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# BOFAXE



## The Goldstone-Report on Gaza (UN Doc. A/HRC/12/48)

One year after the withdrawal of the Israeli army the Report of the UN Fact Finding Mission is still dividing North and South

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### Fokus

One year ago the Israeli army completed its withdrawal from the Gaza Strip after a three-week assault against militants from the Hamas group. The report of the United Nation Fact Finding Mission on the Gaza Conflict to the UN Human Rights Council is still discussed controversially around the globe.

Directly after the withdrawal of the Israeli troops in the morning hours of 21 January 2009, UN Secretary-General Ban Ki-moon, after seeing the destruction in Gaza and visiting the southern Israeli town of Sderot, which has been one of the main targets of Palestinian rocket attacks, demanded that those responsible should be held accountable and underlined the need for a "full investigation".

On 15 September 2009, Judge Richard Goldstone – a former South African Constitutional Court Judge and former chief prosecutor of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR) – and his Commission delivered a 575 page thick "Report of the United Nations Fact Finding Mission on the Gaza Conflict" to the UN Human Rights Council (HRC). The investigation lasted six months and its publication caused a worldwide stir. The report accused both Israel and the Palestinian Hamas of having committed war crimes during the 3-week hostilities at the end of 2008 and the beginning of 2009 [a.k.a. Operation Cast Lead]. From the beginning the Israeli Government refused to cooperate with the Fact Finding Mission and denied not only access to Israeli victims and officials but also transit to the West Bank to meet with Palestinian authorities. In Gaza, which the Mission reached by crossing the Egyptian Border, the authorities delivered a multitude of evidence.

More than 1,400 Palestinians and 13 Israelis died during the attacks on and from Gaza. On 3 November 2009, the U.S. House of Representatives adopted a resolution (H. Res. 867) that described the report as hopelessly biased and unworthy of further discussion or legitimacy. On 5 November 2009, the UN General Assembly passed a resolution (UN Doc. A/RES/64/10) put forward by the Arab states and against the dissenting or abstaining votes from Europe and North America, which adopted the report and called upon Israel and the Palestinians to comment on the allegations.

The report consists of sixteen chapters dealing with the actions of Israel, one chapter about behaviour of the Palestinian Authority and four chapters about acts by armed groups in Gaza, in particular the Hamas. Goldstone and the Commission explicitly acknowledge Israel's right to self defence, but attached great importance to the violation of its special duties as an occupying power in the Gaza strip. During Operation Cast Lead, according to the Commission findings, the Israeli side carried out attacks on civilians using indiscriminate or disproportionate force, deliberate attacks on non-military objectives as well as systematic attacks on food and water infrastructure. The Commission also identified incidents of abusive detention and the use of Palestinian civilians as "human shields". A special note delivered with the report commented on the use of white phosphorous in built-up areas, which although is not generally forbidden by international law, the report suggests that the banning of use should be a serious consideration in the future. The Israeli Government and the Palestinian Authority were criticised regarding incidents in the West Bank; Israel for restricting movement and access and aggravating the separation between the West Bank and the Gaza strip; the Palestinian Authorities for tolerating violations of political opponents' human rights. It was suggested that a further investigation of alleged torture and ill-treatment by the security forces of the Palestinian Authority and other possible violations of the Universal Declaration of Human Rights be carried out. Concerning the Hamas the Commission made it clear that there is no justification in international law for the rocket and mortar attacks on civilian towns in southern Israel that can cause psychological trauma to the inhabitants. Therefore, the Commission considered these acts as war crimes and possible crimes against humanity. Furthermore, the report states that the Hamas is responsible for not taking precautions to protect civilians and civilian objects, attacking Fatah members and for the ongoing detention of the Israeli soldier Gilad Shalit.

The effect that this report will have on the world and the United Nations will be marginal. Goldstone himself put the report into perspective and said that despite all the information collected, they had to do their best with the material they had. If he went to court nothing would be proved. The refusal of cooperation by the Israeli Government hindered from the beginning a balanced analysis of the tide of events from 27 December 2008 to 21 January 2009. The political reaction in the world was foreseeable when it comes to the Israeli-Palestinian Conflict. Finally the United Nations showed again that their system is not capable of solving this conflict. The UN Security Council is blocked by vetoing powers and both the UN General Assembly and the UN Human Rights Council are too weak to act with a real effect.

### Verantwortung

Die BOFAXE werden vom Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht der Ruhr-Universität Bochum herausgegeben: IFHV, NA 02/33, Ruhr-Universität Bochum, 44780 Bochum, Tel.: +49 (0)234/32-27366, Fax: +49 (0)234/32-14208. Die BOFAXE werden vom Deutschen Roten Kreuz unterstützt.

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