Israel/Occupied Palestinian Territories

Turning a Blind Eye

Impunity for Laws-of-War Violations during the Gaza War

HUMAN RIGHTS WATCH

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Summary

This report documents how Israel and Hamas have addressed credible allegations of laws-of-war violations by their respective forces during the Gaza war in December 2008 and January 2009. More than one year after the conflict, neither side has taken adequate measures to investigate serious violations or to punish the perpetrators of war crimes, leaving civilian victims without redress. Israel's investigations have fallen far short of international standards for investigations, while Hamas has conducted no credible investigations at all.

In Israel, military authorities say they have investigated roughly 150 incidents in Gaza, but approximately 120 of these were limited to "operational debriefings" that consider testimony from the soldiers involved but not from witnesses or victims. Thirty-six incidents are or have been the subject of a criminal investigation (with seven cases closed), but these neglect many incidents deserving investigation. Critically, Israel has failed to conduct credible investigations into policies authorized by senior levels of the country's political and military leadership that may have led to violations of the laws of war. These include the targeting of Hamas political institutions and Gaza police, the use of heavy artillery and white phosphorus munitions in populated areas, and the rules of engagement for aerial drone operators and ground forces.

All Israeli debriefings and investigations have been conducted by the military, and the government has rejected calls for an independent review. As of April 7, 2010, military authorities had convicted only one soldier for crimes committed in Gaza – for stealing a credit card from a Palestinian. Two more soldiers were on trial for ordering a Palestinian boy to open bags they suspected of being rigged with explosives.

In Gaza, Hamas has punished no one for ordering or carrying out hundreds of deliberate or indiscriminate rocket attacks into Israeli population centers, which killed three Israeli civilians and wounded dozens more. Despite evidence to the contrary, Hamas claims it launched rockets only at military targets, and that civilian casualties were unintended. Cases of killings and torture by Hamas security forces against suspected collaborators and political rivals in Gaza have also gone unpunished.

The unwillingness of both Israel and Hamas to conduct impartial investigations defies calls for accountability from an ever-growing list of governments, the United Nations Secretary-General, UN General Assembly and European Parliament. In February 2010, the UN General

Assembly called on Israel and Hamas for the second time to punish perpetrators, giving them until late July 2010 to launch thorough and impartial investigations. A majority of European Union member states supported the resolution, including permanent Security Council members France and the United Kingdom.

This report recommends that influential governments and international bodies increase their pressure on both parties to conduct domestic investigations that are prompt, thorough and impartial. Regarding Israel, the US and European governments should demand truly impartial investigations, including into policies set by senior officials. US officials in particular have praised Israel's military justice system, without acknowledging how the system has failed to serve many Palestinian victims of the Gaza war.

Governments with influence on Hamas and bodies such as the Arab League and Organisation of the Islamic Conference should demand credible investigations by the authorities in Gaza. To date, none of Hamas's supporters have called for accountability or pressed for serious investigations.

UN Secretary-General Ban Ki-moon can also play a more constructive role by monitoring and reporting on domestic investigations by both parties, and determining whether they are independent, credible and in conformity with international standards, as the General Assembly has requested him to do by July 26, 2010.

Continued impunity for serious violations during the Gaza conflict by both sides will harm efforts to achieve a durable peace. Punishing perpetrators and publicly recording violations helps build trust that can advance the peace process and lay the foundation for long-term stability and security. Promoting accountability is not a barrier to peace, as some claim, but rather a prerequisite.

A failure by governments to demand accountability for serious violations during the Gaza war will also reveal a double-standard in international concern for justice. Governments that tolerate impunity in the Israeli-Palestinian conflict weaken their calls for accountability in places such as Sri Lanka, Sudan, and the Democratic Republic of Congo.

Ultimately, if domestic investigations in Israel and Gaza fail, then international prosecutions present the only chance for civilian victims of the armed conflict to obtain justice. In such an event, the UN Security Council should refer the conflict to the International Criminal Court in The Hague.

To prepare this report, Human Rights Watch wrote letters to both the Military Advocate General of the Israel Defense Forces (IDF) and Gaza Prime Minister Ismail Haniya, requesting information about their respective investigations (see appendices). Haniya's office did not reply. On February 4, 2010, IDF military lawyers met with Human Rights Watch in Tel Aviv, and the information they provided is included in this report, as are public statements and reports by both Israel and Hamas.

The report does not address investigations by the Fatah-run Palestinian Authority in the West Bank, which the report of the UN Fact Finding Mission on the Gaza Conflict (the Goldstone report) also named as responsible for human rights violations. The arbitrary detentions, torture and due process violations against Palestinians in the West Bank documented in the Goldstone report, and previously by Human Rights Watch, are not directly related to the armed conflict in Gaza and Israel.

Impunity in Israel and Gaza

Between December 27, 2008 and January 18, 2009, Israel's "Operation Cast Lead" in Gaza killed several hundred Palestinian civilians and wounded many more, some during Israeli attacks that were indiscriminate, disproportionate or at times seemingly deliberate, in violation of the laws of war. Israeli forces also extensively destroyed civilian objects in Gaza, including homes, agricultural land and factories, without a lawful military reason.

In Israel, three civilians were killed and dozens wounded by rocket fire from Hamas and other Palestinian armed groups. The absence of Israeli military forces in the areas struck and statements by Hamas leaders supporting the attacks are evidence of an intent to strike Israeli civilians and civilian objects. Even if military objectives had been present, the rockets launched were invariably indiscriminate when fired into populated areas. In addition, Hamas and other armed groups placed Palestinian civilians unnecessarily at risk from Israeli counter-attack by launching rockets from densely populated areas in Gaza.

In Israel, military authorities have conducted roughly 150 "investigations" of incidents in Gaza, but they have not provided a full list of the cases. Approximately 120 of the 150 investigations are what the military calls an "operational debriefing" – *tahkir mivza'i* in Hebrew. These are after-action reports, not criminal investigations, in which an officer in the chain of command interviews the soldiers involved, with no testimony from victims or witnesses. The debriefings may lead to disciplinary measures or criminal investigations, but they are not a substitute for impartial and thorough investigations into laws-of-war violations. The Military Advocate General had closed 65 of these 120 cases as of April 7, 2010, because

it found no grounds for a criminal investigation. The decisions of the Military Advocate General are subject to review by the Attorney General and the Israeli Supreme Court, but according to Israeli human rights organizations, such reviews rarely take place.

Thirty-six cases reached the level of a more serious military police investigation, in which IDF investigators summoned witnesses from Gaza to give statements and present evidence. As of April 7, only one of these cases had resulted in a conviction (the soldier who stole a credit card) and one had gone to trial (the two soldiers who allegedly forced a nine-year-old Palestinian boy to open bags that they suspected of being booby-trapped). The Military Advocate General had closed seven cases due to lack of evidence or because the complainants were unwilling to testify; the remaining 27 cases are ongoing but the IDF has not released a list.

Four soldiers and commanders have faced disciplinary hearings, but the IDF has provided only partial information on the circumstances. In one case, a colonel and brigadier general received notes of reprimand for firing "several" high-explosive artillery shells that hit the United Nations Relief and Works Agency (UNRWA) headquarters in central Gaza City, despite dozens of phone calls from UN officials asking that the shelling stop. The other cases involved the unauthorized shooting on a UN convoy and an unknown incident of property destruction.

The IDF also opened "command investigations" into five types of alleged violations during the Gaza operation: attacks on UN facilities; attacks on medical crews and facilities; harm to civilians not involved in hostilities; the destruction of civilian structures; and the use of white phosphorous munitions. The IDF concluded in April 2009 that its forces had "operated in accordance with international law" throughout the fighting and that "a very small number" of "unavoidable" incidents occurred due to "intelligence or operational errors." To correct these, the IDF Chief of Staff, Lt. Gen. Gabi Ashkenazi, reportedly ordered improvements in "certain command operations" but the military has provided no details.

The IDF's conclusions on white phosphorus munitions and harm to civilians not involved in hostilities contradicted the findings of Human Rights Watch, which documented 53 civilian deaths in 19 incidents in which Israeli forces appeared to have violated the laws of war. Some of these deaths appear to have been the result of deliberate policy decisions.

In November 2009, the IDF opened a sixth command investigation into three cases raised in the UN fact-finding report. One of these cases—the alleged killing of more than 20 members of the al-Samouni family in the Zeitoun neighborhood of Gaza City on January 5—was known

since January 7, 2009, when the International Committee of the Red Cross publicly criticized the IDF for denying medical access to the wounded and dead. As with the five other command investigations, a colonel not directly involved with the incidents in question will lead the review, but it remains in question whether an officer of that rank would implicate senior commanders who set policy.

The military's debriefings and investigations notwithstanding, the Israeli government has failed to conduct adequate investigations into important policy decisions by military and political leaders that may have increased civilian deaths. These include:

- Targeting of Hamas's political infrastructure;
- Targeting of Gaza's police who were not taking direct part in hostilities;
- Resumption of heavy artillery (155mm) use in Gaza after a two-year de facto moratorium imposed because of civilian casualties;
- Use of artillery-fired white phosphorus munitions in densely populated areas of Gaza;
- Use of Palestinian civilians to search homes or as "human shields";
- Rules of engagement for aerial drone operators and ground forces.

One underlying problem cited by Israeli human rights organizations is the independence of the office of the IDF Military Advocate General (MAG), which plays a central role in military investigations. Prior to Operation Cast Lead in Gaza, the MAG was helping set policy, including targeting and weapons choices, and after the operation it was investigating allegedly unlawful attacks. The IDF says these two functions are distinct and military prosecutions proceed independently from the Chief of Staff.

Military investigations into laws-of-war violations are not incompatible with international standards for prompt, impartial and thorough investigations. But, as Human Rights Watch documented in its 2005 report, "Promoting Impunity," the IDF has a poor record of holding accountable the soldiers and commanders implicated in violations of international human rights and humanitarian law against Palestinians in Gaza and the West Bank. According to Israeli human rights groups, the numbers of criminal investigations, prosecutions and convictions of Israeli soldiers for violations against Palestinians have all dropped since 2000, despite the large number of allegedly unlawful deaths.

Concerns with the thoroughness and impartiality of IDF investigations have led Israeli human rights groups to call for an independent inquiry into the Gaza operation. So far, the government has refused. Instead, senior officials contend that the IDF did everything possible to minimize civilian casualties and that Hamas is to blame for the high number of

civilian deaths because they fought from amidst the civilian population and used civilians as human shields. Hamas at times placed civilians in danger by fighting from densely populated areas but, in the 19 incidents Human Rights Watch investigated, resulting in 53 civilian deaths, Palestinian fighters were not in the area at the time of the Israeli attack.

Instead of implementing Israel's legal obligation to conduct impartial investigations, Prime Minister Benjamin Netanyahu has called for loosening the laws of war to allow states more latitude when addressing conflicts with armed groups in populated areas.

In Gaza, Hamas has taken no meaningful steps to investigate and punish those who violated the laws of war. After rejecting criticism of its conduct during the war, Hamas established a commission headed by the Gaza Minister of Justice to look at the allegations in the Goldstone report. In January 2010 it released the commission's findings that Hamas's armed wing, the Izz al-Din al-Qassam Brigades, and other Palestinian armed groups had fired rockets only at Israeli military targets, and civilian casualties from those attacks were mistakes, due to the weapons' technological limitations.

The claim ignores the fact that the rockets fired into Israel that did not land in open terrain mostly struck in civilian populated areas, including towns and cities, far from any legitimate military target. Even if Hamas's claim were true, the locally made Qassam and longer-range Grad rockets fired from Gaza have no guidance systems and are invariably indiscriminate when fired into densely populated areas.

In addition, statements by Hamas leaders prior to and during last year's fighting strongly suggest that targeting civilians was a goal of the attacks, rather than an accidental result. A spokesman for the Izz al-Din al-Qassam Brigades who identified himself as Abu Obeida, for example, said that "continuing the incursion will only make us increase our rocket range.... We will double the number of Israelis under fire." According to senior Hamas leader Mahmoud Zahar, Israel "shelled children and hospitals and mosques, and in doing so, they gave us legitimacy to strike them in the same way."

The balance of power and the politics of a conflict are never justifications for a warring party to target civilians, and violations of the laws of war by one party do not justify violations by the other side.

In addition to laws-of-war violations, Hamas security forces also committed serious human rights abuses during the fighting against other Gazans, especially suspected collaborators with Israel and supporters of Hamas's chief rival, Fatah, but also those who criticized Hamas.

Human Rights Watch and other human rights organizations documented arbitrary arrests, torture, maimings, and killings of Palestinians that have largely gone unpunished over the past year.

Hamas's failure to investigate all of these violations is not new. Since taking power in Gaza in 2007, it is not known to have punished any of its fighters or commanders for the thousands of rockets fired deliberately or indiscriminately at Israeli population centers. On the contrary, numerous public statements by Hamas political leaders have endorsed these unlawful attacks.

Legal Standards

All parties to the armed conflict in Gaza and Israel are bound by international humanitarian law – the laws of war. Applicable law includes treaty law, namely the Fourth Geneva Convention of 1949 concerning occupied territories, and customary international law, covering the means and methods of warfare. Both states and non-state armed groups may be held responsible for violations of the laws of war.

Individuals who commit serious violations of the laws of war with criminal intent – deliberately or recklessly – are responsible for war crimes. Commanders may be liable for planning or ordering war crimes, or as a matter of command responsibility when they knew or should have known of crimes committed by forces under their control but took no action to stop them.

States responsible for violations of the laws of war are required to make reparations, which includes providing fair and adequate compensation to victims and their relatives, and establishing the truth about what happened.

States also have an obligation to investigate war crimes allegedly committed by their armed forces, and if appropriate, to prosecute those responsible. Although international law does not provide a single standard for the conduct of investigations, basic justice principles necessitate that investigations be prompt, thorough, and impartial and that ensuing prosecutions also be independent.

Violations and Response by Hamas

Laws-of-War Violations by Hamas

Hamas and other Palestinian armed groups have launched thousands of rockets into Israel since 2001, killing 15 civilians, wounding many more, and posing an ongoing threat to the nearly 800,000 Israeli civilians who live and work in the weapons' range. During the 22-days of fighting in December 2008 and January 2009, rocket attacks killed three Israeli civilians, wounded scores more, and caused damage to civilian infrastructure. Two Palestinian civilians in Gaza also died when a rocket misfired.

Throughout the fighting, Palestinian-fired rockets struck populated areas up to 40 kilometers inside Israel, with some reaching the outskirts of Tel Aviv. On December 27, 2008, a rocket launched from Gaza killed Beber Vaknin, a 58-year-old window installer in Netivot. On December 29, a Grad-type rocket struck the city of Ashkelon, killing Hani al-Mahdi, 27, a construction worker from the Bedouin village of Aro'ar, and wounding several others. That same day, a rocket launched from Gaza hit a car in the city of Ashdod, killing Irit Sheetrit, a 39-year-old school secretary, and wounding her sister. Hamas's armed wing, the Izz al-Din al-Qassam Brigades, claimed responsibility for all three attacks.[1]

Some Hamas officials have claimed that the rockets were aimed only at military targets, saying that civilian casualties were the accidental result of the weapons' poor quality. But statements by Hamas leaders suggest that the purpose of the rocket attacks was indeed to strike civilians and civilian objects.[2]

A spokesman for the Qassam Brigades, identified as Abu Obeida, for example, said in a video released on January 5, 2009 that "continuing the incursion will only make us increase our rocket range [...]. We will double the number of Israelis under fire."[3] Hamas leader

[1] "Qassam Brigades Shells Zionist Netivot with Eight Qassam Rockets and the Enemy Admits the Death of a Zionist and Injuries to Others," http://www.alqassam.ps/arabic/statments1.php?id=4066, accessed April 29, 2009; "Qassam Brigades Hits al Majdal Occupied City with Grad Rocket, the Enemy Admits the Killing of a Zionist and Injuries to Others," http://www.alqassam.ps/arabic/statments1.php?id=4088, accessed April 29, 2009; and "South Under Fire; 2 Israelis Killed," by Shmulik Hadad, Ynet News, December 30, 2008, http://www.ynet.co.il/english/articles/0,7340,L-3646829,00.html, accessed March 16, 2009. See also "Qassam Brigades Hits Ashdod Harbor and Occupied Ashkelon with Two Grads, the Enemy Admits the Killing of Two Zionists and Other Serious Injuries," http://www.alqassam.ps/arabic/statments1.php?id=4098, accessed April 30, 2009.

[2] See Human Rights Watch report, "Rockets from Gaza: Harm to Civilians from Palestinian Armed Groups' Rocket Attacks," August 6, 2009, http://www.hrw.org/en/node/84867/section/1.

[3] "Hamas Ready for Battle; Victory's Coming, 'God Willing'," by Hanan Awarekeh, *Al Manar*, January 5, 2009, http://www.almanar.com.lb/NewsSite/NewsDetails.aspx?id=69218&language=en, accessed March 12, 2010.

Mahmoud Zahar, in a speech broadcast the same day, said, "The Israeli enemy ... shelled everyone in Gaza. They shelled children and hospitals and mosques, and in doing so, they gave us legitimacy to strike them in the same way."[4]

Whatever the intended target, Qassam and longer-range Grad rockets launched from Gaza have no guidance system. These rockets cannot be aimed in a manner that distinguishes between military targets and civilians and civilian objects, making them indiscriminate weapons when fired at populated areas. This makes their use against populated areas of Israel violations of the laws of war.

In some cases, the rockets fell short and struck Gaza. On December 26, 2008, a Palestinian-fired rocket hit a house in Beit Lahiya, killing two Palestinian girls, Sabbah Abu Khusa, 12, and Hanein 'Ali Abu Khusa, 5, and injuring another child.

The laws of war require parties to a conflict to take all feasible precautions to spare civilians from the dangers of military operations. While fighting in urban areas is not prohibited under the laws of war, parties to a conflict are obligated to avoid placing military targets within or near densely populated areas. Hamas and other Palestinian armed groups at times violated the laws of war by unnecessarily firing rockets from within densely populated areas, placing Palestinian civilians at risk of Israeli counter-attacks. Forces that occupy homes, schools or other presumptively civilian structures make those structures military objectives subject to attack. Palestinian forces occupying such buildings have an obligation to take feasible measures to remove the civilians in the vicinity from them. Forces that deploy behind civilians deliberately to deter attacks are committing "human shielding," which is a war crime. In the 53 civilian deaths in Gaza investigated by Human Rights Watch – chosen to document civilian deaths that resulted from IDF military policies – Palestinian fighters were not in the area at the time of the attack. In other cases, however, fighters may have fired rockets from areas close to civilians with the intention of deterring Israeli forces from counter-attacking.[5]

Palestinian armed groups in Gaza that have claimed responsibility for firing rockets into Israel include Hamas's Izz al-Din al-Qassam Brigades, Islamic Jihad's Al-Quds Brigades, the Fatah-aligned al-Aqsa Brigades, the Popular Resistance Committee's Salah al-Din Brigades,

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[4] "Israeli Military Surrounds Gaza City, Officials Say," CNN, January 5, 2009, http://edition.cnn.com/2009/WORLD/meast/01/05/israel.gaza/index.html , accessed March 12, 2010.

[5] International Crisis Group, "Gaza's Unfinished Business," April 23, 2009, p. 3, http://www.crisisgroup.org/home/index.cfm?id=6071, accessed February 15, 2010. See also "Hamas and Its Discontents," by Rod Nordland, Newsweek, January 20, 2009, http://www.newsweek.com/id/180691/page/1, accessed March 25, 2010.

and the Abu Ali Mustafa Brigades of the Popular Front for the Liberation of Palestine. Hamas and Islamic Jihad have been responsible for the majority of rocket attacks, and together claim to have fired 820 rockets from December 27, 2008 to January 18, 2009.[6]

In addition, armed gunmen in Gaza, apparently affiliated with Hamas, used unlawful lethal force against alleged collaborators and political opponents during and after the Gaza conflict, killing at least 32 people from December 2008 to March 2009.[7] Human Rights Watch documented the deaths of Zaher Ahmad al-Za'anin, 40, Jamil Shakura, 51, Nihad Sa'adi al Dabbaka, 47, and Ata Yusif Abd al-Wahhab al-Bur'I, all of whom died apparently as the result of torture following their apprehension or abduction by persons claiming to work for Hamas Internal Security or other Hamas security forces. Masked gunmen during and after the conflict also severely beat or shot Palestinians in the legs with the intent to maim.

The Goldstone report also documented the above violations. Regarding the rocket attacks into Israel, the report said the attacks amounted to "the commission of an indiscriminate attack on the civilian population of southern Israel, a war crime, and may amount to crimes against humanity."[8]

The Goldstone report also addressed whether and to what extent Palestinian armed groups took all feasible precautions to protect civilians in Gaza from the dangers of military operations. The report concluded that Palestinian armed groups launched rockets from urban areas but it found no direct evidence that this was done with the intent of shielding the rocket launchers from counter-attack.

Response by Hamas

Over the past year, Hamas spokespersons have said that the Gaza authorities would investigate allegations of laws-of-war violations by the Izz al-Din al-Qassam Brigades and other Palestinian armed groups. To date, however, no Palestinians are known to have been punished for wartime abuse. As described below, a Hamas report to the United Nations in

[6] According to the website of the Izz al-Din al-Qassam Brigades, the group launched 345 Qassam rockets, 213 Grad rockets, 402 mortar rounds, and 82 rocket-propelled grenades and similar shells between December 27, 2008 and January 18, 2009. ("Summary of al-Qassam Operations during the 23-day al-Forqan Battle," www.alqassam.ps, accessed April 8, 2009.) On January 20, 2009, Al Jazeera reported that Islamic Jihad claimed responsibility for launching 262 rockets into Israel since December 27, 2008. ("Palestinian Factions United by War," by Shane Bauer, Al Jazeera English, January 20, 2009, http://english.aljazeera.net/focus/war_on_gaza/2009/01/200911915455957756.html, accessed March 16, 2009.)

[7] Human Rights Watch, "Under Cover of War," April 19, 2009, http://www.hrw.org/node/82366.

[8] "Report of the United Nations Fact Finding Mission on the Gaza Conflict," September 15, 2009, , pp. 366, http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm, accessed February 28, 2010.

January 2010 concluded that Palestinian fighters in Gaza fully complied with international humanitarian law.

Since the fighting ended in January 2009, Hamas has rejected criticisms of its conduct during the war. It said, for example, that a Human Rights Watch report about its rocket attacks on Israeli population centers "exempts the occupation from the crimes it committed" and was "lacking objectivity and impartiality."[9] A Human Rights Watch report on the torture and killing of Palestinians in Gaza during the war was dismissed because it was "inaccurate and hastily-released," and it "harms the policies of [the] Hamas movement in [the] Gaza Strip."[10]

Hamas cooperated with the UN fact-finding mission and its reaction to the mission's report was mixed. It criticized the report for equating "the victim" (Palestinians) with "the aggressor" (Israel). At the same time, it praised the report for highlighting many laws-of-war violations by Israeli forces, and said it would implement the recommendations of the report pertaining to Hamas.

On October 1, 2009, a senior Hamas official, Ahmad Yusuf, said that Hamas would "try to do our best" to investigate allegations of violations. He also claimed that "Hamas has said all the time that they were targeting military bases" rather than civilians. "Maybe because these are primitive weapons -- the rockets, because they're homemade -- maybe some of these rockets missed their targets, some of them fell short," he said.[11]

On October 14, two days before the UN Human Rights Council endorsed the Goldstone report, Gaza Prime Minister Ismail Haniya praised the report and said, "My government will spare no effort to implement any recommendations that the UN would come up with."[12]

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[9] "Report Accuses Hamas of War Crimes," Al Jazeera Engilsh, August 13, 2009, http://english.aljazeera.net/news/middleeast/2009/08/200986105573109l9.html, accessed January 4, 2010.

[10] "Hamas Accused of Killing Rivals," Al Jazeera English, April 21, 2009, http://english.aljazeera.net/news/middleeast/2009/04/200942074324860133.html, accessed January 3, 2010.

[11] "Hamas: Gaza Authorities Will Investigate Goldstone's Findings," October 1, 2009, http://www.maannews.net/eng/ViewDetails.aspx?ID=228039, accessed January 18, 2009. Yusuf made a similar comment on September 15, 2009, saying: "We were targeting military bases, but the primitive weapons make mistakes." ("Inquiry Finds Gaza War Crimes from Both Sides," by Neil MacFarquhar, *New York Times*, September 16, 2009, http://www.nytimes.com/2009/09/16/world/middleeast/16gaza.html?_r=1&hpw, accessed march 12, 2010.)

[12] "Deposed Hamas gov't backs UN fact-finding Gaza report," Xinhua, October 14, 2009, http://news.xinhuanet.com/english/2009-10/14/content_12233990.htm, accessed January 18, 2009. See also a report in Arabic by Al Dastoor, http://www.addustour.com/ViewTopic.aspx?ac=%5CArabicAndInter%5C2009%5C10%5CArabicAndInter_issue737_day15_id182296.htm, accessed January 18, 2010.

On October 15, foreign ministry officials in Gaza elaborated on Haniya's statement. "Although we do not agree with certain aspects of his [Goldstone's] report, we intend to act on his recommendation and to carry out our own investigation into any alleged crimes committed by members of the resistance movements in Gaza," a statement said.[13] Hamas spokesperson Taher al-Nounou repeated this view, saying that the government pledged to begin investigating the recommendations of the report.[14]

The Gaza-based Palestinian Centre for Human Rights welcomed Hamas's announcement, calling it "a first step towards upholding victims' rights and enforcing the rule of the law."[15]

Human Rights Watch wrote to the Hamas government five days later, urging Prime Minister Haniya to "conduct thorough, independent and impartial investigations" and to "prosecute in conformity with international fair trial standards those found responsible for rocket attacks that target Israeli population centers." (See appendix.) As of April 7, 2010, Human Rights Watch had received no reply.

In the letter, Human Rights Watch also asked for clarification about Ahmed Yusuf's statement that Hamas was targeting Israeli military objectives and not civilians, noting that his comments ran counter to previous statements by Hamas leaders.

In the past, leaders of Hamas and other Palestinian armed groups have sought to justify attacks against Israeli civilians as legitimate reprisals for Israeli attacks against Palestinian civilians.[16] In other cases, Hamas leaders seemed to acknowledge that rocket attacks targeted Israeli civilians but claimed the attacks were justified as part of their resistance tactics against Israeli occupation.[17]

While Human Rights Watch received no reply to its letter, the media reported comments about it by Hamas officials on October 21. Yousef Rizka, an advisor to Prime Minister Haniya,

[13] "Hamas to Examine Alleged War Crimes," by Michael Jansen, *Irish Times*, October 16, 2009, http://www.irishtimes.com/newspaper/world/2009/1016/1224256787193.html, accessed January 18, 2010.

[14] "Human Rights Council Adopts Goldstone Report" October 17, 2009, *Dar al Hayat*, http://international.daralhayat.com/internationalarticle/66781, accessed January 18, 2010.

[15] "PCHR Welcomes Hamas Decision to Investigate Allegations of War Crimes, Comply With Goldstone Report," Palestinian Centre for Human Rights, October 16, 2009, http://www.pchrgaza.org/files/PressR/English/2009/107-2009.html, accessed January 18, 2010.

[16] On June 11, 2006, the Izz el-Din al-Qassam Brigades said in a statement that, in response to an Israeli attack that targeted Palestinian fighters, the group had carried out a rocket attack against the Israeli town of Sderot and would continue attacking Sderot "until its residents flee in horror. We will turn Sderot into a ghost town." (El-Madar.Net, June 11, 2006, http://www.el-madar.net/default1.asp, accessed October 10, 2006.)

[17] For justifications by Hamas and other Palestinian armed groups for attacks on civilians, see Human Rights Watch report, "Indiscriminate Fire: Palestinian Rocket Attacks on Israel and Israeli Artillery Shelling in the Gaza Strip," June 30, 2007, http://www.hrw.org/en/reports/2007/06/30/indiscriminate-fire.

told reporters that Hamas "will carry out all of Goldstone's recommendations involving the Hamas-mandated Gaza Strip."[18] He added that Human Rights Watch "should have sent its letter to Israel" because so many more Palestinians than Israelis died. He said that Hamas and the Gaza government urged the Palestinian armed groups not to target Israeli civilians and any harm to non-combatants was most likely due to the poor quality of the Palestinian rockets.

A few days earlier Rizka said that Hamas's minister of justice, Faraj al-Ghoul, had been tasked with leading an investigation into the allegations contained in the Goldstone report. He did not say when the minister would complete the investigation.[19] Al-Ghoul later confirmed that he had formed a committee to look at the findings of the report.[20]

On November 5, 2009, the UN General Assembly endorsed the Goldstone report and called on both sides to conduct credible independent investigations within three months -- that is, by February 5, 2010. Hamas welcomed the resolution and again said it would form a committee to examine its implementation.[21]

On November 23, 2009, Human Rights Watch sent a second letter to Prime Minister Haniya, requesting information on the status of Hamas's investigations (see appendix). As of April 7, the Hamas authorities had not responded.

A subsequent statement by a top Hamas leader outside of Gaza placed the group's willingness to conduct an impartial investigation in doubt. On December 2, 2009, Musa Marzouk, deputy chair of the group's Political Bureau, told a Saudi newspaper that the Goldstone report "exonerates Hamas from any wrongdoing."[22] He did not comment on the previously announced government committee.

On January 16, 2010, 11 Palestinian human rights organizations, concerned about the lack of domestic Palestinian inquiries, called on the Palestinian authorities in Gaza and the West

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[18] "International Rights Group: Hamas Must Probe Attacks on Israeli Civilians," *Haaretz*, October 21, 2009, http://www.haaretz.com/hasen/spages/1122626.html, accessed January 18, 2010.

[19] Palestine News and Information Agency, October 19, 2009.

[20] "Palestinian Rights Group Call for Independent Investigation of Hamas in Gaza Fighting," by Mohammed Daraghmeh, Associated Press, January 18, 2010.

[21] "Hamas Welcomes the UN Adopting Goldstone Report and Agrees to Form an Investigation Committee," available at Al Ma`had al `Arabi, http://www.ma3hd.net/vb/ma3hd3/arab127832/, accessed March 21, 2010.

[22] "Hamas Position on Palestinian National Reconcilation: Interview with Dr. Mousa Marzouk" *Okaz Daily* (Saudi Arabia), December 02, 2009, http://www.okaz.com.sa/new/Issues/20091202/Con20091202318343.htm, accessed January 18, 2010; and "Hamas Not Trying to Establish an Islamic Emirate nor an Integrated Political System in the Gaza Strip" *Al-Mashahid Al-Siyasi*, December 5, 2009, http://www.almushahidassiyasi.com/ar/4/7704/, accessed January 18, 2010.

Bank to conduct independent investigations into the allegations contained in the Goldstone report. "We urge both the Palestinian authorities in the West Bank and Gaza to immediately commence credible internal investigations in compliance with international standards and in accordance with the Report by the Fact-Finding Mission on the Gaza Conflict," identical letters to Palestinian Authority President Mahmoud Abbas and Hamas Prime Minister Ismail Haniya said. The letter continued: "We urge you to immediately take clear and public steps toward holding all those who prove to be responsible for the violations detailed in the Report to account."[23]

On January 27, Hamas released the summary of the report prepared by Minister al-Ghoul's committee, which said that Hamas "has on more than one occasion called on armed Palestinian groups to avoid targeting civilians," and that any civilian casualties resulted from "errant fire."[24] A media statement accompanying the report summary said: "Despite the certainty that there were no international humanitarian law or human rights violations amounting to war crimes, the committee opened its doors wide to receive people's complaints, investigate them to the fullest extent, and prosecute the perpetrators in accordance with Palestinian law."[25]

On February 3, Hamas gave the UN secretary-general its full 52-page report that rejected allegations it had committed war crimes during the Gaza war. In its response, Hamas expressed its "commitment to the principles of international law with regard to the protection of civilians" and said that any civilian casualties from its rocket attacks were unintended. According to the report, Palestinian armed groups in Gaza:

> [w]ork as hard as possible in order not to expose civilians to any harm, but it shall be known that the Palestinian resistance – even though it is a resistance organization – is not a regular army with technologically advanced weapons, so the resistance might set a military target and the fire deviate a little or a lot and thus might impact near a civilian site, despite the efforts to keep the civilians safe. We assure you that the resistance does not deliberately set civilian targets, and that it deals with unintended incidents.[26]

[23] Letters to President Mahmoud Abbas and Prime Minister Ismail Haniyeh calling for immediate commencement of internal investigations in compliance with UN GA Resolution A/RES/64/10, January 16, 2009, http://www.mezan.org/en/details.php?id=9463&ddname=ESC%20rights&id_dept=26&p=center and http://www.mezan.org/en/details.php?id=9462&ddname=ESC%20rights&id_dept=26&p=center, accessed January 18, 2010.

[24] "Hamas Clears Itself of UN Gaza War Crimes Charges," Al Arabiya, January 27, 2010, http://www.alarabiya.net/articles/2010/01/27/98609.html, accessed March 21, 2010.

[25] "Press Release by the Government's Committee to Follow up the Report of Goldstone's Team," Gaza, January 27, 2010.

[26] Gaza Ministry of Justice, "Report of the Follow-Up Committee for the Implementation of UN Fact Finding Mission's Report," February 3, 2010, p. 50.

The report also tried to justify the rocket attacks as a political strategy, saying that "civilian victims in Israel were not meant to be targeted by the resistance because the ongoing launching of rockets was a political challenge against the Israeli aggression, which claims that it [the military operation] was intended to stop the rocket attacks."[27]

For apparently the first time, Hamas expressed regret for the Israeli civilian victims of its attacks. "We express our sorrow for whatever happened to any Israeli civilian and we hope that Israeli civilians understand that the key starting point is the ongoing targeting of us by their government."[28]

A Palestinian judge who helped draft the report, Diaa al-Madhoun, told the media that the expression of regret was consistent with Hamas's commitment to international law. "It is part of our religion not to target civilians, women, children and the elderly, who do not take part in the aggression against us," he said.[29]

At the same time, Minister of Justice al-Ghoul backtracked on the statement. "Some words or phrases were taken out of context," he said. "The report held the [Israeli] occupation fully responsible and it did not include apologies."[30] An unnamed senior Hamas official told the media that the expression of regret would not alter Hamas's strategy. "There is no change in the movement's policy, and that includes our position on the martyrdom operations," he said.[31] "Martyrdom operations" refer to suicide bomb attacks on both military and civilian targets.[32]

The Palestinian Centre for Human Rights responded to Hamas's report, calling it "disappointing." The report "merely confirmed that the government in Gaza has failed to establish a credible, impartial investigation committee to lead an inquiry into the allegations

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[27] Gaza Ministry of Justice, "Report of the Follow-Up Committee for the Implementation of UN Fact Finding Mission's Report," February 3, 2010, p. 50.

[28] Ibid.

[29] See also "Hamas "Regrets" Civilian Deaths, Israel Unmoved," Reuters, February 5, 2010, http://www.reuters.com/article/idUSTRE6143UB20100205, accessed February 9, 2010.

[30] "Rivals Slam Hamas for "Apology" to Israelis," Reuters, February 5, 2010, http://www.reuters.com/article/idUSMAC647764?feedType=RSS&feedName=everything&virtualBrandChannel=11563, accessed March 20, 2010.

[31] "Hamas "Regrets" Civilian Deaths, Israel Unmoved," Reuters, February 5, 2010, http://www.reuters.com/article/idUSTRE6143UB20100205, accessed March 21, 2010.

[32] See Human Rights Watch, "Erased in a Moment," October 15, 2002, http://www.hrw.org/en/reports/2002/10/15/erased-moment.

of the Goldstone Report," PCHR said.[33] The organization also expressed grave concern about the credibility of Israeli investigations, which it later presented in a detailed report.[34]

Since the end of hostilities in January 2009, Hamas has largely stopped launching rocket attacks on Israel, although other armed groups have launched roughly 150 rockets, killing a 33-year-old Thai migrant worker named Manee Singmueangphon on March 19, 2010.[35] On at least two occasions Hamas has arrested members of other armed groups who carried out attacks, showing that it has the ability to impose the law when it wants. In March 2009, for example, Islamic Jihad said that Hamas security forces had arrested some of its members for firing rockets, and they were released only after promising not to engage in such attacks.[36] In July 2009 Islamic Jihad said that Hamas had arrested two more members as they were engaging IDF forces near the boundary line in eastern Gaza.[37]

[33] Palestinian Centre for Human Rights, "PCHR Expresses Grave Concern Regarding Credibility of Investigations Carried Out in Response to Recommendations of the Goldstone Report," February 5, 2010, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=5984:pchr-expresses-grave-concern-regarding-credibility-of-investigations-carried-out-in-response-to-recommendations-of-the-goldstone-report-&catid=36:pchrpressreleases&Itemid=194, accessed February 12, 2010.

[34] Palestinian Centre for Human Rights, "Genuinely Unwilling: Israel's Investigations into Violations of International Law Including Crimes Committed during the Offensive on the Gaza Strip, 27 December 2008 – 18 January 2009," February 2010, http://www.pchrgaza.org/files/2010/israeli-inve.-%20english.pdf, accessed February 12, 2010.

[35] A previously unknown armed group in Gaza, Ansar al-Sunna, claimed responsibility for the attack. (See Human Rights Watch press release, "Gaza: End Impunity for Indiscriminate Rocket Attacks," March 19, 2010, http://www.hrw.org/en/news/2010/03/19/gaza-end-impunity-indiscriminate-rocket-attacks.)

[36] "Hamas Threatens Rocket Militants," BBC, March 12, 2009, http://news.bbc.co.uk/2/hi/middle_east/7940371.stm, accessed January 26, 2010.

[37] "Hamas Nabs Two Islamic Jihad Men Preparing to Fire Mortars at Israel," *Haaretz*, July 11, 2009, http://www.haaretz.com/hasen/spages/1099318.html, accessed January 26, 2010.

Violations and Response by Israel

Laws-of-War Violations by Israel

Israel's 22-day "Operation Cast Lead" in Gaza involved various laws-of-war violations that led to civilian deaths. In addition to specific incidents, some of Israel's policy decisions on weapons and targeting choices apparently also increased civilian deaths.

Human Rights Watch's reports on Israeli conduct of the armed conflict focused on three issues: the IDF's use of white phosphorus munitions in populated areas, the killing of civilians with drone-launched missiles, and the killing of civilians waving white flags. Additional areas of concern are the use of heavy artillery in populated areas, the destruction of civilian property without military necessity, and the use of Palestinians as human shields.

In total, Human Rights Watch documented 53 civilian deaths in 19 incidents in which Israeli forces appeared to have violated the laws of war. Six of those incidents involved the unlawful use of white phosphorus munitions; six were attacks by drone-launched missiles that killed civilians; and seven involved soldiers shooting civilians who were in groups holding white flags.

Regarding white phosphorus, Human Rights Watch documented how the IDF repeatedly exploded white phosphorus munitions in the air over populated areas, killing and injuring civilians and damaging civilian structures, including a school, a market, a UN humanitarian aid warehouse, and a hospital. White phosphorus munitions were not responsible for large numbers of civilian deaths – many more people died from missiles, bombs, artillery and tank shells, and small arms fire – but their use in densely populated neighborhoods, including downtown Gaza City, violated the laws of war, which requires taking all feasible precautions to avoid civilian harm and prohibits indiscriminate attacks. In the white phosphorous cases documented by Human Rights Watch in the report *Rain of Fire*, shells discharging burning white phosphorus wedges or the resulting fires killed 12 civilians, including three women and seven children, one of them a fifteen-month-old baby. Dozens more were injured by burns or smoke inhalation.[38]

Regarding drone-launched missiles, Human Rights Watch documented the IDF's killing of 29 civilians, including eight children, with one of the most precise weapons in its arsenal. The

[38] Human Rights Watch, "Rain of Fire," March 25, 2009, http://www.hrw.org/en/reports/2009/03/25/rain-fire-0.

total number of Gazan civilians killed by drone-launched missiles remains unclear. Israeli and Palestinian human rights organizations -- B'Tselem, the Palestinian Centre for Human Rights, and the Al-Mezan Center for Human Rights -- together reported 42 drone attacks that killed 87 civilians.[39]

The Human Rights Watch report *Precisely Wrong* focused on six Israeli drone strikes. Based on interviews with victims and witnesses, investigations of the attack sites, IDF and media reports on the fighting, and in one case IDF video footage of the attack, Human Rights Watch determined that the Israeli military directed its strikes at individuals who were civilians. In none of the cases did Human Rights Watch find evidence that Palestinian fighters were present in the immediate area of the attack at the time. None of the targets was moving quickly or leaving the area, so the drone operators had the time and optical ability to determine whether they were observing civilians or combatants, and to hold fire if they were not able to tell the difference.[40]

In the incidents investigated by Human Rights Watch, Israeli forces either failed to take all feasible precautions to verify that the targets were combatants, apparently setting an unacceptably low threshold for conducting attacks, or they failed to distinguish between combatants and civilians and to target only the former. These attacks violated the laws of war.

Regarding the shooting of civilians waving white flags, Human Rights Watch documented seven incidents where Israeli soldiers fired on civilians with small arms, killing 11 civilians—including five women and four children—and wounding at least another eight. These casualties comprise a small fraction of the Palestinian civilians killed and wounded during Operation Cast Lead, but they stand out because of the circumstances of the attacks. In each case, the victims were standing, walking, or in a slowly moving vehicle with other unarmed civilians who were trying to convey their non-combatant status by waving a white flag. All available evidence indicates that Israeli forces had control of the areas in question, no fighting was taking place there at the time, and Palestinian fighters were not hiding among

[39] See the websites of B'Tselem (http://www.btselem.org/English/), the Palestinian Centre for Human Rights (http://www.pchrgaza.org/), and Al-Mezan Center for Human Rights (http://www.mezan.org/en/). Amnesty International told the media that it documented 48 civilian deaths from drones, and that this does not represent the full number. Amnesty International was cited in a video produced by the *Guardian*. See "Cut to Pieces: the Palestinian Family Drinking Tea in their Courtyard," http://www.guardian.co.uk/world/2009/mar/23/gaza-war-crimes-drones, accessed April 26, 2009. Amnesty International also published a blog entry on Israel's use of drone-launched missiles. See Amnesty International Livewire, "Faulty Intelligence, Wanton Recklessness, or a Combination of the Two," February 1, 2009, http://livewire.amnesty.org/2009/02/02/faulty-intelligence-wanton-recklessness-or-a-combination-of-the-two/, accessed April 29, 2009. Amnesty International subsequently sent Human Rights Watch the names of 58 civilians whom it believes had been killed by drones.

[40] Human Rights Watch, "Precisely Wrong," http://www.hrw.org/en/node/84077/section/3#_ftn1.

the civilians who were shot. Even if they had not been waving a white flag, these people were civilians not taking an active part in hostilities, and therefore under the laws of war were not subject to attack.

To date, the Israeli government and IDF have denied wrongdoing for civilian deaths during the Gaza fighting, saying the military did everything possible to minimize civilian casualties. One element of this argument is that Hamas placed non-combatants in danger by hiding and engaging Israeli forces from amidst civilians, making it impossible for Israeli forces to attack without causing "collateral damage." As noted, in the 19 IDF attacks Human Rights Watch documented, selected to highlight policies that led to unlawful deaths, we found no evidence that Hamas or other Palestinian fighters were present at the time of the attack.

Another element of the Israeli argument is that the IDF warned Gazan civilians of impending military action by dropping leaflets, making telephone calls, and broadcasting announcements on local radio and television stations.[41]

International humanitarian law obliges armed forces to provide advance warnings of an attack when circumstances permit, but the warnings must be "effective." In Gaza, the IDF's warnings were too vague, often addressed generally to the "inhabitants of the area." The IDF typically dropped the leaflets from high altitudes, scattering them over wide areas; many Gaza residents told Human Rights Watch that they disregarded the leaflets because they were so numerous, widely dispersed, and imprecise. In addition, the warnings did not instruct civilians where to find safety after fleeing their homes. With the beginning of the ground offensive on January 3, the IDF warned residents to "move to city centers," but then attacked some city centers, including UN schools in urban areas where civilians had sought shelter. Ultimately, Palestinian civilians had no safe place to flee, given the strict closure of Gaza's borders, enforced by Israel, as well as by Egypt in the south.

Finally, even after warnings are issued, the laws of war require attacking forces to take all feasible precautions to avoid loss of civilian life and property. An attacking force cannot disregard its obligation to minimize civilian harm just because it has issued a warning; attacking forces may not assume that all persons remaining in an area after a warning has been issued are legitimate military targets.[42]

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[41] To view and listen to the various warnings issued by the IDF, see the Israel Ministry of Foreign Affairs website, http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm, accessed April 6, 2009.

[42] In apparent recognition that its Gaza warnings were ineffective, the IDF in July announced that future warnings would contain more specific information, such as timetables for attacks and escape routes. (Hanan Greenberg, "IDF to Give Better

Other human rights organizations documented numerous laws-of-war violations during the Israeli operation. Amnesty International's main report on the conflict documented attacks on civilians and civilian objects, indiscriminate attacks, attacks unlawfully using flechette shells, attacks on and obstruction of medical workers, and unjustified destruction of civilian infrastructure. "Much of the destruction," Amnesty International concluded, "resulted from direct attacks on civilian objects as well as indiscriminate attacks that failed to distinguish between legitimate military targets and civilian objects."[43]

Israeli and Palestinian human rights organizations documented similar laws-of-war violations. The Jerusalem-based B'Tselem has filed 20 complaints with the IDF's Military Advocate General, involving the deaths of 95 Palestinian civilians.[44] The Israeli non-governmental organization Breaking the Silence, composed of Israeli military veterans, published the testimonies of 26 unnamed reserve and regular combat soldiers who had participated in the operation.[45] The soldiers spoke about the destruction of private property without military necessity, the use of Palestinian civilians as human shields, the firing of white phosphorus munitions into populated areas, and the killings of civilians with small arms. The Public Committee Against Torture in Israel, a Jerusalem-based group, filed five complaints with Israeli authorities on incidents of human shielding and unlawful detention of Palestinians.[46]

The Gaza-based al-Mezan Center for Human Rights and Palestinian Centre for Human Rights (PCHR) each published a series of reports that looked at specific incidents as well as the broader military campaign. Al-Mezan documented what it considered willful killing of civilians, the shooting of civilians holding white flags, indiscriminate and disproportionate attacks, the use of civilians as human shields, and the targeting of medical personnel.[47] PCHR documented alleged violations that included willful killings, the destruction of civilian property, the targeting of civilians and civilian objects, the use of human shields, and

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Warnings Before Attacks," Ynet, July 29, 2009, http://www.ynetnews.com/articles/0,7340,L-3753851,00.html, accessed July 30, 2009.)

[43] "Operation 'Cast Lead': 22 Days of Death and Destruction," Amnesty International, July 2, 2009, http://www.amnesty.org/en/library/asset/MDE15/015/2009/en/8f299083-9a74-4853-86of-0563725e633a/mde150152009en.pdf, accessed March 10, 2010.

[44] Human Rights Watch interview with Noa Tal, Jerusalem, December 3, 2009, and follow-up e-mail received February 17, 2010.

[45] Breaking the Silence, "Operation Cast Lead: Soldiers Testimony from Operation Cast Lead, Gaza 2009," July 15, 2009, http://www.shovrimshtika.org/oferet/booklet_e.asp, accessed January 10, 2010.

[46] Human Rights Watch interview with Majd Bader, Jerusalem, November 29, 2009.

[47] Al-Mezan Center for Human Rights, "Cast Lead Offensive in Numbers," August 2, 2009, http://www.mezan.org/upload/8941.pdf, accessed January 12, 2010.

indiscriminate attacks.[48] The organization has presented the MAG with documentation on 450 incidents affecting 941 Palestinians.

The UN Fact-Finding Mission's report (the Goldstone report) found that Israel had committed serious violations of international human rights and humanitarian law, some of them amounting to war crimes and possibly crimes against humanity.[49]

The Goldstone report documents 36 incidents in Gaza – a selection of incidents that included indiscriminate attacks, willful killings of civilians, failure to take all feasible precautions to minimize harm to civilians, deliberate targeting of civilian objects, wanton destruction of civilian property, and collective punishment from Israeli closures of Gaza's borders.

The Goldstone report attributed Israeli laws-of-war violations to decisions by high-level decision makers:

> Taking into account the ability to plan, the means to execute plans with the most developed technology available, and statements by the Israeli military that almost no errors occurred, the Mission finds that the incidents and patterns of events considered in the report are the result of deliberate planning and policy decisions. [50]

The IDF maintains that it did everything possible to minimize civilian casualties, and that it is investigating every credible allegation of unlawful conduct. To date, the IDF has not demonstrated that those investigations are thorough or impartial.

Response by Israel

As of April 7, 2010, Israel has not investigated in a thorough and impartial manner the conduct of its forces during the hostilities or decisions by commanders that may have contributed to violations. The government has resisted domestic and international calls to create an independent commission of inquiry; all investigations have been conducted internally by the IDF.

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[48] Palestinian Centre for Human Rights, "23 Days of War, 928 Days of Closure," December 23, 2009, http://www.pchrgaza.org/files/Reports/English/pdf_spec/23-days.pdf, accessed January 12, 2010.

[49] "Report of the United Nations Fact-Finding Mission on the Gaza Conflict," September 15, 2009, http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf, accessed March 19, 2010.

[50] "Report of the United Nations Fact-Finding Mission on the Gaza Conflict," p. 24.

On the whole, the military and government claim, Israel did everything possible to minimize the impact of its military operations on civilians. They portray Hamas as fully responsible for all civilian casualties because Palestinian forces operated from residential areas and allegedly used civilians as "human shields."[51]

During and just after Israel's military operations, human rights organizations and the media began reporting on allegedly unlawful civilian deaths. Nevertheless, senior IDF officials dismissed calls for an investigation into alleged abuses. "Commanders during the fighting shouldn't be losing sleep because of the investigations," said Col. Liron Liebman, who became head of the IDF's international law department after the operation. "It's impossible not to make mistakes in such a crowded environment, under pressure." Charges of laws-of-war violations against Israeli soldiers and officers, he added, amount to "legal terrorism."[52]

Senior government officials expressed a similar view. According to Ehud Olmert, Israeli prime minister during the fighting, "[T]he soldiers and commanders who were sent on missions in Gaza must know that they are safe from various tribunals and that the State of Israel will assist them on this issue and defend them just as they bodily defended us during Operation Cast Lead."[53]

Since the cessation of major hostilities, Israeli human rights groups have been calling on the government to conduct credible investigations into both specific incidents and the policy decisions that led to civilian deaths. On January 20, 2009, eight organizations wrote a joint letter to Attorney General Meni Mazuz requesting independent and effective investigations into the allegations of unlawful conduct by the IDF. "In light of previous experience in which the obligation to conduct an investigation was not realized," the letter said, "we are submitting our request to you at an early stage so that you can establish a mechanism for investigating suspected cases of humanitarian law violations by IDF officers and soldiers." The organizations said that the investigations "must also address the legality of the actual

[51] On February 3, 2010, for example, Deputy Foreign Minister Danny Ayalon said: "All civilian casualties in Gaza during the fighting were caused because Hamas violated all the international norms and treaties." (Israel Ministry of Foreign Affairs, "Deputy FM Ayalon Replies to Motion for the Agenda Regarding the Goldstone Report,"
February 3, 2010, http://www.mfa.gov.il/MFA/About+the+Ministry/MFA+Spokesman/2010/Ayalon-replies-to-motion-regarding-Goldstone-Report-3-Feb-2010.htm, accessed April 7, 2010.)

[52] "War Crime Charges Over Gaza Offensive are 'Legal Terror,'" by Tomer Zarchin, *Haaretz*, February 19, 2009, http://www.haaretz.com/hasen/spages/1065338.html, accessed March 7, 2009. During Operation Cast Lead, head of the IDF international law department was Colonel Pnina Sharvit-Baruch.

[53] Remarks by Prime Minister Ehud Olmert to the Israeli cabinet, cabinet communiqué, January 25, 2009, http://www.mfa.gov.il/MFA/Government/Communiques/2009/Cabinet_communique_25-Jan-2009.htm, accessed May 28, 2009.

orders and directives given to forces in the field, both during their training and during the action itself."[54]

The organizations said they were submitting their request to the attorney general and not the IDF's Military Advocate General, which they called the Judge Advocate General (JAG), because "the involvement of JAG personnel and the JAG himself during stages of decision-making does not allow for the JAG's appointment as an investigating figure."

The attorney general's office responded on February 24, 2009, defending the IDF's actions in Gaza as "in line with the principles of the rules of war under international law" and rejecting the request for investigations into alleged wrongdoing. The IDF had started "operational briefings," the letter said, including some by senior officers appointed by the chief of staff.[55]

On February 4, 2009, the government released findings of the first known investigation: a probe into the deaths of three daughters and niece of a Palestinian doctor, Izzeldin Abu El-Eish. The case generated intense interest in Israel because Dr. Abu El-Eish had been providing frequent eyewitness accounts of the fighting for Israeli television programs, and he was on the phone live with a television journalist on January 16 when an IDF tank fired two shells at his Jabalya apartment, killing the four girls.[56]

The IDF said the commanders of the forces in the area, as well as the division commander, had conducted an investigation, which was approved by the head of the IDF Operations Branch and the IDF's Southern Command, commanded during the war by Maj. Gen. Yoav Galant. The investigation concluded that a unit from the Golani Infantry Brigade had acted properly by opening defensive fire after coming under sniper and mortar fire from near the doctor's home. "During this defensive fire, suspicious figures were identified in the upper level of Dr. Abu El-Eish's house and were thought to be spotters who directed the Hamas sniper and mortar fire," the IDF said. "Upon assessing the situation in the field while under heavy fire, the commander of the force gave the order to open fire on the suspicious figures.

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[54] The letter was submitted by the Association for Civil Rights in Israel (ACRI), Binkom, B'Tselem, Gisha, Hamoked Center for the Defense of the Individual, the Public Committee Against Torture in Israel, Yesh Din, and Physicians for Human Rights—Israel. See http://www.btselem.org/Download/20090120_ACRI_to_Mazuz_on_Castlead_Investigations_Eng.pdf, accessed January 20, 2010.

[55] Letter from Raz Nizri, Senior Assistant to the Attorney General, to Limor Yehuda, Association for Civil Rights in Israel, February 24, 2009, http://www.btselem.org/Download/20090224_States_Attorney_Office_to_ACRI_on_Castlead_Investigations_Eng.pdf, accessed January 20, 2010.

[56] Dr. Abu El-Eish's reporting about the deaths is viewable at http://www.youtube.com/watch?v=OnEe2N-kxJk, accessed January 20, 2010.

It is from this fire, that the three daughters of Dr. Izzeldin Abu El-Eish were killed."[57] The IDF said it was "saddened by the harm caused to the Abu El-Eish family," but it maintained that "considering the constraints of the battle scene, the threats that endangered the forces in the area, and the intensity of fighting in the area, that the forces' action and the decision to fire towards the building were reasonable."

The IDF Military Advocate General reviewed the investigation and found no grounds to open a criminal investigation.[58] Dr. Abu El-Eish maintained that no Palestinian fighters were in or on his house.[59] He told Human Rights Watch that the IDF had full control of the area around his house at the time of the attack and that he had not seen or heard any Palestinian fighters in the area at the time. The IDF did not contact him or any members of his family as part of its investigation.[60]

The Israeli government's reluctance to conduct independent investigations continued even after Israeli soldiers who had fought in Operation Cast Lead made allegations of unlawful IDF conduct. At a meeting of graduates of a military preparatory course in northern Israel on February 13, 2009, dozens of combat pilots and infantry soldiers who had fought in Gaza discussed their experiences, and the Israeli media published some of their statements that suggested permissive rules of engagement and incidents of unlawful attacks.[61]

In response to the soldiers' statements, Military Advocate General Brig. Gen. Avichai Mandelblit instructed the Criminal Investigation Division of the Military Police to investigate the claims.[62] About the investigation, IDF Chief of the General Staff Lt. Gen. Gabi Ashkenazi remarked:

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[57] "IDF Investigation Results, Dr. Abu El-Eish Residence," IDF Spokesperson, February 4, 2009, http://idfspokesperson.com/2009/02/04/idf-investigation-results-dr-abu-el-eish-residence-4-feb-2009-1708-ist/, accessed January 26, 2010.

[58] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," January 29, 2010, p. 30, http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Gaza_Operation_Investigations_Update_Jan_2010.htm, accessed February 14, 2010.

[59] "'My Daughters, They Killed Them': Doctor Shows Israelis Horrors of War," by Ben Lynfield, *The Independent*, January 19, 2009, http://www.independent.co.uk/news/world/middle-east/my-daughters-they-killed-them-doctor-shows-israelis-horror-of-war-1419286.html, accessed February 15, 2010.

[60] Human Rights Watch telephone interview with Dr. Izzeldin Abu El-Eish, March 26, 2010.

[61] The meeting was for graduates of the Yitzhak Rabin pre-military preparatory course at Oranim Academic College in Tivon. The transcript of the meeting is available in Hebrew at http://www.news1.co.il/uploadFiles/384121119976044.pdf, accessed February 15, 2010. See also Amos Harel, "IDF in Gaza: Killing Civilians, Vandalism, and Lax Rules of Engagement," *Haaretz*, March 19, 2009, http://haaretz.com/hasen/spages/1072040.html, accessed May 27, 2009; and Amos Harel, "'Shooting and Crying'," *Haaretz*, April 28, 2009, http://www.haaretz.com/hasen/spages/1072475.html (accessed May 27, 2009).

[62] The IDF Chief Advocate General Orders Investigation of Claims Made at the Rabin Preparation Center," IDF press release, March 19, 2009, http://dover.idf.il/IDF/English/Press+Releases/09/03/1902.htm, accessed May 27, 2009.

> I don't believe that soldiers serving in the IDF hurt civilians in cold blood, but we shall wait for the results of the investigation. The IDF is the most humane army in the world and operates according to the Spirit of the IDF and high moral standards of fighting. Isolated cases, if found to have taken place, will be dealt with individually.[63]

One week later, the IDF announced that it had closed the investigation because the soldiers' statements were "based on hearsay and not supported by specific personal knowledge."[64] Without explaining how it conducted its investigation, and not interviewing witnesses from Gaza, the IDF concluded that "the stories were purposely exaggerated and made extreme, in order to make a point with the participants of the conference."

Israeli Defense Minister Ehud Barak said the investigation showed that Israel possesses "the most moral army in the world." He denounced the "extensive rumors that have considerably damaged the IDF's image both at home and abroad."[65] Military Advocate General Mandelblit summed up the investigation's findings by criticizing the soldiers who had spoken out:

> It is unfortunate that none of the speakers at the conference was careful to be accurate in the depiction of his claims, and even more so that they chose to present various incidents of a severe nature, despite not personally witnessing and knowing much about them. It seems that it will be difficult to evaluate the damage done to the image and morals of the IDF and its soldiers, who had participated in Operation Cast Lead, in Israel and the world.[66]

In early November 2009, however, the Israeli government contradicted the IDF's conclusions by announcing that the military police had opened a criminal investigation "following published reports relating to the seminar at the Yitzhak Rabin Preparatory Academy."[67] The

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[63] "The IDF Chief of the General Staff Refers to Claims Made at the Rabin Preparation Center," IDF press release, March 23, 2009, http://dover.idf.il/IDF/English/Press+Releases/09/03/2303.htm, accessed May 27, 2009.

[64] "Military Police Investigation Concerning Statements Made at the Rabin Center: Based on Hearsay," IDF press release, March 30, 2009, http://dover.idf.il/IDF/English/Press+Releases/09/03/3001.htm, accessed May 27, 2009.

[65] "Barak Welcomes IDF Decision to End Gaza Misconduct Probe," by Amos Harel, *Haaretz*, March 31, 2009, http://www.haaretz.com/hasen/spages/1075221.html, accessed July 13, 2009.

[66] "Military Police Investigation Concerning Statements Made at the Rabin Center: Based on Hearsay," IDF press release, March 30, 2009, http://dover.idf.il/IDF/English/Press+Releases/09/03/3001.htm, accessed May 27, 2009.

[67] Ministry of Foreign Affairs, "Examination of Allegations by the Israel Defense Forces," November 1, 2009. The document is apparently not available on the ministry's website but can be found, dated October 29, 2009 at http://www.reliefweb.int/rw/rwb.nsf/db900sid/JBRN-7XBGXP?OpenDocument&RSS20&RSS20=FS, accessed March 21, 2010.

government did not specify which incident or incidents from the seminar were under investigation. According to Israel, criminal investigations take place when there is "reasonable suspicion of criminal activity."[68]

In February 2010, IDF lawyers told Human Rights Watch that military police had closed the investigation into incidents mentioned at the seminar because the soldiers' accounts were based on hearsay. It remains unclear why a criminal investigation was opened, and into which specific incidents, after the IDF had so adamantly rejected the allegations as false.

On April 22, 2009, the IDF announced the results of its "investigation into central claims and issues in Operation Cast Lead." Five command investigations headed by colonels who were not "a direct part of the chain of command of the operation" looked at five distinct issues: attacks in which the military fired upon United Nations facilities; attacks on medical facilities and crews; claims of harm to civilians not involved in hostilities; the use of white phosphorous munitions; and the destruction of civilian structures. The command investigations into attacks on UN facilities, medical facilities, and civilians not involved in hostilities involved military examinations of specific incidents. The command investigations into white phosphorus and the destruction of civilian structures involved a military examination "from a general perspective" and did not look at specific incidents.[69] The IDF concluded for all five issues that:

> [T]hroughout 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.[70]

The results of the investigations ran counter to the findings of Human Rights Watch, other human rights investigations and the UN fact-finding mission. The IDF's conclusion, for example, that "no phosphorus munitions were used on built-up areas" was contradicted by

[68] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 18.

[69] Ministry of Foreign Affairs, "Examination of Allegations by the Israel Defense Forces," November 1, 2009.

[70] "IDF: Conclusions of Investigations into Central Claims and Issues in Operation Cast Lead," IDF press release, April 22, 2009, http://dover.idf.il/IDF/English/Press+Releases/09/4/2201.htm, accessed May 28, 2009.

the numerous white phosphorous artillery shells, canister liners, and burnt felt wedges containing white phosphorus that Human Rights Watch, Amnesty International and international journalists found on city streets and apartment roofs, in residential courtyards, and at a United Nations school after the fighting stopped. Spent artillery shells that delivered white phosphorus and burn marks from large fires indicate that the al-Quds Hospital and headquarters of the United Nations Relief and Works Agency for Palestinian Refugees (UNRWA) in Gaza City were both struck with the incendiary munitions.[71] Human Rights Watch also documented seven incidents where Israeli soldiers fired on civilians with small arms, killing 11 civilians—including five women and four children—and wounding at least another eight. In each of these incidents, the evidence strongly indicates that Israeli soldiers failed to take all feasible precautions to distinguish between civilians and combatants before carrying out the attack, and in some cases they might have deliberately fired on civilians.[72]

Although the officers who led the investigations were said to be outside the direct chain of command during the operation, the thoroughness and impartiality of the investigations remained in doubt. Without access to Gaza, the military investigators did not interview Palestinian victims and witnesses to the alleged violations. The officers who headed the investigations, all colonels appointed by IDF Chief of Staff Ashkenazi, were of insufficient rank to address policies set by senior commanders that potentially contravened international humanitarian law, such as the broad set of targeting choices and the decisions to use white phosphorus munitions and heavy artillery in densely populated areas.[73]

The IDF contended that the investigating officers acted independently. All summoned military personnel were required to cooperate with the investigations, the IDF said, and soldiers interviewed did not have the right to remain silent, as opposed to the practice in criminal investigations. It said the military advocate general would review the investigations results and determine whether "additional checks need to be done or if there is the basis for opening another type of investigation."[74]

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[71] Human Rights Watch, "Rain of Fire,"March 25, 2009, and Amnesty International, "Operation 'Cast Lead': 22 Days of Death and Destruction," July 2, 2009.

[72] Human Rights Watch, "White Flag Deaths," August 13, 2009, http://www.hrw.org/en/reports/2009/08/13/white-flag-deaths.

[73] The five colonels who headed the investigation were: Col. Itzik Turgeman, Col. Erez Katz, Col. Tamir Yedai, Col. Shai Alkalai, and Col. Adam Zusman.

[74] Israeli Ministry of Foreign Affairs, IDF: Conclusions of Investigations into Central Claims and Issues in Operation Cast Lead," April 22, 2009, and Israeli Ministry of Foreign Affairs, "Examination of Allegations by the Israel Defense Forces," November 1, 2009.

On May 4, 2009, the findings of a UN Board of Inquiry looking into attacks on UN facilities and personnel became public. UN Secretary-General Ban Ki-moon had formed the board in February to investigate nine incidents in Gaza that affected UN personnel, property or operations. Israel allowed the board entry into Israel and provided some information on the condition of confidentiality. The board submitted its report to the secretary-general on April 21 and he passed a 23-page summary prepared by his office to the Security Council on May 4, along with the report's verbatim recommendations. The full 184-page report has not been made public, as with all UN Boards of Inquiry.

The board found that in seven of the nine incidents it investigated, the death, injuries and damage involved were caused by military actions of the IDF. One incident was caused by a Palestinian armed group, most likely Hamas. In one incident the board was unable to reach a determination.

In the seven incidents caused by the IDF, damages to UNRWA totaled more than US$10.4 million and damages to the UN Special Coordinator Office for the Middle East (UNSC) more than $750,000. The attack by Palestinian fighters caused some $29,000 in damage. The board concluded that: "IDF actions involved varying degrees of negligence or recklessness with regard to United Nations premises and to the safety of United Nations staff and other civilians within those premises, with consequent deaths, injuries, and extensive physical damage and loss of property."[75]

In January 2010, Israel paid the United Nations US$10.5 million for the losses that the organization had sustained in the incidents investigated by the Board of Inquiry.[76] An Israeli diplomat at the UN said Israel made an *ex gratia* payment, meaning voluntarily and without recognition of liability.[77] Hamas is not known to have paid the US$29,000 that the board said it caused in damage.

A key recommendation of the UN board was for a wider investigation into alleged incidents of violations of international law. "Where civilians have been killed and there are allegations of violations of international humanitarian law," the report said, "there should be thorough

[75] Secretary-General's Summary of the Report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009, May 4, 2009, http://www.unhcr.org/refworld/docid/4a292c8dd.html, accessed February 28, 2010.

[76] "Report of the Secretary-General of the status of implementation of paragraph 3 of Council resolution S-12/1 B," UN Secretary-General report to the Human Rights Council thirteenth session, March 19, 2010, http://unispal.un.org/UNISPAL.nsf/47D4E277B48D9D3685256DDC00612265/3F688934C5712FB8852576EF005986E7, accessed March 25, 2010.

[77] "Israel Pays U.N. $10.5 Million Over Gaza Damage," by Patrick Worsnip, Reuters, January 22, 2010, http://ca.news.yahoo.com/s/reuters/100122/world/international_us_israel_un_gaza_2, accessed January 25, 2010.

investigations, full explanations, and, where required, accountability." The report recommended that these incidents be "investigated as part of an impartial inquiry mandated, and adequately resourced, to investigate allegations of violations of international humanitarian law in Gaza and southern Israel by the IDF and by Hamas and other Palestinian militants." Secretary-General Ban rejected this recommendation, saying, "It is not my intention to establish any further Inquiry."[78]

In July 2009 another group of IDF soldiers spoke out about the abuses they had seen during Operation Cast Lead. The Israeli organization Breaking the Silence, composed of Israeli military veterans who served in Gaza and the West Bank, published the testimonies of 26 unnamed reserve and regular combat soldiers who had participated in the Operation Cast Lead.[79] The soldiers spoke about the destruction of private property without military necessity, the use of Palestinian civilians as human shields, the firing of white phosphorus munitions into populated areas, and the killings of civilians with small arms. Two soldiers from the Givati Brigade who served in the Zeitoun neighborhood of Gaza City, for example, explained how soldiers shot and killed an elderly Palestinian man who had approached an IDF position in a house at night. The company commander refused to give orders for deterrent fire when the man was first sighted walking on an empty street with a flashlight between 150 and 200 meters from the house, they said, so soldiers in accordance with their rules of engagement shot and killed the man when he reached within 25 meters.

The IDF disputed the report, saying that many of the testimonies are "based on hearsay and word of mouth."[80] However, it never specified which testimonies fit this description. The foreign ministry approached at least one of Breaking the Silence's funders, the Dutch government, to request that it cease its support for the group.[81]

On July 29, the Israeli Ministry of Foreign Affairs released its first major findings on the fighting – a 163-page report released only in English, which focused largely on the context of

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[78] Press conference of UN Secretary-General Ban Ki-moon, New York, May 5, 2009, http://www.un.org/News/Press/docs/2009/sgsm12224.doc.htm, accessed January 18, 2010.

[79] Breaking the Silence, "Operation Cast Lead: Soldiers Testimony from Operation Cast Lead, Gaza 2009," July 15, 2009, http://www.shovrimshtika.org/oferet/booklet_e.asp, accessed July 23, 2009. SInce 2004, Breaking the Silence has collected testimonies from more than 650 soldiers who served in the occupied Palestinian territories since the start of the second Intifada in September 2000.

[80] Israel Ministry of Foreign Affairs government communiqué, "Reaction to 'Breaking the Silence' Human Rights Report," July 15, 2009, http://www.mfa.gov.il/MFA/Government/Communiques/2009/Reaction_to_Breaking_Silence_report_15_Jul_2009.htm, accessed July 29, 2009.

[81] "Israel Prepares for Goldstone Report," by Herb Keinon, *Jerusalem Post*, July 27, 2009, http://www.jpost.com/servlet/Satellite?cid=1248277897030&pagename=JPost%2FJPArticle%2FPrinter, accessed August 3, 2009.

the operation and Israel's legal justifications for carrying it out.[82] The report addressed the allegations of soldier misconduct during the hostilities, saying the IDF had opened investigations into roughly 100 complaints, resulting in 13 criminal investigations by the military police. The report did not list the cases.

Approximately 80 of the cases characterized as investigations were actually IDF "operational debriefings" – *tahkir mivza'i* in Hebrew. These are low-level internal military reviews conducted by officers in the chain of command of the unit in question.[83] Introduced in September 2000 as the default first-level of military examination after alleged IDF misconduct, operational debriefings are an inappropriate mechanism to investigate alleged violations of international humanitarian law.[84] They rely primarily on accounts of the soldiers involved in an incident without statements or evidence from victims and non-military witnesses. The Military Advocate General reviews the findings of operational debriefings, and he or she may order the opening of a criminal investigation, but the debriefing findings cannot be disclosed or used as evidence in a trial. The decisions of the Military Advocate General are subject to review by the Attorney General and the Israeli Supreme Court but, according to Israeli human rights organizations, such reviews rarely take place.[85]

On September 17, 2009, the Ministry of Foreign Affairs released a "status report" on Israeli investigations into Operation Cast Lead that updated the figures.[86] The ministry said the Military Advocate General was examining the five "command investigations" ordered by Chief of Staff Gen. Ashkenazi to determine whether criminal investigations were required. Within these five thematic investigations, the IDF said it had "examined" 20 specific incidents, four of which were to appear in the Goldstone report, which was released on September 15. In addition, the ministry said, 80 other incidents have been "investigated,"

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[82] Israeli Ministry of Foreign Affairs, "The Operation in Gaza: Factual and Legal Aspects," July 29, 2009, http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Operation_in_Gaza-Factual_and_Legal_Aspects.htm, accessed July 30, 2009.

[83] Article 539(A) of Israel's Military Justice Law describes operational debriefings as "a procedure held by the army, in the army" that is "conducted according to army orders and regulations." The debriefings are to be conducted "with respect to an incident that has taken place during the course of training or operational activity."

[84] For details on the deficiencies of operational debriefings as an investigative mechanism into laws-of-war violations, see Human Rights Watch report, "Promoting Impunity: the Israeli Military's Failure to Investigate Wrongdoing," June 21, 2005, http://www.hrw.org/en/reports/2005/06/21/promoting-impunity. See also Yesh Din, "Exceptions: Prosecution of IDF Soldiers during and after the Second Intifada, 2000-2007," September 2008, http://www.yesh-din.org/sys/images/File/Exceptions[Eng][1].pdf, accessed January 26, 2010.

[85] According to B'Tselem, for example, an attorney general examination of a MAG decision is "rare and occurs only in extremely exceptional cases." (B'Tselem, "Israel's Report to the UN Misstates the Truth," February 4, 2010, http://www.btselem.org/English/Gaza_Strip/20100204_Israels_Report_to_UN.asp, accessed February 28, 2010.)

[86] "Israeli Investigations into Allegations Regarding the Gaza Operation – Status Report," September 17, 2009, http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Israeli_investigations_Gaza_Operation-Status_Report-Sept_2009.htm, accessed April 7, 2010.

including another four contained in the Goldstone report. From the more than 100 investigations, the ministry said, the Military Advocate General had promptly opened 15 criminal investigations. They opened eight more later, including alleged shootings at civilians carrying white flags and firing flechette munitions towards civilians or civilian objects. In total, it said, military police had opened 23 criminal investigations, seven of which the Goldstone report also addressed.

When the Goldstone report was released on September 15, Israel criticized the report as "a political assault directed against Israel and against every State forced to confront terrorist threats."[87] Some top officials took an even harder line, with Finance Minister Yuval Steinitz calling Goldstone, who is Jewish with longstanding ties to Israel, an "anti-Semite."[88] Israeli President Shimon Peres in November called Goldstone "a small man, devoid of any sense of justice, a technocrat with no real understanding of jurisprudence."[89]

Israel's Ministerial Committee on National Security discussed the Goldstone report on October 20, and tasked Minister of Justice Yaakov Neeman with establishing a unit to deal with legal proceedings against Israel or its citizens overseas. Prime Minister Netanyahu also instructed the relevant government ministries to explore ways of changing the laws of war "in keeping with the spread of terrorism around the world."[90] Regarding the Goldstone report, Netanyahu said:

> Our challenge is to delegitimize the continuous attempt to delegitimize the State of Israel. The most important arena where we need to act in this context is in the arena of public opinion, which is crucial in the democratic world. We must continue to debunk this lie that is spreading with the help of the Goldstone report.[91]

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[87] Israel Ministry of Foreign Affairs, "Initial Response to Report of the Fact Finding Mission on Gaza Established Pursuant to Resolutions S-9/1 of the Human Rights Council," September 24, 2009, http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Initial-response-goldstone-report-24-Sep-2009.htm, accessed January 25, 2010.

[88] "Israel Finance Minister: Goldstone is "Anti-Semite," by Stewart Ain, *Jewish Weekly*, September 15, 2009, http://www.thejewishweek.com/viewArticle/c40_a16771/News/Israel.html, accessed January 25, 2010.

[89] "Peres: Goldstone is a Small Man Out to Hurt Israel," by Shuki Sadeh, *Haaretz*, November 12, 2009, http://www.haaretz.com/hasen/spages/1127695.html, accessed January 25, 2010.

[90] Prime Minister's Office, "Ministerial Committee on National Security," October 20, 2009, http://www.pmo.gov.il/PMOEng/Communication/Spokesman/2009/10/spokevaada201009.htm, accessed January 25, 2010. See also "Israel Prepares to Fight War Crimes Trials after Goldstone Gaza Report," by Barak David, *Haaretz*, October 20, 2009, http://www.haaretz.com/hasen/spages/1122327.html, accessed January 20, 2010.

[91] Prime Minister's Office, "Ministerial Committee on National Security," October 20, 2009.

A public debate ensued in Israel over how to respond to the Goldstone report. Some government officials and prominent individuals called for an independent Israeli investigation. Attorney General Meni Mazuz reportedly proposed a commission of inquiry, as did Deputy Prime Minister Dan Meridor and at least six members of the Knesset. According to media reports, Minister of Defense Ehud Barak and IDF Chief of Staff Ashkenazi have strongly opposed an outside review.[92] "There is no need for a committee of inquiry," Minister Barak reportedly said. "The Israeli military knows to examine itself better than anyone else."[93]

On November 1, the Ministry of Foreign Affairs provided another update on the various military investigations. The military police investigations unit was investigating 27 incidents, the ministry said, and the IDF was still examining 27 others on the operational level. The IDF had completed 45 operational debriefings and determined that "further measures were not necessary."[94]

The ministry gave some details on disciplinary measures taken against soldiers. In one case, a soldier was "prosecuted in a disciplinary hearing" for the unlawful use of a weapon because of unauthorized firing at a UN convoy. In another case, a colonel and lieutenant colonel were "prosecuted in a disciplinary hearing" for firing artillery in violation of military orders (no casualties resulted from the attack). The IDF later reported that this case involved the artillery shelling of the UNRWA headquarters in the Tel al-Hawa neighborhood of Gaza City on January 15.[95]

In addition, the ministry said, based on complaints from human rights organizations and others, the IDF was looking at about 100 other incidents, about three-quarters of them at the operational level (operational debriefings). Fourteen of the cases went straight to the military police, including "allegations of looting, use of civilians as human shields, violent treatment of detainees, maltreatment of detainees, and an investigation that was opened following published reports relating to the seminar at the Yitzhak Rabin Preparatory Academy." Three of these investigations produced no findings because the complainants refused to give

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[92] "Government Likely to Review IDF's Cast Lead Probe," by Herb Keinon, *Jerusalem Post*, December 29, 2009, http://www.jpost.com/servlet/Satellite?cid=1261364530815&pagename=JPost%2FJPArticle%2FShowFull, accessed January 20, 2010; "Kadima MK Calls for Cast Lead Probe," *Jerusalem Post*, October 18, 2009, http://www.jpost.com/servlet/Satellite?cid=1255694833213&pagename=JPArticle%2FShowFull, accessed January 20, 2010; "Deputy PM to Haaretz: Israel Must Probe Gaza War," by Gidi Weitz, *Haaretz*, October 23, 2009, http://www.haaretz.com/hasen/spages/1122551.html, accessed January 20, 2010; and "An Investigation to Serve Foreign Policy," by Tova Tzimuki and Itamar Eichner, *Yediot Ahronoth*, December 28, 2009.

[93] "Israel Prepares to Fight War Crimes Trials after Goldstone Gaza Report," by Barak David, *Haaretz*, October 20, 2009.

[94] Ministry of Foreign Affairs, "Examination of Allegations by the Israel Defense Forces," November 1, 2009.

[95] Ibid.

testimony. One case was closed. One case, the credit card theft, led to the conviction and imprisonment of a sergeant for seven-and-a-half months and demotion to private for looting—the only conviction thus far from Operation Cast Lead.[96]

Four days later, on November 5, the UN General Assembly passed Resolution 64/10, which endorsed the Goldstone report.[97] Most importantly, the resolution called on Israel and "the Palestinian side" to undertake, within three months, "independent, credible investigations" that are "in conformity with international standards" into the allegations of laws-of-war violations. The resolution also requested the UN secretary-general to report back to the General Assembly within three months on implementation of the resolution, with a view to considering further action by relevant UN organs and bodies.

Human Rights Watch called on Secretary-General Ban Ki-moon to present a report that went beyond a recitation of the parties' claims and independently evaluates whether they have in fact undertaken independent, impartial and credible investigations. "A report that merely transmits information from the parties would not advance discussions on this crucial issue and would fail to satisfy the General Assembly's request," Human Rights Watch said.[98]

That same day, the Israeli Ministry of Foreign Affairs released further information about IDF military investigations. It said that the IDF had examined or was examining 128 incidents. Twenty-five of these were part of the five thematic command investigations announced on April 22. The results of these investigations were with the Military Advocate General, who was to present his findings to the Attorney General.

Of the remaining 103 cases, the IDF closed 48 of them because "there was no basis for suspecting any violation of the law." The rest of the cases were either still being examined (operational debriefings) or had been forwarded to the military police for criminal investigations. Twenty-eight cases were still being examined and 27 were under criminal investigation, with the one conviction thus far.[99]

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[96] The soldier identified only as "A.K." was arrested on May 7, 2009 and sentenced on August 11, 2009 to 7.5 months in prison and two years on probation. (*IDF Military Prosecutor v. Sergeant A.K.*, S/153/09, August 11, 2009, Presiding Judge Lt. Col. Yaron Levi.)

[97] United Nations General Assembly Resolution 64/10, http://unispal.un.org/UNISPAL.NSF/0/C00AAE566F6F9D7485257664004CFF12, accessed March 10, 2010.

[98] Human Rights Watch, "Letter to Ban Ki-moon on the General Assembly resolution of post-fact finding Investigations in Gaza," November 23, 2009, http://www.hrw.org/en/news/2009/11/23/letter-ban-ki-moon-general-assembly-resolution-post-fact-finding-investigations-gaza.

[99] Israeli Ministry of Foreign Affairs, "Status of IDF Investigations of Gaza Incidents," November 5, 2009, http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Examination_allegations_by_IDF_Oct_2009.htm, accessed January 20, 2010.

On November 11, B'Tselem said it had confirmed 14 investigations by the military police, even though the military police and MAG had not provided the full list.[100] According to B'Tselem, six incidents involved soldiers allegedly firing at Palestinians holding white flags, killing nine civilians; two incidents involved soldiers allegedly firing flechette shells at civilians, killing nine; and one incident involved soldiers allegedly firing a white phosphorous shell at a home, killing six persons, including two minors, and two additional family members who were subsequently killed by small-arms fire. B'Tselem also said it knew of four investigations into the IDF's alleged use of civilians as human shields.[101]

On November 30, a coalition of Israeli human rights groups confirmed that at least 21 cases submitted to the Israeli authorities by human rights organizations were under investigation. Complaints on individual cases had been submitted by B'Tselem, Physicians for Human Rights-Israel, and the Al Mezan Center for Human Rights.[102] The IDF had also taken up some of the cases reported by Human Rights Watch. On October 7, military police investigators requested Human Rights Watch's assistance in establishing contact with witnesses in three apparently unlawful killings, all of which were among those documented in the Human Rights Watch report *White Flag Deaths: Killings of Palestinian Civilians during Operation Cast Lead*.[103] After consulting with the persons in question, Human Rights Watch facilitated the contact and six of these witnesses gave statements to military police investigators at Israel's Erez crossing with Gaza. The IDF did not allow witnesses to bring an attorney or have other representation while giving their statements.

A source with direct knowledge of the military police investigations who wished to remain unnamed, told Human Rights Watch that the military police criminal investigations unit had established a special team under the Military Police Southern Unit in early October to address allegations of Israeli laws-of-war violations in Gaza.[104] Based in Be'er Sheva, the team comprised more than a dozen investigators, including at least six officers. They were broken into four teams, three of which talked with IDF soldiers and commanders while the

[100] B'Tselem, "Military Investigations of Harm to Civilians in Operation Cast Lead are Insufficient," November 11, 2009, http://www.btselem.org/English/Gaza_Strip/20091111_IMP_Investigations_of_Cast_Lead_Operation.asp, accessed March 21, 2010.

[101] B'Tselem, "Military Investigations into Operation Cast Lead Focus on Individual Soldiers, Not Unlawful Policies, November 4, 2009, http://www.btselem.org/English/Press_Releases/20091104.asp, accessed March 21, 2010.

[102] Letter to the German Cabinet, HaMoked Center for the Defense of the Individual, B'Tselem, and Physicians for Human Rights-Israel, November 30, 2009.

[103] The cases were the killing of Ibtisam al-Qanu, age 40, Nada al-Marrdi, age 5, and Ibrahim Mu'in Juha, age 14. See Human Rights Watch, "White Flag Deaths: Killing of Palestinian Civilians during Operation Cast Lead," http://www.hrw.org/en/reports/2009/08/13/white-flag-deaths.

[104] Human Rights Watch interview, Jerusalem, November 2009.

other talked with Palestinians who were summoned to Erez. The team was investigating 25 cases, the source said, and would conclude its work by mid-December.

As the three-month deadline set by the UN General Assembly resolution for impartial investigations approached, Israeli human rights organizations reiterated their concern that the government would not conduct a serious investigation. On January 26, nine of the major groups issued a common statement that called on the government to create an independent and impartial investigation mechanism. In a letter to Prime Minister Netanyahu and members of his cabinet, the organizations said that the military's internal examination "does not satisfy Israel's obligations to investigate."[105] The examinations and investigations look at "deviations from orders," the letter said. However, most of the harm to civilians "was a result of policies determined at the senior government and army levels, with the approval of the Military Advocate-General."

Three days later, on January 29, 2010, Israel released its most detailed information to date about investigations—a 46-page report entitled "Gaza Operation Investigations: An Update."[106] Half of the report presents an overview of Israel's military justice system and how it compares to systems in the United Kingdom, United States, Australia, and Canada. Most of the rest addresses the various military debriefings and investigations conducted into allegedly unlawful conduct in Operation Cast Lead.

The report provides updates on the five thematic command investigations announced on April 22, the results of which were reviewed by the Military Advocate General. In total, the five investigations looked at 30 specific incidents. For 27 of these incidents, the MAG found no basis to open a criminal investigation.

Regarding the investigation into harm to civilians not involved in hostilities, the IDF examined seven separate incidents. In four of the incidents, the MAG found no grounds to open a criminal investigation.[107] In three of the incidents, investigations are ongoing.[108]

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[105] Adalah, ACRI, B'Tselem, Gisha, HaMoked, Physicians for Human Rights—Israel, Public Committee Against Torture in Israel, Yesh Din, Rabbis for Human Rights, "Human Rights Community to the Prime Minister: Time is Running Out. Establish Independent Inquiry into Operation Cast Lead," January 26, 2010, http://www.gisha.org/index.php?intLanguage=2&intItemId=1687&intSiteSN=113, accessed March 21, 2010.

[106] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 27.

[107] The four closed incidents are: the attack on Hamas official Nizar Ri'an, which allegedly killed 15 other individuals; the attack on the Al-Rabat Mosque; the December 29 attack on a truck carrying oxygen canisters that killed 9 individuals (as documented in Human Rights Watch's report "Presicely Wrong"); and the attack on the home of Dr. Abu El-Aish, killing his three daughters and one niece.

[108] The three incidents still under review by operational debriefings are the attack on the Imad Aq'al Mosque; the strike on the Al-Daiya family home; and the attack on the Al-Maquadme Mosque.

Regarding attacks in which the military fired upon UN facilities, 13 incidents were examined and reviewed by the MAG, which found no basis to open criminal investigations. In two of the incidents, the MAG affirmed the decisions to pursue disciplinary proceedings against IDF personnel. One of those incidents involved damage to the UNRWA Headquarters in the Tel al-Hawa neighborhood of Gaza City on January 15, when two officers "fired several artillery shells in violation of the rules of engagement prohibiting the use of such artillery near populated areas."[109] A brigadier general and a colonel, identified in the media as Eyal Eisenberg and former Givati Brigade commander Ilan Malka, respectively, were reprimanded for "exceeding their authority in a manner that jeopardized the lives of others."[110]

Regarding attacks on medical crews and facilities, the IDF examined 10 incidents, and the MAG found no basis to open any criminal investigations.

Regarding the destruction of private property and infrastructure, the IDF examined the overall allegation and not specific incidents. The MAG determined that "the findings of the special investigation are consistent with Israel's obligations under the Laws of Armed Conflict."[111] It noted however, that the investigation was "limited in scope and dealt with overall issues" so that "specific incidents reported after the conclusion of the special command investigation have been referred to individual command investigations."

Regarding the use of white phosphorus munitions, the IDF looked at the use of white phosphorus as a whole rather than specific incidents, and the MAG found "no grounds to take disciplinary or other measures for the IDF's use of weapons containing white phosphorus, which involved no violation of the Law of Armed Conflict." However, the report notes that the MAG's opinion "did not address a number of specific complaints that were received after the investigation concluded and which are being investigated separately."[112]

It remains unclear why the command investigation did not examine any of the six incidents documented in Human Rights Watch's report on white phosphorus, *Rain of Fire*, which was published on March 25, 2009, nearly one month before the command investigation's results became public. Human Rights Watch first informed the IDF of the six cases on February 1,

[109] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 31.

[110] "Israel Rebukes 2 for U.N. Gaza Compound Shelling," by Isabel Kershner, *New York Times*, February 2, 2010, http://www.nytimes.com/2010/02/02/world/middleeast/02mideast.html, accessed February 14, 2010.

[111] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 32.

[112] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 33.

2009, including dates and GPS coordinates, when it asked the IDF for more information about the incidents.[113]

Based on recommendations from the five command investigations, Chief of Staff Ashkenazi reportedly "ordered the IDF to implement lessons learned on a broad range of matters, directing that certain standing orders be highlighted or clarified, establishing further guidelines on the use of various munitions, and instructing that steps be taken to improve coordination with humanitarian organizations and entities."[114] The report provided no details on concrete changes to IDF policy.

According to the report, the MAG also recommended that the IDF Chief of Staff establish a sixth command investigation to assess certain incidents raised in the Goldstone report. Lt. Gen. Ashkenazi did this on November 10, 2009, and appointed an unnamed colonel who the IDF said was not directly involved with the incidents in question. Three cases are under review: the attack on the home of the al-Samouni family in the Zeitoun neighborhood of Gaza City on January 5, in which more than 20 civilians were reportedly killed and Israeli forces allegedly blocked access for medical crews;[115] the alleged mistreatment of Palestinian detainees;[116] and the attack on the Al-Maquadme Mosque.[117] The attack on the al-Samouni family home was known since January 7, 2009, when the International Committee of the Red Cross publicly criticized the IDF's denial of medical access to the wounded and dead.[118]

In addition, the report said the IDF had opened command investigations (operational debriefings) into approximately 90 other incidents, generally involving allegations of civilian injuries or deaths and the destruction of civilian property.[119] The IDF had already completed 45 of these command investigations, the report said. The MAG referred seven incidents for

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[113] See Human Rights Watch letter to Brig. Gen. Avi Benayahu, IDF Spokesperson Unit, February 1, 2009, appendix to Human Rights Watch report "Rain of Fire," http://www.hrw.org/en/node/81726/section/9.

[114] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 30.

[115] "UN Fact Finding Report on the Gaza Conflict," pp. 161-162. According to Israel's report, "additional allegations" related to the al-Samouni family had already been referred for criminal investigation. ("Gaza Operation Investigations: An Update," footnote 109.)

[116] "UN Fact Finding Report on the Gaza Conflict," pp. 232-236.

[117] "UN Fact Finding Report on the Gaza Conflict," pp. 184-185. A command investigation first determined that the IDF had not struck the Al-Maquadme Mosque during a military operation but, after reviewing the findings of the investigation together with media accounts and NGO reports, the MAG recommended a new command investigation.

[118] International Committee of the Red Cross, "Gaza: ICRC Demands Urgent Access to Wounded as Israeli Army Fails to Assist Wounded Palestinians," January 8, 2009, http://www.icrc.org/web/eng/siteengo.nsf/htmlall/palestine-news-080109?opendocument, accessed February 15, 2010. When medical crews finally reached the al-Samouni house, the ICRC said, they found at least 12 corpses lying on mattresses, as well as four small children next to their dead mothers. According to the ICRC, "the Israeli military failed to meet its obligation under international humanitarian law to care for and evacuate the wounded."

[119] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 34.

criminal investigations. In the other 38 incidents, the MAG found "no reasonable suspicion of a violation of the Law of Armed Conflict."[120] IDF inquiries into the remaining 45 incidents are ongoing. The report did not list the cases or explain why a precise number was unavailable.

According to the report, the IDF had opened 36 criminal investigations. In these cases, the MAG determined that "the nature of the alleged incidents and/or the evidentiary record raised a reasonable suspicion that allegedly criminal behavior occurred."[121] The report did not list the cases.[122]

From the 36 criminal investigations opened thus far, 19 incidents involved "alleged shootings towards civilians." The Military Advocate General referred 12 of these incidents directly for criminal investigation, while seven of them were referred after the MAG reviewed the findings from the operational debriefing and concluded that there was a reasonable suspicion of criminal activity. The remaining 17 incidents involved allegations of using civilians as human shields, mistreatment of detainees and civilians, and pillage and theft. To date, the report said, IDF investigators had taken testimony from almost 100 Palestinian complainants and witnesses, along with roughly 500 Israeli "soldiers and commanders."

From the 36 criminal investigations, one had led to the conviction of a soldier—the credit card theft case. The MAG had also closed seven of the investigations without charges because "the complainants refused to give testimony and/or there was insufficient evidence of a criminal violation."[123] The remaining 28 criminal investigations were ongoing.

On March 11, the IDF military prosecutor announced that criminal investigations had led to indictments against two staff sergeants for ordering a nine-year-old Palestinian boy to open bags that the soldiers suspected were booby-trapped with explosives.[124] The trial against the two reservists from the Givati Brigade began on March 24 at a military court of the IDF

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[120] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 35.

[121] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 35.

[122] B'Tselem has posted a list of 19 incidents it believes are under criminal investigation. See http://www.btselem.org/English/Gaza_Strip/20091227_Updated_list_of_Military_Police_investigations_into_Castlead_violations.asp, accessed March 18, 2010.

[123] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 36.

[124] "Israel Charges Two Soldiers in Gaza War Case," by Isabel Kershner, *New York Times*, March 11, 2010, http://www.nytimes.com/2010/03/12/world/middleeast/12israel.html, accessed March 18, 2010. According to Al Jazeera, the victim is Majed al-Rubah from the Tal al-Hawa neighborhood of Gaza City and the incident occurred on January 15, 2009. ("Gaza 'Human Shield' Case in Court," Al Jazeera English, March 14, 2010, http://english.aljazeera.net/news/middleeast/2010/03/201031411164982528 8.html, accessed March 18, 2010.) The website Ynet also published the testimony of the child, available at http://www.ynetnews.com/articles/0,7340,L-3861676,00.html, accessed March 24, 2010.

southern command.[125] The soldiers are reportedly charged with conduct unbecoming (a disciplinary charge) and exceeding authority in a way to endanger life or health (which carries a maximum penalty of three years in prison).

The report also addresses the 36 incidents of alleged unlawful conduct by the IDF raised in the Goldstone report. The IDF was already investigating 22 of these incidents when the Goldstone report came out, the report says.[126] The MAG referred the additional 12 cases for operational debriefings when the report became available.

Eleven incidents from the Goldstone report were the subject of ongoing criminal investigations, the report said. Two had already been concluded with no suspicion of criminal behavior. Seven incidents were examined as part of the five command investigations, and the rest were subject to operational debriefings.

The report highlights four cases in the Goldstone report to claim that these incidents presented no basis for criminal investigations.[127] Human Rights Watch has not published findings on these four incidents but in one of the cases the military's investigation apparently missed an important piece of evidence – remains of an aerial bomb found in the al-Badr flour mill outside Jabalya. These remnants contradict Israel's claim that the IDF only targeted the mill with tank shells and not from the air.

According to the Goldstone report, the IDF bombed the mill from the air in a deliberate attempt to damage civilian infrastructure. Israel said its investigation concluded that the mill constituted a legitimate military target because of Hamas activity in the area. It found that the flour mill "was struck by tank shells during combat" but was not "attacked from the air using precise munitions." The report asserted that photographs taken after the incident "do not show structural damage consistent with an air attack."[128]

However, video footage taken by the mill owners after the attack and obtained by Human Rights Watch shows the apparent remains of an Israeli MK-82 500-pound aerial bomb in the

[125] "Soldier Accused of Endangering Gaza Boy: I Feel Betrayed," by Hanan Greenberg, Ynet, March 24, 2010, http://www.ynetnews.com/Ext/Comp/ArticleLayout/CdaArticlePrintPreview/1,2506,L-3867539,00.html, accessed March 24, 2010, and "Israeli Soldiers on Trial for Misconduct in Gaza War," Agence France-Presse, March 24, 2010.

[126] The report states that Israel was able to identify only 34 incidents in the UN report. (Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," footnote 114.)

[127] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 37.

[128] Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update," p. 43.

damaged mill.[129] Furthermore, UN de-miners told Human Rights Watch that they had visited the mill on February 11, 2009, and found the front half of a 500-pound Mk-82 aircraft bomb on an upper floor.[130]

The Israeli report did not address the remaining 30 cases documented in the Goldstone report.

On February 4, 2010, the day before the deadline set by the UN General Assembly, the IDF Military Advocate General's office met Human Rights Watch. The IDF lawyers reiterated the material in the government's most recent report, declining to provide details on cases, but they did provide some new information.

According to the IDF, the 36 criminal investigations would take several more months to complete. The lawyers would not provide details about the seven criminal investigations closed so far, but two were closed because the alleged victim was not willing to come to the Israeli-controlled Erez crossing with Gaza to testify.[131] One of these cases involved the alleged use of a civilian in Jabalya as a human shield and the other involved unspecified misconduct towards a civilian. One of the seven closed cases involved the incidents raised by IDF soldiers at the Yitzhak Rabin Preparatory College seminar in February 2009.

All of the incidents documented in Human Rights Watch's reports on Gaza had been the subject of an operational debriefing or a criminal investigation, the lawyers said. Regarding the use of white phosphorus munitions documented in the report *Rain of Fire*, the IDF opened one criminal investigation and five command investigations. The criminal investigation also involves a white flag case, the lawyers said, which means it is the January 4 attack on the Abu Halima family house in Siyafa, in which six members of the family died and four were wounded, and two more were shot and killed as they tried to leave the area, after getting permission from the IDF.[132]

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[129] Video footage of the aerial bomb is at http://www.hrw.org/en/news/2010/02/06/israel-military-investigations-fail-gaza-war-victims. See also "UN Find Challenges Israeli Version of Attack on Civilian Building in Gaza War," by Rory McCarthy, *Guardian*, February 1, 2010, http://www.guardian.co.uk/world/2010/feb/01/gaza-war-report-accuses-israel, accessed February 14, 2010.

[130] E-mail communication to Human Rights Watch from UN Mine Action Team, February 1, 2010.

[131] Erez on Gaza's northern boundary with Israel is the only Israel-Gaza crossing point for individuals. It is controlled by the Israeli military and includes interrogation facilities for the intelligence agencies.

[132] Human Rights Watch, "Rain of Fire," March 25, 2009, and "White Flag Deaths," August 13, 2009. The "Rain of Fire" report lists five members of the Abu Halima family killed and five wounded from the white phosphorus munition strike on their house, but one of the wounded, 21-year-old Ghada, died on March 29, 2009. (See B'Tselem, "Testimony: Members of Abu Halima Family Killed and Burned in Army's Bombing of Their House, 3 January 2009, http://www.btselem.org/english/testimonies/20090104_abu_halima_home_set_on_fire_by_shelling.asp, accessed February 15, 2010.)

Asked why the IDF used white phosphorus munitions for the first time in Gaza, the military lawyers said it was an operational decision stemming from the nature of the combat and a general approach to "reduce risks." The same reason was given for resuming the use of heavy artillery in Gaza after a two-year de facto moratorium.

In addition, the IDF lawyers said, all seven incidents documented in Human Rights Watch's report *White Flag Deaths*, about civilians shot while in groups waving white flags, are under criminal investigations. In these seven incidents, 11 civilians died, including five women and four children.

All six incidents in Human Rights Watch's report on drone-launched missiles, *Precisely Wrong*, had been the subject of an operational debriefing, the lawyers said. One of these incidents—the December 29 airstrike on an open-back truck that the IDF believed was carrying Grad rockets—was already closed. Nine civilians died in that attack, three of them children. Human Rights Watch's investigation found that Israeli forces failed to take all feasible precautions in determining whether the truck was a valid military target.[133]

Regarding the destruction of civilian property, the IDF lawyers noted several incidents that were still under review: the Abu Jubbah cement factory; the Wadiyya Food Factory; Khuza'a neighborhood near Khan Yunis; the al-Samouni neighborhood of Zeitoun and the 'Abd Rabbo of Jabalya. Regarding the video and photographic evidence that the IDF had dropped an aerial bomb on the al-Badr Flour Mill, the lawyers said that they could reopen an investigation when presented with new evidence.

On February 26, 2010, the UN General Assembly met again to discuss the Goldstone report, and in particular the undertaking by Israel and Hamas of thorough and impartial investigations, as called for in the November 2009 GA resolution. On February 4, Secretary-General Ban Ki-moon had informed the General Assembly that, because the Israeli and Palestinian investigations were ongoing, "no determination can be made on the implementation of the resolution by the parties concerned."[134]

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[133] Human Rights Watch, "Precisely Wrong," June 30, 2009, http://www.hrw.org/en/node/84077/section/1.

[134] Report of the Secretary-General, "Follow-up to the Report of the United Nations Fact-Finding Mission on the Gaza Conflict," February 4, 2010, http://unispal.un.org/UNISPAL.NSF/5ba47a5c6cef541b802563e000493b8c/5e96a25e79e3c35c852576c1004e5c30?OpenDocument, accessed February 28, 2010.

The General Assembly voted to repeat its call for credible domestic investigations, this time giving the parties another five months to respond.[135] Significantly, 16 of 27 European Union member states voted in favor, including two permanent members of the Security Council, the United Kingdom and France.[136] The EU states' support of the resolution grew significantly since the November vote, when only five members voted for the resolution. In February, the United States and Canada were among seven states that voted against the resolution.

On March 10, 2010, the European Parliament supported the General Assembly's call, passing a resolution that urged both parties "to conduct investigations within five months that meet international standards of independence, impartiality, transparency, promptness and effectiveness."[137]

On March 22, 2010, the UN Human Rights Council passed another resolution on the follow-up to the Goldstone report. It created a committee of independent experts to monitor and report on domestic investigations by both sides, including "the independence, effectiveness, genuineness of these investigations and their conformity with international standards."[138] Appointed by the High Commissioner for Human Rights, the committee will report back to the HRC at its fifteenth session in September 2010.

As of April 7, 2010, at least nine Israeli and Palestinian human rights organizations had filed complaints with the IDF on behalf of victims in Gaza.[139] One of those complaints had led to an indictment and trial – the two soldiers who allegedly forced a Palestinian boy to open

[135] United Nations General Assembly Resolution A/64/L. 48, http://unispal.un.org/UNISPAL.NSF/0/9E2DC74F7AAED8A4852576D5004E7C68, accessed February 28, 2010.

[136] For the voting record and members states' comments, see "General Assembly Requests Secretary-General to Submit Further Report on Investigations into Violations During Gaza Conflict," February 26, 2010, http://www.un.org/News/Press/docs/2010/ga10917.doc.htm, accessed February 28, 2010.

[137] European Parliament press release, "Gaza Conflict: Implementing the Goldstone Recommendations," March 10, 2010, http://www.europarl.europa.eu/news/expert/infopress_page/030-70271-067-03-11-903-20100309IPR70270-08-03-2010-2010-false/default_en.htm, accessed March 18, 2010.

[138] UN Human Rights Council Resolution A/HRC/13/L.30, "Follow-up to the Report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, March 22, 2010, http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=104&t=4, accessed March 25, 2010.

[139] The organizations that submitted cases are the Palestinian Centre for Human Rights, B'Tselem, al-Mezan Center for Human Rights, al-Haq, Defense for Children International-Israel (DCI-I), Adalah, Public Committee against Torture in Israel (PCATI), Physicians for Human Rights-Israel (PHR-I), and Addameer. Physicians for Human Rights-Israel filed one case with the MAG involving the deaths of two Palestinian civilians; the status of that case is unknown. Addameer filed one complaint involving one Palestinian civilian; the IDF closed the case when the victim declined to testify. PCATI filed three complaints to the MAG and two to the Israeli Attorney General for injuries sustained by four Palestinians; none of these cases are the subject of a criminal investigation. DCI-I filed one complaint to the MAG involving the alleged use of a Palestinian boy to open bags suspected of containing explosives, which is the subject of a pending criminal trial.

bags they suspected of being rigged with explosives.[140] At least twenty-seven other incidents are the subject of criminal investigations.

The Palestinian Centre for Human Rights (PCHR) filed the most criminal complaints, presenting the MAG with documentation on 450 incidents affecting 941 Palestinians. According to PCHR, 15 of these incidents are the subject of a criminal investigation.[141] B'Tselem filed 20 complaints, involving the deaths of 95 Palestinian civilians and the wounding of 21 others.[142] According to B'Tselem, eight of these cases are the subject of a criminal investigation (two of which overlap with PCHR). The Haifa-based organization Adalah filed 10 cases with the MAG, involving the deaths of 20 Palestinians; six of these cases became the subject of a criminal investigation, one of which has already been closed.[143]

The Palestinian Centre for Human Rights has also submitted 1,028 compensation claims to the Israeli Ministry of Defense. According to PCHR, as of February 11, 2010, the ministry had indicated to PCHR its receipt of only seven of these claims.[144]

[140] The case was submitted by Defense for Children International-Israel. (Human Rights Watch e-mail from Defense for Children International-Israel, March 11, 2010.)

[141] Palestinian Centre for Human Rights, "Genuinely Unwilling," February 2010, http://www.pchrgaza.org/files/2010/israeli-inve.-%20english.pdf, accessed March 1, 2010.

[142] Human Rights Watch interview with Noa Tal, Jerusalem, December 3, 2009, and follow-up e-mail received February 17, 2010.

[143] Adalah, "Briefing Paper: Israeli Military Probes and Investigations Fail to Meet International Standards," January 2010. pp. 6-7, http://www.adalah.org/newsletter/ara/jan10/paper.pdf, accessed January 29, 2010. In February 2010 the MAG announced that it had closed the investigation into the alleged use of the Palestinian Abbas Halaweh as a human shield. Adalah complained that the victim and his legal representative learned of the decision through the media and received no explanation for the investigation's closure. At the same time, the MAG closed the investigation into the alleged use of Mahmoud Al-Ajrami as a human shield, which had been filed by PHCR. (Adalah, "Israel Army Closes Military Investigations into Two Human Shields Cases from the War on Gaza Without Informing the Victims," February 25, 2010, http://www.adalah.org/eng/pressreleases/pr.php?file=25_02_10_2, accessed March 21, 2010.)

[144] Israel's Civil Wrongs Law (Liability of the State) 5712 - 1952 bars claims against Israel for harm caused by the IDF during "war operations" (article 5), which it defines as "any action combating terror, hostile acts, or insurrection, and also an action intended to prevent terror, hostile acts, or insurrection that is taken in a situation endangering life or limb" (article 1). An official English translation of the law as revised in 2005 is available at http://www.adalah.org/features/compensation/law-e.pdf, accessed March 24, 2010. To receive compensation, aggrieved Palestinians must file a complaint with the ministry, which decides whether a settlement committee will review the case (see article 5a, and Palestinian Centre for Human Rights, "Genuinely Unwilling," February 2010, http://www.pchrgaza.org/files/2010/israeli-inve.-%20english.pdf, accessed March 1, 2010).

Duty to Investigate

Under international law, states have an obligation to investigate credible allegations of war crimes committed by their nationals and members of their armed forces, or over which they have jurisdiction, and appropriately prosecute those responsible.[145]

War crimes are serious violations of international humanitarian law committed willfully – that is, deliberately or recklessly – and give rise to individual criminal responsibility.[146] They include intentional, indiscriminate and disproportionate attacks on civilians or civilian objects, use of human shields, and unjustified destruction of civilian property. Individuals may be held criminally responsible for directly committing war crimes or for war crimes committed pursuant to their orders, such as ordering a deliberate attack on civilians.[147] They may also be held criminally liable for attempting to commit war crimes, as well as planning, instigating, assisting in, facilitating, and aiding or abetting them.[148]

Commanders and civilian leaders may also be prosecuted for war crimes as a matter of command responsibility when they knew or should have known about the commission of war crimes and took insufficient measures to prevent them or punish those responsible.[149]

There is no single set of international standards for the conduct of investigations into alleged war crimes. However, international law sets out basic principles that are necessary components of any criminal investigation -- namely that they be prompt, thorough and impartial. These principles have been enunciated by various United Nations entities, including the General Assembly,[150] the Commission on Human Rights,[151] treaty bodies,[152] and

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[145] See, e.g., Fourth Geneva Convention, article 146 (states parties "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."). See International Committee of the Red Cross (ICRC), Customary International Humanitarian Law (Cambridge: Cambridge University Press, 2005), rule 158; see also Rome Statute of the International Criminal Court, A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art. 21., preamble (noting "the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes"), http://untreaty.un.org/cod/icc/index.html.

[146] See ICRC, Customary International Humanitarian Law, pp. 568-74.

[147] See ICRC, Customary International Humanitarian Law, p. 556.

[148] See ICRC, Customary International Humanitarian Law, p. 554.

[149] See ICRC, Customary International Humanitarian Law, rule 153.

[150] See, e.g., UN General Assembly. Resolution 55/111, December 4, 2000, para. 6 (regarding the "obligation of all Governments to conduct exhaustive and impartial investigations" into all suspected cases of unlawful killings).

[151] See, e.g. Commission on Human Rights, Resolution 2001/62, April 25, 2001, para. 6 (allegations of torture and ill-treatment "should be promptly and impartially examined by the competent national authority").

[152] See, e.g. Human Rights Committee, Decision dated November 13, 1995, Communication No. 563/1993, Case of Nydia Erika Bautista (Colombia), UN doc. CCPR/C/55/D/563/1993, para. 8.6 (states parties are "under a duty to investigate thoroughly

special human rights envoys.[153] They have also been set out by regional human rights mechanisms, such as the European Court of Human Rights[154] and the Inter-American Court of Human Rights.[155]

Specific elements identified by international courts and standards for prompt, thorough and impartial investigation include, but are not limited to:

- ensuring that findings are capable of leading to the identification and prosecution of those responsible and the provision of effective and transparent remedies for victims;[156]
- ensuring against unwarranted delays in taking witness statements and opening investigation proceedings, or unexplained failure to make progress after a reasonable time;[157]
- protecting complainants, witnesses, families, and investigators from violence or intimidation;[158]
- a responsibility by the authorities to provide satisfactory and convincing explanations of incidents where events lie largely or wholly within their exclusive knowledge;[159]
- providing a detailed written report on the methods and findings of the investigation to be made public within a reasonable time;[160] and

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alleged violations of human rights"); Conclusions and recommendations of the Committee against Torture: The Russian Federation, UN Doc. CAT/C/RUS/CO/4, February 6, 2007, para. 12.

[153] See, e.g., UN Special Rapporteur on extra-judicial, summary or arbitrary executions, Report of the Special Rapporteur, Philip Alston, March 8, 2006, E/CN.4/2006/53, para. 36 ("Armed conflict and occupation do not discharge the State's duty to investigate and prosecute human rights abuses…. States are also held to a standard of due diligence in armed conflicts as well as peace").

[154] See, e.g. European Court of Human Rights, Judgment *Aksoy v. Turkey*, December 18, 1996, application no. 00021987/93, para. 98.

[155] See Inter-American Court of Human Rights, Judgment of 29 July 1988, para. 174 (the "state has a legal duty to …use the means at its disposal to carry out a serious investigation").

[156] See European Court of Human Rights, Judgment, *Hugh Jordan v. The United Kingdom*, May 4, 2001, Application no. 24746/94, para. 109.

[157] See European Court of Human Rights, *Bati and others v. Turkey*, September 3, 2004, Applcation nos. 33097/96 and 57834/00 ("While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, it may generally be regarded as essential for the authorities to launch an investigation promptly in order to maintain public confidence in their adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts.") art. 136. Lapses in cases range from one to five years, and delays in taking witness statements from four months to several years. For a summary of cases see C. Buckley, Turkey and the European Convention on Human Rights, A report on the Litigation Programme of the Kurdish Human Rights Project, London, July 2000, p. 143, n. 781.

[158] Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

[159] European Court of Human Rights, Judgment, *Hugh Jordan v. The United Kingdom*, May 4, 2001, Application no. 24746/94, para. 103.

[160] Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

- establishing an independent commission of inquiry for those cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality.[161]

It is on this basis that the investigations by Israel and Hamas should be evaluated.

[161] Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

Recommendations

To Israel

- Conduct thorough and impartial investigations into all allegations of laws-of-war violations by Israeli forces during the fighting in Gaza of December 2008-January 2009. Make the investigation results public and prosecute those responsible for war crimes in trials respecting international standards. In addition to individual incidents, policy decisions needing investigation include those relating to: 1) the targeting of Hamas's political infrastructure; 2) the targeting of Gaza's police; 3) the use of heavy artillery in densely populated areas; 4) the use of artillery-fired white phosphorus munitions in populated areas; 5) the use of Palestinian civilians to search homes or as human shields; 6) the rules of engagement for aerial drone operators and ground forces; and 7) the destruction of civilian infrastructure.
- Make public the gun-camera video of all drone attacks in which civilians died to clarify IDF targeting decisions.
- Provide prompt and adequate compensation to the victims of laws-of-war violations in Gaza.
- End the practice of relying primarily on military operational debriefings (*tahkir mivza'i*) into alleged laws-of-war violations by military forces to determine whether a criminal investigation is required.
- Establish an independent body to receive complaints of laws-of-war violations committed by IDF soldiers in Gaza and elsewhere, and to monitor government investigations.

To Hamas

- Conduct thorough and impartial investigations into all allegations of laws-of-war violations by the armed forces of Hamas and other Palestinian armed groups in the Gaza-Israel fighting of December 2008-January 2009. Make the investigation results public and prosecute those responsible for war crimes in trials respecting international standards.
- Conduct an independent review, with public findings, of the policy decision to launch Qassam and Grad rockets into civilian areas of Israel.
- Provide prompt and adequate compensation to the victims of laws-of-war violations in Israel and Gaza.

- Establish and publicize a clear mechanism to investigate and hold accountable the armed forces of Hamas and other Palestinian armed groups who violate the laws of war.
- Provide clear guidelines and training to all commanders and fighters to ensure compliance with the laws of war against attacks that target or indiscriminately harm civilians.

To the UN Secretary-General

- Monitor and report to the General Assembly within five months (by July 26, 2010) on investigations conducted by the parties to the conflict as required by UN General Assembly resolution A/64/L.48, including an assessment of whether the steps taken meet international standards of promptness, thoroughness, and impartiality.
- Should Israel and Hamas's investigations continue to fall short of international standards for thoroughness and impartiality, refer the report of the UN Fact Finding Mission on the Gaza Conflict (Goldstone report) to the UN Security Council under article 99 of the UN Charter.
- Continue to emphasize the importance of accountability in peacefully resolving the Israeli-Palestinian conflict.

To the UN Security Council

- As the Security Council has done with other conflicts, call on Israel and Hamas to conduct thorough and impartial investigations into the allegations of laws-of-war violations by their respective forces, prosecute those responsible for serious violations, and compensate the victims.
- Await next steps by the UN General Assembly, and in case of continued failure by the parties to conduct impartial investigations and prosecutions, create an independent committee of experts to monitor and report on steps by the parties to conduct thorough and impartial investigations into alleged laws-of-war violations.
- If the parties continue to fail to conduct thorough and impartial investigations up to international standards, refer the conflict to the prosecutor of the International Criminal Court.

To the UN General Assembly

- Consider the UN Secretary-General's report in response to General Assembly resolution A/64/L.48, due by July 26, 2010. In case of continued failure by the

parties to conduct impartial investigations and prosecute those responsible for serious laws-of-war violations, refer the situation to the Security Council.

To the United Nations Human Rights Council

- Continue reviewing implementation of the Goldstone report recommendations by the parties to the conflict and UN bodies.

To the United States and European Union Member States

- Urge the parties to the Gaza conflict to conduct without further delay thorough and impartial investigations that conform with international standards into alleged laws-of-war violations, prosecute perpetrators and compensate victims. The investigations should include looking at policy decisions, such as targeting and weapons choices.
- Stress in all relevant fora the paramount importance of civilian protection in all armed conflicts and that the obligation to protect civilians rests squarely with the parties to conflict.
- State clearly in all relevant fora that under international law state parties to armed conflicts are obliged to investigate credible allegations of laws-of-war violations, prosecute perpetrators and compensate victims.
- Insist in all relevant fora that the laws-of-war are fully applicable to the Israeli-Palestinian conflict no matter the motives for taking up arms: combating terrorist threats, protecting civilians from attacks, or resisting occupation.
- Insist in all relevant fora that ending impunity for serious laws-of-war violations in the Israeli-Palestinian conflict is as important as in other conflicts and that victims deserve justice and compensation.
- Include mechanisms for accountability as an essential part of mediated Israeli-Palestinian negotiations.
- While acknowledging pledges made and investigative steps taken by Israel and Hamas to investigate alleged laws-of-war violations during the Gaza conflict, clearly state that thus far these have not met international standards for thoroughness and impartiality.

To Arab states, the Arab League and Organisation of Islamic Conference

- Urge the parties to the Gaza conflict to conduct without further delay thorough and impartial investigations that conform with international standards into alleged laws-of-war violations, prosecute perpetrators and compensate victims. The

investigations should include looking at policy decisions, such as targeting and weapons choices.

- Stress in all relevant fora the paramount importance of civilian protection in all armed conflicts and that the obligation to protect civilians rests squarely with the parties to conflict.
- State clearly in all relevant fora that under international law, state parties to armed conflicts are obliged to investigate credible allegations of laws-of-war violations, prosecute perpetrators and compensate victims.
- Insist in all relevant fora that the laws-of-war are fully applicable to the Israeli-Palestinian conflict no matter the motives for taking up arms: combating terrorist threats, protecting civilians from attacks, or resisting occupation.
- Insist in all relevant fora that ending impunity for serious laws-of-war violations in the Israeli-Palestinian conflict is as important as in other conflicts and that victims deserve justice and compensation.
- Include mechanisms for accountability as an essential part of mediated Israeli-Palestinian negotiations.
- While acknowledging pledges made and investigative steps taken by Israel and Hamas to investigate alleged laws-of-war violations during the Gaza conflict, clearly state that thus far these have not met international standards for thoroughness and impartiality.

Acknowledgements

This report was researched and written by Fred Abrahams, senior emergencies researcher, and Arezo Yazd, fellow at Human Rights Watch, with assistance from Bill van Esveld, researcher, Fares al-Ghoul, research consultant, Noga Malkin, research assistant, and Lara Haddad, legal intern. The report was edited by Joe Stork, deputy director of the Middle East and North Africa division, James Ross, legal and policy director, and Iain Levine, program director.

Human Rights Watch thanks the many individuals and organizations who assisted in the preparation of this report, particularly the Israeli and Palestinian human rights groups who are advocating on both sides for civilian victims and the rule of law.

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Appendices

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October 20, 2009

Prime Minister Ismail Haniya
Prime Minister's Office
Jerusalem Street
Tal al-Hawa
Gaza

Dear Prime Minister Haniya:

We are writing you after the United Nations Human Rights Council's resolution last week endorsing the report of the UN Fact Finding Mission on the Gaza Conflict. We view the report prepared by Justice Richard Goldstone as a crucial forward step towards securing accountability for the civilian victims of the war on all sides. A key component of the report is its call on all parties to the conflict to conduct credible domestic investigations within six months.

We welcome the October 15 statement from your foreign ministry, which says the authorities will conduct investigations into the allegations against the armed wing of Hamas and other Palestinian armed groups. We therefore call on Hamas to conduct thorough, independent and impartial investigations into alleged violations of international humanitarian law by members of the Qassam Brigades and other armed groups in Gaza, and to prosecute in conformity with international fair trial standards those found responsible for rocket attacks that target Israeli population centers, as recommended by the Goldstone report.

Human Rights Watch recognizes that IDF military operations caused far greater total harm to civilian lives and property than operations by Palestinian armed groups during the December-January conflict. The conflict was characterized by great disparity in the military strength of the

parties, and Human Rights Watch has documented serious violations of the laws of war by Israeli forces, including the unlawful use of white phosphorus, the killing of civilians with drone-fired missiles, and the killing of civilians waving white flags.

However, these violations and the high death toll in Gaza do not detract from the need to investigate serious violations of the laws of war by all sides. Nor can they justify violations by Hamas. Violations of the laws of war are not measured in the number of civilian casualties, but whether each side is taking all feasible precautions to minimize civilian loss. Using unsophisticated weapons does not justify failure to respect the laws of war; nor does an adversary's use of sophisticated weapons provide a pass to its opponents to ignore those laws. The unnecessary loss of civilian life can be minimized only if both parties recognize and respect their obligations to abide by the laws of war, however sophisticated or unsophisticated the weapons at their disposal.

Human Rights Watch would also like to ask for clarification of recent statements by Hamas spokespersons that Hamas rocket attacks into southern Israel were intended to target Israeli military bases, but not Israeli civilians. Previous statements by Hamas leaders, as well as our own research, indicate that rocket attacks by Hamas and other Palestinian armed groups deliberately targeted Israeli civilians or were launched towards Israeli population centers indiscriminately. The Goldstone report concluded that Hamas was responsible for serious violations of the laws of war, including war crimes and possible crimes against humanity, in connection with these rocket attacks directed against Israeli civilians.

According to an October 1 interview with the Ma'an news agency, Ahmad Yusuf, an advisory with your foreign ministry, said: "Hamas has said all the time that they were targeting military bases. Maybe because these are primitive weapons -- the rockets, because they're homemade -- maybe some of these rockets missed their targets, some of them fell short." According to The Media Line news service, Yusuf made similar comments on September 21: "In Hamas, we have said that we never intended to target civilians during the war. These are home-made rockets and they were targeting military bases, but some of them may have missed the targets causing three Israeli [deaths] and a few injured."

In the past, leaders of Hamas and other armed groups have publicly expressed an apparent intent to target Israeli civilians, seeking to justify their attacks as lawful reprisals for Israeli attacks against Palestinian civilians. For example, Abu Obeida, identified as a spokesman for the Qassam Brigades, said in a pre-recorded video released on January 5, 2009 that "continuing the incursion will only make us increase our rocket range [...]. We will double the number of Israelis under fire." He did not make any distinction between civilians and military

forces. In a speech broadcast the same day, Mahmoud Zahar said, "The Israeli enemy ... shelled everyone in Gaza. They shelled children and hospitals and mosques, and in doing so, they gave us legitimacy to strike them in the same way." Under the laws of war, reprisals against civilians are prohibited.

In addition, Hamas leaders seem to have claimed that rocket attacks against Israeli civilians are justified as part of their resistance tactics against Israeli occupation. In an interview on May 5, head of the Hamas political bureau Khaled Meshal appeared to acknowledge that Hamas rocket attacks intentionally targeted Israeli civilians. In the course of describing why Hamas had decided to stop firing rockets for the time being, Meshal said:

Not targeting civilians is part of an evaluation of the movement to serve the people's interest. Firing these rockets is a method and not the goal. The right to resist the occupation is a legitimate right but practicing this right is decided by the leadership within the movement.

Any party which partakes in hostilities, irrespective of the basis on which they assert a right to do so, must comply with the laws of war which provide that civilians are protected from attack and prohibit directing attacks against civilian objects and attacks that will have indiscriminate or disproportionate impact on civilian objects.

According to the website of the Izz al-Din al-Qassam Brigades, the group launched 345 Qassam rockets, 213 Grad rockets, as well as mortar rounds and other munitions from December 27, 2008 to January 18, 2009. The Qassam Brigades website claimed responsibility for each of the three Israeli civilian deaths caused by rocket attacks in late December 2008, which Human Rights Watch investigated.

Previous Qassam Brigades statements also indicated an intent to target civilian areas. A Qassam Brigades statement dated June 11, 2006, said that in response to an Israeli attack that targeted a group of fighters, that the group had carried out a rocket attack against Sderot and would continue attacking Sderot "until its residents flee in horror. We will turn Sderot into a ghost town."

The absence of Israeli military forces in the areas struck by the rockets indicates that many of these attacks are deliberately intended to strike Israeli civilians and civilian structures.

In addition the rockets fired by Hamas and other armed groups cannot be reliably aimed. Civilian structures damaged in Israel by rocket attacks since December 27, 2008 include a kindergarten, a synagogue and private homes. The inability to fire these rockets with any

degree of accuracy has resulted in rockets also striking areas inside Gaza: on December 26, 2008 a Palestinian rocket hit a house in Beit Lahiya, killing two Palestinian girls, ages 5 and 12. Under applicable international humanitarian law, such weapons are inherently indiscriminate when directed towards populated areas.

Hamas and other Palestinian armed groups have also violated the laws of war by firing rockets from within populated areas. While fighting in urban areas is not prohibited under the laws of war, firing rockets from within or near populated areas places Palestinian civilians at grave risk of Israeli counter-attacks, and violates the laws-of-war obligation to take all feasible precautions to avoid placing military targets within or near densely populated areas and to protect civilians from the danger resulting from military operations.

The Goldstone report's recommendations represent an opportunity for the Gaza authorities to repudiate unlawful attacks on Israeli civilians in future, and to meet their obligations under international law to investigate and bring to justice those responsible for past attacks. Human Rights Watch is not aware of any previous inquiries by the Gaza authorities into such attacks, and we ask you to initiate thorough and impartial investigations as a matter of urgency.

Sincerely,

Sarah Leah Whitson
Executive Director
Middle East and North Africa division

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Brig.-Gen. Avichai Mandelblit
Military Advocate General
Israel Defense Forces
MAG Building #22
Ha'Kirya, Tel Aviv

November 16, 2009

Dear General Mandelblit,

I am writing to request information for a forthcoming Human Rights Watch report. We are researching the steps that the authorities in Israel (and in Gaza) are taking to investigate credible allegations of laws-of-war violations by their respective forces during the latest armed conflict in Gaza and southern Israel.

We would very much appreciate it if your office could provide us with responses to the questions listed below, which relate to allegations of violations of the laws of war by the IDF during "Operation Cast Lead." We understand that, as of November 5, the IDF has investigated or is investigating 128 incidents that occurred during Operation Cast Lead. We are seeking more specific information about these incidents and the progress of investigations.

I. General questions:

1. For each of the 128 incidents that the IDF has investigated or is investigating, could you please provide the following information:
    a. the date, time and location of the incident;
    b. the alleged misconduct that is the subject of investigation;
    c. the type of investigation that has been or is being conducted;
    d. the body responsible for the investigation (e.g., criminal investigations division of the military police) and the number of staff involved in the investigation;
    e. the reason the investigation was initiated (e.g., due to internal "field investigations," complaints by nongovernmental organizations, presented in the

report of the UN Fact Finding Mission on the Gaza Conflict);
   f. the date the investigation began;
   g. the current status of the investigation (e.g. open, closed, or referred for further investigation);
   h. the number of Palestinian victims or witnesses the IDF has interviewed in connection with the investigation;
   i. the outcome or findings of the investigation; and
   j. if the incident was referred for further investigation, the date of the referral and the person or office to which the referral was made, as well as any subsequent decisions on the case.
2. In addition to the 128 incidents, has the IDF opened disciplinary proceedings against any soldiers or commanders for events in connection with Operation Cast Lead? If yes, against whom, when and for what? What is the status of these investigations?
3. Could you please inform us of any case where the IDF has opened criminal proceedings against military personnel for actions during Operation Cast Lead; the date, location, and circumstances of the incident; the rank of each soldier investigated; whether the soldier has been indicted; and if applicable, the penalty imposed?
4. Will the full findings of all investigations be made public? If so, at what stage of the investigation will they be made public?

II. Incident questions: We would like to take this opportunity to ask for information regarding questions we submitted to the IDF Spokesperson's office during the course of researching reports regarding Operation Cast Lead, as we have not received responses to our questions.

1. On the use of white phosphorous munitions: On February 1, Human Rights Watch informed the IDF Spokesperson's office of six cases where we documented the use of white phosphorus munitions in attacks that caused death or injury to civilians, and asked for further information regarding these incidents. A copy of our letter is attached. We have not received a response to our inquiry.

   Which specific incidents involving the use of white phosphorus have been investigated? According to the July 29 Ministry of Foreign Affairs (MFA) report, while the IDF has concluded its field investigations on the use of white phosphorus, "further stages of the review are ongoing." What is the status of these investigations? Have any incidents been referred to the military police? If so, who is conducting the investigation, and what are the terms of reference?

2. Incidents that involve the killing of civilians with white flags: On February 11, 2009 Human Rights Watch informed the IDF Spokesperson's office of eight cases where we documented attacks in which civilians who were holding white flags were killed, and

asked for further information regarding these incidents. A copy of our letter is attached. We have not received a response, but the IDF has contacted us with respect to five of the cases we documented. We are aware that they have interviewed 21 witnesses at the Erez border crossing.

According to the July 29 MFA report there are over 21 incidents that are pending field investigations, including five incidents involving civilians who were killed while holding white flags. The MFA report is unclear on the specific dates, locations, and number of persons killed and injured. What is the current status of the white flag incidents? Which incidents are pending? Have any incidents been referred to military police? If so, who is conducting the investigation, and what are the terms of reference of the investigations?

3. Incidents that involve civilians killed by drone-launched missiles: On March 12, 2009, Human Rights Watch informed the IDF Spokesperson's office of seven cases where we documented attacks by drone-launched missiles that caused death or injury to 29 civilians, and asked for further information regarding these incidents. A copy of our letter is attached. We have not received a response. Have investigations been launched into any of these incidents and, if so, which ones?

    a. On December 27, an IDF drone launched a missile at a group of Palestinian civilians and students waiting for a UN bus, killing 12 people.

    According to the July 29 MFA report, a "field investigation [is] in progress" with respect to this incident. What is the status of the investigation? Have any of incidents been referred to the military police? If so, who is conducting the investigation, and what are the terms of reference of the investigations?

    b. We documented five other drone-launched missile attacks that involving the deaths of Palestinian civilians: 1) On December 29, an Israeli drone launched a missile at a truck being loaded with oxygen canisters killing ten people, including six children. 2) On January 4 in Gaza City, an Israeli drone launched a missile at two children playing on a roof, killing both. 3) On January 4 in Gaza City, a missile was launched at the Habbash family home, killing two children and injuring three others. 4) On January 5, another missile hit and killed a child on a rooftop in al-Sha'f of Gaza City. 5) On January 5, an IDF drone launched a missile at UNRWA Asma Elementary school killing three people.

    According to the July 29 MFA report, all of these incidents have undergone IDF operational debriefings ("field investigations") but remain open to

further investigation pending decisions by the Military Advocate General. What is the status of these investigations? Have any of these incidents been referred to the military police? If so, who is conducting the investigation, and what are the terms of reference of the investigations?

4. On January 7, 2009, we informed your office that Mr. Akram al-Ghoul and Mahmoud Salah Ahmad al-Ghoul, the father and cousin of a Human Rights Watch research assistant, Fares Akram al-Ghoul, were killed in an attack on their farm in northern Gaza on January 3, 2009. We have not received a response.

   Please inform us whether any investigation has been opened into these deaths and if so the status of the investigation.

5. On August 21, 2009 Human Rights Watch informed the IDF Spokesperson's office of nine cases where we documented the destruction of civilian property apparently without military necessity, and asked for further information regarding these incidents. A copy of our letter is attached. We received a response on September 6, which did not answer our questions regarding specific incidents.

   Have any of these incidents been investigated? What is the status of these investigations? Have any incidents been referred to the military police? If so, who is conducting the investigation, and what are the terms of reference?

Thank you for your attention to this request. We would appreciate it very much if you could respond by November 30, 2009.

Sincerely,

Joe Stork
Deputy Director
Middle East and North Africa division

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November 23, 2009

Prime Minister Ismail Haniya
Prime Minister's Office
Jerusalem Street
Tal al-Hawa
Gaza

Dear Prime Minister Haniya,

I am writing to request information for a forthcoming Human Rights Watch report. We are researching the steps that the authorities in Gaza (and Israel) are taking to investigate credible allegations of laws-of-war violations by their respective forces during the latest armed conflict in Gaza and southern Israel.

We would very much appreciate it if your office could provide us with responses to the questions below, which relate to allegations of violations of the laws of war by Hamas and other Palestinian armed groups during the December-January hostilities.

Thank you for your attention to this request. We would appreciate it very much if you could respond by December 4, 2009.

Sincerely,

Joe Stork
Deputy Director
Middle East and North Africa division

QUESTIONS FOR THE GOVERNMENT OF ISMAIL HANIYA

1. On October 15, 2009, the Foreign Ministry in Gaza stated that, "Although we do not agree with certain aspects of his [Goldstone] report, we intend to act on his recommendation and to carry out our own investigation into any alleged crimes committed by members of the resistance movements in Gaza." Have the authorities opened any investigations? If yes, how many and into which cases? Who is conducting the investigations and when do you expect them to be completed? Will the results be made public?
2. On October 19, 2009 we wrote you a letter, asking for clarification on Hamas's position on the targeting of civilians. Repeated statements by Hamas officials and fighters indicate an intent to direct rockets toward Israeli civilian targets, but recently at least one senior official, Ahmad Yousef, said that Hamas only aimed at Israeli military targets, rather than civilians, and that some rockets may have missed their targets because they are "primitive weapons." Can you clarify this apparent contradiction?
3. On December 29, 2008 a Grad-type rocket struck the city of Ashkelon, about 16 kilometers north of the armistice line, killing Hani al-Mahdi, 27, a construction worker from the Bedouin village of Aro'ar, and wounding several others. Has your government opened an investigation into the incident? If yes, what type of investigation and by whom?
4. Also on December 29, 2008, a rocket launched from Gaza hit a car in the city of Ashdod, killing Irit Sheetrit, a 39-year-old school secretary, and injuring her sister. The al-Qassam Brigades on its website (http://www.alqassam.ps/arabic/statments1.php?id=4098) claimed credit for the attack. Has your government opened an investigation into the incident? If yes, what type of investigation and by whom?
5. On December 27, 2008, a rocket launched from Gaza killed Beber Vaknin, a 58-year-old window installer, in Netivot. Has your government opened an investigation into the incident? If yes, what type of investigation and by whom?
6. On December 26, 2008, a rocket launched from Gaza hit a house in Beit Lahiya, Gaza, killing two children, Sabbah Abu Khusa, 12, and Hanein 'Ali Abu Khusa, 5, and injuring another child. Has your government opened an investigation into the incident? If yes, what type of investigation and by whom?
7. Has your government conducted any investigations into allegations that persons affiliated with Hamas security forces were responsible for extrajudicial executions during the December-January hostilities, including persons suspected of collaboration with Israel who had been held in the Gaza Central Prison but escaped when Israeli warplanes bombed that facility on December 28, 2008? If so, could you inform us which killings have been investigated and the results of those investigations?
8. On December 29, 2008, after Israeli forces bombed Gaza Central Prison, Saleh Hajoj, 32, was taken to Al-Shifa Hospital in Gaza City where he was abducted by a group of men and shot in the back of the head. Has your government opened an investigation into the incident? If yes, what type of investigation and by whom?

9. Has your government conducted any investigations into shootings by masked gunmen during or immediately after the Israeli military operations that killed or wounded persons? Has the government investigated any of the numerous reported incidents of shootings apparently intended to maim, such as shootings at the legs of persons who are or are suspected of being supporters of Fatah? If so, could you inform us which shooting incidents have been investigated and the results of those investigations?

10. Human Rights Watch has information concerning the deaths of Zaher Ahmad al-Za'anin (40), Jamil Shakura (51), Nihad Sa'adi al Dabbaka (47), Ata Yusif Abd al-Wahhab al-Bur'I, all of whom died apparently as the result of torture following their apprehension or abduction by persons claiming to work for Internal Security or other Hamas security forces. Has your government investigated the circumstances surrounding any of these deaths? If so, could you provide information about the results of the investigations? Have the authorities taken into custody anyone suspected of responsibility for any of these deaths?

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Turning a Blind Eye

Impunity for Laws-of-War Violations during the Gaza War

Turning a Blind Eye documents how Israel and Hamas have addressed credible allegations of laws-of-war violations by their respective forces during the Gaza war in December 2008 and January 2009.

More than one year after the conflict, neither side has adequately investigated serious violations or punished the perpetrators of war crimes, leaving civilian victims without redress. Israel's investigations have fallen far short of international standards for investigations, and Hamas has conducted no credible investigations at all.

Influential governments such as the United States and member states of the European Union, as well as United Nations Secretary-General Ban Ki-moon, should press Israel and Hamas to hold those responsible for violations to account, including senior officials who set policies that contravened the laws of war. Thorough and impartial investigations are needed to provide justice for the victims and form the basis for sustainable peace.