of 17 March 2009: A/HRC/10/20.

of tunnels from Egypt. It claims that it exercised its “inherent” right to self-defence provided for in Article 51 of the United Nations Charter. The Committee therefore believes that this issue must be considered before it addresses the question of criminal responsibility.

409. In the first instance it must be stressed that there are serious questions about the applicability of the doctrine of self-defence in the case of military action taken by an occupying power against an occupied people. It may be that military action taken in such circumstances should rather be categorized as police or enforcement action against resistance action by the occupied people. After all, Nazi Germany did not qualify its actions taken against the French resistance during World War II as self-defence but rather as police action by an occupying power. No doubt it was considerations of this kind that led the International Court of Justice in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 2004 to reject Israel’s claim that under Article 51 of the United Nations Charter it was entitled to construct a wall in Palestinian Territory in the West Bank. The Court stated, in dismissing this argument:²⁴¹

Article 51 of the Charter recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State. The Court also notes that Israel exercises control in the Occupied Palestinian Territory and that, as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside that territory. The situation is thus different from that contemplated by Security Council resolutions 1368 (2001) and 1373 (2001), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising the right of self-defence. Consequently, the Court concludes that Article 51 of the Charter has no relevance to the case.

410. The suggestion that modern international law recognizes a broader definition of self-defence than that contained in Article 51, allowing self-defence against terrorism, has no bearing on the Gaza conflict. The argument that Security Council resolutions 1368 (2001) and 1373 (2001), which provide the basis for the claimed new definition of self-defence, apply to the Palestinian situation, has, as shown above, been dismissed by the International Court of Justice.²⁴²
411. The Committee is unable to accept that Israel acted in self-defence, both for the above reasons, and for a number of other reasons.

- (1) Israel’s response was not an immediate attack in response to the rockets. In this respect it failed to meet the requirements laid down in the famous *Caroline* case, according to which it is necessary “to show a necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment for deliberation”.²⁴³ Israel had endured rocket attacks for over a year before it acted, which makes it difficult to contend that there was any immediate necessity for action in self-defence. Rather, it seems, that Israel’s actions were punitive and designed to prevent further rocket attacks.

²⁴¹ 2004 ICJ Reports 136, 194 (para 139).

²⁴² Ibid.

²⁴³ (1938) 32 *American Journal of International Law* 82.

- (2) Israel was itself responsible for violating an agreed six month truce with Hamas that commenced on 19 June 2008 and was largely effective in maintaining peace. In the six months period preceding the truce some 150 rockets (at least) were fired from Gaza each month. From 19 June until 4 November “the rate of rocket and mortar fire from Gaza dropped to almost zero”.²⁴⁴ On 4 November 2008 Israel violated the truce when it launched an attack on Gaza on the pretext of closing a tunnel to be used to abduct Israeli soldiers, that killed six Palestinians (see Para 36 above). This violation resulted in a resurgence of rocket fire but it seems that Israel refused attempts to renew the truce. This all casts doubts on the integrity of Israel’s claim that it acted in self-defence.
- (3) Israel announced that the purpose of its offensive was to destroy the “infrastructure of terrorism”. However, little attempt was made to bomb Hamas strongholds in the aerial bombing or the land offensive. Instead decidedly “non-terrorist”, non-Hamas targets were attacked such as the American School and other schools, United Nations premises, hospitals, mosques, factories, businesses, neighbourhoods not generally sympathetic to Hamas and cultural institutions.
- (4) On 5 November 2008 Israel imposed a ban on foreign journalists entering Gaza. This suggests that Israel’s action was premeditated rather than self-defence which was “instant, overwhelming, leaving no choice of means and no moment for deliberation”. This conclusion is confirmed by an article by Barak Ravid in *Haaretz* on 27 December 2008 in which he states “Sources in the defence establishment said Defence Minister Ehud Barak instructed the Israel Defense Forces to prepare for the operation over six months ago, even as Israel was beginning to negotiate a cease-fire agreement with Hamas.”²⁴⁵

Terrorism.

412. Israel categorizes Hamas as a terrorist organization and the actions of Palestinian militants as terrorism. It has justified operation *Cast Lead* as lawful action against terrorism, in addition to self-defence.
413. The Committee has serious misgivings about the use of the term “terrorism” in the context of the Palestinian conflict. The term is too uncertain, undefined and emotive to provide a basis for a rational examination of criminal responsibility.
414. There is no clear definition of the term terrorism. This is largely due to the opposing views on the question whether acts of violence carried out by a state or the actions of those fighting for the right of self-determination are to be included in the concept.²⁴⁶ The West is generally opposed to the inclusion of State terrorism, while the developing world is determined to exclude those engaged in a struggle involving the exercise of the

²⁴⁴ Nancy Kanwisher, Johannes Haushofer & Anat Biletzki, “Reigniting Violence: How do Ceasefires End?” 24 January 2009, cited by Falk, A/HRC/10/20 (2009) at 12.

²⁴⁵ “Operation *Cast Lead*”: Israeli airforce strike followed months of planning,” *Haaretz* 27 December 2008. <http://www.haaretz.co.il/hasen/spages/1050448.html>, accessed 25 April 2009. As confirmed on the IMFA website, which states: “The forces participating in the operation have been highly trained and were prepared for the mission over the long period that the operation was planned.” http://www.mfa.gov.il/MFA/Government/Communiques/2009/Second_stage_Operation_Cast_Lead_begins_3-Jan-2009.htm, accessed 20 April 2009.

²⁴⁶ A Cassese *International Law* 2nd ed (2005) 449; RA Friedlander “Terrorism” in 4 *Encyclopedia of Public International Law* (2000) 846,849; *ibid* Addendum 199 by Tilau Marauhn 856,

right of self-determination.²⁴⁷ That those engaged in the struggle for self-determination against “alien domination” or “alien occupation” are to be accorded a special status is supported by resolutions of the General Assembly.²⁴⁸ Moreover, Article 1(4) of Additional Protocol I extends the protective principle of the laws of international armed conflict to those fighting in the exercise of the right of self-determination against “alien occupation” – a clear reference to the Occupied Palestinian Territory.

415. The United Nations has had difficulty in reaching agreement on a comprehensive definition of terrorism. While there is consensus on the prohibition of different species of terrorism, such as hijacking of aircraft and ships, hostage-taking, acts of terror against diplomats, terrorist bombings, terrorist financing and nuclear terrorism, which have all been criminalized in multilateral conventions, the Sixth Committee of the General Assembly has for several years failed to reach agreement on a general definition of terrorism for a comprehensive convention outlawing terrorism. In large measure this is due to disagreement over whether those engaged in resistance to occupation are to be subject to the rules of international humanitarian law or treated as terrorists.²⁴⁹
416. Special Rapporteurs have experienced similar difficulties. The first Special Rapporteur on Terrorism to the Commission on Human Rights (now Human Rights Council), Professor K. Koufa (Greece), considered the finding of an all-encompassing and generally acceptable definition of terrorism too ambitious an aim.²⁵⁰ For that reason, she was authorized to conduct a conceptual study of terrorism and human rights.²⁵¹ Her successor, the present Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms, Professor Martin Scheinin (Finland), considered the definition of the notion “terrorism” by individuals or individual states as an issue central to his mandate²⁵² but he has not succeeded in providing a definition of the term.
417. The Security Council has adopted a number of resolutions on terrorism, notably resolutions 1368 (2001), 1373 (2001) and 1566 (2004). Resolution 1566 describes terrorism as:

... criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism...

²⁴⁷ The OAU (now AU) Convention on the Prevention and Combating of Terrorism (1999), provides that “the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered terrorist acts”(Article 3). (See, too, the Arab Convention on the Suppression of Terrorism of 1998, Article 2.(a))

²⁴⁸ See, for example, para 7 of the Definition of Aggression, GA Resolution 3314 (XXIX). In *Nicaragua v US* (Merits) the International Court of Justice refused to categorize wars of self-determination as an unlawful use of force: 1986 ICJ Reports 108.

²⁴⁹ See J Dugard “The Problem of Definition of Terrorism in International Law “ in P Eden & T O’Donnell (eds) *September 11, 2001: A Turning Point in International and Domestic Law?* (2005) 187; H Duffy *The “War on Terror” and the Framework of International Law* (2005).

²⁵⁰ Preliminary Report E/CN.4/Sub2/1999/27 of 7 June 1999, paragraph 4; Final Report, E/CN.4/Sub.2/2004/40 of 25 June 2004, para 12.

²⁵¹ E/CN.4/Sub.2/1999/27, para 2; E/CN.4/Sub.2/2004/40, para 6.

²⁵² E/CN.4/2006/98 of 28 December 2005, para 26. As for the mandate see HRC/RES/2005/80 of 21 April.

418. This resolution, with its emphasis on acts causing death or bodily injury to civilians with the purpose of intimidation or spreading terror, applies equally to anti-terrorist conventions and the Fourth Geneva Convention,²⁵³ as they both condemn acts of terror. Resolution 1566 makes it clear that political, racial, ideological, philosophical or religious considerations cannot justify such acts and demands that they should be punished. But it makes no distinction between punishment under anti-terrorism conventions and international humanitarian law conventions.
419. There is a growing understanding that any definition of terrorism should focus on terrorist acts against civilians, *regardless* of whether such acts are committed by persons, individually or collectively, or by states and their organs.²⁵⁴ The Committee decided to take this understanding into account in its report on the factual and legal assessment of the operation *Cast Lead* and on recommendations for legal ways and means to hold any violators of international humanitarian law accountable. The Committee therefore believes that criminal responsibility is to be judged by the rules of international humanitarian law applicable to armed conflicts which criminalize acts of violence directed at civilians by both state actors and non-state actors.
420. Related to the question of criminal responsibility for acts of terrorism is Israel's determination that Hamas is a "terrorist organization"²⁵⁵ and that, as a consequence, Gaza is a "hostile entity".²⁵⁶
421. Hamas was elected government of Palestine in democratic elections in 2006 and today exercises *de facto* authority and control over Gaza. The armistices between Hamas and Israel and the mutual accusations of violations strengthen the view it is inaccurate to consider Hamas as a purely terrorist organization and the firing from rockets from Gaza as terrorist acts, without regard to the siege imposed on Gaza which in large measure has prompted them. The correct position is well stated by **B'Tselem**.²⁵⁷

Hamas is certainly responsible for missile fire at Israeli civilians, which constitutes a war crime. However, as the entity effectively governing the Gaza Strip, it is also responsible for maintaining daily life. As such, it supervises the activity of all civilian frameworks in Gaza – among them the welfare, health, housing, and legal systems. Hamas must also ensure public order and safety by means of a police force. Therefore, even if Hamas is a 'hostile entity' whose principle objective is to undermine the existence of the State of Israel, this does not lead to the conclusion that every act it carries out is intended to harm Israel and that every government ministry is a legitimate target.

422. In these circumstances the Committee will determine criminal responsibility in the conflict in Gaza between 27 December 2008 and 18 January 2009 in accordance with the norms of international humanitarian law and international criminal law and not the uncertain and undefined norms of international terrorism. It will not consider whether Israel's acts constitute state terrorism; nor will it examine the conduct of militants from Hamas and other bodies from the perspective of terrorism. Instead the criminal

²⁵³ Article 33.

²⁵⁴ Oscar Schachter, *International Law in Theory and Practice*. (1991) 163.

²⁵⁵ See the website of the Israeli Ministry of Foreign Affairs, which systematically describes Hamas as a terrorist organization: <http://www.infolive.tv/en/infolive.tv-2026-israelnew-iicc>; <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/>. Significantly, Israeli human rights NGO's, such as Gisha, carefully refrain from describing Hamas as a terrorist organization.

²⁵⁶ <http://edition.cnn.com/2007/WORLD/meast/09/19/israel.gaza/index.html>.

²⁵⁷ http://www.btselem.org/English/Gaza_strip/20081231_Gaza_Letter_to_Mazuz.asp.

responsibility of both will be judged by the traditional standards of international humanitarian law.

Proportionality.

423. The principle of proportionality is central to the question of criminal responsibility. It is a principle reaffirmed in Additional Protocol I,²⁵⁸ the Rome Statute of the ICC²⁵⁹ and national military manuals. It is also a recognized principle of customary international law and has been formulated as follows by the International Committee of the Red Cross in its study on *Customary International Humanitarian Law*:²⁶⁰

Launching an attack which 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, is prohibited.

424. In her dissenting opinion in the *Legality of the Threat or Use of Nuclear Weapons*, Judge Higgins declared that “even a legitimate military target may not be attacked if the collateral civilian casualties would be disproportionate to the specific military gain from the attack”.²⁶¹

425. Probably the most comprehensive judicial statement on the principle of proportionality is that of President (Emeritus) Barak in the decision of the Israeli Supreme Court in *Public Committee against Torture in Israel v The Government of Israel (the Targeted Killing Case)*.²⁶² In his judgment President Barak declared:

The proportionality test determines that attack upon innocent civilians is not permitted if the collateral damage caused to them is not proportionate to the military advantage (in protecting combatants and civilians). In other words, attack is proportionate if the benefit stemming from the attainment of the proper military objective is proportionate to the damage caused to innocent civilians harmed by it. That is a values based test. It is based upon a balancing between conflicting values and interests...

The requirements of proportionality *strict sensu* must be fulfilled in a case in which the harm to the terrorist carries with it collateral damage caused to nearby innocent civilians. The proportionality rule applies in regards to harm to those innocent civilians... The rule is that combatants and terrorists are not to be harmed if the damage expected to be caused to nearby innocent civilians is not proportionate to the military advantage in harming the combatants and terrorists. ... Performing that balance is difficult. Here as well, one must proceed case by case, while narrowing the area of disagreement. Take the usual case of a combatant, or of a terrorist sniper shooting at soldiers or civilians from his porch. Shooting at him is proportionate even if as a result, and innocent civilian neighbor or passerby is harmed. That is not the case if the building is bombed from the air and scores of its residents and passersby are harmed... The hard cases are those which are in the space between the extreme examples. There, a meticulous

²⁵⁸ Article 51 (5) (b), Article 57.

²⁵⁹ Article 8 (2) (b) (iv)

²⁶⁰ (2005) vol 1, 46.

²⁶¹ 1996 ICJ Reports 226, para 20. See, too, *Prosecutor v Kupreskic*, ICTY, Case No IT-95-16 (2000), para 524.

²⁶² H.C.J. 769/02 *The Public Committee against Torture in Israel v. Government of Israel et al.* (in English at: http://elyon1.court.gov.il/Files_ENG/02/690/007/a34/02007690.a34.pdf). paras 45-46.

examination of every case is required; it is required that the military advantage be direct and anticipated... Indeed, in international law, as in internal law, the ends do not justify the means. The state's power is not unlimited. Not all of the means are permitted...

However, when hostilities occur, losses are caused. The state's duty to protect the lives of its soldiers and civilians must be balanced against its duty to protect the lives of innocent civilians harmed during attacks on terrorists. That balancing is difficult when it regards human life. It raises moral and ethical problems. Despite the difficulty of that balancing, there's no choice but to perform it.

426. As President Barak says, military advantage and the protection of the lives of soldiers must be balanced against the duty to protect the lives of innocent civilians on a case by case basis, with regard to the circumstances of each case. The Committee will perform this task in its examination of criminal responsibility.

B Violations of Human Rights and International Humanitarian Law Not Constituting International Crimes.

427. The Committee will not examine the violation of these norms in great detail as the focus of the present report is on international crimes and the available remedies for such crimes.

Human Rights Conventions.

428. Israel is a party to a number of human rights conventions which may have been violated in the course of its actions in Gaza. The Committee will, however, consider only three such conventions – the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child – as these conventions were considered by the International Court of Justice in its 2004 Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*²⁶³ and held to be binding on Israel in its administration of the Occupied Palestinian Territory.²⁶⁴

International Covenant On Civil And Political Rights.

429. The violation of several provisions of this Covenant give rise to criminal responsibility. For instance, violations of the right to life²⁶⁵ and the prohibition on torture, cruel, inhuman or degrading treatment²⁶⁶ may constitute war crimes, crimes against humanity or genocide. Such violations are considered in the section on criminal responsibility.
430. A number of provisions not giving rise to criminal responsibility were violated by Israel in the course of the conflict:
- (i) The right of everyone within the territory to freedom of movement²⁶⁷ was seriously violated by both the aerial bombardment of 27 December to 4 January, which confined people to their homes, and by the ground offensive from 4 to 18 January, which likewise confined people to their homes or compelled them to move to safe places – which often turned out to be unsafe.

²⁶³ 2004 ICJ Reports 136.

²⁶⁴ Ibid 177-181.

²⁶⁵ Article 6.

²⁶⁶ Article 7.

²⁶⁷ Article 12 (I).

- (ii) The rights of persons to freely leave their own territory²⁶⁸ was violated by the closure of Israeli controlled crossings from Gaza which resulted in the population being confined to the territory for the entire conflict.
- (iii) The prohibition on interference with the family and home²⁶⁹ was drastically violated by the IDF in its ground offensive which included the requisitioning of homes and their destruction.
- (iv) According to Article 1 of the Convention, all peoples have the right of self-determination, as recognized in the context of Palestine by the International Court of Justice.²⁷⁰ Israel's action in Gaza during the conflict, and before and after the conflict, has clearly impeded the exercise of this right and was so intended. This is apparent from Israel's hostile attitude towards Hamas, despite the fact that it succeeded in winning the democratically conducted elections in Palestine in 2006.

International Covenant On Economic, Social And Cultural Rights.

431. This Covenant obliges states within territories subject to their jurisdiction to recognize a wide range of rights, including the right to work,²⁷¹ the right to adequate food, clothing and housing,²⁷² freedom from hunger,²⁷³ the right to physical and mental health²⁷⁴ and the right to education.²⁷⁵ States are obliged to take steps by all appropriate means to achieve progressively the full realization of these rights.²⁷⁶ Although this obligation allows states a considerable discretion in the assertion of these rights, there is no doubt that the Covenant prohibits a state from deliberately taking measures to undermine the fulfilment of these rights. The siege imposed on Gaza prior to the conflict and the measures taken during the conflict, which resulted in the destruction of houses, the disruption of schooling and the destruction of schools, the denial of healthcare, and the harm caused to both physical and mental health of the population, constituted a severe violation of the rights contained in this Covenant.

Convention On The Rights Of The Child.

432. The Convention on the Rights on the Child obliges a state that is party to the Convention (which includes Israel) to respect and ensure the rights set forth in the convention in respect of every child under the age of 18 within its jurisdiction (which, according to the International Court of Justice,²⁷⁷ includes the Occupied Palestinian Territory). These rights include the right to life,²⁷⁸ the right to health,²⁷⁹ the right to education,²⁸⁰ and the freedom from cruel, inhuman or degrading treatment.²⁸¹ Moreover, states undertake "to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child" and "to take

²⁶⁸ Article 12 (2).

²⁶⁹ Article 17.

²⁷⁰ 2004 ICJ Reports 1, 171-2, 197, 199.

²⁷¹ Article 6.

²⁷² Article 11 (1).

²⁷³ Article 11 (2).

²⁷⁴ Article 12.

²⁷⁵ Article 13.

²⁷⁶ Article 2.

²⁷⁷ Supra.

²⁷⁸ Article 6.

²⁷⁹ Article 24.

²⁸⁰ Article 28.

²⁸¹ Article 37 (a).

all feasible measures to ensure protection and care of children who are affected by an armed conflict”²⁸².

433. The facts set out above provide evidence that Israel failed to ensure the protection of children affected by armed conflict and violated the right to life, to health, to education and the right not to be subjected to cruel, inhuman or degrading treatment. As shown above, over 300 children were killed in the conflict – that is, over 20% of all persons killed. The right to health of children also suffered as over 1,800 were wounded. Education was brought to a halt and schools destroyed and damaged. Many witnesses testified to the inhuman treatment meted out to children.

Humanitarian Law Conventions.

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (‘Fourth Geneva Convention’) of 1949.

434. The Fourth Geneva Convention includes prohibitions on wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, and the extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly, and designates the violation of such prohibitions as “grave breaches” which are to be punished as war crimes.²⁸³ War crimes of this kind are dealt with separately in the section on “War Crimes”.
435. The Convention prohibits collective punishment, reprisals, intimidation or terrorism.²⁸⁴ The Committee is of the opinion that Israel’s assault was not an exercise in self-defence but punitive action for rocket fire taken against the population of Gaza in a massive display of collective punishment. See further, below, under the examination of genocide. The incessant bombardment from air, land and sea, followed by a ground offensive with weaponry designed to cause excessive suffering, both physically and mentally, had the effect of intimidating and terrorizing the population. From these facts the Committee draws the inference that this was Israel’s intention.
436. The Convention requires the Occupying Power to ensure that the population has adequate food and medical supplies,²⁸⁵ to facilitate the proper working of educational institutions,²⁸⁶ and to ensure and maintain, with the co-operation of the local authorities, hospitals and medical services.²⁸⁷ Israel’s siege of Gaza prior to the conflict placed great restrictions on the supply of food and medication, while the conflict itself placed still greater restraints on the supply of food and medication, brought education to a halt and destroyed or damaged hospitals and medical services .

Additional Protocol I to the Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts (1977).

437. Like the Fourth Geneva Convention, Additional Protocol declares that certain conduct constitutes “grave breaches” of Protocol I and constitute war crimes. Such conduct includes attacks on the civilian population or civilian objects in the knowledge that such attacks will cause excessive loss of life and injury, when committed wilfully and

²⁸² Article 38.

²⁸³ See Articles 146 and 147 of the Fourth Geneva Convention; Article 85 of the Additional Protocol I (1977).

²⁸⁴ Article 33.

²⁸⁵ Article 55.

²⁸⁶ Article 50.

²⁸⁷ Article 56.

causing death or serious injury to body and health. War crimes of this nature are dealt with in the section on “War Crimes” below.

438. The prohibition on collective punishments contained in the Fourth Geneva Convention is confirmed in Additional Protocol I. As shown above, it can reasonably be inferred from Israel’s conduct that the principal purpose of its attack was to engage in collective punishment.

C International Crimes.

439. In recent years the international community has evidenced a determination to ensure accountability for the commission of international crimes and to put an end to impunity. This is reflected in the Preamble to the Rome Statute of the International Criminal Court which declares:

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished...

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes...”.

This means that the actions of the military in armed conflicts are always subject to the Rule of Law.

440. On the basis of the facts described in this report it is necessary to consider whether war crimes, crimes against humanity or genocide have been committed by parties to the conflict. Crimes against humanity and genocide may be committed in time of peace or war: it is not necessary to establish the existence of an armed conflict for the commission of such crimes. War crimes, on the other hand, can only be committed in the course of an armed conflict.

War Crimes.

The nature of the Conflict.

441. Until recently war crimes might only be committed in international armed conflicts. Since the decision of the Appeals Chamber of the ICTY in *Tadic*,²⁸⁸ in 1995, however, the distinction between non-international armed conflicts and international armed conflicts has become blurred. This is reflected in Article 8 of the Rome Statute of the ICC which recognizes that war crimes may be committed in both types of conflict. Nevertheless some differences do remain and these differences are reflected in Article 8. For this reason it is necessary to consider whether the conflict between Israel and Gaza is to be categorized as an international or non-international armed conflict.
442. An international armed conflict is essentially a conflict between sovereign states. The statehood of Palestine is uncertain with the result that the conflict possibly cannot be seen as one between two sovereign states. On the other hand, the conflict cannot be categorized as an internal conflict as Gaza is an entity distinct from Israel. It is a part of the Palestine entity, which has been recognized by over 100 states as a state and is a member of the League of Arab States. Moreover, Gaza is an occupied territory governed by the Fourth Geneva Convention which applies to territories occupied in the course of international armed conflicts. The inhabitants of Gaza are not Israeli nationals, but Palestinian nationals. For reasons of this kind the conflict must be viewed as one of

²⁸⁸ ICTY case No IT-94-1-AR 72 (1995), paras 71-97.

an international character. This characterization has been accepted by the Israel Supreme Court.²⁸⁹ Consequently, in assessing the commission of war crimes by either party to the conflict it is necessary to treat the conflict as international. This categorization does, however, make little difference in practice as many of the unlawful acts considered in this report qualify as war crimes whether committed in international or non-international armed conflicts.

The Applicable Law.

443. War crimes criminalize the prohibitions of international humanitarian law, which are designed to give effect to the following cardinal principles:

- (1) Combatants must distinguish between military objectives and the civilian population, and attack only military objectives (this is known as the principle distinction);
- (2) In attacking military objectives, combatants must take measures to avoid or to minimize collateral damage to civilians and refrain from attacks that would cause excessive civilian damage (the principle of proportionality);
- (3) The methods of war employed and the means of warfare must not cause unnecessary suffering and must respect humanitarian principles.

444. These prohibitions or war crimes are to be found in customary international law; the Hague Regulations of 1907, which recognizes that the right of belligerents to adopt means of injuring the enemy is not unlimited; the Four Geneva Conventions of 1949, which deal with the sick and wounded in the field (First Convention), the wounded, sick and shipwrecked at sea (Second Convention), prisoners of war (Third Convention) and civilians (Fourth Convention); the Additional Protocols to the Geneva Conventions of 1977, concerning international armed conflicts (Protocol I) and non-international armed conflicts (Protocol II); the statutes for the *ad hoc* tribunals for the Former Yugoslavia (ICTY 1993) and Rwanda (ICTR 1994) and, most recently, the Rome Statute of the International Criminal Court of 1998.

445. In examining the question whether parties to the conflict have committed war crimes, this report will adopt a broad view which takes account of international consensus on the content and meaning of specific war crimes. This is best done by limiting the assessment to the most generally accepted war crimes and to conduct that in most instances constitutes a war crime in both international and non-international armed conflicts. This is the fairest position to adopt as neither Israel nor Palestine are parties to the Rome Statute of the ICC which provides a detailed list of war crimes, and some may contest the character of the conflict as international. Accordingly the report will limit its enquiry into the commission of war crimes to the following crimes:

1. Indiscriminate and disproportionate attacks on civilians.
2. Killing, wounding and terrorization of civilians.
3. Wanton destruction of property not justified by military necessity.
4. Attacks on hospitals, ambulances and means of humanitarian assistance.

Indiscriminate and Disproportionate Attacks on Civilians.

The Applicable Law.

²⁸⁹ *Public Committee against Torture in Israel v Government of Israel and Others* H CJ 769/02, para 21

446. International law prohibits indiscriminate attacks on civilians in both international and non-international armed conflicts. This prohibition applies to attacks on places inhabited only by civilians and places where both civilians and combatants are to be found. In the latter case the attack must be confined to military targets, however difficult this may be. This is clear from Additional Protocol 1 of 1977, whose prescriptions are today viewed as customary international law.²⁹⁰ Article 48 provides that “Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives”.
447. Indiscriminate attacks are defined in Article 51(4) as:
- (a) those which are not directed at a specific military objective;
 - (b) those which employ a method or means of combat which cannot be directed at a specific military objective;
 - (c) those which employ a method or means of combat the effects of which cannot be limited as required by this protocol;
- and consequently in each case, are of a nature to strike military objectives and civilians or civilian objects without distinction.
448. Article 51(5) provides that the following types of attacks are to be considered as indiscriminate:
- (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects;
 - (b) an attack which 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.
449. Article 52(3) provides that “In the case of doubt whether a place normally dedicated to certain purposes, such as a place of worship, a house or other dwelling or a school, is being used to make effective contribution to military action, it shall be presumed not to be so used”. On the other hand, the civilian population or individual civilians shall not be used to shield military objectives from attacks.²⁹¹ Those launching an attack are required to give advance warning of an attack²⁹² and to take precautions to spare the civilian population and, in particular, to “refrain from deciding to launch an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects... which could be excessive in relation to the concrete and direct military advantage anticipated”.²⁹³
450. Violation of the above prohibitions when committed “willfully... and causing death or serious injury to body or health”, constitutes a war crime.²⁹⁴ That such conduct constitutes a war crime is confirmed by Article 8 of the Rome Statute which includes as

²⁹⁰ *Customary International Humanitarian Law (International Committee of the Red Cross)* (2005) eds Jean-Marie Henckaerts & Louise Doswald-Beck, vol 1 (Rules), Rules 1 and 3.

²⁹¹ Article 51 (7).

²⁹² Article 57 (2) (c).

²⁹³ Article 57 (2) (a) (ii).

²⁹⁴ Article 85 (3) and (5).

a war crime “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities.”²⁹⁵

451. Central to the prohibition on indiscriminate attacks on civilians is the question of who constitutes a civilian. Article 50 of Additional Protocol I describes a civilian as a person who is not a member of the armed forces. However, civilians lose their status as civilians and hence their protection, “for such time as they take a direct part in hostilities”.²⁹⁶ According to the study on *Customary International Humanitarian Law* compiled by the ICRC there is no “precise definition of the term ‘direct participation in hostilities’ ” and no definition of this term has been developed in state practice.²⁹⁷ Care should be taken not to extend this term to cover “civilians whose activities merely support the adverse party’s war or military effort”.²⁹⁸ After all, Article 50(1) of Protocol I warns that “in case of doubt whether a person is a civilian, that person shall be considered to be a civilian”.²⁹⁹ That there is no easy answer to the determination of when a civilian loses his protection is clear from the judgment of President (Emeritus) Barak in the *Targeted Killing Case* before the Israeli Supreme Court³⁰⁰ in which he holds that “each and every case “must be examined bearing in mind that “well based information is needed” before a civilian loses his protection, that “a civilian taking a direct part in hostilities cannot be attacked at such time as he is doing so, if a less harmful means can be employed” and that after a civilian suspected of taking an active part in hostilities has been attacked a thorough, independent investigation is to be conducted “regarding the identification of the target and the circumstances of the attack upon him”³⁰¹

Palestinian actions.

452. Palestinians have fired Qassam and Grads rockets indiscriminately from Gaza into Israel. As detailed in Para 32 above, Israeli sources report that 1,438 rockets were fired into Israel between the withdrawal of its forces from Gaza and the Hamas takeover in June 2007. From the start of the truce on 19 June 2008 to 19 December 2008, 361 rockets and mortars were fired, with 324 of those being after the Israeli incursion on 4 November 2008. Seven hundred and seventy-six rockets and mortars were fired during the conflict from 27 December 2008 to 18 January 2009. The IMFA reports that since operation Cast Lead 158 rockets and mortars have been fired (see para 189 above). The ultimate destination and targets of these rockets are both uncontrolled and uncontrollable. During the conflict four Israelis were killed and 182 injured by rocket fire. These rocket attacks, that have terrorized the population of Sderot, are inherently indiscriminate in that they are fired without regard to the likely target and have landed on private homes, schools and other public buildings, causing damage to property and loss of life and injury to innocent Israeli civilians.

Israeli actions.

453. Israel’s claims that its military actions in Gaza were strictly confined to military targets, and were proportionate is not supported by the evidence. The massive destruction of

²⁹⁵ Article 8 (2) (b)(i) and (e)(i)

²⁹⁶ Article 31(3).

²⁹⁷ Eds J-M Henckhaerts and L Doswald-Beck (2005) vol 1, 22-23.

²⁹⁸ “Report of the Inter-American Commission on Human Rights, ibid 22.

²⁹⁹ According to the ICRC study, ibid 24, “We cannot automatically attack anyone who might appear dubious”.

³⁰⁰ HCJ 769/02

³⁰¹ Ibid para 40.

and damage to private homes (over 3,000 destroyed and 11,000 damaged (paras 133-137)), hospitals (15 hospitals and 43 primary healthcare centres destroyed or damaged (para 138)), mosques (30 destroyed and 15 seriously damaged (paras 158-161)) , schools (10 destroyed and 168 damaged (paras 150-152)), government buildings (28 government buildings and 60 police stations destroyed or damaged (paras 167-169)), factories (215 destroyed or damaged (para 172)), businesses (700 destroyed or damaged (para 171)) universities and colleges (3 destroyed and 14 damaged (para 153)), United Nations premises (53 damaged (paras 162, 164)) and agricultural land (80% of agricultural land was damaged (para 173)), provides evidence that little attempt was made to restrict bombing and shelling to military targets. The death toll speaks for itself. Of the 1,417 Palestinians killed, 313 were children, 116 women and 926 civilians. The Israeli government has disputed the number of civilians killed and claims that only 295 were civilians (para 81). Although it is impossible to say with certainty that none of the 926 persons categorized as civilians by PCHR were combatants, it must be borne in mind that Israel classifies policemen as fighters. This is incorrect. Policemen charged with the task of maintaining law and order qualify as civilians. Hence Israel's bombing of a police parade on 27 December 2008 which resulted in the death of more than 50 policemen, was action taken against a civilian target. Over 200 police men were killed (para 84).

454. Israel's assault on Gaza was initially confined to aerial bombardment by F-16's and drones. During this period, from 27 December to 3 January, buildings were destroyed that could not conceivably have qualified as military targets. From 4 to 18 January 2009 Israel engaged in a land assault which resulted in the further destruction of homes and buildings and the killing of civilians.
455. Most witnesses denied the presence of Palestinian fighters in the vicinity at the time of the bombing or shelling. Even if this testimony is discarded the Committee has no doubt that Israel's actions were grossly disproportionate.
456. Nine Israeli soldiers were killed in the conflict, of which four were killed by friendly fire. 148 were wounded (para 80).

Conclusion.

Palestinian rockets.

457. Palestinians are provoked into firing rockets into Israel by the siege and occupation of Gaza. Nevertheless the Committee is of the opinion that as these rockets are fired indiscriminately and take no account of civilian life, such attacks constitute war crimes.

The Israeli Operation.

458. The Committee is of the opinion that both the Israeli aerial bombardment of Gaza from 27 December to 3 January and its land offensive from 4 January to 18 January 2009 were conducted in a manner which failed to discriminate between civilian and military targets.
459. In large part Israel's justification for its aerial and land offensives is based on what the Committee considers to be a false premise, namely the determination of civilians and civilian objects.
460. The IDF bombed clearly civilian objects, such as the Legislative Council, the Ministries of foreign affairs, justice, finance and housing, and police buildings. Civilians working in these buildings were also targeted. On 27 December the air force bombed the central

police headquarters, killing 50 police cadets on parade (para 357). Israel has sought to justify its conduct on the ground that any building associated with the government was a legitimate non-civilian target and that any person employed by the Hamas government, in whatever capacity, enjoyed no protection as a civilian.

461. A number of statements by the Israeli military confirms this. On 5 January IDF spokesman Benjamin Rutland told Heather Sharp of the BBC: “Our definition is that anyone who is involved with terrorism within Hamas is a valid target. This ranges from the strictly military institutions and includes the political institutions that provide the logistical funding and human resources for the terrorist arm... We’re talking about an entire government whose entire *raison d’être* is the defeat of Israel ... and all of whose energies are directed at attacking Israeli civilians”.³⁰²
462. Representatives of the Judge Advocate General’s office told a reporter from *Yediot Aharanot* “When a terrorist organization controls the government, all government ministries are used to fulfill the objectives of the terrorist organization”.³⁰³ Moreover, Major Avital Leibovich, of the IDF spokesperson’s office, declared that “everything related to Hamas is a legitimate target.”³⁰⁴
463. The Committee cannot accept Israel’s determination of civilians and civilian targets. The civil police, charged with the task of monitoring law and order and traffic control, and the civil employees of the Hamas government do not qualify as combatants. And government offices are not military targets *per se*.³⁰⁵ Article 52(2) of Protocol I states that “military objectives are limited to those objects which by their nature, location and purpose or use make an effective contribution to military action” and whose destruction offers a definite military advantage. In addition there is a presumption against objects “normally dedicated to civilian purposes” being used to make a contribution to military action. The burden of proof is on Israel to prove that the buildings destroyed were used for military purposes and that the civilians killed were non-civilians. In the opinion of the Committee Israel has not discharged this burden of proof as it has provided no evidence to support its claims that the civilian objects destroyed served any military advantage. The internal investigation conducted by the IDF (see paras 191-194) is too insubstantial and unsourced to alter the decision of the Committee on this subject.
464. Israel bombed and destroyed many non-governmental, purely civilian objects not associated with either the political or military wing of Hamas, such as hospitals, mosques, schools, factories, businesses and private homes. Obviously the presumption against such objects serving any military advantage is even greater than in the cases referred to above. And again Israel has provided no hard evidence that such premises were used by Palestinian militants or used to store munitions. Vague claims along these lines cannot constitute evidence. That such claims are of dubious evidential value is demonstrated by an incident related by B’Tselem in which the IDF posted a video on its website which it claimed showed that Palestinians were loading Grad missiles onto a truck. Eight Palestinians were killed by IDF rocket fire in the incident but a subsequent investigation established that the Palestinians in question were loading oxygen canisters

³⁰² 19 January 2009.

³⁰³ Moshe Ronen “War has Rules” 24 Hours Supplement *Yediot Aharanot* 19 January 2009.

³⁰⁴ Cited by B’Tselem in its *Guidelines for Israel’s Investigation into Operation Cast Lead*, page 11.

³⁰⁵ Israel did not claim that government buildings were used for military purposes, such as munitions storage or cover for armed militants. See B’Tselem *ibid* 11.

from a metal workshop that had been bombed by the IDF in order to prevent such equipment from being looted.³⁰⁶

465. Israel has claimed that its action was proportionate. The Committee is unable to accept this as the figures speak for themselves: over 900 civilians killed, more than 5,000 wounded and some 4,000 buildings and structures destroyed or damaged. The Committee is mindful here of the admonition of President (Emeritus) Barak in the *Targeted Killing Case* on the need for a careful balancing of military advantage against the duty not to harm civilians. In the opinion of the Committee much of the IDF action falls into President Barak's category of prohibited disproportionate military action in which a "building is bombed from the air and scores of its residents and passersby are harmed".³⁰⁷
466. Accusations of the use of "human shields" have been made by both parties to the conflict (paras 121–130). It is difficult to establish the truth of such accusations. However, even if "human shields" were employed by Palestinian fighters, the killing of civilians in such circumstances, as part of the ground offensive, would inevitably have been minimal. Clearly they provide no justification for the massive loss of life incurred in operation *Cast Lead*.
467. Israel did drop leaflets and make phone calls, ostensibly to warn Palestinians of an impending assault and of the need to evacuate a particular area. The Committee has examined these leaflets (see paras 282 – 298) and has found them both vague and misleading as in most instances they provided no indication of which areas were to be attacked and where Palestinians might find refuge. Phone calls were equally misleading. The Committee heard evidence of persons who had received messages on their mobile phones when they were not at work or at home and the caller who warned them to evacuate could not possibly have known where they were. In such circumstances a call to evacuate was meaningless. The Committee is therefore of the opinion that whether intended or not, the dropping of leaflets and the making of phone calls did not serve as a proper warning but were instead a source of confusion and panic.
468. The Committee is of the opinion that the purpose of the phone calls was probably not to advise of an imminent target; otherwise the calls to Al-Wafa hospital would be direct evidence of an intention to breach international humanitarian law. Instead it seems they were rather part of a plan to cause panic and distress to the civilian population.

Killing, Wounding and Terrorization of Civilians.

The Law.

469. Human rights conventions protect the right to life and demand that a person shall not be "arbitrarily deprived of his life".³⁰⁸ International humanitarian law instruments likewise prohibit the killing of civilians who do not take part in hostilities. Article 147 of the Fourth Geneva Convention makes "wilful killing" a grave breach of the Convention. Common Article 3 of the Geneva Conventions and Article 4(2)(a) of Additional Protocol II prohibit the murder and "violence to life" of civilians not taking an active part in hostilities. Such acts are also criminalized by the Statutes of the *ad hoc* tribunals and by the Rome Statute of the ICC. Article 8(2)(a)(i) of the Rome Statute recognizes "wilful killing" as a war crime in international armed conflicts and Article 8(2)(a)(iii)

³⁰⁶ B'Tselem Press Release of 31 December 2008, *ibid* 4.

³⁰⁷ HCJ 769/02, at paras 45-46.

³⁰⁸ International Covenant on Civil and Political Rights, Article 6 (1).

criminalizes “wilfully causing great suffering or serious injury to body or health”. Article 8(c)(i) likewise recognizes as a war crime in non-international armed conflicts “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”. In assessing responsibility under these provisions it is important to stress that the presence of combatants among a civilian population does not deprive the population of its civilian character. As the ICTR stated in *Akayesu*.³⁰⁹

Where there are certain individuals within the civilian population who do not come within the definition of civilians, this does not deprive the population of its civilian character.

470. The International Commission of Inquiry into Darfur, under the chairmanship of Judge Antonio Cassese, states:

Therefore, even if it were proved that rebels were present in a village under attack, or that they generally used the civilian population as a ‘shield’, nothing would justify the murder of civilians who do not take part in the hostilities.³¹⁰

471. The prohibition on murder or violence to life must be seen in conjunction with the prohibition on weapons that cause unnecessary suffering, both to combatants and civilians – but particularly civilians. The use of weapons that “cause superfluous injury or unnecessary suffering or which are inherently indiscriminate” is prohibited by Article 35 (2) of Additional Protocol 1 and constitutes a war crime under the Rome Statute provided the weapons are the subject of comprehensive prohibition.³¹¹ Customary international law likewise recognizes such a prohibition.³¹²

472. While white phosphorus and flechettes are not expressly prohibited by humanitarian law, it is highly arguable that their use in densely-populated civilian areas constitutes an indiscriminate attack and hence a war crime. Thus Amnesty International argues that the use of white phosphorus is prohibited both by Additional Protocol I, which outlaws indiscriminate attacks, and by the Third Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effect.³¹³ It likewise maintains that the use of flechettes fired in dense populated civilian areas violates the international law prohibitions on indiscriminate attack.³¹⁴

473. Acts of intimidation or terrorism are prohibited by customary international law.³¹⁵ Article 33 of the Fourth Geneva Convention and both Additional Protocols to the Geneva Conventions prohibit “Acts or threats of violence the primary purpose of which is to spread terror among the civilian population.”³¹⁶

Palestinian Actions.

474. The indiscriminate firing of rockets into Israel by Palestinians during the conflict resulted in the killing of four civilians and the wounding of 182 civilians. Rockets have

³⁰⁹ ICTR, 96-1, T Ch I(1998), para 582.

³¹⁰ Para 291.

³¹¹ Article 8 (2) (b) (xx).

³¹² *Customary International Humanitarian Law (ICRC)* Rule 70, at 237.

³¹³ *Fuelling Conflict: Foreign Arms Supplies to Israel / Gaza*, AI index: MDE 15/012/2009, 23 February p 7 See, too, Human Rights Watch, *Rain of Fire. Israel’s Unlawful Use of White Phosphorus in Gaza* (March 2009).

³¹⁴ *Op cit* 10.

³¹⁵ *Customary International Humanitarian Law (ICRC)*, Rule 2, 8.

³¹⁶ Article 51 (2) of Protocol I and Article 13 (2) of Protocol II.

had a traumatic effect on the population of Sderot and neighbouring Israeli towns and have generated a state of terror among the civilian population.

Israeli Actions

475. According to the **PCHR**, the IDF offensive between 27 December 2008 and 18 January 2009 was responsible for the death of 1,417 including 926 civilians, 255 police officers and 236 fighters. Of those killed, **PCHR** stated that 313 were children and 116 were women (para 85). The Ministry of Health gives the number of dead as 1,455 and reports the number of wounded as 5,303, of which 1,606 were children and 828 women (para 82). Israel disputes these figures, saying the overall number of deaths is 1,166, 709 of them being Hamas operatives and 89 being children under the age of 16 (para 82). The discrepancies can partially be explained by the different definitions used of children and combatants. The Committee believes that the deaths from the conflict were in the vicinity of 1,400, with more than 850 of those being civilians. It cannot accept the figures given by Israel as they were provided too soon to have been properly scrutinized. Moreover Israel has failed to provide the names of those killed, whereas Palestinian sources have done so. (See paras 100-101).
476. The continuous aerial bombardment by F-16 warplanes and from unmanned drones and helicopters and the persistent shelling from sea and land terrorized the civilian population.
477. The Committee visited Gaza some five weeks after the conflict which meant that it was unable to make a proper study of the weapons used; although it found fragments of missiles fired from helicopters and unmanned drones and large fragments of bombs dropped by F-16 war planes. The Committee did, however, receive a briefing on the weaponry used by the Mines Advisory Group, and it has studied a report by Amnesty International titled *Fuelling Conflict: Foreign Arms Supplies to Israel / Gaza*.³¹⁷ From this information it is clear that Israel used weapons that caused great suffering to civilians.
478. It is accepted that white phosphorus was used by the IDF; and the Committee saw ample evidence of its use.
479. The Committee found flechette darts and heard evidence of witnesses who had been hit by flechettes. Flechettes are 4cm long metal darts that are sharply pointed at the front, with four fins at the rear. Between 5,000 and 8,000 darts are packed into 120 mm shells which are fired from tanks. When the shells explode they scatter darts which pose a high risk to humans.
480. Although the Committee received no clear evidence of the use of DIME (Dense Inert Metal Explosives), doctors at Shifa hospital spoke of unknown weapons that caused great suffering. Amnesty International states that it found evidence of the use of a missile which explodes a large number of sharp-edged metal cubes, between 2 and 4 mm square in size. According to Amnesty these cubes “appear designed to cause maximum injury and, in some respects, seem to be a more sophisticated version of ball-bearings or nails and bolts which armed groups often pack into crude rockets and suicide bombs.”³¹⁸

³¹⁷ AI Index: MDE 15/012/2009, 23 February 2009, and Human Rights Watch, *Rain of Fire. Israel's Unlawful Use of White Phosphorus in Gaza (March 2009)*.

³¹⁸ Op cit 13.

481. Israel also dropped mortar shells, apparently for the first time in Gaza. Mortar fire is less accurate than artillery fire which meant that in a densely populated territory like Gaza the harm to civilians is much greater.³¹⁹
482. There were several reports that civilians were killed while waving a white cloth as a flag.
483. Israel dropped leaflets from airplanes to instruct Palestinians to evacuate their premises. Phone calls were also made to civilians to evacuate their homes. But none of these leaflets indicated which sites were to be bombed or where safe refuge might be found. Consequently the effect of these warnings was to create a state of terror, confusion and panic among the local population rather than to serve as a warning. In this connection it must be stressed that the population of Gaza was not able to flee to a neighbouring safe territory in order to seek refuge as the borders of both Israel and Egypt were closed to them. This fact made the conflict in Gaza unique, as in most conflict situations civilians are able to escape to the safety of neighbouring territories.

Conclusion

Palestinian Rockets

484. Those who fired rockets indiscriminately into Israel from Gaza are responsible for the killing, wounding and terrorization of civilians. They may therefore be held responsible for the war crime of killing, wounding and terrorization of civilians.

Israeli Operation

485. Over 1,400 Palestinians, including over 850 civilians, were killed by Israel in operation *Cast Lead*. Over 5,000 were wounded. The Committee is of the opinion that the overwhelming majority of civilians affected were killed or wounded in indiscriminate bombings, shelling, crossfire or deliberate fire. In most instances those responsible for these killings or wounding dropped their bombs or fired their shells deliberately on civilian objects or in densely populated areas where they must have foreseen that the killing or wounding of civilians would ensue. If they did not do so deliberately, they acted recklessly in respect of the foreseeable consequences. In the language of the Rome Statute, they meant to cause the consequences in question or they were aware such consequences would occur “in the ordinary course of events”.³²⁰ This means that they had the necessary intent (*mens rea*) for the crime of wilful killing or wounding of civilians.
486. There is, in addition, disturbing evidence that civilians, including women and children, were shot in cold blood by members of the IDF (paras 60-69, 226-257). In these cases there can be no question about the wilfulness of the killings or wounding.
487. Some of the weaponry employed by the IDF “caused superfluous injury or unnecessary suffering. The use of white phosphorus and flechettes in densely populated areas is illegal in densely populated areas as it constitutes an indiscriminate attack on civilians.
488. Israel’s use of white phosphorus in Gaza has been fully documented and investigated by Amnesty International³²¹ and Human Rights Watch.³²² The Committee did not make a study of this subject but it did see evidence of the use of white phosphorus in the

³¹⁹ B’Tselem *Guidelines for Israel’s Investigation into Operation Cast Lead*, page 5-6.

³²⁰ Article 30

³²¹ *Fuelling Conflict: Foreign Arms Supplies to Israel / Gaza* A1 Index: MDE 15/012/2009, 23 February 2009.

³²² *Rain of Fire. Israel’s Unlawful Use of White Phosphorus in Gaza* (March 2009).

UNRWA compound, and elsewhere and it received reports from victims who had suffered from it. Israel at first denied use of white phosphorus, but later acknowledged that it had done so, claiming that it had used this weapon lawfully as an obscurant. The Committee is unable to accept this as the IDF exploded white phosphorus munitions in the air over densely populated areas, killing and injuring civilians (the exact number is unknown), and damaging civilian structures, including a school in Beit Lahiyeh, Al-Quds hospital, an UNRWA warehouse and houses in residential neighbourhoods. In the basis of the available evidence, the Committee concludes that Israel knew of the harmful effects of white phosphorus;³²³ that it did not use white phosphorus as a smokescreen or obscurant to protect its forces, as in documented cases³²⁴ it was used when there were no IDF forces in the vicinity in need of protection; that Israel used white phosphorus as an incendiary device in densely populated neighbourhoods; that Israel either intentionally used white phosphorus as an incendiary weapon, as evidenced by its initial denial of its use and by its systematic use of the weapon, or knew that it would in the ordinary course of events have incendiary and harmful consequences and was reckless as to such consequences.

489. The Committee is furthermore of the opinion that although white phosphorus is not illegal when used as an obscurant, it is illegal when used in a densely populated area because it violates the prohibition on the indiscriminate and disproportionate attacks on civilians³²⁵ and the obligation to take precautions to minimize harm to civilians;³²⁶ and causes unnecessary and superfluous harm to civilians.³²⁷ This conclusion is shared by others who have made a study of the subject.³²⁸
490. Israel has sought to defend its actions by claiming that it warned the people of Gaza and advised them to evacuate certain areas by dropping leaflets and making phone calls. For the reasons set out in paras 282 – 292, the Committee is doubtful as to the purpose of such leaflets and phone calls, which caused great confusion and panic among the population. It is, however, unable to find that such action was intended to spread terror among the civilian population. The Committee, however, has no hesitation in concluding that the consistent bombing and shelling of Gaza over a twenty-two day period, coupled with confusing warnings to evacuate unidentified dangerous areas for unidentified safe areas, served to spread terror among the population. The Committee is furthermore of the opinion that this was either intended or that such a consequence was foreseen “in the ordinary course of events.”³²⁹
491. Those responsible for ordering, managing and implementing the attack on Gaza are, in the opinion of the Committee, accountable for the unlawful killing and wounding of civilians. They are also responsible for using weapons designed to cause great suffering and for spreading terror among the civilian population by means of continuous

³²³ See the reports of the Israeli Ministry of Health, cited by Human Rights Watch, which acknowledge that “white phosphorus can cause serious injury and death when it comes into contact with the skin, is inhaled or is swallowed ... in addition to its ‘usual’ burn effects, white phosphorus is poisonous, and has serious consequences that intensify the effects of the injury”(ibid 11-12).

³²⁴ Ibid.

³²⁵ Article 51 (4) of Additional Protocol I.

³²⁶ Article 51 of Additional Protocol I.

³²⁷ Article 51 of Additional Protocol I.

³²⁸ Human Rights Watch, above at 60-66; Amnesty International, above. See too I J MacLeod and A P V Rogers “The Use of White Phosphorus and the Law of War” (2007) 10 *Yearbook of International Humanitarian Law* 75, 94-95.

³²⁹ Article 30 of the Rome Statute.

bombardment over a period of 22 days and by the giving of confusing warnings to people to evacuate their homes. The internal investigation conducted by the IDF (see paras 191-194) is too insubstantial and unsourced to alter the decision of the Committee on this subject.

Wanton Destruction of Property Not Justified by Military Necessity.

The Law.

492. International humanitarian law instruments prohibit and criminalize the wanton destruction of property not justified by military necessity.
493. Article 53 of the Fourth Geneva Convention provides that “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the state, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations” and Article 147 makes the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” a grave breach of the Convention. Additional Protocol I prohibits not only indiscriminate attacks against civilians but also attacks against “civilian objects”.³³⁰ It provides that attacks are to be “limited strictly to military objectives,” that is objects “which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offer a military advantage.”³³¹ There is a presumption against places of worship, schools or dwelling houses being used to make an effective contribution to military action. It is, moreover, prohibited to attack “historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples”.³³² Additional Protocol II likewise contains prohibitions on the destruction of property.³³³
494. The Rome Statute recognizes as war crimes in international armed conflict the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”,³³⁴ attacks that cause severe damage to the natural environment which would clearly be excessive in relation to the concrete and direct overall military advantage anticipated;³³⁵ the bombardment of “towns, villages, dwellings or buildings which are undefended and which are not military objectives”,³³⁶ intentional attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments and hospitals provided they are not military objectives,³³⁷ and the destruction of enemy property unless such destruction “be imperatively demanded by the necessities of war”.³³⁸ The Rome Statute likewise recognizes that war crimes involving the destruction of property, particularly the destruction of buildings dedicated to religion, education, art, science or charitable purposes, historic monuments and hospitals are committed in non-international armed

³³⁰ Articles 48, 51 (4), 51 (5) (b)

³³¹ Article 52 (2).

³³² Article 53

³³³ Articles 15 and 16

³³⁴ Article 8 (2) (a) (iii)

³³⁵ Article 8 (2) (b) (iv)

³³⁶ Article 8 (2) (b) (v)

³³⁷ Article 8 (b) (ix)

³³⁸ Article 8 (2) (b) (xiii)

conflicts.³³⁹ Additional Protocol I also describes such conduct as a war crime (Article 85).

Palestinian Actions.

495. Palestinian rockets fired indiscriminately into Israel have caused some damage to civilian property. Unfortunately the Committee was not able to assess the extent of this damage as a result of the failure of the Israeli Government to co-operate with the Committee.

Israeli Actions.

496. The Israeli attack on Gaza resulted in the large scale destruction of property. Over 3,000 private homes were destroyed and some 11,000 damaged (paras 131-135), 30 mosques were destroyed and 15 damaged (paras 158-161), 58 hospitals and primary healthcare centres were damaged (para 138), 10 schools were destroyed and 168 damaged (para 152), three universities/colleges were destroyed and fourteen damaged (para 153), 28 government buildings were destroyed or seriously damaged, 60 police stations were seriously damaged or destroyed (para 169), 53 United Nations premises were damaged (para 164), 215 factories were destroyed or damaged (para 172), 700 businesses were destroyed or damaged (para 171) and some 80% of Gaza's agricultural land was seriously damaged by incessant bombing or shelling.

497. It is difficult to accept that military necessity justified much of the Israeli action. The aerial bombardment from 27 December to 3 January was directed largely at non-military targets, which had no military advantage. It is impossible to see what military advantage might have been gained from the destruction of government buildings, schools, cultural centres, mosques and private homes. The properties destroyed in the land offensive were also largely non-military targets and their destruction had no apparent military advantage. This applied to the destruction of hospitals, mosques, schools, universities, colleges, United Nations premises, factories, businesses and private homes.

498. The destruction of the minarets of mosques was particularly troubling as the size of the minarets mitigates against them being used to harbour snipers. Mosques are clearly protected buildings under international humanitarian law. The use of them to harbour weapons and to launch weapons is as illegal as the targeting of them. Even if the allegations reported by the IMFA of the number of mosques being used as weapons stores were correct, the targeting of minarets remains unexplained. There were no allegations that snipers were using the minarets as firing points, and the Committee was informed that there were no stairs or enough space to hold a person. It appears that the targeting of minarets was designed to create more destruction and impact on civil society in Gaza and to undermine the symbols of Islam

Conclusions.

Palestinians

499. The Committee is of the opinion that those persons who have indiscriminately fired rockets into Israel are responsible for damage to property. However, the Committee received no evidence that the damage resulted in the wanton destruction of property.

³³⁹ Article 8 (2) (e) (iv) and (v)

Israel

500. The Committee concludes that the massive destruction of properties of all kinds in Gaza cannot be justified. First, the statistics of the destruction make it impossible to argue that the destruction was in any way proportionate to the injury suffered by Israel or the harm threatened. Secondly, it is difficult to accept that considerations of military necessity could have justified such destruction. Palestinian resistance at best was sporadic and isolated. There was no conventional army to confront. It is therefore difficult to imagine what military necessity might have justified such devastation. On occasion private homes were requisitioned to secure advantageous military positions, but in many instances such houses were destroyed or damaged when the IDF troops withdrew.
501. Israel has sought to justify its actions on the ground that all public buildings were associated with Hamas and that they were all therefore legitimate military targets, whose destruction served some military advantage. As has been shown above this argument is false and takes no account of the law relating to the determination of what constitutes a civilian object and what does not. Israel's argument is even weaker when it comes to the destruction of property not associated in any way with either the military or political wing of Hamas. Claims that mosques, schools, hospitals, factories and businesses were being used for munitions storage or to conceal militants have not been substantiated and have in some cases been shown to be untrue.
502. The Committee is of the opinion that buildings were destroyed not for any military advantage or for reasons of military necessity but in order to punish the people of Gaza for tolerating a Hamas regime. For this reason, buildings that represent the cultural identity of Gaza, such as mosques, schools, hospitals and public buildings, were destroyed in a wanton manner. This is nowhere more clearly illustrated than in the case of the deliberate targeting of the minarets of mosques. The destruction of private homes simply added to the punitive impact of the operation *Cast Lead*.
503. An aggravating factor that must be considered is that Israel had placed an embargo on the import of cement and other construction materials into Gaza before operation *Cast Lead* and that it persists in pursuing this policy. Consequently thousands of Gazans are left homeless with no materials to rebuild their homes. This is hardly compatible with the obligation of the Occupying Power to care for the welfare of an Occupied People.
504. The Committee therefore concludes that the IDF was responsible for the wanton destruction of property and that those who carried out such destruction have committed war crimes. The internal investigation conducted by the IDF (see paras 191-194) is too insubstantial and unsourced to alter the decision of the Committee on this subject.

Attacks on Hospitals, Ambulances and Means of Humanitarian Assistance

The Law.

505. Under customary international law medical personnel must be respected and protected in both international and non-international armed conflicts. Humanitarian relief must likewise be respected and protected.³⁴⁰ Conventional international law recognizes similar rules. Articles 16 and 18 of the Fourth Geneva Convention of 1949 require the wounded and the sick and civilian hospitals to be protected and respected. Article 15 of

³⁴⁰ See Rules 25 and 31 of the International Committee of the Red Cross study on *Customary International Humanitarian Law* vol I (eds J-M Henckharts and L Doswald-Beck, (2005), 79, 105.

Additional Protocol I provides that civilian medical personnel shall be respected and protected and Article 11 of Additional Protocol II provides “medical units and transports shall be respected and protected at all times and shall not be the object of attack”. The Rome Statute recognizes as a war crime attacks on hospitals, medical units and transports and those who provide humanitarian assistance: Article 8(2)(b)(iii), (ix) and (xxiv); and Article 8 (2)(e)(ii), (iii) and (iv).

The Facts.

506. In the course of operation *Cast Lead* fifteen hospitals and 43 primary care clinics were destroyed or seriously damaged (para 136). There is also extensive evidence that ambulances and medical help workers were fired upon. Sixteen medical help workers were killed and 28 wounded by the IDF while performing their duties. Consequently the evacuation of the wounded was obstructed, often for days; sometimes with fatal consequences. A report published by the Israeli NGO, Physicians for Human Rights,³⁴¹ provides numerous testimonies from victims and others affected of attacks on civilians, refusal by the IDF of permission to evacuate the wounded, the shooting (and sometimes killing) of medical personnel seeking to evacuate the wounded, firing upon ambulances and their destruction, and attacks on hospitals. From 7 January onward, the Israeli army declared a three-hour truce each day during which attacks would cease in order to enable civilians to purchase food, to allow humanitarian supplies into Gaza, and to permit the evacuation of the wounded. However, the same report³⁴² and testimony heard by the Committee, show that the truce was on occasion violated by Israel, with fatal consequences. Prior to operation *Cast Lead* there was a “co-ordination mechanism” between the IDF and the ICRC which allowed ambulances from the Ministry of Health and the Palestinian Red Crescent Society to enter areas under Israeli control. During operation *Cast Lead* this mechanism was not fully respected by the IDF and ambulances sometimes took days to reach attacked areas to evacuate the wounded. And, on occasion, such ambulances were attacked by the IDF.³⁴³
507. The Committee visited the Al-Wafa, Shifa Hospital and Al-Quds Hospitals. The attack on Al-Wafa Hospital was particularly severe and clearly deliberate. The first half of the word “Hospital” on the façade of the building had been shelled in what could only have been an act of deliberate targeting (see Picture 5). The Al-Wafa Hospital is situated in an open area near to the border with Israel which makes it highly improbable that it would have been used by the Hamas leadership or militants as a place of refuge. The Committee heard testimony from several witnesses about the manner in which the Israeli armed forces had obstructed and prevented humanitarian assistance. According to this testimony the IDF did not allow the evacuation of wounded and trapped civilians for several days, leaving them in isolated pockets with no access to food, water and medical treatment. Moreover, the army prevented Palestinian emergency vehicles from reaching wounded and civilians and refused to give medical assistance to wounded persons, sometime within several meters of the soldiers. See above paras 138-151, 316-332.

³⁴¹ Independent Fact-Finding Mission into Violations of Human Rights in the Gaza Strip during the Period 27-12-2008 – 18-01-2009 (Brussels, April 2009).

³⁴² Ibid at 55.

³⁴³ Ibid at 9.

Conclusion.

508. There is, in the opinion of the Committee, sufficient evidence to establish that the IDF attacked hospitals, prevented the evacuation of the wounded and obstructed and attacked ambulances.
509. Israel's justifications for its actions are unconvincing. Israel first declared, in response to a petition brought by eight human rights organizations before the Israeli Supreme Court, that it had given unequivocal instructions to its forces to refrain from attacking medical teams and ambulances and to allow evacuation of the wounded.³⁴⁴ However, it then qualified this statement by claiming that Palestinian militants had used ambulances to "carry out terrorist acts, and also sometimes disguise themselves as medical-team personnel".³⁴⁵ Commenting on these statements **B'Tselem** stated "The argument that Palestinians abused ambulances has been raised numerous times by Israeli officials ... although Israel has almost never presented evidence to prove it".³⁴⁶ To aggravate matters, Israel failed to ensure the free passage of ambulances and the evacuation of the wounded, despite the wide publicity given to its obstruction of medical assistance by journalists, international agencies and NGO's.
510. The Committee is of the opinion that the IDF was responsible for violating norms of international humanitarian law prohibiting attacks on hospitals, ambulances and means of humanitarian assistance. The internal investigation conducted by the IDF (see paras 191-194) is too insubstantial to alter the decision of the Committee. Moreover, it takes no account of Palestinian sources on the subject.

Crimes Against Humanity.

511. Article 7 of the Rome Statute of the ICC, which aims to codify the customary law prohibition on crimes against humanity, provides that crime against humanity means:
- Any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
- (a) murder;
 - (b) extermination; ...
 - (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ... or other grounds... in connection with any act [of murder, extermination or other inhumane acts]...
 - (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
512. The requirements for the commission of the crime against humanity contained in the above definition will be examined, together with a description of Israel's conduct, to see whether Israel's conduct satisfies these requirements with the result that members of its armed forces may be found to be responsible for crimes against humanity and Israel itself may be held responsible for such crimes.

³⁴⁴ HCJ 201/09, *Physicians for Human Rights et al v Prime Minister*, Response on Behalf of the Respondent, 8 January 2009, section 4 and 24.

³⁴⁵ *Ibid*, sections 19-21.

³⁴⁶ "Guidelines for Israel's Investigation into Operation Cast Lead 27 December 2008 – 18 January 2009, 16.

Attacks against a civilian population.

513. The attack must be directed against a civilian population. However, the presence of combatants does not change the character of the population attacked if it is predominantly civilian and is the primary object of the attack: Robert Cryer, Haka Friman, Darryl Robinson and Elizabeth Wilmshurst *An Introduction to International Criminal Law and Procedure* (2007) 193. In this connection it must be recalled that in the opinion of the Committee Israel adopts too wide a meaning of the term combatant and too narrow a meaning of the term civilian. See above under War Crimes.
514. The number of civilian deaths and injuries, and the destruction of civilian property, provides prima facie evidence of the fact that Israel's attack was predominantly directed against a civilian population. Israel claims that the primary object of the attack was to destroy the infrastructure of terrorism but this is difficult to reconcile with the facts that many of the targets – hospitals, mosques, schools, universities, cultural centers, private homes, factories, farms and businesses – were inherently civilian and that most of those killed and wounded were civilians.

Acts must be part of a Widespread or Systematic Attack.

515. “Widespread” connotes the large scale nature of the attacks and the number of victims. “Systematic” requires a high degree of organization that follows a regular pattern. Customary international law does not require the attack to be government policy but Article 7(2) requires an attack, within the meaning of Article 7(1), must involve the multiple commission of acts against any civilian population “pursuant to or in furtherance of a state or organizational policy to commit such an attack”. The International Criminal Court recently held in the case of *Omar Al Bashir*:³⁴⁷

Although the terms ‘widespread’ and ‘systematic’ are not specifically defined in the Statute, the Chamber has previously held that this language excludes random or isolated acts of violence, and the term “widespread’ refers to the large scale nature of the attack, as well as to the number of victims, while the term ‘systematic’ pertains to the organized nature of the acts of violence and to the improbability of random occurrence.

516. There can be little doubt that Israel's offensive against Gaza was “widespread”: there were consistent and regular aerial attacks in many parts of Gaza from 27 December to 3 January, followed by a massive ground offensive accompanied by aerial attacks, that resulted in 1,417 deaths, more than 5,000 wounded and substantial damage to property. The attack was likewise “systematic” in that it was the result of an organized and sustained campaign in pursuance of government policy.

Actus Reus for Crimes Against Humanity.

517. Four of the acts comprising the *actus reus* for the crime against humanity are applicable to the conflict: murder, extermination, persecution and “other inhumane acts”.

Murder.

518. The term “murder” must be given its customary meaning of unlawfully and intentionally causing the death of a human being. The mental element is satisfied, according to the jurisprudence of the ICTY and ICTR if the perpetrator intends to kill,

³⁴⁷ ICC-02/05-01/09,29 (para 81).

or intends to inflict grievous bodily harm likely to cause death and is reckless as to whether death ensues.³⁴⁸

519. Over 850 Palestinian civilians were killed by Israel in its attack on Gaza. Some were deliberately, unlawfully and intentionally killed: see above paras 60-69, 226-252, and particularly the cases of Abed Rabo, and Samouni. Others were killed by fire directed at civilian targets or at military targets so close to civilian areas that the causing of deaths was inevitable. The Committee believes it is clear that many of the civilians killed were killed by Israeli soldiers or pilots with at very least an intention to inflict grievous bodily harm likely to cause death and were reckless as to whether death ensued. In the words of Article 30 of the Rome Statute, they meant to cause death or were aware that it would occur in the ordinary course of events.

Extermination.

520. “Extermination” overlaps the crime of murder, dealt with above. It differs from murder in that extermination connotes killing on a large scale.³⁴⁹ This does not mean the perpetrator must personally carry out mass killing: it is sufficient if he knew of the context of the mass killing.³⁵⁰ The Committee believes the evidence shows there were mass killings - “extermination”- in certain cases, notably the bombing of the police parade on 27 December (paras 362-363). In other cases, the Committee has reason to believe those responsible for individual killings knew or must have known the killings for which they were individually responsible were committed in the context of mass killings.
521. This species of crime against humanity is close to the crime of genocide because Article 7(2)(b) provides that extermination for the purpose of the crime against humanity includes the “intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine calculated to bring about destruction of part of a population”. This resembles Article 2(c) of the Genocide Convention which lists, as a species of genocide, “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”. “Extermination” for the purpose of the crime against humanity differs from genocide in that a special intent to destroy the group is required for the latter crime. In its examination of the crime of genocide (see below, under Genocide), the Committee provides reasons for believing that Israel’s armed forces intentionally inflicted conditions of life that might bring about the destruction of the people of Gaza but doubts whether the special intent required for genocide was present. Although the required intention to destroy part of the population necessary for extermination may be inferred from Israel’s actions, the Committee has doubts about this intention as it believes that the main purpose of the offensive was to punish the people of Gaza and reduce them to a state of submission. For this reason it is of the opinion that “extermination” was committed as a result of the mass killing of civilians, but possibly not as a result of its intentional infliction of conditions of life “calculated to bring about the destruction of part of a population.

³⁴⁸ *Celebici*, Case No IT-96-21, T.ch.II (1998) para 439; *Akayesu*, case No ICTR-95-4, T.ch I (1998) para 589; *Kordic*, case No IT-95-14/2, T.ch (2001) para 236.

³⁴⁹ see *Prosecutor v Omar Al Bashir* ICC-02/05-01/09, 34, para 96.

³⁵⁰ *Prosecutor v Kayishema* Case No ICTR-95-1, Tr.ch (1999) para 147; Cryer et al *International Criminal Law and Procedure* 202.

Persecution.

522. Persecution involves the intentional and severe deprivation of fundamental rights against an identifiable group on prohibited discriminatory grounds, provided the crime is committed in connection with other conduct that may constitute a crime falling within the jurisdiction of the ICC.
523. In the first instance, this crime requires discrimination against a group on the grounds of, *inter alia*, politics, race, nationality, ethnicity, culture or religion. As shown below in the examination of the crime of genocide, the Palestinians clearly constitute a separate racial and national group. They may also be distinguished on political, cultural and religious grounds from Israelis. Discrimination means any distinction or restriction based on one of these grounds that has the purpose or effect of impairing the recognition or exercise on equal footing of fundamental human rights in the political, economic, social, cultural or other fields of public life.³⁵¹ Israel clearly distinguishes between its own population and the Palestinians of Gaza on grounds of politics (its opposition to the Hamas authority of Gaza), nationality, ethnicity, culture and, possibly, religion with the purpose of impairing the equal recognition or exercise of human rights in many fields, ranging from political to cultural.
524. The requirement that persecution be committed in connection with any other crime within the jurisdiction of the ICC (that is, genocide, crimes against humanity or war crimes) probably does not reflect customary international law.³⁵² This is not, however, an issue in the present case as the Committee has already expressed the opinion Israel committed serious war crimes and other species of crimes against humanity in its offensive in Gaza.³⁵³
525. Persecution requires an intent to take action against a person or a group on prohibited grounds of discrimination, but there is no need to establish an intent to destroy the group to which the victims belong as in the case of genocide. In *Prosecutor v Kupreskic* the ICTY held:³⁵⁴

Both persecution and genocide are crimes perpetrated against persons that belong to a particular group and who are targeted because of such belonging. In both categories what matters is the intent to discriminate: to attack persons on account of their ethnic, racial or religious characteristics (as well as, in the case of persecution, on account of their political affiliation). While in the case of persecution the discriminatory intent can take multifarious inhumane forms and manifest itself in a plurality of actions including murder, in the case of genocide that intent must be accompanied by the intention to destroy, in whole or in part, the group to which the victims of the genocide belong. Thus, it can be said that, from the viewpoint of *mens rea*, genocide is an extreme and most inhumane form of persecution.

526. The Committee elsewhere expresses the opinion that the required special intent for genocide was absent in Israel's offensive (see below, in Genocide). However, the Committee is of the opinion there are reasonable grounds for finding that Israel's armed forces had the required discriminatory intent to commit the species of crime against humanity known as "persecution". The facts of the offensive indicate clearly that murder, extermination, war crimes and other inhumane acts were committed against the

³⁵¹ Article 1 (1) of the International Convention on the Elimination of All Form of Racial Discrimination.

³⁵² *Prosecutor v Kupreskic* Case No IT-95-16, T. Ch. II (2000) para 580.

³⁵³ See further, *Prosecutor v Krstic* Case No IT-98-33; T. ch I (2001) para 537.

³⁵⁴ Case No IT- 95-16-T. Ch II, Para 636.

Palestinian people, as such, with an intent to violate their fundamental rights in a discriminatory manner.

Other inhumane acts.

527. The Rome Statute requires that for “other inhumane acts” to qualify as crimes against humanity they must be crimes of a “similar character” to other crimes against humanity and must intentionally cause “great suffering, or serious injury to body or to mental or physical health”.³⁵⁵
528. Israel’s offensive resulted in murder and mass killing constituting “extermination”, and persecution. However, its also offensive caused serious bodily injury to over 5,000 persons who were wounded, and great suffering and serious injury to the mental health of the entire population of Gaza which was subjected to terrorization by bombing from the air and shelling from land and sea for 22 days, and in the process many were deeply traumatized. The Committee therefore has no hesitation in finding “other inhumane acts” were committed by the Israeli armed forces.

Conclusion.

529. The Committee concludes that the IDF was responsible for murder, extermination, persecution and other inhumane acts during the conflict between 27 December 2008 and 18 January 2009. It also concludes that these acts of violence were committed with “knowledge of the attack”³⁵⁶ in the sense that the perpetrators of these acts knew the conduct was part of a widespread or systematic attack against a civilian population and that they intended to further such an attack”.³⁵⁷

Genocide.

530. Genocide has been described as the “crime of crimes”. This is not quite accurate as there is no hierarchy of international crimes and some categories of crimes against humanity may be equally heinous. Nevertheless it is a crime that has been singled out for special condemnation and opprobrium and the very suggestion a state or individuals may be responsible for this crime is one that should be approached with great care. Nevertheless the Committee believes Israel’s attack on Gaza from 27 December 2008 to 18 January 2009 is of such gravity that it is compelled to consider whether this crime has been committed.

The Law.

531. According to Article 2 of the Genocide Convention of 1948, which is reproduced in Article 6 of the Rome Statute, the crime of genocide consists of:

Any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

Killing members of the group;

Causing serious bodily or mental harm to members of the group;

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

³⁵⁵ Article 7(1)(k).

³⁵⁶ As required by Article 7 of the Rome Statute, above

³⁵⁷ Rome Statute, Elements of Crime, Introduction to Article 7

Imposing measures intended to prevent births within the group;

Forcibly transferring children of the group to another group.

532. Genocide may be committed in time of peace and war and it is not necessary to prove the acts constituting genocide were committed as part of a widespread or systematic attack.
533. Apart from the requirement of an “intent to destroy”, which raises the difficulties addressed below, Israel’s actions in Gaza from 27 December 2008 to 18 January 2009, meets all the requirements for the crime of genocide.

Part of a National, Ethical, Racial or Religious group.

534. The Palestinian people clearly constitute a national or ethnical group. According to the Trial Chamber of the ICTR the term “national group” refers to a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties.³⁵⁸ An ethnic group, on the other hand, said the same tribunal “is one whose members shares a common language and culture; or a group which distinguishes itself as such (self-identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others)”.³⁵⁹ The people of Gaza may aptly be described as part of the Palestinian group.

535. The International Court of Justice observed in its judgment on *Genocide*.³⁶⁰

In the first place, the intent must be to destroy at least a substantive part of the particular group... the part targeted must be significant enough to have an impact on the group as a whole... Second, the court observes that it is widely accepted that genocide may be found to have been committed where the intent is to destroy the group within a geographically limited area.

536. The population of Gaza is 1.5 million, compared with the population of the West Bank of 2.4 million. It occupies a separate and distinct area. Therefore it represents a substantial and significant part of the Palestinian people within a geographically limited area.

Plan or Policy and Context

537. There is a dispute as to whether genocide may be committed in the absence of a plan or policy on the part of the actor.³⁶¹ Nevertheless the better view is that “genocide prosecutions will invariably involve individuals who participate in a plan or policy being implemented by a state or similar body”.³⁶² In the present case there is no question Israel’s action was the result of a “plan or policy”.

538. An additional material element is to be found in the ICC Elements of Crime in respect of the definition of Genocide which requires “the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.”³⁶³

³⁵⁸ *Prosecutor v Akayesu*, Case No ICTR-96-4-T (1998)

³⁵⁹ *Prosecutor v Kayishema et al* (Case No ICTR-95-I-T (1999)

³⁶⁰ *Bosnia and Herzegovina v Serbia and Montenegro* 2007 ICJ Report 1 at 74 (paras 198-199).

³⁶¹ see *Prosecutor v Omar Al Bashir* ICC-02/05-01/09, 4 March 2009 pp. 42-44 (paras 117-125)

³⁶² W. A. Schabas *Genocide in International Law*, 2nd ed (2009)252

³⁶³ U.N. Doc PCNICC/20001/Add2 (2000)

539. Again Israel's actions over many years, and particularly since 2007 when Hamas took control of Gaza, provides evidence of a "manifest pattern of similar conduct" or of "conduct that could itself effect such destruction." See above in the examination of War Crimes.

Physical Element or Actus Reus of Genocide

540. Israel's attack on Gaza has violated paragraphs (a) to (c) of Article 2 of the Genocide Convention.

Killing of members of the group.

541. 1,417 Palestinians were killed in the attack. Of these 313 were children, 116 women and 926 civilians (para 85). The manner in which Palestinians were killed in the attack is described above under War Crimes.

Causing serious bodily or mental harm to members of the group.

542. Over 5,000 were wounded in the attack. Great mental harm was caused to members of the group by Israel's constant bombing and shelling, by its dropping of leaflets and making of phone calls which had the effect of creating a state of confusion and panic among the population. The trauma caused by Israel's actions is described above under War Crimes.. According to Schabas the result that must be proved for this requirement to be satisfied "is that one or more victims actually suffered physical or mental harm".³⁶⁴ Clearly there would be no difficulty in proving this in the present case.

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

543. In order to decide whether this requirement is satisfied it is necessary to consider three forms of action taken by Israel. First, the attack from 27 December 2008 to 18 January 2009. Secondly, the siege that has been imposed on Gaza ever since Hamas seized control of Gaza in mid-June 2007. Thirdly, the destruction of religious, educational and cultural facilities which may be described as cultural genocide.

544. First, the severity and wantonness of the attack in Gaza from 27 December 2008 to 18 January 2009, described above in the examination of War Crimes may be construed as action calculated to bring about physical destruction of the people of Gaza.

545. Secondly, Gaza has been subjected to a siege imposed by Israel since 2007 which has resulted in the destruction of resources important for survival, such as food, fuel, medical supplies and the systematic destruction of homes by regular military incursions. (See above paras 34-44). This meets the requirement contained in the Elements of Crime of the ICC relating to "conditions of life".³⁶⁵

546. The Genocide Convention does not mention "cultural genocide" as a factor calculated to bring about the physical destruction of a group. In this respect it differs from the Israeli definition of genocide which includes as a separate act of genocide "destroying or desecrating Jewish religious or cultural assets or values".³⁶⁶ In *Krstic*, Judge Shahabuddeen recognized cultural genocide as falling within the definition of genocide,³⁶⁷ but in the *Genocide Case (Bosnia v Serbia)* the International Court of Justice held "that the destruction of historical, religious and cultural heritage cannot be

³⁶⁴ *Genocide in International Law*, 2nd ed (2009)188

³⁶⁵ Elements of Crime of UN Doc PCNICC/2000/I/Add 2. (2000)

³⁶⁶ Nazi and Nazi Collaborators (Punishment) Law, *Laws of State of Israel* 4, p 154

³⁶⁷ *Prosecutor v Krstic* (Case No. IT-98-33-A

considered to constitute the deliberate infliction of conditions of life calculated to bring about the physical destruction of the group”.³⁶⁸ Nevertheless the Court endorsed the observation in *Krstic*³⁶⁹ that “where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious properties and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group”. In the present case there is evidence of deliberate targeting and destruction of mosques (see above under War Crimes), and cultural centres.

Mens Rea of Genocide: An intent to destroy the Palestinians in Gaza

547. This is the most difficult element of the crime of genocide to prove.

The Law.

548. According to the International Court of Justice, in addition to the intentional elements contained in the underlying crimes of killing and the other punishable acts, Article 2 of the Genocide Convention:³⁷⁰

... requires a further mental element. It requires the establishment of the ‘intent to destroy, in whole or in part... [the protected] group, as such’. It is not enough to establish, for instance in terms of paragraph (a), that deliberate unlawful killings of members of the group have occurred. The additional intent must also be established, and is defined very precisely. It is often referred to as a special or specific intent or *dolus specialis*... It is not enough that the members of the group are targeted because they belong to the group, that is because the perpetrator has a discriminatory intent. Something more is required. The acts listed in Article II must be done with intent to destroy the group as such in whole or in part.

549. As direct evidence of genocidal intent is usually lacking, intent must be inferred from the conduct of the actor and the factual circumstances. In *Jelsic*, the Appeals Chamber of the ICTY noted specific intent may “be inferred from a number of facts and circumstances, such as general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminating acts”.³⁷¹

550. The writings of scholars and judicial decisions give some indication of the factual circumstances from which a specific intent may be inferred. First, such an intent may be inferred from the number of persons killed or wounded.³⁷² The number of persons killed and wounded by Israel in the conflict would certainly allow an inference of specific intent to commit genocide to be drawn. Secondly, an intent may be inferred from the “political doctrine which gave rise to the acts ... or the repetition of destructive and discriminating acts”.³⁷³ Again, an inference of specific intent may be drawn from the “political doctrine”- intense hostility to Hamas and Gaza on the part of Israel – and the repetition of destructive and discriminatory acts. Thirdly, although the Genocide

³⁶⁸ 2007 ICJ Reports 1 at 124, para 344

³⁶⁹ IT-98-33-T, (2001) para 580

³⁷⁰ 2007 ICJ Reports p. 70, para 187.

³⁷¹ Case No IT-95-10-A (2001) para 47.

³⁷² W. A. Schabas, *Genocide*, 276-77, 2nd ed. 2009

³⁷³ *Prosecutor v Karadic & Mladic*, cases No IT-95-5-R61, IT-95-18-R61, Review of Indictment Pursuant to Rule 61, 11 July 1996, para 94

Convention does not expressly recognize cultural genocide as a criminal act, proof of attacks directed against religious, historical or cultural institutions, committed in association with killing “may prove important in establishing the existence of genocidal rather than merely a homicidal intent”.³⁷⁴ As shown above (under War Crimes), Israel destroyed many mosques and historical and cultural buildings, in association with its killings of Palestinians, and this points strongly in the direction of a genocidal special intent.

551. On the other hand, the International Court of Justice has cautioned against drawing an inference of genocidal intent from the massive killings of members of the victim group: *Genocide (Bosnia v Serbia)*.³⁷⁵ The International Court of Justice also found the required specific intent could not be inferred from the siege of a city, deprivation of food and fuel and deliberate obstruction of humanitarian assistance.³⁷⁶ This indicates that a genocidal intent cannot necessarily be inferred from the massive killings and wounding in the conflict over a 22 day period, from the long siege of Gaza and the restrictions placed on fuel and food or from the obstruction of medical and humanitarian assistance during the conflict.
552. From the above it is clear that as genocide is seen to be the “crime of crimes”, a genocidal, specific intent cannot be readily inferred from even the most atrocious and horrendous circumstances. Indeed the International Criminal Court has recently held – in the case of *Prosecutor v Omar Al Bashir* – that the required specific intent should not be inferred from the factual circumstances if it “is only one of several reasonable conclusions available on the materials provided”.³⁷⁷
553. The Committee now turns to the question whether a specific intent to destroy the Palestinian group of Gaza as such in whole or in part may be inferred from the facts of the conflict.

The Facts.

554. On their face, Israel’s actions appear to allow an inference of a specific intent to destroy the group in whole or in part. Israel’s attack consisted of massive aerial bombings, followed by a brutal land offensive, resulting in the deaths of 1,417 persons, and wounding over 5,000 persons – mainly civilians; the terrorising of the entire population of the territory by bombing, shelling and confusing warnings to evacuate; the systematic and widespread destruction of property, including mosques, hospitals and cultural institutions; the shooting of ambulances and obstruction of humanitarian assistance; and the siege imposed before, during and after the offensive, which has resulted in serious shortages of food and medical supplies, fuel and power. Such actions would appear to be sufficient to justify a reasonable inference that Israel had the required genocidal intent.
555. The Committee is, mindful of the fact Israel has consistently maintained its offensive was action taken in self-defence to rockets fired from Gaza into Israel and the smuggling of weapons into Gaza by means of tunnels from Egypt. However, as shown above (paras 407-410), there are serious reasons for doubting whether Israel may

³⁷⁴ Schabas, *Genocide* 267, 2nd ed 2009

³⁷⁵ 2007 ICJ Reports 98, paras 276-277, 115 (para 319) 118 (para328). See, too, *Prosecutor v Omar Al Bashir* ICC-02/05-01/09,74 (para194)

³⁷⁶ *Genocide (Bosnia v Serbia)* 2007 ICJ Reports 118 (paras 327-8).

³⁷⁷ ICC- 02/05-01/9 (2009) 56 (para 159) 76 (para 203).

successfully raise this defence. This has led the Committee to conclude that Israel did not act in self-defence when it engaged in operation *Cast Lead*.

556. What then was the purpose of Israel's action? The Committee is firmly of the opinion the purpose of Israel's action was to punish the people of Gaza for having substantially contributed to the election of Hamas in 2006 and for having allowed Hamas to seize control of Gaza in mid 2007. It seems Israel hoped that by punishing not Hamas *but the Palestinian people of Gaza* it would either provoke the people of Gaza to overthrow the Hamas regime or to adopt a more submissive attitude towards Israel. All Israel's actions point in this direction: the siege, the aerial bombardment, the attack from the sea, and the land offensive; the destruction of historical, religious, educational and cultural institutions and other targets related to the identity of the Palestinian people; the brutal and arbitrary killing and wounding of civilians; the wanton destruction of both private and public property; the bombing of hospitals and the shooting of ambulances; and the terrorizing of the people of Gaza.
557. Punitive action of this kind is prohibited by the United Nations Charter, which regards the use of force taken by way of reprisal as illegal. It also violates the prohibition on collective punishment contained in the Fourth Geneva Convention³⁷⁸ and both Additional Protocols.³⁷⁹ However heinous and inhuman collective punishment may be, it does not constitute evidence of a specific intent to destroy the Palestinian people of Gaza in whole or in part.³⁸⁰ The Committee finds Israel has violated paragraphs (a) to (c) of Article 2 of the Genocide Convention in that it has killed, caused serious bodily harm to and deliberately inflicted on the Palestinian people of Gaza conditions of life calculated to bring about their physical destruction in whole or in part, but that its intention was probably not to destroy the group in whole or in part but rather to engage in a vicious collective punishment campaign designed to punish and subdue. Although much of the evidence pointed in the direction of a specific intent to destroy, this was not the only possible inference to be drawn from the facts as there is clear evidence of an intent to punish as the primary motivation for Israel's actions. For this reason the Committee finds that the Government of Israel which planned, initiated and waged the attack on Gaza from 27 December 2008 to 18 January 2009 lacked the necessary genocidal intent for the crime of genocide.
558. The fact that the Committee has found no proof that the government of Israel had the necessary genocidal special intent does not rule out the possibility that in some instances, individual members of the IDF, including Israeli government officials, may have had a genocidal special intent in their actions against Palestinians in Gaza. There is evidence that some soldiers killed Palestinian women and children in cold-blood by shooting them at close range (see above paras 226-258). This evidence has been confirmed by the testimony of members of the IDF at a course at the Oranim Academic College in Israel to the effect that soldiers killed women and children in cold-blood with no remorse, scrawled graffiti on Palestinian walls and destroyed the content of homes in a wanton fashion (see above, paras 60-69). Such testimony might be viewed as evidence of wanton, reckless behaviour, rather than genocidal intent were it not for the fact the soldiers also speak of military rabbis encouraging the belief that they were

³⁷⁸ Article 33.

³⁷⁹ Protocol I, Article 75 (2) (d); Protocol II, Article 4 (2) (D).

³⁸⁰ See, in this connection, the findings of the *Cassese International Commission of Inquiry on Darfur* that Sudan's policy of forcibly displacing members of some tribes did not evince specific intent to destroy but rather an intent to drive the victims from their homes for the purpose of counter-insurgency warfare. Paras 518 and 640.

engaged in a religious war and should not show mercy to the non- Jewish enemy who should be expelled from the holy land.³⁸¹ Although the Committee attempted to establish the identity of those responsible for the cold-blooded killing of women and children, witnesses were not able to provide names, but did indicate that they would be able to identify the culprits. Consequently, it is possible that some individual soldiers may have committed genocide and should be prosecuted for this crime. If it can be proved that certain individuals acted with genocidal special intent, the question will arise as to the complicity of senior military commanders or government officials “either for complicity in genocide or for failure to investigate, or repress and punish such possible acts of genocide”.³⁸²

D State Responsibility.

559. Under international law a state may be held responsible for the commission of internationally wrongful acts attributable to it. Such responsibility may arise under customary international law or in terms of treaty obligations. From the above examination of the conflict, it is clear that serious international crimes have been committed. It is likewise clear that the unlawful conduct in question may be attributed to Israel as it was committed in the course of a military operation planned, initiated and implemented by Israel by means of its armed forces.
560. The report will consider responsibility only under the Genocide Convention as Article 9 of this Convention provides a jurisdictional link for the bringing of a claim against Israel. Such a jurisdictional link is not present in other human rights and humanitarian treaties considered in this report

The Genocide Convention.

561. The Genocide Convention, in Article 9 provides that disputes “concerning the interpretation, application or fulfilment of the present convention, including those relating to the responsibility of a state for genocide or for any of the acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.” As Israel is a party to the Genocide Convention it is possible for any other state party to the Convention to bring proceedings against Israel for failing to fulfil its obligations under the Convention or for responsibility for genocide. That a state, in addition to individuals, has obligations under the Genocide Convention has been confirmed by the International Court of Justice.³⁸³ Moreover it is clear any state party to the Genocide Convention may bring proceedings, without the necessity for establishing a national interest in the dispute: the prohibition on genocide is an obligation *erga omnes*. To date fourteen cases have been brought in the International Court of Justice under Article 9 of the Genocide Convention.³⁸⁴ Of these the most important is the case brought by Bosnia and Herzegovina against Serbia.³⁸⁵
562. The seriousness of Genocide both as a crime and as a civil wrong – an internationally wrongful act – is reflected in the burden of proof. In *Bosnia v Serbia* the International Court of Justice rejected the argument the standard of proof was a “balance of

³⁸¹ *New York Times the Week in Review* 22 March 2009, p 1.

³⁸² *International Commission of Inquiry on Darfur*, para 520; W.A .Schabas, *Genocide in International Law*, 2nd ed, (2009), 361-366; *Prosecutor v Brdanin* (Case No IT-99-36-T (2004) paras 720-721.

³⁸³ *Genocide (Bosnia v Serbia)* 2007 ICJ Reports 63 para 166

³⁸⁴ W. A. Schabas *Genocide in International Law* 2nd ed (2009) 499

³⁸⁵ 2007 ICJ Reports 1.

probabilities” and instead requires “proof at a high level of certainty appropriate to the seriousness of the allegation”.³⁸⁶ This may not be the same standard as “beyond a reasonable doubt” but there is certainly a close resemblance.

563. At the outset it is important to stress no claim can succeed against a state under the Genocide Convention unless it is proved an act of genocide has been committed, although a conviction for such a crime is not necessary.³⁸⁷
564. The Committee has found that while the government of Israel probably lacked the required specific intent for the commission of the crime of genocide, there are reasonable grounds for believing that some members of Israel’s armed forces may have acted with genocidal special intent and, as a consequence, some senior officers may bear responsibility under the principles of command responsibility.
565. As proof of the commission of the crime of genocide is a prerequisite for a claim under the Genocide Convention it is difficult to recommend to states, with confidence of success, they might consider initiating proceedings against Israel. On the other hand, there is a prospect that such a claim might succeed if it can be proved that individual members of the armed forces committed acts of genocide while they were acting under the direct control of the Government of Israel. Such a scenario would allow Israel to be held directly responsible under Articles 2 and 3(a) of the Genocide Convention or for failure to prevent or to punish genocide, as required by Article 1 of the Convention.

Responsibility for acts committed by soldiers under the direction or control of the Government of Israel.

566. It is clear a state is responsible for the actions of persons under its direction or control. In *Bosnia v Serbia*³⁸⁸ the International Court of Justice gave its approval to Article 8 of the International Law Commission Draft Articles on State Responsibility which reads:

The conduct of a person or group of persons shall be considered an act of state under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that state or carrying out the conduct.

567. As there is no question members of the IDF acted under the direction and control of the Government of Israel, this responsibility will not be difficult to prove – if the commission of the crime of genocide has been established.

Failure to prevent Genocide.

568. Article 1 of the Genocide Convention provides genocide is a crime under international law which states “undertake to prevent and to punish”. According to the International Court of Justice in *Bosnia v Serbia* the obligation to prevent genocide is a separate obligation³⁸⁹ which arises from omission.³⁹⁰ Here responsibility arises “if the state manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide”³⁹¹ at the moment “that the state learns of, or should normally have learned of, the existence of a serious risk

³⁸⁶ 2007 ICJ Reports 77 para 210

³⁸⁷ *Bosnia v Serbia* 2007 ICJ Reports 68, paras 180, 182; 154 para 431

³⁸⁸ 2001 ICJ Reports 142-145

³⁸⁹ 2007 ICJ Reports 153, para 427

³⁹⁰ 2007 ICJ Reports 153, para 432

³⁹¹ 2007 ICJ Reports 153, para 430

that genocide will be committed”.³⁹² A state can, however, only be held responsible for breaching the obligation to prevent genocide if genocide was actually committed.³⁹³

569. If an act of genocide can be proved, there should be little difficulty in proving that Israel should have known of the existence of a serious risk that genocide was being committed and would further be committed. There were accounts of atrocities committed by members of the Israeli forces (both the IDF and the IAF), such as the bombing of the police parade on 27 December 2008, and the fatal shootings of members of the Samouni and Abed Rabo families on 7 and 4 January respectively (paras 228-229 and 232-233). These were reported in the media and possibly constituted acts of genocide. These accounts must have put Israel on notice that its forces were possibly committing acts of genocide. In these circumstances Israel was obliged in law to take steps to prevent acts of genocide. Failure to do so would constitute violation of the obligation to prevent genocide.

Failure to punish Genocide.

570. The Genocide Convention obliges states to punish acts of genocide (Article 1). According to Article 6 of the Genocide Convention persons suspected of genocide “shall be tried by a competent tribunal of the state in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction”. Although the acts that might constitute genocide were committed in Gaza and not Israel, an Israeli court would clearly have jurisdiction to try members of its armed forces for crimes committed in Gaza, an occupied territory. Failure to prosecute its armed forces in its own courts, in the absence of an international penal tribunal, would therefore constitute a violation of the obligation to punish.
571. In the light of the absence of *clear* evidence that acts of genocide have been committed the Committee is unable to confidently recommend that states bring proceedings against Israel under Article 9 of the Genocide Convention. If, however, evidence of the commission of such crimes becomes available as a result of further disclosures by soldiers in Israel or testimony from witnesses in Gaza, states may consider bringing such proceedings either individually or collectively.

³⁹² 2007 ICJ Reports 153, para 431

³⁹³ 2007 ICJ Reports 153, para 431

Part IV: Conclusions, Remedies and Recommendations

A Conclusions.

Responsibility of Israel.

572. The Committee has found that some members of the IDF have committed war crimes, crimes against humanity and, *possibly*, genocide in the course of operation *Cast Lead*. Those responsible for the commission of such crimes are individually responsible for their actions, as are those who ordered or incited the commission of such crimes, aided or abetted in the commission of such crimes, or participated in a common purpose to commit such crimes.³⁹⁴ Military commanders and political leaders are likewise responsible for crimes committed under their effective command, authority or control where they knew or should have known that the forces were committing such crimes and they failed to prevent or repress the commission of such crimes or to investigate and prosecute those responsible.³⁹⁵
573. The Committee has also found the State of Israel is responsible for the commission of internationally wrongful acts by reason of the commission of war crimes and crimes against humanity and – *possibly* – genocide by its armed forces. There is no doubt, in the opinion of the Committee, such acts may be attributed to Israel in accordance with the rules of state responsibility expounded by the International Law Commission³⁹⁶. In most instances members of the armed forces acted subject to the authority and direction and control of the executive which provides a sound basis for attribution of their conduct to Israel.³⁹⁷ In some instances, particularly those relating to the possible commission of the crime of genocide, it is likely rogue elements within the armed forces contravened their orders and instructions. Israel cannot, however, escape responsibility for such conduct as, in terms of Article 7 of the International Commission Draft Articles of State Responsibility.³⁹⁸

The conduct of an organ of a State or of a person empowered to exercise elements of governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

Responsibility of Hamas.

574. It is not the function of this report to assess the status of Hamas. Suffice it to say the Committee regards it as unhelpful to simply condemn Hamas as a terrorist organization and all its activities as forms of terrorism as, amongst others, Israel, the United States and the European Union do. It is wrong to refuse to take account of the fact that Hamas is the governing *de facto* authority of Gaza, with a political wing responsible for governing Gaza and managing its day-to-day affairs, and a military wing that engages in acts of violence against Israel.

³⁹⁴ Article 25 of the Rome Statute; Rule 151 of ICRC. Study on *Customary International Humanitarian Law* eds. J-M Henckaerts & L Doswald – Beck (2005) vol 1, 551-555.

³⁹⁵ Article 28 of the Rome Statute; Rules 152 and 153 of ICRC study, *ibid*, 556-563.

³⁹⁶ Draft Articles on Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission (2001), GAOR 56th session, Supp No 10 (A/56/10)29. Articles 1-8.

³⁹⁷ *Ibid*, Articles 1-8.

³⁹⁸ *Ibid*

575. As the de facto governing authority of Gaza, Hamas may be held responsible for violations of international humanitarian law that may be attributed to it. As shown above (paras 210-212), factions other than Hamas, notably Islamic Jihad, Fatah, the Palestinian Front for the Liberation of Palestine and the Democratic Front for the Liberation of Palestine, are also responsible for firing rockets. However, it may be argued that Hamas ultimately had effective control over the actions of these factions and could be held responsible for them.
576. Individuals who fire Qassam and Grads rockets indiscriminately into Israel are criminally responsible for their actions and must be held accountable for them under the laws governing the commission of war crimes. See above, under War Crimes.
577. In assessing the responsibility of Hamas and individual Palestinian militants, regard must be had to a number of factors which may reduce their moral blameworthiness but not criminal responsibility.
- (1) Palestinians have a right of self determination, that has been violated by Israel – as recognized by the International Court of Justice.³⁹⁹ Whether those fighting for their right of self-determination have the right to use force under international law is disputed. On the other hand, Article 1(4) of Additional Protocol I extends the protection of the Geneva Conventions to those fighting against “alien occupation” in the exercise of their rights of self-determination. Several regional conventions on terrorism also recognize the legitimacy of wars of national liberation⁴⁰⁰ and the International Court of Justice has refused to qualify the use of force in such wars as unlawful.⁴⁰¹ On the other hand, recent Security Council resolutions, notably resolution 1566 (2004), condemn acts of violence against civilians with the purpose of provoking a state of terror in the general public and state such acts are “under no circumstances justifiable” for political, philosophical, ideological, racial, ethnic or religious reasons.⁴⁰² The right to use force in resistance to the suppression of self-determination, however brutal and sustained, is therefore a matter of dispute. There is, however, agreement that even if resistance fighters have the right to use force against an alien occupying force, they are bound by the rules of international humanitarian law.
 - (2) Palestinians in Gaza have long been subjected to a cruel siege by Israel, and more particularly since Hamas took control of Gaza in mid-2007. This “imprisonment” of a people is inevitably a major cause for the firing of rockets.
 - (3) Undoubtedly Palestinian fighters who fired rockets into Israel in the course of the recent conflict succeeded in terrorizing many Israeli civilians. Moreover four Israeli civilians were killed and 182 wounded (see para 79). These killings and injuries, however, are significantly less than the number of Palestinians killed (over 1,400, of which over 850 were civilians) and wounded (over 5,000) and the large scale destruction of property. Human life is always precious, but the scale of Israel’s action cannot be ignored in assessing the moral blameworthiness of Palestinians.
 - (4) Palestinian fighters used unsophisticated and primitive weapons: Grads or multiple-launched rockets, “Qassam” and “Quds” rockets and homemade mortars

³⁹⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* 2004 ICJ Reports 136, 171-2 (para 88), 199 (para 155).

⁴⁰⁰ See above para ??

⁴⁰¹ See above para ??

⁴⁰² See above para ??

(see paras 76-78). Israel, on the other hand, had at its disposal a wide array of sophisticated, modern weapons able to cause maximum suffering and damage. The great difference in both the weapons capability of the opposing sides and the use of their respective weaponry are factors to be considered in assessing moral blameworthiness.

- (5) Palestine has indicated a willingness to have crimes committed by both parties to the conflict investigated and prosecuted before the International Criminal Court. See the discussion, below, of the Declaration made under Article 12(3) of the Rome Statute by the Government of Palestine. This willingness contrasts with Israel's refusal to allow an independent investigation of its actions in operation *Cast Lead*.

B Remedies.

Criminal Law Remedies.

Criminal Prosecutions and litigation in Israeli Courts.

578. Israel has criminal jurisdiction over its own armed forces in respect of crimes committed both within Israel and extraterritorially. Ideally, the Israeli authorities should therefore investigate the acts portrayed as criminal in the present report and prosecute those responsible. Israel, does, however, have a poor record of prosecuting members of its armed forces for crimes committed against Palestinians both by its forces on the ground and by high-ranking government officials responsible for ordering such crimes. Civil suits brought against the Israeli Defense Force by Palestinians, or by Israeli NGO's acting on behalf of Palestinians, have likewise been largely unsuccessful.
579. In these circumstances, the Committee is of the opinion there is little prospect the Israeli authorities will initiate investigations or prosecutions in response to the present report.

Prosecutions in Third States by Means of Universal Jurisdiction.

580. The Committee is of the view states with universal jurisdiction statutes that allow their courts to exercise criminal jurisdiction over crimes committed anywhere in the world with no connection with the forum state should be encouraged to institute proceedings based on the present report. States which recognize some form of universal jurisdiction are Austria, Belgium, Canada, Chile, Denmark, France, Germany, the Netherlands, New Zealand, Norway, Senegal, South Africa, Switzerland and the United Kingdom.
581. However, these states differ in the degree to which they recognize universal jurisdiction. While some, such as Spain and New Zealand, exercise criminal jurisdiction without the necessity for any link or connecting factor, others require some connection such as residence on the part of the complainant or the accused person. It is important to recall, for the purposes of the present report, that Israel was one of the first states to exercise universal jurisdiction in the *Eichmann* case.⁴⁰³
582. In resorting to universal jurisdiction, those responsible for bringing such prosecutions should co-ordinate their activities in order to ensure the same prosecution is not brought in different jurisdictions as this may prompt the courts in such states to decline jurisdiction. It must also be stressed that as the courts of states with universal jurisdiction statutes are sometimes reluctant to exercise such jurisdiction, great care should be taken in the preparation and presentation of such cases.

⁴⁰³ (1961) 36 International Law Reports 18.

Prosecutions for violation of the Fourth Geneva Convention in National Courts.

583. Article 146 of the Fourth Geneva Convention obliges state parties to enact legislation to provide for the prosecution of persons committing grave breaches of the Convention under Article 147. In addition:

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

584. In essence the Fourth Geneva Convention obliges states to exercise universal jurisdiction over persons who have committed grave breaches of the Convention. The present report shows there is a *prima facie* case that grave breaches of the Convention have been committed. States should be reminded of their obligations under the Fourth Geneva Convention and encouraged to institute prosecutions, particularly in respect of Israeli officers and politicians who visit their countries.

Jurisdiction under the International Criminal Court.

Preconditions to the exercise of jurisdiction

Acceptance of Jurisdiction

585. The International Criminal Court (ICC) may exercise jurisdiction if one or more of the states in which the conduct in question occurred or the state of which the person accused of the crime is a national⁴⁰⁴ are parties to the Rome Statute of the ICC or have accepted the jurisdiction of the Court *ad hoc* with respect to the crimes referred to in article 5 of the Rome Statute.⁴⁰⁵ The ICC may also exercise jurisdiction if the

⁴⁰⁴ Article 12 Rome Statute 'Preconditions to the exercise of jurisdiction' reads:

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
 - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft.
 - (b) The State of which the person accused of the crime is a national.
3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

⁴⁰⁵ Article 5 of the Rome Statute 'Crimes within the jurisdiction of the Court' reads:

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes
 - (a) The crime of genocide;
 - (b) Crimes against humanity;
 - (c) War crimes;
 - (d) The crime of aggression.
2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Prosecutor has initiated an investigation in respect of such a crime in accordance with articles 15(1) and 12(2) of the Rome Statute when the states involved have accepted the jurisdiction of the Court either generally or ad hoc.⁴⁰⁶

Declaration of the Government of Palestine

586. On 22 January 2009 the Palestinian Minister of Justice His Excellency Mr Ali Kashan on behalf of the Government of Palestine lodged a declaration recognizing the jurisdiction of this Court retrospectively “for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed in the territory of Palestine since 1 July 2002” with the Registrar of the ICC.⁴⁰⁷
587. The reference to the territory of Palestine implies that it applies to every person, who has committed crimes within the jurisdiction of the Court⁴⁰⁸ since 1 July 2002 in the West Bank, including East Jerusalem, and the Gaza Strip.
588. The declaration refers to the territory of Palestine, which implies it also extends to crimes under the jurisdiction of the ICC committed not only in the Gaza Strip but also in the West Bank, including East Jerusalem by both Israelis⁴⁰⁹ and Palestinians as well as other nationals. Moreover, the declaration speaks of the Government of Palestine instead of the Palestinian National Authority and also of the territory of Palestine instead of Occupied Palestinian Territory.

Answer of the ICC

589. The affirmative answer to the question whether the representatives of the PNA lodged a declaration referring to article 12(3) of the Rome Statute with the Registrar of the Court, Ms Silvana Arbia, referred to the PNA and not to the Government of Palestine. It also stated:

The Court has not made any determination on the applicability of article 12(3) to this particular communication. A conclusive determination on its applicability would have to be made by the judges at an appropriate moment.⁴¹⁰

590. The Registrar addressed her acknowledgment of the receipt to the PNA and not to the Government of Palestine. In so doing, she clearly conveyed that her acknowledgment

⁴⁰⁶ Article 13 ‘Exercise of jurisdiction’ reads:

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;
- or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15 (see **note 14**).

⁴⁰⁷ A copy of the declaration is attached as Annexure 7. Article 11(2) of the Rome Statute states in relation to jurisdiction *ratione temporis*: “If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3”.

⁴⁰⁸ Rome Statute, article 5 (*supra* **note 1**).

⁴⁰⁹ But see *infra* paragraphs 16 ff..

⁴¹⁰ ICC Questions and Answers re Palestinian Declaration: <http://www2.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279787/QARegistryArticle15.pdf>. The reference to the Palestinian National Authority instead of the Government of Palestine overlooks the fact that the right to self-determination of the Palestinian people and the accompanying right to establish its own state do not originate in the Oslo Agreements. See *infra* **note 16**.

of receipt and provision of this information was without prejudice to the applicability of Article 12(3) to the communication.⁴¹¹

591. The Prosecutor, Mr Luis Moreno-Campo, indicated that he received several communications relating to the situation of Israel and the Palestinian Territories and that he will first carefully examine all the issues related to the jurisdiction of the Court, including whether the declaration by the PNA accepting the exercise of the ICC meets the statutory requirements. If he determines there is a reasonable basis to begin an investigation, he would have to request a Pre-Trial Chamber to authorize an investigation. The Chamber will then determine independently if there is a reasonable basis to proceed with an investigation and whether the case appears to fall within the jurisdiction of the Court.⁴¹²
592. If the Prosecutor initiates an investigation on the basis of the above communications he needs the cooperation of Palestine as the state on whose territory the conduct in actions occurred. For that reason it is important that Palestine lodged a declaration with the Registrar of the ICC in accordance with article 12(3).

Government of Palestine

593. It is significant the answer from the ICC mentioned the PNA, and not, as the declaration itself did, the Government of Palestine. The term Palestinian (National) Authority results from the Oslo Agreements that had a limited duration of five years, ending in June 1999 when the withdrawal of Israeli forces from the Gaza Strip and the Jericho area began.⁴¹³ The expiration of this term without the recognition by Israel of the Palestinian State and without the effective termination of the occupation was followed by the second intifada in 2000.
594. The above change by the ICC in its public information did not take into account that the Palestinian people have the authority to consider and designate the Palestine Liberation Organisation (**PLO**) as its government. It should be noted in this connection that the PLO as party to the Oslo Agreements did not object to the lodging of the declaration by the Palestine government. In the opinion of the Committee the ICC exceeded its authority by changing the Government of Palestine into the PNA.

Scope of proprio motu investigation

Effect of a declaration of a state not party

595. According to the ICC, the lodging of a declaration under article 12(3) does not mean that the Prosecutor will open investigations *proprio motu* under Article 13(c). Article 12(3) declarations relate only to the scope of the Court's jurisdiction. They do not trigger any investigation. An investigation can only be opened following referral of a situation to the Prosecutor by a State Party to the Rome Statute, referral of a situation to the Prosecutor by the United Nations Security Council, or the authorization to the Prosecutor to open an investigation by a Pre-Trial Chamber of three judges.⁴¹⁴
596. It is not to be expected a state party to the Rome Statute or the Security Council will refer the situation in the Gaza Strip to the Prosecutor. The key question is whether Article 13(c), in conjunction with Article 12(3), intends to limit the power of the

⁴¹¹ ICC Questions and Answers, *supra* note 7.

⁴¹² Ibid.

⁴¹³ Declaration of Principles on Interim Self-Government Arrangements of 13 September 1993, article V(1).

⁴¹⁴ *Supra* note 7

Prosecutor to initiate an investigation *proprio motu* (as laid down in article 15(1)) to situations referred to him by a state party or the Security Council. If that was the case it would not include a situation referred to him by a non-party state such as Palestine, which has nonetheless lodged a declaration ad hoc in accordance with Article 12(3).⁴¹⁵

597. The Committee is of the view that such a limitation would weaken Articles 12(3) and 15(1) and may even deprive them of any significance in the context of the determination of the states parties to the Rome Statute.⁴¹⁶

To establish an independent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international committee as a whole.

598. For that reason, the examination by a Pre-Trial Chamber of the request of the Prosecutor, and the accompanying supporting material, should not be interpreted and applied as if it is limited to cases submitted by states parties or the Security Council. It should also extend to cases submitted by non-state parties in accordance with Article 12(3).
599. Its fact finding in the Gaza Strip leads the Committee to suspect that during operation *Cast Lead* crimes within the jurisdiction of the ICC were committed. The Committee is of the opinion that the declaration lodged by the Government of Palestine authorizes the Prosecutor to initiate investigations *proprio motu*. If the analysis of the Prosecutor corroborates the suspicion of the Committee, this would justify a conclusion there is a reasonable basis to proceed with an investigation and the Pre-Trial Chamber would be required to do so.⁴¹⁷

Lapse of Criminal jurisdiction of Israel

600. According to the Agreement on the Gaza Strip and the Jericho Area of 4 May 1994 between the Government of Israel and the Palestine Liberation Organization, the representative of the Palestinian people, Israel has the sole criminal jurisdiction over Israelis committing crimes in the Palestine Territory.⁴¹⁸ However, according to the Declaration of Principles on Interim Self-Government Arrangements, these arrangements were meant for a period of five years only, to begin upon the withdrawal of Israel from the Gaza Strip and Jericho area.⁴¹⁹ This withdrawal began in June 1994.
601. Whatever the impact of a *de facto* continuation of the arrangement, the intended *de jure* expiration of the permanent status arrangements, the Israeli disengagement from the Gaza Strip and the special status given by Israel to the Hamas controlled Gaza Strip as a “hostile entity” imply the lapse of Israel’s claim to sole criminal jurisdiction over Israelis responsible for committing crimes within the jurisdiction of the ICC committed in the Gaza Strip during operation *Cast Lead*.

⁴¹⁵ *Supra* note 2

⁴¹⁶ Rome Statute Preamble paragraph 9.

⁴¹⁷ Article 15 ‘Prosecutor’: 1. The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court. (...) 3 If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence. 4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case. (...).

⁴¹⁸ Doc. A/49/180 S/1994/72 of 20 June 1996, Annex III Protocol on Legal Matters, article I.

⁴¹⁹ See *supra* note 10.

602. This lapse is not affected by the Oslo Agreements, which did not mention statehood. They cannot, therefore, be read as implying that the parties had agreed a Palestinian state should come into existence automatically even before the final status agreement had been reached. After all, the Palestinian statehood is not the result of the Oslo Agreements but of the right to self-determination of the Palestinian people in conjunction with the United Nations Partition resolution A/Res 181 (II).⁴²⁰
603. The Advisory Opinion of the ICJ on the *Legal Consequences of Construction of a Wall in the Occupied Palestinian Territory* makes it clear that Israel is bound comply with its obligations to respect the right of the Palestinian people to self-determination and under international humanitarian law and international human rights law as obligations *erga omnes*. Moreover, the Court, in stating Israel must ensure freedom of access to the Holy Places that came under its control in the 1967 War, referred not only to the Mandate for Palestine but also to Resolution 181(II).⁴²¹

Recommendation

604. This report shows there is a prima facie case that crimes falling within the jurisdiction of the ICC were committed during operation *Cast Lead*. Palestine exercises criminal jurisdiction within its territory. It is thus able to fulfill the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.⁴²² Therefore there is national criminal jurisdiction to which the jurisdiction of the ICC is complementary.
605. The Committee recommends that the League and its members support the decision of the Government of Palestine to recognize the jurisdiction of the ICC in accordance with Article 12(3) of the Rome Statute. And, in order to prevent new Israeli military operations in the Gaza Strip the Committee further recommends that the League and its members advise the Government of Palestine to deposit an instrument of accession to the Rome Statute of the ICC in accordance with Article 125.⁴²³
606. In so doing the League may underline that Palestine is a member of the League, which is a regional organization cooperating with the United Nations, that Palestine has been recognized as a state by a substantial number of states and has diplomatic relations with states. Whatever the present legal status of the Oslo Agreements, these Agreements do not deny that Palestine is a state, their main purpose being the recognition of Palestine by Israel - and vice versa- as a basis for a peace treaty between the two states, not the establishment of the State of Palestine.

⁴²⁰ Geoffrey R. Watson, *The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements*, (2000). 246-250: 'Termination of the Accord and Palestinian Statehood'; ICJ Reports 2004, paragraphs 149, and 154).

⁴²¹ ICJ Reports 2004, paragraph 149 in conjunction with paragraph 129; Watson, op. cit. note 17, questioned the validity of UN Partition resolution, 20-26.

⁴²² Rome Statute, Preamble paragraph 6.

⁴²³ Article 125 'Signature, ratification, acceptance, approval or accession' reads: 1. This Statute shall be open for signature by all States in Rome, (...) until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000. (...) 3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.'

Civil Law Remedies.

Proceedings before the ICJ in terms of Article 9 of the Genocide Convention.

607. The Committee is of the view some members of the IDF may have committed acts of genocide and that the state of Israel may, as a consequence, be responsible for the commission of the crime. In terms of Article 9 of the Genocide Convention state parties to the Genocide Convention may institute proceedings before the International Court of Justice to determine whether Israel may be found to be responsible for the commission of acts of genocide. See above, under Genocide.

Proceedings before ICJ in terms of other treaties.

608. The Committee has found there is a *prima facie* case that war crimes, crimes against humanity and grave breaches of the Fourth Geneva Convention have been committed by members of the IDF for which the State of Israel may be responsible. Efforts should be made to determine whether there is a jurisdictional basis for states to bring proceedings against Israel before the International Court of Justice in order to establish Israel's responsibility for such internationally wrongful acts. It is today clear a plaintiff state is not required to prove a national special interest in the subject-matter of such a claim as the obligations involved are obligations *erga omnes*, that is obligations owed to the international community as a whole.⁴²⁴

Proceedings before American Federal Courts under the Alien Tort Statute.

609. The American Alien Tort Statute of 1789⁴²⁵ provides "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States". This statute has given rise to many civil suits in American federal courts brought by aliens against those responsible for violating peremptory norms of international law (*jus cogens*).⁴²⁶ Such a civil suit might prove to be both an effective remedy and a way of highlighting the Gaza conflict in the United States.

United Nations.

Article 13 of the International Criminal Court.

610. Under Article 13 of the Rome Statute, the ICC may exercise jurisdiction with respect to a situation which is referred to the Prosecutor by the Security Council acting under Chapter VII of the United Nations Charter. It was under this provision that the Security Council referred the situation in Darfur to the ICC in resolution 1593 of 31 March 2005. As it was adopted under Chapter VII this resolution was clearly binding upon all member states of the United Nations. It is likely that any attempt to obtain such a resolution in respect of the situation in Gaza would be vetoed by one or more of the permanent members of the Security Council. Nevertheless this is a course worth pursuing. If a resolution is adopted – which seems highly unlikely because of the veto – it would be binding on Israel. If it is not adopted because of veto(s) cast by one or more

⁴²⁴ *Barcelona Traction Case (Belgium v Spain)* 1970 ICJ Reports 3 at 32; Article 48 (1) of the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), GAOR 56th session, suppl No 10 (A/56/10)29.

⁴²⁵ Codified at 28 USC 1350.

⁴²⁶ See, for example, *Filartiga v Pena – Irala* 630 F2d 876 (2nd Cir 1980); *Sosa v Alvarez – Machain* 542 US 692; *Presbyterian Church of Sudan v Talisman* No 01 Civ 9882, 2005 WL 2082846 SDNY 2005; *Kadic v Karadic* 70 F 3d 232 (2d Cir 1995).

of the permanent members of the Security Council, this would succeed in highlighting the double standard employed by some states in their response to situations involving the violation of international humanitarian law and human rights.

An Advisory Opinion from the International Court of Justice.

611. The International Court of Justice will refuse to exercise its advisory jurisdiction in a matter that involves a contentious dispute between states.⁴²⁷ This might be considered to preclude the possibility of an advisory opinion on the legal consequences for states, including Israel, of operation *Cast Lead*. However, in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*⁴²⁸ the Court decided it was competent to pronounce on the dispute between Israel and Palestine over the construction of the wall in Palestinian Territory in language which suggests that it might be prepared to render an advisory opinion on the legal consequences of operation *Cast Lead*. In its Opinion the Court stated:⁴²⁹

As regards the request for an advisory opinion now before it, the Court acknowledges that Israel and Palestine have expressed radically divergent views on the legal construction of the wall, on which the Court has been asked to pronounce. However, as the Court has itself noted, “Differences of views... on legal issues have existed in practically every advisory proceeding”...

Furthermore, the Court does not consider that the subject-matter of the General Assembly’s request can be regarded only as a bilateral matter between Israel and Palestine. Given the powers and responsibilities of the United Nations in questions relating to international peace and security, it is the Court’s view that the construction of the wall must be deemed to be directly of concern to the United Nations ...

The object of the request before the Court is to obtain from the Court an opinion which the General Assembly deems of assistance to it in the proper exercise of its functions. The Opinion is requested on a question which is of particular concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute. In the circumstances, the Court does not consider that to give an opinion would have the effect of circumventing the principle of consent to judicial settlement, and the Court accordingly cannot, in the exercise of its discretion, decline to give an opinion on that ground.

612. The Court might be asked to give an advisory opinion on the following type of question:

What are the legal consequences arising from the launching and implementation of operation *Cast Lead* by Israel, the Occupying Power, against Gaza considering the rules and principles of international law, including the Fourth Geneva Convention and relevant resolutions of the Security Council and General Assembly.

⁴²⁷ Here the Court is guided by the decision of the Permanent Court of International Justice in *Status of Eastern Carelia* 1923 PCIJ Reports, Series B, No 5.

⁴²⁸ 2004 ICJ Reports 136.

⁴²⁹ *Ibid* Paras 48-50.

Responsibility To Protect.

613. In 2005 the General Assembly adopted the World Summit Outcome Document which declares:⁴³⁰

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

States should be reminded of their responsibility to protect the people of Gaza.

C Recommendations

614. The Independent Fact Finding Committee on Gaza recommends the following measures be taken, and mechanisms employed to give effect to the findings of its Report and to promote international peace and security based on respect for the rule of law.

Recommendations to Organs of the United Nations.

- (1) The League of Arab States should request the General Assembly of the United Nations to request the International Court of Justice to give an advisory opinion on the legal consequences for states, including Israel, of the conflict in Gaza between 27 December 2008 and 18 January 2009 (**the Conflict in Gaza**).
- (2) The League of Arab States should request the Security Council to refer the situation in Gaza, arising from Operation Cast Lead, to the Prosecutor of the International Criminal Court under Article 13(b) of the Rome Statute.
- (3) The League of Arab States should request the Security Council, failing which, the General Assembly, to exercise its Responsibility to Protect, affirmed in the Summit Outcome Document of 2005 in respect of Gaza.

Recommendations involving the International Criminal Court.

- (4) The League of Arab States should endorse Palestine's declaration accepting jurisdiction of the International Criminal Court under Article 12(3) of the Rome Statute. If the Security Council fails to refer the situation in Gaza to the International Criminal Court under Article 13(b) of the Rome Statute (Recommendation 2), the League of Arab States should request the General Assembly to endorse Palestine's declaration under Article 12(3) of the Rome Statute in a meeting convened under the Tenth Emergency Special Session, constituted in terms of the Uniting for Peace Resolution 377 A (V).

Recommendations relying on the Geneva Conventions.

- (5) The League of Arab States should request the Swiss Government to convene a meeting of the State Parties to the Fourth Geneva Convention to consider the findings of the present Report.
- (6) The League of Arab States should request states to consider taking action under Article 146 of the Fourth Geneva Convention to ensure that those suspected of

⁴³⁰ A/RES/60/1(2005) paras 138-139; affirmed by the Security Council in Resolution 1706(2006).

having committed grave breaches of the Convention under Article 147 be investigated and prosecuted.

- (7) The League of Arab States should remind State Parties to the Geneva Conventions that they are obliged by Article 1 of the Fourth Geneva Convention “to ensure respect” for the Convention. This obligation was confirmed by the International Court of Justice in its 2004 Advisory Opinion on “*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*”. It may be argued that the obligation contained in Article 1 “to respect and to ensure respect for the present convention in all circumstances” includes an obligation on all states to render whatever assistance they can to a state subjected to violations of the Convention.

Recommendations to other States.

- (8) The League of Arab States should recommend to its members that they consider instituting legal proceedings against Israel in accordance with Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide, with due regard to the caution expressed in the present Report.
- (9) The League of Arab States should encourage states to prosecute persons responsible for the international crimes identified in the present Report before their national courts (where universal jurisdiction statutes so permit).
- (10) The League of Arab States should recommend to states that incurred damage to their property in the conflict in Gaza that they claim compensation from Israel for such losses.

Recommendations for action by the League of Arab States directly.

- (11) The League of Arab States should facilitate negotiations between Fatah and Hamas in order to ensure that the welfare of the people of Gaza is not affected by the conflict between these two parties, particularly in the medical field.
- (12) The League of Arab States should establish a documentation centre to keep a record of breaches of international humanitarian law in Palestine. Such an historical archive would ensure that a record is kept of crimes against the Palestinian people, and may assist any future action(s) taken by the League or other bodies.
- (13) This report should be referred to the United Nations, the European Union, the African Union, the Organization of American States, the Organization of Islamic Conference, the Association of South East Asian Nations and the International Criminal Court; and distributed to relevant NGO’s and the general public.

Attachment A: Medical Report of the Body Damage Evaluator.

INTRODUCTION

This medical report was prepared as part of the mission of the Independent Fact Finding Committee, commissioned by the League of Arab States, to identify and report on the situation in Gaza and on alleged violations of international humanitarian law and human rights law during the armed conflict in Gaza between the 27th of December 2008 and 19th of January 2009.

The mission included the forensic body damage evaluation of ten alleged victims of the conflict and the analysis of medical questions raised by those examinations with local medical teams.

The Committee had the opportunity to choose the cases to be examined based on suggested cases provided by local medical teams. The examinations were performed according to recommendations of the United Nations Istanbul Protocol,⁴³¹ adapted to the situation, and according to the methodologies proposed by the European Confederation of Body Damage Evaluation. The medical reports were performed with the eventual aim of judicial use, according to the forensic body damage evaluation methodologies used in European countries.

The author had the opportunity to decide the cases to be examined, to visit medical units and to access individual medical reports. After information as to the purpose of the examination was provided, each alleged victim gave their consent to being examined for the purposes of a body damage evaluation, to them being identified, to the taking of photos and to the use all the information obtained. This consent was given for each of the cases reported here.

The examinations were performed with full medical privacy, without the presence of any non-medical assistants, except some relatives in some cases (in particular where the examined person was a child) and an interpreter. The examined persons were given the opportunity to answer questions, to report the facts and to present objective clinical evidence. In none of the cases was there any kind of pressure or influence from other persons. In all ten cases was the examined persons cooperated fully.

This report consists of ten case studies, which include the information provided by the examined person, other material and photographs. Please be aware that the photographs show injuries and wounds.

⁴³¹ <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

CASE 1

I. Case identification

Subject's given name: Tahany Subject's family name: Rehan
Birth date: 26 April 1984 Birth place: Gebalia Town
Gender: Female
Subject's identification number: 800259368
Father's name: Mahmoud Rehan Mother's name: Souad Rehan
Address: Alzahra Village
Profession: Housewife

Date of exam: 24 February 2009 Place of exam: Shifa Hospital – room 520
Hospital process number: 978
Interpreter's name: Sany Hassan
Informed consent: yes

II. Information (reported by the examined person)

On 6 January 2009, in the morning, she went out to buy ingredients to make bread.

After arriving home, at about 12.00, everything was quiet and, without warning, she heard her sister crying and saw her grandmother falling down. Inside the house were ten people (also her father, two brothers, two sisters, her grandmother, her two sons and daughter).

She felt a strange thing in her right shoulder and saw a cavity in the superior third part of her right upper limb and shoulder, with several muscle fragments and abundant bleeding. She lost consciousness immediately.

Her sister told her that they tried to call the ambulance by mobile phone but the connection was not possible. She was taken to the Shifa Hospital in a neighbour's car.

She recovered consciousness two days later at the Orthopaedic Unit. She had strong pains in her right shoulder and could not sleep on her right side.

A few days latter she was transferred to the Ahli Arab Hospital because the Shifa Hospital was full. She was told that she would go to an Egyptian Hospital.

She stayed at Ahli Arab Hospital for two weeks and had eleven surgical procedures.

She returned to Shifa Hospital because she contracted a bone infection and had to have plastic surgery. She remained in the Burns Unit for ten days having daily debriding.⁴³²

⁴³² The removal of foreign matter and dead tissue from a wound.

She is now waiting for further surgery and to go to an Egyptian Hospital. On 23 February (the day before the examination) she was transported to the Rafah border to go to Egypt, but because she had not passport she was not allowed to cross the border.

She says there was no rocket fire in the region before this incident and that nobody from her family was a fighter against Israel.

Her two brothers and one of her sons were also injured at this incident.

Testimonies of the incident:

Ahmed Azmi Azam

Ahmed Auad Rehan

III. Complimentary data

15135

PALESTINIAN NATIONAL AUTHORITY
MINISTRY OF HEALTH

السلطة الوطنية الفلسطينية
وزارة الصحة
بما فقه

Medical Report

Name: Tahani Rehan
Age: 26 years
Sex: Female ID no: 800259368
Hospital no: 978 Residency: Jabalia
Date of admission: 24/1/09

The above mentioned patient was admitted to AL Shifa Hospital on 6.1.09 as a case of explosive injury on 6.1.09. after admission there was big skin loss and lacerated wounds @ shoulder and back of @ scapula with fracture of @ humerus - @ scapula.
multiple operations were done for internal fixation of the @ humerus & @ shoulder plus debridement of the lacerated wounds on the back of @ shoulder
on 25/2/09 split skin graft was done to cover the raw area on the back of @ shoulder.
The patient still under treatment in AL Shifa hospital with internal fixation to her @ humerus.

w0016005

IV. Actual situation

IV.a) Complaints

- She is very dependent because she nearly cannot move her right upper limb
- She has strong pains in the right upper limb
- She cannot sleep more than two hours per night
- She has nightmares and is afraid of losing her upper limbs
- She is desperate due to the long hospitalisation

IV.b) Objective exam

- Wound with skin loss at the back of the right scapula, the right shoulder and the right arm, approximately 35 centimetres long and 15 centimetres wide, not yet scarred.



Case 1 – Photo 1



Case 1 – Photo 2

CASE 2

I. Case identification

Subject's given name: Randa

Subject's family name: Abu Amsha

Birth date: 8 June 1975

Birth place: Gaza – Al-Shejaia

Gender: Female

Subject's identification number: 924927635

Father's name: Khalel

Mother's name: Laila

Address: Gaza – Al-Shejaia – Alhawashi St.

Profession: Hairdresser

Date of exam: 24 February 2009

Place of exam: Shifa Hospital – room 520

Hospital process number: 979

Interpreter's name: Sany Hassan

Informed consent: yes

II. Information (reported by the examined person)

On 6 January 2009, at about 11.30 a.m., she was coming home after shopping with her sister-in-law, two nephews and one niece. Everything was quiet and, when she was about 500m from the cemetery, without any previous warning, they were attacked by tank shells.

A lot of people who were walking in the street were injured, some severely. Her niece (Islam Abu Amsha - 12 years old) and the sister-in-law (Eiba Abu Amsha - 27 years old, pregnant) died in this incident.

She had several open injuries on her limbs. She was transported to Shifa Hospital in a private car, because the ambulance already had three or four patients inside.

She had surgery to clean her wounds.

She had hallucinations and screamed, especially because of the death of her niece and sister-in-law. She was afraid of losing her lower limbs and had severe pains.

After three days she was transferred to the Ahli Arab Hospital where she was hospitalized for two weeks. It was proposed to amputate her right leg but another medical team decided to try a conservative treatment.

She had a second surgery and was told that she would go to a Turkish Hospital, for plastic surgery and skin grafts, but she was not allowed to go because she did not have a passport.

She says there was no rocket fire in the area before this incident. Several residential buildings were damaged at this incident.

Testimonies of the incident:

Aalaa Abu Amsha

Mohammed Abu Amsha

III. Complimentary data

سلطة الوطنية الفلسطينية
PALESTINIAN NATIONAL AUTHORITY
MINISTRY OF HEALTH

السلطة الوطنية الفلسطينية
وزارة الصحة
محافظة غزة

Medical report .

Pt name - Randa khelil Abou Amsha
Age - 36 years old. ID - 924927635
Sex - Female.
Hosp. N° - 979 Resident - Gaza - Alshifaa

The above mentioned pat. was admitted to Alshifaa hospital on 24-7-2009 as a case of explosive injury leads to massive crushed injury on Rt heel and left leg. Pat went for operation many times for debridement of raw areas. She is still under medication at Alshifaa hospital in department of plastic surgery.

www/6005

IV. Actual situation

IV.a) Complaints

- She has strong pains in her limbs, needing analgesics
- She cannot sleep well
- She screams frequently
- She is afraid of being dependent
- She and her family have no money to pay for water and electricity

IV.b) Objective exam

- Wound with skin loss at the interior part of the superior third of the right leg of approximately three centimetres diameter, not scarred.
- Wound with skin loss at the posterior third on the sole of the right foot approximately ten centimetres diameter, not scarred.
- Wound with skin loss at the posterior part of the inferior third of the left leg of approximately seven centimetres diameter, not scarred.
- Some scarred wounds on the upper and lower limbs.



Case 2 – Photo 1



Case 2 – Photo 2



Case 2 – Photo 3



Case 2 – Photo 4



Case 2 – Photo 5



Case 2 – Photo 6



Case 2 – Photo 7

CASE 3

I. Case identification

Subject's given name: Mohammed Subject's family name: Odai El-hadad
Birth date: 15 January 1985 Birth place: Gaza – Islamic University St.
Gender: Male
Subject's identification number: 800300782
Father's name: Odai Mother's name: Ihsan
Usual address: Gaza – Islamic University St.
Present address: Gaza – Al-aqsa.
Profession: Student - accounting

Date of exam: 24 February 2009 Place of exam: Gaza – Al-aqsa
Interpreter's name: Sany Hassan
Informed consent: yes

II. Information (reported by the examined person)

On 13 January 2009, during the night, there was an invasion of the area where he lived (Islamic University St.). There were no victims from this invasion.

On 15 January, from the early morning there was shooting in the area. Between 11.00 and 14.00, it was the usual cease fire, so he and his family (his parents, one of his brothers and one sister) decided to go to a safer place. When they were leaving their home, at 11:10, and without any warning, the car they were travelling in was directly attacked by a tank shell. The tank was hidden about 160m away and the car was attacked from behind. He was thrown out of the car and lost consciousness.

He does not remember what happened after that but the details were told to him later.

He was burned but tried to reach the car to save his father. Before he could get there, the car was attacked by another rocket. The four members of his family died inside the car (see photos 1, 2 and 3, obtained by the examined person). Several other cars were also attacked in that area.

An UNRWA staff member took him to his car, which was out of sight of the tank, and transported him to Shifa Hospital.

He lost his left eye and had burns to 15% of his body (some third degree), on his head, hands and lower limbs.

He was submitted had surgery to remove his spleen.

After one week he recovered full consciousness. He was removed to the Burns Unit where were made two debridements, continuous wound dressing and a skin graft.

He left the Hospital about one week before the examination date.

He goes to hospital three times a week to have his wounds dressed.

He is currently living with his uncle.

He says there was no rocket fire in the region before this incident and nobody from their family was a fighter against Israel.

III. Complimentary data

الكلية
السلطة الوطنية الفلسطينية
وزارة الصحة
مستشفى
عيادة

Medical Report

FOLLOW UP

Name: Mahamad Al Hadad
Age: 25 years
Sex: male Residency: Gaza
Hospital no: 702
Date of admission: 15.7.09
Date of discharge: 17.7.09
The above mentioned patient was admitted to Al Shifa hospital after exposure to Explosive injury on 15.7.09.
He was taken to the operation room immediately. Laparotomy was done which shows massive intra abdominal bleeding. Splenectomy was done. At the same time (D) enisceratomy for the (D) eye also was done.
There was also (D) haemopneumothorax for which chest tube was inserted.
on 25.7.09 the patient was transferred to our burn unit because he was suffering from third degree burn about (15%) on his face, hands and his lower limbs.
debridment many times for his deep burn on his both lower limbs.
The patient needs skin grafts for his lower limbs which was done outside Al Shifa hospital.

III.a) Photos obtained on 24 February 2009, by the examined person indication:



Case 3 – Photo 1



Case 3 – Photo 2



Case 3 – Photo 3

IV. Actual situation

IV.a) Complaints

- He has strong pains at the burns
- He must have sedatives
- He must be in bed

IV.b) Objective exam

- Blind in his left eye, the eyeball has been lost.
- Wound with scarring signals at the interior part of the left ankle and foot of approximately 10 centimetres long and 8 centimetres wide.
- To protect the clinical progress the dressing was not removed and other wounds were not observed.



Case 3 – Photo 4



Case 3 – Photo 5



Case 3 – Photo 6

CASE 4

I. Case identification

Subject's given name: Ziad Subject's family name: Sameer Shafiq Deeb
Birth date: 19 July 1986 Birth place: Jabalya
Gender: Male
Subject's identification number: 801541400
Father's name: Sameer Shafiq Deeb Mother's name: Nahla Hamed Deeb
Address: Jabalya Refugee Camp near Al-Fakhoura School
Profession: University Student (Design and House Decoration)

Date of exam: 25 February 2009 Place of exam: Shifa Hospital
Interpreter's name: Hany Abu Nahla
Informed consent: yes

II. Information (reported by the examined person)

On 6 January 2009, at about 15.30, he was at his home with his family (about 15 persons). Without any warning, there was an explosion (he was not injured) and, a few seconds later, there was another explosion. Eleven people were killed and three were injured (including himself). He remained conscious and saw people dying near him.

Because the ambulances were removing persons from the Al-Fakhoura school incident, some private cars helped to remove the victims. He was transported in an ambulance that came later.

His lower limbs and right hand were amputated. He was also injured at the abdomen.

He was transported to the Kamal Edwan Hospital and later on the same day to the Shifa Hospital. He was hospitalised for some days at the Shifa Hospital where he had surgery on his limbs and abdomen.

On 11 January he was transferred to the Military Hospital of the Egyptian Ministry of Defence in Al-Maadi. A dressing was made for his injury and he had surgery to clean and close the wounds. On 2 February he left the hospital.

After that a doctor came to his house to treat his injuries. He was told to do physiotherapy.

He says there was no rocket fire in the area before this incident and nobody from their family was a fighter against Israel. A few days before the incident, a neighbouring house, from a fighter against Israel, had been destroyed.

Testimonies of the incident:

Muhannad Mohammed Qadas (neighbour)

Hussein Shafia Deeb (uncle)

Fadel Sameer Deeb (brother)

Ahlam Fareed Deeb (sister-in-law)

III. Complimentary data

سلطنة فلسطين
السلطة الوطنية الفلسطينية
وزارة الصحة
محافظة

رقم الدخول: 0118365
سجل رقم

تقرير طبي للحوادث القضائية

الجنس: ذكر أنثى
رقم الجمل:
رقم الهوية:
رقم المحافظة:

تاريخ الميلاد:
العنوان: منزل رقم
المذكر أو أعلام: حضر إلى المستشفى الساعة ويتوقع الكشف الطبي عليه بين لأنني

الجنس: ذكر أنثى
درجة الحرارة:
الضغط:
النبض:
الدمج: الإكلينيكي التصوير المختبري الأخرى

التوقيع:
الإجراء الطبي:

اسم الطبيب:
التاريخ والختم:

ملاحظة: عند التسجيل بطرق الخطأ يُلغى التقرير ويحفظ الأصل والصورة في الدخول ويذكر ذلك بالتقرير الشهري

WD3003 سجل ، للشرطة ، النسخة الزهر ، للحسابات ، النسخة النظم ، للحساب ، النسخة الورق ، الحفظ



DISCHARGE REPORT

Patient Name: بريار حسين ديب	Ward: الطوارئ
DOB/ Age: 22 years old	Patient No:
Sex: ♂	Admission Date: 11/11/2008
Discharge Date:	

Diagnosis on Admission: **Exploration, stomach injury & repair.**

Investigation done during admission:
 (L) Below knee amputation
 (R) Above knee amputation

Management:
 Medical: **Fracture 2nd, 3rd, 4th proximal Phalanges (R) hand.**

Surgical: *** Revision amputation &**

Condition on Discharge: **Debridement of both lower limbs was done, with dry**

Discharge Medication: **wounds & received antibiotics & analgesia.**

Recommendations: **-To be seen of O.P.C.**

-Sick Leave:

Head of Department

Signature:

التوقيع الطبي
 اسم الطبيب
 اسم المستشفى
 اسم مركز الطوارئ



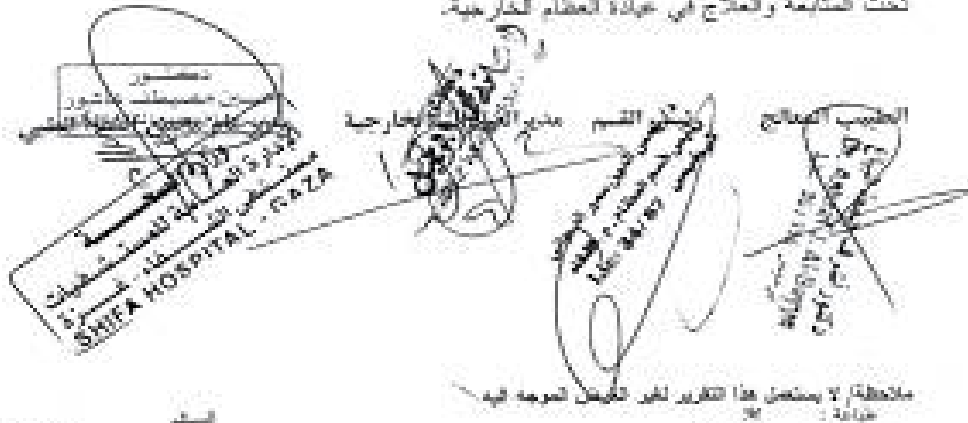
التاريخ: ٢٠٠٩/٠٩/١٥

تقرير طبي

رقم الهوية: 801541400
العمر: ٢٢ سنة
العنوان: غزة

الإسم: زياد سمير ديب
الجنس: ذكر
رقم الملف:

المذكور أعلاه أصيب بتاريخ ٢٠٠٩/١/٦م بانفجار صاروخ (أحداث قصير) وباللمس الطبي تبين وجود بتر للطرفين السفليين اليمنى فوق الركبة، واليسرى تحت الركبة وتوجد إصابة في العنق أدخل على إثرها قسم عظام رجال مستشفى الشفاء، وتم عمل تنظيف للجروح وعيونة استكشاف للطن، وبالأسفة تبين وجود كسر في العظمة الثانية والثالثة والرابعة السامية الداخلية لليد اليمنى، تم تحويل المذكور أعلاه إلى جمهورية مصر العربية لإكمال العلاج والآن المذكور تحت المتابعة والعلاج في عيادة العظام الخارجية.



زياد سمير ديب

السكر

ملاحظة: لا يمتثل هذا التقرير لغير العيادات الموحدة في
غزة

رقم الإصدار: أحداث قصير

IV. Actual situation

IV.a) Complaints

- He has difficulty moving his right hand
- He has strong pains in his lower limbs in the amputation extremities (especially at the right lower limb)

- He has difficulty sleeping
- He has financial difficulties (he depends on humanitarian help) and must find a work.

IV.b) Objective exam

- Amputation of the right thigh by the middle third.
- Amputation of the left leg by the inferior third.
- Scar at the upper extremity of second, third and fourth fingers of right hand, with limited mobility.
- Surgical scar at the abdomen, central, vertical, of about 20 centimetres long.
- Several other scars on the upper and lower limbs.



Case 4 – Photo 1



Case 4 – Photo 2



Case 4 – Photo 3



Case 4 – Photo 4



Case 4 – Photo 5



Case 4 – Photo 6



Case 4 – Photo 7



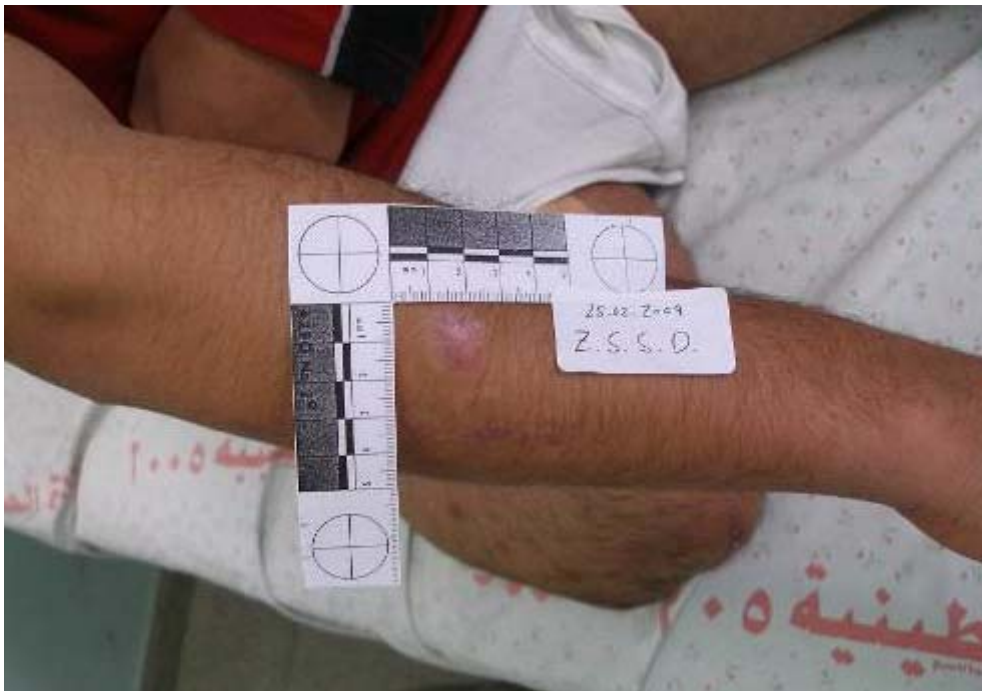
Case 4 – Photo 8



Case 4 – Photo 9



Case 4 – Photo 10



Case 4 – Photo 11

CASE 5

I. Case identification

Subject's given name: Mhomed

Subject's family name: Salah El-Jamál

Birth date: 2 February 1991

Birth place: Gaza city

Gender: Male

Subject's identification number: 802836593

Father's name: Salah El-Jamál

Mother's name: Sade'eh El-Jamál

Address: Tal El-Hawa neighbourhood, Gaza city

Profession: Student (secondary, last year)

Date of exam: February 25, 2009

Place of exam: Shifa Hospital – Burn Unit

Interpreter's name: Salah Abu Hatad

Informed consent: yes

II. Information (reported by the examined person)

On 11 January 2009, at 5.00 a.m., he and his family were inside their home (about 30 persons). Because some of the neighbours' houses had been shelled and were on fire, they decided to move to a safer place.

He left his house and was running along the street when he felt something like "dust and fire". He was conscious but was lying on the street and could not move his body. The ambulances couldn't reach him because of the explosions. He remained on the street for two and a half hours.

He was removed by ambulance and taken to the Shifa Hospital, where his wounds were cleaned.

On his fourth day in hospital, the wounds were larger and deeper and he had surgery.

He was hospitalised for 14 days and went home with antibiotics and other medication.


He says there was no rocket fire in the region before this incident and nobody from their family was a fighter against Israel. There was no warning.

There are no other testimonies of the incident because the persons who were near him were killed.

III. Complimentary data

Medical report

PALESTINIAN NATIONAL AUTHORITY
MINISTRY OF HEALTH



المملكة الوطنية الفلسطينية
وزارة الصحة
محافظة غزة

Name :- Mahmoud Al-jamal
age :- 18 years old.

Sex :- Male
Hosp. N° :- 483
Residency :- Gaza
Date of admission :- 11-1-2009

The above mentioned hospital on 11-1-2009 (suspected of lead shot multiple wounds) (chest large wound) (left lower limb muscles multiple) (left hand dislocated reaching the thumb).

The above mentioned patient was admitted to Al-Shifa hospital on 11-1-2009 as a case of explosive injury. Phosphorous containing weapons were used in different body sites. Deep wound areas reaching chest muscles. Multiple deep wound areas crushed shrapnel were extracted. Full thickness wound areas.

Pt went for debridement of his wounds. Discharged on 18/1/2009.

He was discharged

w0016005

III.a) Photos from the examined patient supplied by the Shifa Hospital:



Case 5 – Photo 1 (examined patient)



Case 5 – Photo 2 (examined patient)



Case 5 – Photo 3 (examined patient)



Case 5 – Photo 4 (doctor who treated the examined patient and had contact with fragments from the examined patient)

IV. Actual situation

IV.a) Complaints

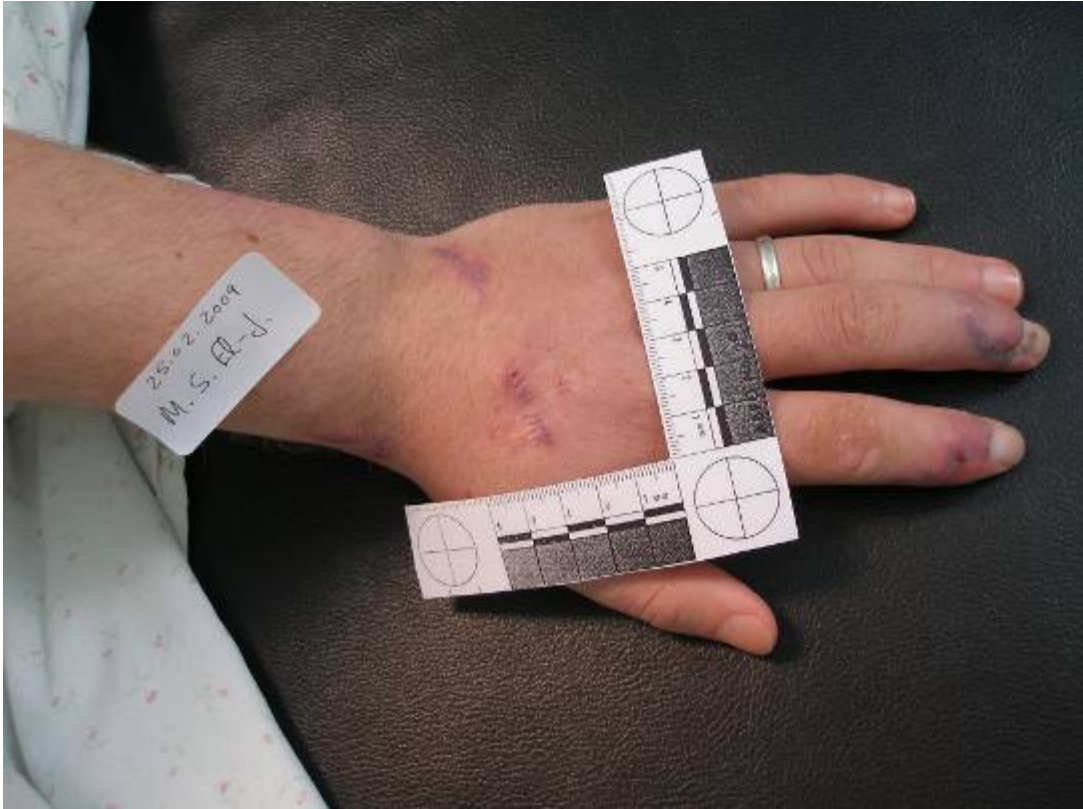
- He has pains in his right shoulder, left hand and left lower limb
- He can't hear in his right ear
- He has difficulty sleeping.

IV.b) Objective exam

- Multiple scared wounds at the trunk, upper and lower limbs.



Case 5 – Photo 5



Case 5 – Photo 6



Case 5 – Photo 7



Case 5 – Photo 8

CASE 6

I. Case identification

Subject's given name: Hassan

Subject's family name: Ezhaq Hawilla

Birth date: 11 June 1996

Birth place: Gaza

Gender: Male

Subject's identification number: 401787908

Father's name: Ezhaq Hawilla

Mother's name: Ferial Hawilla

Address: Jaballia Refugee Camp

Al St'a Suhad Str.

Profession: Student (First elementary)

Date of exam: 25 February 2009

Place of exam: Assalnma Charitable Society

Interpreter's name: Salah Abu Hatab

Informed consent: yes (confirmed by his father)

II. Information (reported by the examined person and his father)

On 6 January 2009, at about 15.00, he was in front of his house, near Al-Fakharra school, playing with his friends. There were plenty of people in the street.

After a rocket shelling he saw his legs bleeding. His right leg was broken. A friend of his died at that incident.

An ambulance transported him to the Kamal Edwan Hospital but he was directly transferred to the Shifa Hospital. He was immediately sent for surgery and the bleeding was stopped. Five hours later the bleeding returned and the clinical situation was worse.

Five days later he was transferred to the El-Hilmi Military Hospital in Egypt where an external fixation was administered. He was hospitalised in Egypt for 40 days.

He is now having daily treatments at the Assalnma Charitable Society.

He says there was no rocket fire in the area before this incident.

III. Complimentary data

السلطنة الوطنية الفلسطينية
 وزارة الصحة
 محافظة غزة

رقم الدفتر: _____
 لسل رقم: 0113970



تقرير طبي للحوادث القضائية

قسم: _____ قسم المستشفى رقم السجل: _____
 اسم المصاب وبعياً: _____
 المهنة / الوظيفة: _____ هاتف رقم: _____
 تاريخ الميلاد: _____ (ذكر/أنثى)
 العنوان: منزل رقم _____ شارع: _____
 *المذكور أعلاه حضر إلى المستشفى الساعة _____ بتاريخ _____
 ويتوقع الكشف الطبي عليه تبين الاتي :-
 النض: _____ الضغط: _____ درجة الحرارة: _____ درجة الرطوب: _____
 *الفحص الاكلينيكي: _____
 *الفحص: _____
 *الاجراء الطبي: _____
 اسم الطبيب: _____ التوقيع والختم: _____
 تحريره في: 2018/11/25

دكتور/البحر عبد السعدي
 مدير وحدة الفحص والتشخيص
 غزة، 199/92

ملاحظة: عند التسجيل طريق الخطأ يلى التقرير وحفظ الأصل والصورة في الدفتر ويذكر ذلك بالتقرير الشهري



شهادة ميلاد
 Birth Certificate

	رقم الوطني National No.	4 0178790 8	رقم الهوية ID. No.
اسحاق	اسم الأب Father's name	حسين	اسم الأب Name
حويلة	اسم العائلة Family name	حسين	اسم العائلة O. F.'s name
فلسطيني	جنسية Nationality	ذكر	الجنس Sex
1996/06/20		1996/06/11	تاريخ الميلاد D. of Birth
الشفرة	المستشفى Hospital	غزة	مكان الميلاد P. of birth
زقزوق	اسم العائلة M.'s family	جاليا	اسم العائلة M.'s name
العنوان Address			

ان التفاصيل المتعلقة بولادة المذكور أعلاه أدرجت في سجل الولادة لسنة 1996
 The details About the above mentioned birth have already been registered in the birth file of year 1996
 من قبل دائرة تسجيل السكان في غزة بتاريخ 1996.06.20
 by the Population Registration Department GAZA On 1996.06.20

الموافق
 للموظف المختص

15/

IV. Actual situation

IV.a) Complaints

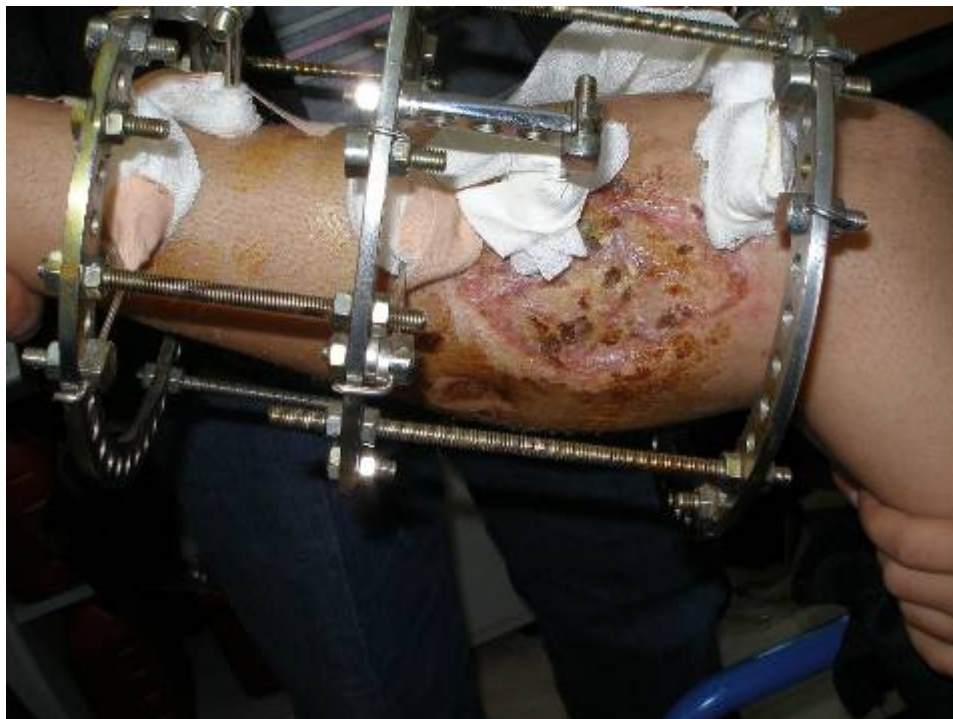
- He has pains in his right leg and must have analgesics
- He has fear and cries a lot

IV.b) Objective exam

- To protect the clinical progress the dressing was not removed; the wounds were only partial observed, but it was possible to describe a wound with scarring signals at the right leg, presenting external fixation.



Case 6 – Photo 1



Case 6 – Photo 2

CASE 7

I. Case identification

Subject's given name: Yehia Subject's family name: Gaze El-Adham

Birth date: 28 June 1987 Birth place: Beit Lahya Village

Gender: Male

Subject's identification number: 800770612

Father's name: Gaze El-Adham Mother's name: Nwal El-Adham

Address: Beit Lahya, Al-Hataby Str., Fadous Neighbourhood

Profession: University Student – Last year of Mathematics

Date of exam: 25 February 2009 Place of exam: Assalnma Charitable Society

Interpreter's name: Salah Abu Hatab

Informed consent: yes

II. Information (reported by the examined person)

On 6 January 2009, at about 15.00, he was near Al-Fakharra School. A lot of people were there because it was considered a safe place. He began to hear shootings, became unconscious, and woke up in Cairo 13 days later. He was in a coma that whole time. He remained hospitalised in Cairo for 35 days at the El-Shikh Zaid Hospital, Six October Hospital.

He lost both his eyes and has a fracture and an injury to his left hand.

III. Complimentary data

75

Ministry of Health
Directorate of Med. Manage. - Amman

وزارة الصحة
ادارة العلاج بالعلاج

REFERRAL REPORT

Hospital: Safa Department: ICU Date: 6/1/09

Name: Yahia Al Adham Age: _____ Sex: _____

Address: _____ Tel: _____

ID. No.: _____ INS. No.: _____ Insured since: _____

Medical History & Clinical Findings:
 - 22 years old male pt. admitted to ICU at scene of
 explosive inj, polytrauma - GCS = 8
 Brain CT: - severe crush inj of all sinuses
ENT: - S.O.H. Rim at CP - partial.
ENT: severe crush inj of upper part of both orbits & ethmoidal
 sinuses, both maxillary sinuses opened to mouth.
Ophthalmology: Bilateral Rupture Globes

Investigations: WBCs: 36 HB: 11 HCT: 31% PLT: 231
BUN: 42 Creat: 1.79, Cholesterol: 240
T.P: 5.7, Alko: 3.5, AST: 39, ALT: 36

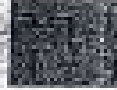
Diagnosis: Explosive Inj, polytrauma, Head trauma, maxillofacial trauma.

Recommendations:

Ref. Specialist: _____ Head of Section: _____ Hospital Director: _____

(Signature: Prof. Dr. ...)

(Stamp: ...)



* التاريخ: ٢٠٠٩/٢/٢٨ *
* التاريخ: ٢٠٠٩/٢/٢٨ *
* التاريخ: ٢٠٠٩/٢/٢٨ *
* التاريخ: ٢٠٠٩/٢/٢٨ *

منظمة الصحة العالمية
مستشفى الشيخ زايد

بشرف الكونغرس الطبي على السيد / يحيى غازي محمد الأدهم

بعد أن بعثت بعلي من: حضر المريض معولاً من حواء ما بعد حادث التصادم بتاريخ ٢٠٠٩/٢/٢٨ وبعد عمل الإسعافات الأولية تبين وجود كسر بقاع الجمجمة وخرايف تحت الام البوابية وتم حجز المريض بوحدة الرعاية المركزية لاستقبال العلاج والملاحظة الدقيقة حتى استقرار درجة الوعي . وتم نقل المريض في اليوم الثاني لاستكمال العلاج والتابعة - حالت بتوجهه والمساعد والرجع الأيسر - كسور مستعدة نهائية بعظام الوجه على الجانبين تحتاج إلى معاودة الفرجعة بعد حوالي ثلث شهر من تخرجه لعمل اللازم من جراحة الجمجمة - فرحة فرحان بارزة الرأس من خلف تحتاج إلى استمرار علاج الجرح . جراح حرسى بقلد الحرسى مع كسور متعددة بالمشغولات تم التثبيت بواسطة أسلاك معدنية . مع العودة المتابعة بعد ٢٠٠٩ شهر .

الشبيب الجمال
أ.د/ مصطفى عرفة
أ.د/ لطفي عبد الحميد
أ.د/ رضا إبراهيم

هذا التقرير لدم بناء على طلب المريض دون أدنى مسؤولية على المستشفى

Date of issue: 2/18/2009 20:51 PM

بسم الله الرحمن الرحيم

Al- Azhar University



جامعة الأزهر بغزة

Gaza - Palestine

غزة - فلسطين

Admission & Registration

القبول والتسجيل

Ref.:

الرقم :

Date:

03/02/09

التاريخ:

شهادة قيد

تفقد عمادة القبول والتسجيل بجامعة الأزهر بغزة بيان القيد المبين في

الرقم الجامعي : ٢٠٠٥٢٨٧٣

الاسم : يحيى شكري محمد الازهر

مقبلة في المستوى : الثالث بكلية : التربية

الاسم : رياضيات وعلم التنوير

في الفصل الدراسي ٢٠٠٦/٢٠٠٧

و قد أعطيت لها هذه الشهادة بناء على طلبها دون مسئولية الجامعة فيما يتعلق بخلاف القبول

مدير القبول والتسجيل

أروحة حادي حمرور



مسجل الكلية

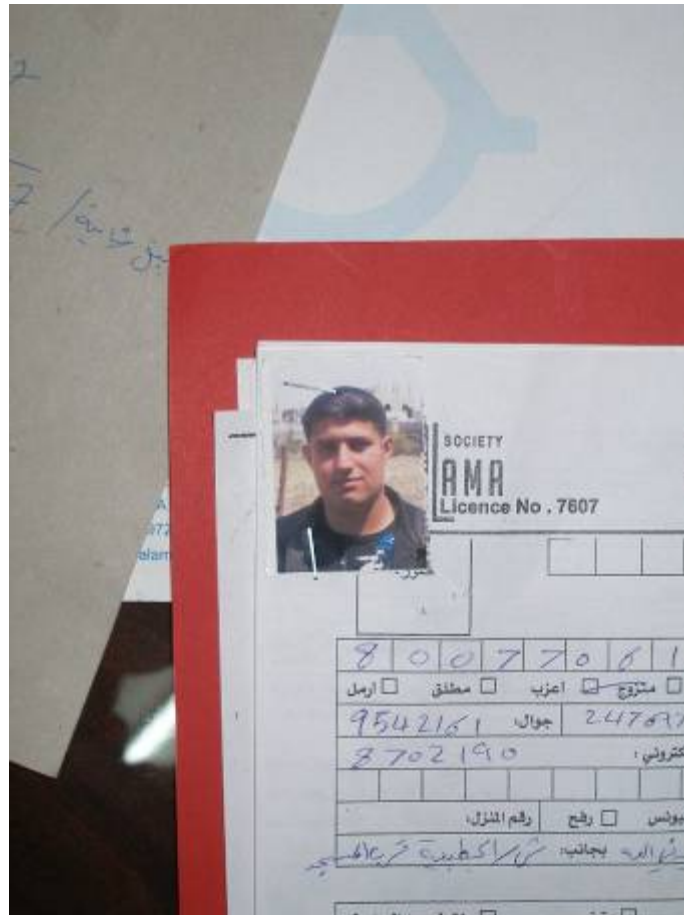
عمادة القبول والتسجيل

مسجل كلية التربية

التاريخ : / /

التوقيع : 17/18

بعد هذه الشهادة فلا تعد إحصاءها لهم مسجل الكلية و توليد



Case 7 – Photo 1

IV. Actual situation

IV.a) Complaints

- He is very exhausted
- He has strong headaches and pains in his left hand, in the back and legs
- He has parestesias¹ in his legs.

IV.b) Objective exam

- Bilateral (complete) blindness.
- Facial dismorfism⁴³³ (see photo 1 before the incident).
- Several wounds, scars and injuries showing signs of scarring on his face, upper and lower limbs.
- To protect the clinical progress the dressing on his left fist and hand was not removed.
- He is a very exhausted patient.

¹ An abnormal or imaginary sensation . ² A form of birth defect.



Case 7 – Photo 2



Case 7 – Photo 3



Case 7 – Photo 4



Case 7 – Photo 5



Case 7 – Photo 6

CASE 8

I. Case identification

Subject's given name: Doaa Subject's family name: Kamal El Banna

Birth date: 13 January 1994 Birth place: Gaza

Gender: Female

Subject's identification number: 804741197

Father's name: Kamal El-Banna Mother's name: Amann El-Banna

Actual address: Jabalya Al-Nuzlah, El Banna Street, refugee camp

Profession: Student (third year, secondary school)

Date of exam: 25 February 2009 Place of exam: Assalnma Charitable Society

Interpreter's name: Salah Abu Hatad

Informed consent: yes

II. Information (reported by the examined person)

On 12 January 2009, at about 13.00, she was in the kitchen of her house (Haifa Str. – Taha Hamud Tower), with her mother and two sisters. Because they didn't have electricity and water, her mother went to a neighbour house. Suddenly it was very dark and she saw dust and stones, but she had not heard any explosion. One of her sisters was crying and the other was moaning. She saw her sister's (24 years old) thorax and abdomen opened and her other sister (12 years old) with her eyes closed. Her two sisters died in the incident. Her brother was injured.

She was semi-conscious and felt her intestines out of her abdomen. She tried to stand up but her left hand had been amputated. She held her intestines with her right hand and went to the upper floor. She was told that a friend who was on that floor had also died, the friend had been decapitated.

She was transported in a private car to the Kamal Edwan Hospital where she had surgery to her left hand and abdomen.

One week later, because of overcrowding in the hospital, she had to continue her treatments at home.

Testimonies of the incident:

Amann El-Banna (mother)



25/1/09

Name: DOAA Kamal Elzanna

Age: 14 Years

I.D Number: 804741197

Medical Report

The mentioned Patient 14 years suffering
of Amputation Left forearm due
to Explosive injury in 12/1/2009.
She needs for Artificial Prothesis

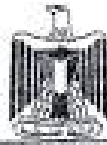
treating
Doctor

Dr. Kamal Elzanna
Head of Section

head
of section

Director
hospital

W001/500



1/1/20



بسمه تعالی

القدس

تاريخ: 1/1/20

تدريسي

المذكورة أعلاه كعرضت فللا صراحة بتفصيلها من
السر التي وردت بتاريخ 1/1/20. تقع تحت
بنت في لندن لتدريج الأسير. ولا صراحة في لندن
صحة أممية لا مملوكة صراحة. وهي بحاجة لأن صراحة

Handwritten signature and stamp on the bottom left.

Handwritten signature and stamp in the middle bottom.

Handwritten signature and stamp on the bottom right.

Wafiq

المعتمد
www.dubai.gov.ae

رقم اربعة	المساحة	الاسم	رقم اربعة
01/01/1994	100.00	دعارة	01/01/1994
02/02/1994	100.00	كامل	02/02/1994
03/03/1994	100.00	شود	03/03/1994
04/04/1994	100.00	امانة	04/04/1994
05/05/1994	100.00	امانة	05/05/1994
06/06/1994	100.00	امانة	06/06/1994
07/07/1994	100.00	امانة	07/07/1994
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IV. Actual situation

IV.a) Complaints

- She has pains in her left hand region and in her abdomen.
- She is always afraid.
- She is anxious.
- She feels alone.

IV.b) Objective exam

- Amputation of left hand; to protect the clinical progress the dressing was not removed.
- The patient did not authorise observation of the abdominal wound.



Case 8 – Photo 1

CASE 9

I. Case identification

Subject's given name: Sania Subject's family name: Salman El-Manayá
Birth date: 21 November 1993 Birth place: Jabalya
Gender: Female
Subject's identification number: 804572428
Father's name: Salman El-Manay'a Mother's name: Nasra El-Manayá
Address: Jabalya (near Al-Fakhoura School)
Profession: Student (10th year)

Date of exam: 26 February 2009 Place of exam: Shifa Hospital – Burn Unit
Interpreter's name: Khalil Said Shaheen
Informed consent: yes

II. Information (reported by the examined person)

On 10 January 2009, between 22.30 and 23.00, she was sleeping at home with her family (her father, mother and two brothers). She woke up to find her bed and her legs burning. She lost consciousness for some moments.

Because there was no ambulance she was transported by a private car to the Kamal Edwan Hospital. She had medical treatments but as the hospital was overcrowded she was sent home. Over the next four days she went to the hospital daily and then she was hospitalised at the Shifa Hospital – Burns Unit, where she remained for another 28 days. During that time she had three surgeries.

She says there was no rocket fire in the region before this incident, but there was some about 300 meters away on the day of the incident. Nobody from her family was a fighter against Israel. There was no warning.

Testimonies of the incident:


Joma'a Al Sawarka

Nidal Al Sawarka

III. Complimentary data

سليم المنافع

السلطة الوطنية الفلسطينية
وزارة الصحة
مستشفى
عيادة



FOLLOW UP

Name: Samia Suliman Al Manayeh
Age: 16 years
Sex: Female
Residency: Jabalia
Hospital no: 806
I.D. No:
Date of admission: 19.1.2009
Date of discharge: 16.2.2009
The above mentioned patient was admitted to Al Shifa Hospital, Burm write on 19.1.09 as a case of deep third degree burn on her both legs 10%.
She was involved in explosive injury during the last conflict on 9.1.09.
After the injury she was treated in primary health care by daily dressing. then she was admitted to the burm write on 21.1.09 debridement for both her both legs was done.
on 29.1.09 split skin graft was done to cover the raw areas on both legs.
She was discharged on 16.2.09 to follow the out patient clinic for dressing. she was followed in the outpatient clinic. still there is raw areas on both legs which need skin graft again.

IV. Actual situation

IV.a) Complaints

- She has pains in her legs during the night and must have analgesics and narcotics
- She lost her appetite
- She has irritability
- She can not go to school because it is far away 1 km and she has difficulties talking.

IV.b) Objective exam

- Burns with scarring on the majority of anterior and lateral parts of right and left legs and ankles.



Case 9 – Photo 1



Case 9 – Photo 2



Case 9 – Photo 3



Case 9 – Photo 4



Case 9 – Photo 5



Case 9 – Photo 6

CASE 10

I. Case identification

Subject's given name: Saja

Subject's family name: Ammar El Helo

Birth date: 7 November 2002

Birth place: Gaza city

Gender: Female

Subject's identification number: 408431377

Father's name: Ammar El Helo

Mother's name: Shereen

Address: Salah eldeen Str., Azayton Quarter

Profession: Student (1st year)

Date of exam: 26 February 2009

Place of exam: Palestinian Centre for Human Rights

Interpreter's name: Khalil Said Shaheen

Informed consent: yes (confirmed by her father)

II. Information (reported by the examined person and by her father)

On 3 January 2009, in the afternoon, the artillery destroyed the windows of their house and at about 17.30 the tanks came closer. Because they were afraid the family (her father, mother and their four children – 6 years old [Saja – the subject], 4 years old, 2,5 years old and 14 months) went to their car leave the area, but they were shot and returned home.

When they were in a bedroom a bomb exploded at the dining room.

They sheltered under the stairs and remained there the whole night.

At 5.30 a.m. on 4 January, when they were all together sleeping under the stairs, about 30 soldiers came in from the back of the house. Without any warning or any resistance, one of the soldiers shot her grandfather in the heart and he died in a few moments. They told the soldiers they were civilians.

The soldiers told them to leave the house and that if they did they wouldn't be injured.

They began walking towards the north and after about 500 meters her uncle Abdulah was shot by a bullet coming from the Daloul Building. Her aunt, Islam, was injured and her sister of 14 months died, her intestines had come out of her abdomen.

Saja was injured by a bullet in her right elbow.

They tried to contact the ambulance (by phone – 101) for five hours and managed to contact two local radio stations (Alaqsa Radio Station and Al Quds Radio Station).

An ambulance tried to reach them but it was attacked and two ambulance staff members died and another was injured.

They remained at the same place until 18.00, when some Israeli soldiers came and began treating the wounded persons.

At about 5.00 a.m. on 5 January, an ambulance reached them. Saja was removed to the Shifa Hospital, where the bullet was removed from her elbow, the wound was cleaned and went home.

Some Israeli soldiers took Saja's father who was detained for 5 days. He was tortured, beaten and deprived of food.

They say there was no rocket fire in the area before this incident and nobody from their family was a fighter against Israel.*

Testimonies of the incident:

Abdulah El Helo

Islam El Helo

* Information obtained from another relative suggests an uncle of Saja was a fighter (who died in this conflict).

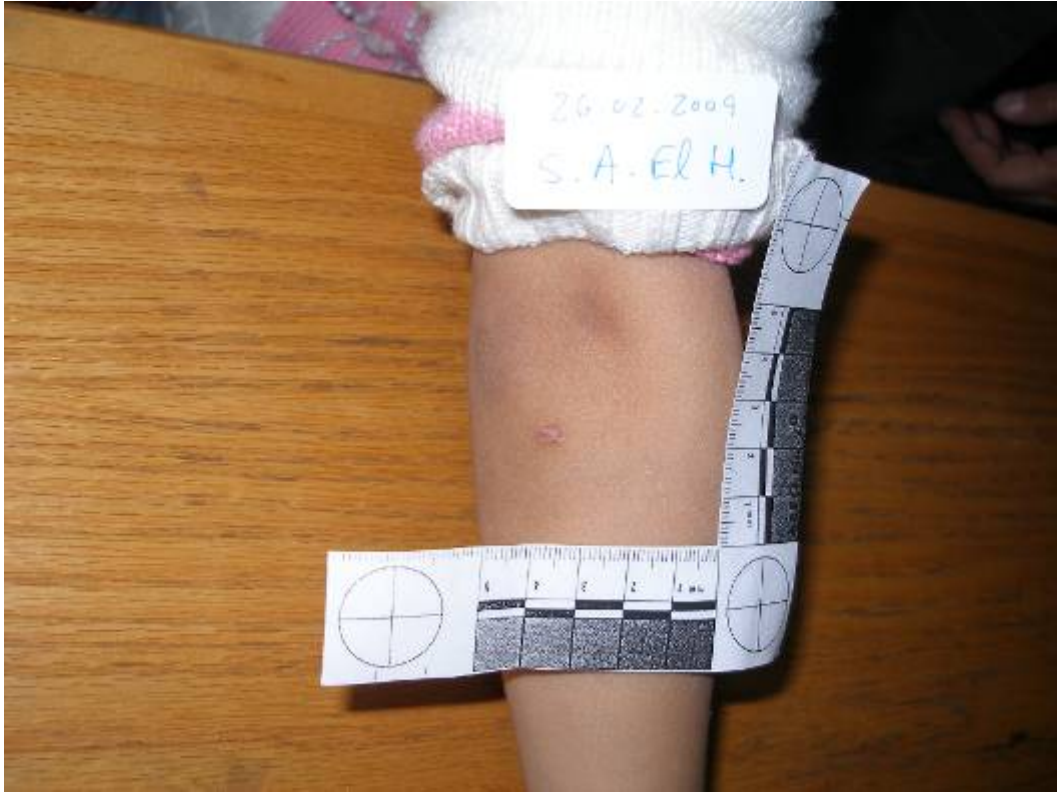
III. Actual situation

III.a) Complaints

- She has pain if anyone touches her right elbow
- Her right upper limb is weak
- She has difficulty sleeping and wakes up with fear.

III.b) Objective exam

- Scarred circular wound at the posterior part of the superior third of the right forearm, with about four centimetres diameter.
- Scarred circular wound at the anterior part of the superior third of the right forearm, with about four centimetres diameter.



Case 10 – Photo 1



Case 10 – Photo 2

SUMMARY

Based on the ten forensic body damage evaluations and clinical information from local medical teams, I can report:

In relation to the injured and killed:

- very dramatic clinical suffering in several situations, proved by physical evidence,
- a huge number of victims,
- a huge number of children and women injured and killed,
- difficulties in obtaining medical treatments, with the need for some kinds of medicines and vaccines,
- difficulties in the treatment of some unusual injuries, even to medical staff with previous conflict experience,
- victims with unusual degradation of their clinical situation a few days after the initial wounds, including unexpected deaths,
- victims with injuries compatible with white phosphorous burns,
- victims with burns with progressive evolution in extension and depth,
- fragments collected from burns victims that caused burns to medical staff,
- signs of radiation exposure in medical staff who had contact with recently injured victims,
- victims with unusual bleeding that was difficult to control,
- victims with internal organs with unusual characteristics (like being “grilled” or like “cheese”),
- victims with unknown fragments in huge quantities,
- many victims with limb amputations, including multiple amputations and
- victims with amputations with progressive evolution due to necrosis, during the first 3 or 4 days.

In relation to the provision of medical treatment:

- difficulties in the operation of technical equipment, due to the lack of spare parts,

- difficulties in follow-up consultations and rehabilitations, because of the huge number of severely injured victims,
- difficulties in the formulation of detailed medical reports for legal purposes, due to the huge number of injured persons,
- difficulties in performing all the programmed surgeries, as they were not performed during the conflict due to the huge number of victims,
- difficulties in the free movement of patients to foreign hospitals, including some urgent cases the transfer had been previously accepted,
- difficulties in the free movement of medical staff to perform medical training outside Gaza,
- difficulties with clinical installations (a new building of the Shifa Hospital has been waiting for 3 years to be completed due to the lack of construction materials),
- lack of electricity and fuel for the back up generators in clinical units and an increase in the number of burns because of the use of kerosene, due to the lack of fuel.

During the conflict:

- there was a lack of ambulances to attend the huge number of victims,
- there were difficulties in the movement of ambulances and medical staff,
- there were difficulties in coordination of medical assistance due to difficulties in communications,
- lives of medical staff were in danger,
- ambulances were destroyed or damaged, despite internationally known identifications,
- clinical installations were destroyed or damaged,
- there was a lack of operation rooms, due to the huge number of simultaneous victims,
- there was a lack of Intensive Care Units, due to the huge number of simultaneous victims,
- the medical staff were completely exhausted, due to the huge number of victims to be attended.

In conclusion, there was huge suffering during and after the conflict, with a lot of children and women being killed and wounded. The medical situation in Gaza is extremely worrying and needs urgent intervention.

Professor Francisco Corte-Real

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Annexure 1: Terms of Reference

TERMS OF REFERENCE

Independent Fact Finding Committee

Commissioned by the League of Arab States

(Gaza Feb, 2009)

1. The Secretary General of the League of Arab States set up a committee of independent experts chaired by Professor John Dugard, and composed of the following members: Mr. Gonzalo Boye, Judge Finn Lynghjem, Professor Paul De Waart and Professor Francisco Corte-Real as the forensic body damage evaluator. Ms Raelene Sharp will serve as Rapporteur of the committee. The committee may consult other sources in relevant areas which may contribute to achieving its objectives.
2. The committee will identify and report on the situation in Gaza and on alleged violations of international humanitarian law and human rights law during the armed conflict in Gaza between the 27th of December 2008 and 19th of January 2009.
3. The committee will collect information on State and individual responsibility under international law for any violations of international human rights law and international humanitarian law, including crimes against humanity and war crimes.

4. The committee will meet with a wide spectrum of personalities in Gaza including representatives of international organisations, non-governmental organisations, prominent actors in Gaza, victims affected by the armed conflict and others that it deems useful for achieving its objectives. The committee will also visit a number of affected sites in Gaza.

5. The committee will present a report to the Secretary General of the Arab League. This report will include both a factual and legal assessment of the situation resulting from the conduct of the operations, the use of weapons and ammunition, whether the government of Israel observed its duties as the Occupying Power, and other legal questions that the committee deems necessary in this regard. The report will include recommendations for legal ways and means to hold any violators of international humanitarian law accountable.

Annexure 2: Schedule of Meetings Gaza Strip.



المركز الفلسطيني لحقوق الإنسان PALESTINIAN CENTRE FOR HUMAN RIGHTS

Visit Program for the Inquiry Mission of the Arab League
Proposed by the Palestinian Center for Human Rights (PCHR)

Sunday, 22 February 2009

Arrival at Rafah International Crossing Point (reception by PCHR's staff)

17:00 – 18:00	Towards offices of PCHR (briefing on the impacts of the Israeli military offensive on the Gaza Strip and discussion of the visit program)
18:00 – 19:00	The ICRC Director
19:00 – 21:00	Dinner, and a meeting with PCHR's staff member; Dr. Bassem Naim, Minister of Health; Counselor Mohammed Awadh; and Khaled Abdul Shafi, UNDP Director.

Monday, 23 February 2009

09:00 – 10:00	Karen Abu Zayed, UNRWA Commissioner-General
10:00 – 11:00	UNRWA warehouses that were burnt by Israeli shelling
11:00 – 13:00	Juhor al-Dik area, southeast of Gaza City
13:00 – 15:00	Al-Zaytoun neighborhood (the al-Sammouni and al-Daya clans)
15:00 – 17:00	Al-'Atara area in Beit Lahia, and al-Fakhoura area in Jabalya
18:00 – 19:30	A meeting at PNGO's offices (Palestine Red Crescent Society, Union of Health Work Committees, Union of Health Relief Committees, Union of Agricultural Work Committees and Union of Agricultural Relief Committees)
19:30 – 21:00	Dr. Eyad al-Sarraj, Gaza Community Mental Health Programme; Constantine al-Dabbagh, Middle East Council of Churches; 'Eissa Saba, Cana'an Pedagogical Institute; and Suhila Tarazi, Director of the Arab National Hospital (a work dinner)

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Tuesday, 24 February 2009

09:00 – 12:00	Al-Wafaa' Hospital, the Industrial Zone and 'Izbat 'Abed Rabbu area
12:30 – 13:30	A meeting for Professor John Dugard with Christina Blond and Hamada al-Bayari from OCHA at al-Deera Hotel A meeting for Professor Paul De Waart with NDC, the Swedish Consul General, Dutch Consul General and Danish Consul General
14:30 – 15:30	Dr. Bassem Naim, Minister of Health
15:30 – 17:00	Shifa Hospital – an open tour, Dr. Hussein Aashour, Director of Shifa Hospital
17:00 – 19:00	Members of political factions: Kayed al-Ghoul, PFLP; Khaled al-Batash, Islamic Jihad; Saleh Nasser, DFLP; and Abu Maher Helles, Fatah movement.
19:00 – 20:00	A meeting with human rights organizations: Essam Younis, Director of al-Mezan Center for Human Rights; Mahmoud Abu Rahma, from al-Mezan Center for Human Rights; lawyers Samer Mousa and Wa'el al-Qarra, from al-Dameer Association for Human Rights; and Jameel Sarhan, Director of the Palestinian Independent Commission for Human Rights in Gaza
20:00 – 21:00	Dinner with representatives of human rights organizations

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Wednesday, 25 February 2009

	Breakfast at PCHR's offices
10:00 – 11:00	A meeting with The ICRC Director
11:00 – 12:30	A meeting with 10 members of the Palestinian Legislative Council at its headquarter
13:00 – 14:00	War Crimes Documentation Committee – Dr. Nafez al-Madhoun, members of the committee and forensic medicine specialists
14:00 – 15:00	Lunch
15:00 – 16:30	A meeting with FAO, OHCHR, WHO, WFP and Unicef at Unicef's office
17:00 – 19:00	A meeting with PCHR lawyers (briefing on cases and meetings with victims)
19:00 – 21:00	Dinner with representatives of the Bar Association, and lawyers Salama Bsaissu, Sharhabeel al-Zaim and Younis al-Jarou.

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Thursday, 26 February 2009

08:00 – 09:00	Journalists who passed the duration of the recent Israeli offensive: (1) Mohammed al-Baba, photographer for Agence France Press (2) Zakaria Abu Harbeed, a cameraman of Ramattan News Agency (3) Thou al-Faqqar Sergio, al-Sha'ab Radio
09:00 – 10:00	Meeting with Michael Kingsley, Director Executive Officer, UN, in al-Deera Hotel
10:00 – 11:00	Meeting with bombs experts, in PCHR Mark Buswell, Technical Director, MAG Saves lives builds future
11:15 – 12:15	Meeting with women organizations, in the Women's Affairs center: 1) Amal Saidam, Director of Women's Affairs Center 2) Dunia al-Amal Isma'il, Board Director of Creative Women Association 3) Islah Hassaniya, Director of Women's Legal Research and Consultations Center 4) Miriam Zaqqout, Director of Culture and Free Thought Society 5) Ibtissam Omran al-Zaanin, Board Director of al-Ataa' Charity 6) Amal Hamad, Board Director of the General Union of Palestinian Women 7) Huda Hammouda, Board Director of Palestinian Women Media and Information Center 8) Dr. Miriam Abu Daqqa, Board Director of Women's Development Studies Center
13:00 – 15:00	Lunch
15:00 – 16:00	Islam Shahwan, Spokesman of the Police
16:00 – 17:00	A meeting with Dr. Kamalin Sha'ath, President of the Islamic University
17:00 – 18:00	A meeting with John Ging, Director of UNRWA operations, in UNRWA
18:30	Press conference

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المركز الفلسطيني لحقوق الإنسان PALESTINIAN CENTRE FOR HUMAN RIGHTS

Friday, 27 February 2009

10:00 – 11:00	Islamic University – Gaza. Visit to the laboratories building that had been targeted by the Israeli raids.
11:00	Visit to the Palestinian Red Crescent Society (PRCS) and to the al-Quds Hospital that sustained heavy damages due to the Israeli bombardments.
12:00 – 13:00	Visit to the al-Fukhari Village, in the east of Khan Younis
13:00 – 14:00	Visit to the Philadelphi Route on the border between Egypt and Gaza
14:00	Rafah Crossing for departure

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Annexure 3: Letters of the Committee to the Government of Israel

23 February 2009

Ambassador Eviatar Manor

Deputy Director General for UN and International Organizations.
Ministry of Foreign Affairs, Government of Israel
Jerusalem

By Fax: 02 530 3710

Dear Sir,

I write to you as Chairman of the Independent Fact Finding Committee, Gaza 2009, which has been commissioned by the League of Arab States to investigate any possible violations of international humanitarian law in Gaza between 27 December 2008 and 19 January 2009. I attach the terms of reference of the Independent Fact Finding Committee for your information and attention.

In pursuance of our mandate, we wish to collect evidence and information from all parties to the conflict. We therefore request that Israel, as the Occupying Power, provide us with any information and comments that it may wish to make on the above matter either by oral testimony or written submissions. If Israel prefers to provide us with oral testimony, we will arrange to meet with any representatives at their convenience.

By virtue of our mandate in respect of victim oriented fact finding, we are particularly interested in the following matters:

1. The number of rockets fired from Gaza into Israel, and the number of persons killed or injured, both before 27 December 2008 and during the period of 27 December 2008 and 19 January 2009.
2. Whether the response of the Israeli Defense Forces to the above rocket attacks, which took the form of Operation Cast Lead, was proportionate.
3. The steps taken by the Israeli Defense Forces to distinguish between civilian and military targets.
4. The quantity and nature of the weaponry used by the Israeli Defense Forces during Operation Case Lead. We are particularly interested to know whether white phosphorous and or DIME (dense inert metal explosive) were used.
5. The steps taken to ensure that the wounded, particularly wounded civilians, received adequate medical attention.
6. The reasons for the refusal to allow adequate food and medical supplies to be transferred into Gaza via crossing between Israel and Gaza.

7. The legal basis for, and the military necessity to launch Operation Cast Lead on 27 December 2008 in Gaza.
8. The precautionary measures taken at the political and military level to limit the high risk of collateral damage given the densely populated nature of Gaza.
9. The state of affairs regarding Israel's investigations, if any, in relation to alleged violations of internal Israeli law, human rights law and international humanitarian law by members of the Israeli Defense Forces in respect of civilians.

In order to be able to present our report to the League of Arab States in a balanced and objective way, and in the interests of the victims and right to get proper protection under international law, international humanitarian law and human rights law, we would appreciate Israel's response at its earliest convenience.

I can be contacted at the Al Diera Hotel Gaza on 0828 38100 (from Tel Aviv) until 27 February 2009, and thereafter on c.j.r.dugard@law.leidenuniv.nl, should Israel wish to discuss any of these matters.

Yours Sincerely,

Professor John Dugard
Chairman, Independent Fact Finding Committee

COPY

28 February 2009

Ambassador Eviatar Manor

Deputy Director General for UN and International Organizations.
Ministry of Foreign Affairs, Government of Israel
Jerusalem

By Fax: 02 530 3710

Dear Sir,

We refer to our letter of 23 February 2009, copy attached.

We have now concluded our mission in Gaza and are considering the evidence that we have so far collected.

As an independent fact finding committee, we are committed to considering the position of all parties to the conflict.

We very much hope that you will provide us with information of the kind that we requested in our previous letter, together with any submissions you may wish to make.

We intend to complete our report within a reasonable time, and for this reason we would appreciate it if you could provide us with any information and or submissions by 15 March 2009.

Please post any documents to the following address:

Professor C J R Dugard
Duke University, School of Law
PO Box 90360
Durham, North Carolina 27708
United States of America

If you prefer to respond by email, please send emails to the following addresses:

c.j.r.dugard@law.leidenuniv.nl, and
finn.lynghjem@domstol.no

Yours Sincerely,

Professor John Dugard
Chairman, Independent Fact Finding Committee

His Excellency Harry Kney-Tal,
Ambassador to the Netherlands
Israeli Embassy
Buitenhof 47
2513 AH Den Haag
The Netherlands

5 April 2009

Your Excellency,

We attach a letter for the attention of your Foreign Ministry relating to an inquiry we are conducting into the conflict in Gaza between 27 December 2008 and 18 January 2009.

We would be most grateful if you could transmit this letter to the Foreign Ministry.

Yours Sincerely,

Professor John Dugard
Chairman, Independent Fact Finding Committee

Encl

COPY

Ministry of Foreign Affairs
9 Yitzhak Rabin Blvd.
Kiryat Ben-Gurion
Jerusalem 91035

5 April 2009

Dear Sir or Madam,

As you know, we are conducting an independent inquiry into the conflict in Gaza between 27 December 2008 and 18 January 2009, at the request of the League of Arab States. We wrote to you earlier in this connection requesting your cooperation. However, we have received no reply. Please find attached our earlier letters of 23 and 28 February 2009 addressed to **Ambassador Eviatar Manor**, Deputy Director General for UN and International Organizations.

Press reports indicate that you have concluded an inquiry into allegations of violations of international humanitarian law in the Gaza conflict. We would be most grateful if you could provide us with a copy of the report of this inquiry. We would also welcome any further observations you may wish to make.

As we are proposing to finalizing our report shortly we would appreciate your reply no later than 16 April 2009.

Please post any documents to the following address:

Professor C J R Dugard
Duke University, School of Law
PO Box 90360
Durham, North Carolina 27708
United States of America

If you prefer to respond by email, please send emails to the following addresses:

c.j.r.dugard@law.leidenuniv.nl, and
finn.lynghjem@domstol.no

Yours Sincerely,

Professor John Dugard
Chairman, Independent Fact Finding Committee

Encl



SUNNMØRE TINGRETT

Tinghuset - Ålesund

Her Excellency Miryam Shomrat
Ambassador to the Kingdom of Norway
Israeli Embassy
Parkveien 35
NO-0214 Oslo

Deres referanse

Vår referanse
Judge Lynghjem

Dato
14 April 2009

Operation Cast Lead in Gaza

Your Excellency,

I am a member of an Independent Fact Finding Committee whose members visited Gaza between 22 February until 27 February 2009.

Please find attached:

1. Terms of Reference
2. Letter of 23 February 2009 to his Excellency, Ambassador Eviatar Manor
3. Letter of 28 February 2009 to his Excellency
4. Letters of 5 April 2009 to the Ministry of Foreign Affairs, Jerusalem
5. Letters of 5 April 2009 to the Israeli Embassies in The Netherlands and in Oslo.

The Committee has tried to communicate with the Israeli Government for the purpose of a balanced report of our findings.

We would appreciate very much your assistance in transmitting our communication to your Foreign Ministry.

In the attached letter of 5 April 2009 we have most kindly requested a response from your Ministry by 16 April 2009. This cover letter is late due to the Easter holidays in Norway,

Postadresse
Postboks 1354 Sentrum

Telefoner
70 11 77 50

Telefaks E-post
70 11 77 51

sunmore.tingrett@domstol.no

however, we intend to deliver our report to the League of Arab State no later than the last week in April 2009.

A reponse from your Ministry will be received with gratitude.

Sincerely,

Finn Lynghjem
International Judge

Enclosure

COPY

Annexure 4: Accounts of Witnesses.

The following accounts were provided to Committee members during the course of their mission to Gaza.

The Abed Rabo Family, East Jabalya

1. On 7 January 2009, two young girls were shot dead by the IDF: Souad, aged 7 and Amal, aged 2. The Committee met with their father Mr Khaled Mohamed Muneeb Abed Rabo at the location where his daughters died.

2. Mr Abed Rabo gave the following account:

On 7 January 2009 at around 12:50pm I was at home with my wife, mother and three daughters. The residents were told to leave the house by an IDF soldier over a megaphone. We left the house and saw an Israeli tank 7-10 metres away. There were two IDF soldiers on the tank, we could see them. One was eating chips (crisps), the other one was eating chocolate. We were waiting for orders from the soldiers. A third IDF soldier got out of the tank and opened fire at the children.

I carried Amal, her intestines were hanging out of her stomach. I went to carry Samar (4 years old), she was also shot, I hurried into the house, my wife was crying, and the IDF shot Souad with more than 10 bullets. My mother, who is 60 years old, was hit by two bullets and she was also bleeding.

We went back into the house and tried to call for an ambulance, but nobody came. After a time we decided to leave in small groups. As we left there was firing over our heads and at our feet. I was carrying my dead children and the IDF soldiers came out of their tanks and were laughing at us.

At Zimo square a man on a cart who offered to help, they shot at him and the horse. He was first evacuated to a hospital in Egypt, but he later died.

3. Mr Abed Rabo stated that the soldiers were firing an M16. The two soldiers who were eating had no markings indicating any rank, however the third soldier who was shooting had two cloth stars on his uniform. He denied that there were any resistance fighters in the area.
4. Two or three days later (9 or 10 January 2009) an ambulance arrived to evacuate the bodies, however the ambulance was also destroyed.

The Al-Dir Family, East Jabalya

5. On 3 January 2009, five members of the one family were killed. Mr Lahid Mohamed Al-Dir's wife Iman, aged 26, father Mohamed, aged 46, brothers Rakan, aged 4 and Ibrahim aged 12, and sister Fidah, aged 19 were all killed. The Committee met with him at the location where his family members died.

6. Mr Al-Dir gave the following account:

In the evening of 3 January I went home. Sixteen members of my family were at home. A missile fell near the house and 10 minutes later my father said we should all leave the

house. We were gathering around an animal cart to leave and a missile landed near us. My father I were wounded. I was wounded on my hand, leg and chest.

I walked to a neighbour's house. My mother brought Ibrahim to the neighbour's house, then we brought my wife and sister.

We called the ICRC and the Palestinian Red Crescent and all the other humanitarian organisations, but coordination for access of ambulances was denied.

I left the area and walked for two kilometres. I fell more than once, but was collected by another resident and taken to the Al-Awda hospital. I was screaming to the crews that my family was killed.

My mother stayed in the area for five days together with the bodies. Only then, after the Israeli ground operations in the area finished, could we evacuate the wounded. The IDF forced us to leave but the bodies remained.

On 18 January 2009 after the withdrawal I came back and found the bodies, they were all decayed. It took us three days to find my father because he had been buried.

7. Mr Al-Dir denied that there was any resistance in the area. He stated two years previously the IDF had raided the area and verified that there were no resistance fighters. The PCHR also advised that in the areas close to the borders, the IDF are aware of the identity of all of the residents.
8. There were no warnings – leaflets or phone calls – prior to the attack. The remains of one of the shells was recovered, it was a surface to surface missile.

The Samouni Family, Zeitoun

9. On 4 January 2009 houses were raided in the Zeitoun area and 29 members of the wider Samouni family were killed. The Committee met with surviving members of the extended family, Ibrahim Helmi Samouni and 13 year old Almaza Ibrahim Helmi Samouni in the area where their relatives died. The Committee saw the destruction to the houses, including a mosque situated across the street from the houses which was also destroyed.
10. Mr Samouni gave the following account:

On 4 January, I was at my family home, there were 18 people inside. The IDF raided the house at 6:30am. They opened fire inside the house. They told the owner of the house to go outside, so he went out with his hands up. He started crying and they started firing at us.

My mother was wounded in her back, my 4 year old brother Ahmed was shot with two bullets to his chest. I was saying in Hebrew 'katan' which means small child, and anything to do with holy books just so they would stop the shooting.

We were in one room and they were firing. We were suffocating so we moved to another room, and we begged to be able to go to the mosque. The soldiers spoke in Arabic saying: bastards, gays, terrorists.

They ordered us to move forward, I was carrying my wounded mother, and others were carrying other wounded. They told us to drop the wounded, we were told to take our clothes off. They pointed their guns at us and we said "We want to go to Gaza". The soldier said no.

Mr Samouni denied that there were any militants in the area. He also said there were no warnings. He was unable to identify any of the soldiers as they were wearing black paint and helmets.

11. Miss Almaza Ibrahim Helmi Samouni, aged 13, gave the following account:

I was sitting in my uncle's house with my family when the shells and rockets came into the house. I heard screams. The IDF surrounded the house we were in, they demolished the walls.

The IDF ordered my father to leave the house with his family. When he left, other soldiers ordered them to go back to the house. We were all crying as the shells hit the house, including white phosphorous. It was yellow white and when you put it in water it burned, sparkles of red and white.

We were crying because we were very scared. They detonated bombs at the door of the house to break in and they fired at the house. My father and uncle spoke in Hebrew, and they were ordered to leave the house.

There were 120 people inside the house by this time, mostly children, and we were all forced out at 5am. They ordered us to move forward, soldiers from inside the house ordered us to keep moving, but they were firing at us.

There were at least five planes and ten Apaches firing from the air, I counded them. There were tanks and bulldozers, soldiers with their faces green and black, you couldn't see them at night because of the makeup.

The IDF fired 3 missiles into the house and at least 25 people were killed.

We stayed in the house for 3 days, then my brother Mohamed left to get food.

Hamdeh (neighbour) was shot dead (aged 25 or 26). My brother Mohamed also died. My uncle Rashad and his sons were wounded.

12. The house the Samouni family had been staying in was destroyed. It was in the middle of two other houses, which were both still standing but which had also been occupied by the IDF. Salah Talal Helmi Samouni, another member of the extended family, who lived in one of the buildings next to the Samouni building, gave the following account:

My brother and family were in the house (next to the Samouni house). On 3 January we were all on the first floor. At midnight the shooting and the shelling started. A helicopter opened fire on the house.

At 8am a shell came in on the third floor. My uncle came and said the house was burning. I carried my 6 month old baby and ran towards a relative's house. My 17 year old brother was with me, I sent him back to tell the family to leave the house. The IDF wanted to seize the house. My brother was wounded and his leg was amputated.

I was outside the house and heard three people calling, they were wearing uniforms and I thought they were the resistance. I moved towards them, their faces were covered with make-up, they had helmets and were carrying strange guns.

When I was five metres away, they ordered me to stop and stand near an olive tree. The ordered me to take off the clothes from the upper part of my body and turned around. They asked me if I was a member of Hamas or another organisation. I said no, I'm not affiliated with any organisation. They verified my ID card. They ordered me to go back to the house. 90 minutes later they forced us out of our house, so we went to the Samouni's house. The number of relatives there increased as people joined us. We

were more than 97 people. We stayed there until the morning of the 4th of January and then the morning of the 5th I left to get wood for cooking.

The soldiers saw us, as soon as we left the house a shell fell on us, I can't say where it came from. I was wounded on my head and leg by shrapnel and am still getting treatment. I am told I will have to get treatment for one year.

I went back into the house and two minutes later another two shells landed on the house. I thought I was going to die. I went to check on my family, I found my mother, part of her face was gone, my father and uncle were dead. My daughter was disembowelled. 22 people were killed here by the shells.

People didn't want to leave, but we moved to another house, where we stayed for 3 days. The ICRC tried to enter however the IDF fired on them. On the 5th day, the ICRC evacuated nine people, they were all wounded.

We asked the soldiers for help, saying we were civilians, farmers, telling them they had made a mistake. They said "Go back to death" in classical /formal Arabic. I kept on trying to run away but they kept on shooting, I kept fleeing. I went back to the ICRC. After they had evacuated the 9 wounded, the IDF threw a missile to flatten the area and bury the dead.

My cousin died on the 4th of January. He was shot dead by the soldier who later said "go back to death". He was bleeding for a whole day without any help.

On the 18th of January after the military had withdrawn we came back. We had to get people with bulldozers to move the rubble so that we could get to the bodies – we only found 18.

One teenager, who was wounded and couldn't move, had to stay with the bodies for four days before he was evacuated.

The Hajjaj family, Juhor Al-Dik

13. On 4 January 2009, two members of the Hajjaj family were killed in Juhor al-Dik, east of Gaza city.
14. The Committee travelled to Juhor Al-Dik. It was a residential and agricultural area which suffered aerial bombardment and earth moving by tanks. The Committee spoke with Mr Youssef Abd al-Karim Balaqa Hajjaj who detailed the destruction to the agricultural land. His house was hit by a shell, and so they fled the area. When they returned the olive groves had all been cleared by tanks. When the family returned to the house, all of their belongings had also been removed from the house and buried. When the Committee met with him, his family still had not been able to locate their possessions.
15. At the same location, the Committee also spoke with Mr Saleh Abd al-Karim Balaqa Hajjaj (Youssef's brother), also a farmer. On 4 January 2009 both his mother and his sister were killed.
16. Mr Saleh Hajjaj gave the following account:

On the first day of the ground incursion, the house was damaged and so we left. My daughter was injured and I attempted to arrange for the ICRC to evacuate her, but the IDF military refused to coordinate for the ambulance to reach the area.

During the morning there were leaflets dropped and the IDF intervened in the local radio ordering people to move, so we decided to move again.

We were 27 people all together including 17 children and 5 women. We were clearly civilians, and my sister was carrying a white flag. We walked with the flag for maybe 300m. We were in an open area and the soldiers could see us. The tank moved toward us and opened fire. We moved back but the tank continued to fire. A soldier got out of the tank and pointed at my mother and they continued to fire. My mother was wounded but continued to walk for another 15 metres, she was bleeding from her chest area. My sister was killed instantly, but I couldn't see where she was wounded because the firing continued.

We got to our neighbour's house and stayed there for two nights. We contacted the ICRC to get the bodies, but the IDF refused to allow ambulances into the area, so we left our house and moved to a refugee camp.

After the ceasefire, we continued to request coordination to evacuate the bodies. We decided to go on our own to get the bodies. We waited for four hours until the military left our house. We found the area completely changed and we started to search for the bodies. The two bodies were still there, my mother was covered with sand, my sister was covered with tin and you could see she had been run over by a tank. The two bodies remained here for 16 days.

The Abu Halima Family, Al Atra area.

17. On 4 January 2009, the Abu Halima family home was shelled with white phosphorous. Three brothers Abdul Rahim, aged 14, Sayed, aged 11 and Hamza, aged 8, their sister Sha'et, aged 15 months, and their father Saad Allah Abu Halima aged 45, were all killed. The Committee met with Mahmoud Abu Halima, whose brothers, sister and father had been killed, in the area where his family members died.

18. Mr Abu Halima gave the following account:

At 10am, we went with my father to my uncle's house and remained there until 4pm. There were 16 people in the house and my little brother and I went out together in the afternoon. We heard an explosion.

We thought the explosion was at my uncle's house. I went to my own house and saw white smoke pouring from the house. My brothers who survived were at the door. I took a piece of cloth, wet it and covered my nose and mouth to go in.

I smell was suffocating, like rotten eggs. When I got into the house I couldn't stand the smell and I jumped out the window.

No medical aid, civilian crews or ICRC could come. I attended to my father and three brothers. They were all burnt together. I put water on them, and then the water burnt. We evacuated the wounded, my sister, my sister in law and niece, on a tractor.

19. Mr Abu Halima denied there were any militants in the area. He asserted that this was the case even before the IDF ground forces took control of the area.

The Al-Dayer Family, Zeitoun

20. On 6 January 2009, 22 members of the extended Al-Dayer family were killed, including thirteen children aged between 11 years and 5 months. Six women were killed, one of whom was pregnant, and three men. Mr Al-Dayer was the only person in the house to survive. The Committee met with him at the offices of the PCHR.

21. Mr Al-Dayer gave the following account:

At 5:45am on the 6th of January, we were 23 people together in the house. I was inside the house so didn't see any fighters, I only heard the bombardment. I suffered burns to my face. I was unconscious for around 30 minutes.

My father had just finished praying. He was found under the rubble.

Apparently they were targeting an individual 100m away and when we heard the sound of that targeting, we gathered on the first floor, then the building was destroyed. After the first bomb we all woke up and moved to the one spot.

We only found 13 bodies, the others have just vanished.

The Ambulance arrived after five minutes and the bodies were evacuated within 36 hours.

22. Mr Al-Dayer said that the ground forces were only one kilometre away from his house. He denied any link between his family and Hamas, indicating that they were all farmers / students / workers.

The Al-Deeb Family, Beit Lahiyeh

23. On 6 January 2009, 11 members of the Al-Deeb family were killed when a shell hit where the family were sitting. The grandmother of the family, aged 67, one of her sons, one of his sons and two of his daughters, a daughter in law of the grandmother and her five children were all killed.

24. The Committee met with Mr Ziad Samir Al-Deeb and Mr Mu'in Al-Deeb. Mr Ziad Al-Deeb was in a wheelchair having had a double leg amputation as a result of the attack. He lost his father, a brother and two sisters, his aunt, five cousins and his grandmother. Mr Mu'in Al-Deeb was not injured but lost his wife, five of his children, his brother, his mother and a nephew and two nieces.

25. Mr Ziad Al-Deeb gave the following account:

At around 3pm, I was sitting together with all the members of my family. We thought the area was safe because the school was being used a shelter. Artillery shells hit a nearby agricultural area, and a few seconds later another shell hit where we were sitting. Eleven people were killed and three others were wounded.

There were no militants in the area, we were simply a family sitting at home, mostly women and children. There were no warning, but we are far from the affected areas. There were no rockets from here.

I spent seven days in a hospital here in Gaza and 22 days in a hospital in Cairo. I was taken to the hospital maybe 30 minutes after the explosion

26. Mr Ziad Al-Deeb did not think there was any justification for targeting the area. He said it was simply to cause maximum casualties.
27. Mr Mu'in Al-Deeb confirmed that he lost his wife (Amal, aged 37) and five children in the attack. His children were aged 22, 16, 13, 9 and 3½. In his view, the missiles were fired from drones because the explosion was small. He indicated that committee of the ICRC investigated and they concluded that the attack was by drones, but the hospital could not determine the nature of the weapons used.

The Rayyan Family, Jabalya

28. On 1 January 2009 at 2:40pm Nizar Rayyan – a senior Hamas member, his four wives and eleven of his children were killed when their house was bombed. The children were aged between 1 and 16 years old. Rayyan is survived by four adult sons aged between 18 and 25. The Committee met with two of his sons at the PCHR Offices.

29. Mr Nizar Rayyan gave the following account:

My father was a political leader and a professor at the Islamic University, teaching Islam. He came home at around 2:10pm, 30 minutes before the attack. I was shopping with my brother and we passed him on his way home. I was in the market when the bomb landed. Everyone who was in the house was killed.

The house was hit around 2:40pm. There was no kind of warning.

My father couldn't imagine he would be targeted like this. There were no arms in the house and my father was unarmed at the time of the attack. We lived a normal life at home. There was a library and students from the university would come to study.

Six neighbouring houses were also destroyed as well as the mosque. There were two fighter jets which dropped two bombs on the house, one from the north and one from the south. I could see the fighter jets from the market.

The Abouyasha Family, Al-Naser area

30. On 5 January 2009 between 1:30 and 2:00am, five people were killed when the building housing the extended Abouyasha family was destroyed. The Committee met with Rashad Rizik Sabr Abouyasha and his niece at the PCHR Offices. Mr Abouyasha's brother, sister in law and three of their children were killed. His niece is the only surviving member of her immediate family.

31. Mr Abouyasha gave the following account:

At approximately 1:30 to 2:00am I heard an explosion. I went to check where it was. I spoke on the telephone with a neighbour and he said the explosion was in someone else's house. Five minutes later there was a second explosion. It was very heavy. The house was destroyed and fell on us.

I live on the third floor with my family. My wife and I and our six children were in a small room, and at least 100 bricks fell on us. I tried to remove the rubble. Fifteen minutes after the explosion I found two of my children, I thought they were dead at first, but they were just unconscious.

My brother and his family lived on the first floor of the building. He and his wife and three of their children were killed with the building collapsed on them. My niece was not at home that night and so she is the only surviving member of her immediate family. She was not at home because her cousin had also been killed and she was staying at the condolence house.

32. Mr Abouyasha also confirmed that the IDF ground troops were approximately two kilometres from the house, which was in a densely populated area, five kilometres from the border.

The Abed-Diam Family, eastern border area of North Gaza

33. At approximately 7:30am on 5 January 2009, five people were killed and 17 were injured when flechette bombs landed on a condolence gathering at the house of

Mohamed Deeb Abed-Diam. Condolences were being offered for Mr Abed-Diam's son who had been killed. He (Mr Abed-Diam's son) was a teacher but volunteering as an ambulance driver during the conflict. The Committee met with Mr Abed-Diam, and a neighbour of his, at the offices of the PCHR.

34. Mr Abed-Diam gave the following account:

At around 7:30am, I was at the condolence house for men located in my uncle's house, when it was attacked. Three people were wounded. I was taken to hospital immediately but went home soon after. I came back from the hospital and informed people that the condolence house was closing, so all the participants moved to my home across the street.

45 minutes after the first attack, I had been to hospital and come back, four shells were fired at the second house and two more rocket attacks landed away from the house. Two of the shells were flechette shells containing lots of shrapnel. Five people were killed and 17 people were wounded, including two of my sons and other relatives.

There was no reason to attack these houses – maybe the only reason could be that there was a group of men gathering for the condolence.

Mr Abed-Diam's neighbour said the bombs exploded before they hit the ground, and that all the victims were killed by shrapnel. The neighbour denied there was any fighting in the area and said there was no warning.

Annexure 5: Examples of Leaflets dropped in Gaza during the conflict.

Provided to the Committee by the **PCHR**. The original Arabic version is followed by a translation, also provided by the **PCHR**.

إلى سكان رفح

بسبب استخدام بيوتكم من قبل حماس لتهديب وتخزين العتاد العسكري سيهاجم جيش الدفاع الإسرائيلي المنطقة ما بين شارع البحر حتى الحدود المصرية.

على جميع سكان الأحياء التالية:

بلوك 0 - مخيم البرازيل - حي الشعراء - قشطة - حي السلام
إخلاء بيوتهم فوراً إلى ما بعد شارع البحر، وذلك من لحظة استلام هذا
البيان حتى يوم الغد الساعة الثامنة صباحاً.

من أجل سلامتكم وسلامة أولادكم نفذوا هذا البلاغ.

قيادة جيش الدفاع الإسرائيلي

To the Residents of Rafah

Because your houses are used by Hamas for military equipment smuggling and storing, the Israeli Defence Forces (IDF) will attack the area between the Sea Street and till the Egyptian border ...

All the Residents of the following neighborhoods:

**Block O – al-Barazil Neighborhood – al-Shu'ara'a – Keshta – al-Salam
Neighborhood**

**Should evacuate their houses, till beond the Sea Street. The Evacuation enters
into force from no till tomorrow at 08:00 am.**

For your safety and for the safety of your children, apply this notice.

IDF leadership

مكان القطاع

بدها من الثانية صباح الأحد (18/1/2009) سيدخل حيز التنفيذ وقف إطلاق النار أحادي الجانب من إسرائيل.

إن قوات جيش الدفاع الإسرائيلي سبقي في مواقعها وسترد بصرامة ويكامل قواها على أي محاولة من حماس وعناصر إرهابية أخرى المساس بسكان دولة إسرائيل وقوات جيش الدفاع.

يجدد جيش الدفاع التأكيد على أن عملياته لا تستهدفكم بل تستهدف عناصر حماس فقط.
مكان القطاع، إنكم مطالبون، حتى إشعار آخر، بالامتناع عن دخول المناطق التي تتواجد فيها قوات جيش الدفاع.

من أجل سلامتكم، واصلوا الابتعاد عن أي مكان تنطلق منه عمليات إرهابية من صنع عناصر حماس الذين يستخدمونكم دروعاً بشرية في سبيل الدفع كما مصالح اجنبية.

اعلموا أن الهدوء سيجلب الهدوء

الخير لكم

قيادة جيش الدفاع الإسرائيلي

The Residents of the Strip

At 02:00 am on Sunday, 18 January 2009 the Israeli unilateral ceasefire will enter into force.

The Israeli Defense Force (IDF) will stay in their positions, and will strongly respond, and with their full capacity, to any attempt by Hamas and other terrorist members to cause harm to the inhabitants of the State of Israel.

IDF reiterate that their operations do not target you, they only target the members of Hamas.

Residents of the Strip, you are demanded, until further notice, to refrain from entering the locations where IDF are positioning.

For your safety, keep staying away from any locations used to launch terrorist operations by the members of Hamas, who use you as human shields, in order to push foreign interests forward.

Know that peacefulness will bring peacefulness

Option is left for you

IDF Leadership

الى سكان المنطقة

بسبب الأعمال الإرهابية التي تقوم بها عناصر إرهابية انطلاقاً من منطقة
سكناكم ضد دولة إسرائيل

اضطر جيش الدفاع الإسرائيلي إلى القيام بالرد الفوري والعمل داخل
منطقة سكناكم

من أجل سلامتكم انكم مطالبون بإخلاء المنطقة فوراً.

قيادة جيش الدفاع الإسرائيلي

To the residents of the region

Due to the terrorist actions that terrorist members launch from your vicinity against the State of Israel

The Israeli Defense Forces (IDF) were forced to immediately respond and take actions in your vicinity.

For your safety, you are demanded to evacuate the area immediately.

IDF leadership

التي سكان قطاع غزة

جيش الدفاع الاسرائيلي يعمل ضد الحركات والعناصر الذين يقومون باعمال ارهابية ضد مواطني دولة اسرائيل.

جيش الدفاع الاسرائيلي سيضرب ويدمر كل مبنى وموقع يوجد فيه ذخيرة وعتاد عسكري.

ابتداء من نشر هذا البيان، كل من توجد ذخيرة وعتاد عسكري في بيته فهو معرض للخطر وعليه مغادرة المكان كي يحافظ على حياته وحياته اسرته.

وقد اعذر من النذر.

قيادة جيش الدفاع الإسرائيلي

To the residents of the Gaza Strip

The Israeli Defense Forces (IDF) take actions against the movements and the members who implement terrorist operations against the citizens of the State of Israel.

IDF will strike and destroy any building or site that contains ammunition and military equipment.

Starting from the moment of the dissemination of this notice, everyone who has ammunition and military equipment in his house will be at risk, and accordingly he must leave the site for his safety and for the safety of his family.

Due notice.

IDF leadership

Annexure 6: Security Council Resolution 1860 (2009)

United Nations

S/RES/1860 (2009)



Security Council

Distr.: General
8 January 2009

Resolution 1860 (2009)

Adopted by the Security Council at its 6063rd meeting, on
8 January 2009

The Security Council,

Recalling all of its relevant resolutions, including resolutions 242 (1967), 338 (1973), 1397 (2002), 1515 (2003) and 1850 (2008),

Stressing that the Gaza Strip constitutes an integral part of the territory occupied in 1967 and will be a part of the Palestinian state,

Emphasizing the importance of the safety and well-being of all civilians,

Expressing grave concern at the escalation of violence and the deterioration of the situation, in particular the resulting heavy civilian casualties since the refusal to extend the period of calm; and *emphasizing* that the Palestinian and Israeli civilian populations must be protected,

Expressing grave concern also at the deepening humanitarian crisis in Gaza,

Emphasizing the need to ensure sustained and regular flow of goods and people through the Gaza crossings,

Recognizing the vital role played by UNRWA in providing humanitarian and economic assistance within Gaza,

Recalling that a lasting solution to the Israeli-Palestinian conflict can only be achieved by peaceful means,

Reaffirming the right of all States in the region to live in peace within secure and internationally recognized borders,

1. *Stresses* the urgency of and *calls for* an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from Gaza;
2. *Calls for* the unimpeded provision and distribution throughout Gaza of humanitarian assistance, including of food, fuel and medical treatment;
3. *Welcomes* the initiatives aimed at creating and opening humanitarian corridors and other mechanisms for the sustained delivery of humanitarian aid;

09-20432 (E)



4. *Calls on* Member States to support international efforts to alleviate the humanitarian and economic situation in Gaza, including through urgently needed additional contributions to UNRWA and through the Ad Hoc Liaison Committee;

5. *Condemns* all violence and hostilities directed against civilians and all acts of terrorism;

6. *Calls upon* Member States to intensify efforts to provide arrangements and guarantees in Gaza in order to sustain a durable ceasefire and calm, including to prevent illicit trafficking in arms and ammunition and to ensure the sustained reopening of the crossing points on the basis of the 2005 Agreement on Movement and Access between the Palestinian Authority and Israel; and in this regard, *welcomes* the Egyptian initiative, and other regional and international efforts that are under way;

7. *Encourages* tangible steps towards intra-Palestinian reconciliation including in support of mediation efforts of Egypt and the League of Arab States as expressed in the 26 November 2008 resolution, and consistent with Security Council resolution 1850 (2008) and other relevant resolutions;

8. *Calls for* renewed and urgent efforts by the parties and the international community to achieve a comprehensive peace based on the vision of a region where two democratic States, Israel and Palestine, live side by side in peace with secure and recognized borders, as envisaged in Security Council resolution 1850 (2008), and recalls also the importance of the Arab Peace Initiative;

9. *Welcomes* the Quartet's consideration, in consultation with the parties, of an international meeting in Moscow in 2009;

10. *Decides* to remain seized of the matter.

Annexure 7: Declaration of the Government of Palestine to the ICC.

بسم الله الرحمن الرحيم

Palestinian National Authority
Ministry of Justice
Office of Minister



السلطة الوطنية الفلسطينية
وزارة العدل
مكتب الوزير

Date: -----

Ref: -----

تاريخ: -----

الرقم: -----

Declaration recognizing the Jurisdiction of the International Criminal Court.

In conformity with Article 12, paragraph 3 of the Statute of the International Criminal Court, the Government of Palestine hereby recognizes the jurisdiction of the Court for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Palestine since 1 July 2002.

As a consequence, the Government of Palestine will cooperate with the Court without delay or exception, in conformity with Chapter IX of the Statute.

This declaration, made for an indeterminate duration, will enter into force upon its signature.

Material supplementary to and supporting this declaration will be provided shortly in a separate communication.

Signed in The Hague, the Netherlands, 21 January 2009

For the Government of Palestine

Minister of Justice

Ali Khashan

Ramallah, A/Amman
Tel: 022973263, 022973265
Fax: 022973264

<http://www.moj.gov.ps>
Email: info@moj.gov.ps

رام الله/عمان
هاتف: 022973263، 022973265
فكس: 022973264

Annexure 8: List of abbreviations.

Al Mezan	Al Mezan Centre for Human Rights
DIME	Dense Inert Metal Explosives
IAF	Israeli Air Forces
ICC	International Criminal Court
ICJ	International Court of Justice
IDF	Israeli Defence Forces
IMFA	Israeli Ministry of Foreign Affairs
League	League of Arab States
MAG	Mines Advisory Group
OCHA	Office for the Coordination of Humanitarian Affairs
PA	Palestinian Authority
PCHR	Palestinian Centre for Human Rights
PHR	Physicians for Human Rights
PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organisation
PMOH	Palestinian Ministry of Health
PNA	Palestinian National Authority
UNDP	United Nations Development Programme
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
WHO	The World Health Organisation

Annexure 9: Curriculum Vitae of the Committee Members.

JOHN DUGARD, CHAIRMAN

John Dugard (South Africa) was a professor of law at the University of the Witwatersrand, Johannesburg for thirty years. In South Africa he was active in the struggle against apartheid and wrote the definitive work on the law of apartheid: *Human Rights and the South African Legal Order* (1978). Later he participated in the drafting of the 1996 South African Constitution. From 1995-1997 he was Director of the Lauterpacht Research Centre for International Law, Cambridge; and from 1998-2006 he was professor of international law at the University of Leiden. Since his retirement he has been a visiting professor of law at Duke University and an honorary professor in the Centre for Human Rights at the University of Pretoria. He is the author of *International Law: a South African Perspective* (3rd ed 2005). He has been a member of the United Nations International Law Commission since 1997; and has twice served as an *ad hoc* Judge on the International Court of Justice. He is member of the Institut de Droit International. From 1997 to 1999 he was a member of the Steering Committee of the ICRC Study on Customary International Humanitarian Law. In 2001 he chaired the Human Rights Inquiry Commission to investigate violations of Human Rights and International Humanitarian Law in the Occupied Palestinian Territory established by the United Nations Commission on Human Rights. From 2001 to 2008 he was Special Rapporteur on Human Rights in the Occupied Palestinian Territory to the United Nations Commission on Human Rights (later the Human Rights Council).

PAUL DE WAART

Dr. Paul J.I.M. de Waart (the Netherlands) is emeritus professor of international law at the VU University Amsterdam. At the request of the Netherlands Co-financing Agency NOVIB he visited Israel/Palestine in February 1987 in order to give an advisory opinion on the role of international law in the peaceful settlement of the Israeli-Palestinian dispute. This opinion resulted in the joint Academic Project Dynamics of Self-Determination of Israeli, Palestinian and Western researchers 1988-1993, which he chaired. His publications include *Dynamics of Self-Determination in Palestine: Protection of Peoples as a Human Right* (1994) and numerous articles on the legal aspects of the Israeli-Palestinian question. He participated in the Ad Hoc United Nations Group of Experts on the Right to Development (1981-1987).

After his retirement in 1997 he was involved in the evaluation of human rights projects in several countries, including Israel/Palestine. In 1999 he was Counsel of the Yugoslav Delegation in the Case concerning Legality of the Use of Force before the International Court of Justice in the Hague.

FINN LYNGHJEM

Finn Lynghjem (Norway) was appointed as a judge in the Sunnmore District Court in 1985. He has extensive experience internationally and in particular in the Balkans. He was an International Judge of the Court of Bosnia and Herzegovina, serving on the Appellate Division for War Crimes, between January 2005 and December 2007. He was appointed as a

legal observer of political trials in the former Yugoslavia on behalf of the Norwegian Helsinki Committee and the Norwegian Bar Association in 1988 and 1984; was Chief Judge of the Election Appeals Sub-Commission for Bosnia and Herzegovina from 1996 to 1999; was Head of the Human Rights Component in the Regional Centre in Sokolac, Republika Srpska from March to April 1996; was appointed chair of the Brcko Law Revision Commission in May 1999; helped train Balkan judges, prosecutors and lawyers from Western Balkans in Serbia and in Montenegro as preparation for war crimes trials in 2001 and 2003; and was elected in 2002 to the Oversight Board of Hercegovina Osiguranje and Eronet in Bosnia and Herzegovina.

He worked with the United Nations Transitional Authority in Cambodia (UNTAC) in the 1993 United Nations sponsored elections; establishing contact with the Military Component and acting as a liaison to the Cambodian People Armed Forces. He was attached to the Special Prosecutor's Office in Addis Ababa as an international legal expert and in house consultant in March 1994; attached to the Central Supreme Court in Addis Ababa, as a legal advisor in international law from April-May 1994; attached to the International Human Rights Law Group in Washington, D.C. on the Cambodian Court Training Project in 1995; trained Ethiopian Judges and Prosecutors and provided Legal Counsel on the applicability of Human Rights instruments in the courtroom in August 2002; was a member of the Mission to Baghdad from 13 to 20 August 2003 as part of the International Legal Assistance Consortium, Stockholm; delivered seminars for Iraqi jurists on Human Rights in Dubai, United Arab Emirates, in June 2004 and May 2005; and was Legal Advisor to the SRSC and Swedish Army project on global simulated exercises to outline preparations for peacekeeping and peace-enforcement missions in 2005; and was speaker in a work shop with Egyptian Judges, Prosecutors and Defence Counsel in Hurghada in 2008.

GONZALO BOYE

Gonzalo Boye Tuset (Chile / Germany) studied Politics and Economics at the University of Heidelberg (Germany) and after several years as an international consultant completed his law degree in Spain. He has lived in Chile, Germany, the United Kingdom and Spain.

From 2002 onwards he has specialised in criminal law with a successful record at the Spanish Courts. Since 2004 he has represented some victims of March 11 bomb attack to Madrid and since 2007 has been working on several cases under Spain's universal jurisdiction, including a case alleging torture in Guantánamo and the case related to the explosion in Al Daraj (Gaza) in 2002.

Gonzalo Boye is also Professor of Procedure and Criminal Law at the Madrid Bar Association as well as a permanent contributor to several Spanish newspapers.

FRANCISCO CORTE REAL

Francisco Corte Real (Portugal) is a medical doctor, specialist in Legal Medicine with the conference in Body Damage Evaluation. He has extensive academic qualifications, including a Masters Degree and PhD in Legal Medicine, and post-graduate qualifications in body damage evaluation. He is a Professor at the Faculty of Medicine of the University of Coimbra, and Director of the Central Delegation of the National Institute of Legal Medicine. He was

formerly the President of the Portuguese Association of Body Damage Evaluation and Deputy of the European Council of Legal Medicine.

RAELENE SHARP, RAPPORTEUR

Raelene Sharp (Australia) is a lawyer with extensive domestic experience in criminal investigations, prosecutions and related litigation. She also has international experience in terrorism investigations. In addition to her domestic legal qualifications she has a master's degree in International Criminal Law from Leiden University. She has experience in the Middle East having worked at the United Nations Independent International Investigation Commission in Lebanon investigating the assassination of Rafik Al Hariri. She is serving as the Rapporteur of the Committee.