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Written statement addressing Resolution S-9/1 and the “Goldstone Report” Item 7. “Human rights situation in Palestine and other occupied Arab territories”

1. The purpose of this declaration is to address the lack of neutrality and, hence, reliability of the Goldstone Fact-Finding Mission’s Report. In particular, the ECLJ is concerned about the flawed methodology of the Mission’s Report, the pre-conceived biases of its authors, and the speculative legal and factual conclusions that exceeded the scope of the Mission’s mandate. The Report exhibited inherent biases against the State of Israel and defied basic international standards on fact-finding as set forth by the UN and International Bar Association.

2. On 27 December 2008, Israeli armed forces, in response to Hamas’s renewed rocket and mortar attacks deliberately targeting civilians and civilian property in Israel—and after much effort to resolve the situation diplomatically—launched a three-week military operation against Hamas in the Gaza Strip, designated as Operation Cast Lead. The Operation’s purposes were to defend Israeli civilians and territory from Hamas, dismember Hamas’s military infrastructure, and prevent or disrupt Hamas’s ability to execute further unlawful attacks against Israel.

3. Israel, which was not opposed to an investigation *per se*, refused to cooperate with *this* particular Mission due to flaws in its creation, a decision that the Report repeatedly emphasised. Each of the Mission’s four members also made prior statements that indicated pre-existing biases against and conclusions about Israel.

4. The evidence that the Mission eventually gathered and relied upon in authoring the Report was collected nearly six months after the fighting ended. Most of it relied exclusively upon one-sided sources who had only second-hand knowledge (at best) of facts and had no knowledge of any intelligence relied upon by Israeli forces in deciding what to target and when. The Mission selected 36 incidents to investigate, which, by the Mission’s own acknowledgment, were selected to further the conclusion that Israel’s actions were unjustified. It relied heavily (over 300

citations) upon the analyses of other NGO's that possess an anti-Israel bias, and it drew conclusions based upon technical and forensics analysis without any information about who conducted such analysis or what credentials they possessed that qualified them to make such assessments.

5. In addition, the Report consistently drew factual and legal conclusions unwarranted by the evidence and beyond the scope of the Mission's mandate. In particular, it failed to provide anything resembling the full and appropriate context that prompted Operation Cast Lead. Its biases were evident throughout the Report by references to the Israeli "offensive" and to the Gaza Strip and the West Bank as the "Occupied Palestinian Territories"—despite the fact that Israel acted in self-defence and unilaterally withdrew from the Gaza Strip several years ago.

6. It omitted critical information about Hamas, such as the fact that it is considered a terrorist group by most of the world, or that its founding charter declares that "Israel will exist and will continue to exist until Islam will obliterate it" and that "there is no solution for the Palestinian question except through Jihad".

7. While the Report failed to account for many of Hamas's transgressions against Israel, it largely omitted recognition of criminal acts by Hamas towards fellow Palestinians as well. It conceded that Palestinian fighters engaged in armed confrontation around civilian homes and confessed that many Gazans were reluctant to speak about the presence of, or conduct of hostilities by, Palestinian armed groups, but it refused to condemn Hamas practises as illegal and still extended undue credibility to witnesses likely subject to intimidation. It did not describe further the sources of such intimidation, and it consistently assumed that persons who criticised Israel were credible, while those who criticised Hamas or exonerated Israel were less so. The Report also did not investigate other widely known instances of Hamas using mosques, hospitals, and other civilian areas for military purposes.

8. The Report repeatedly professed to know that Israeli soldiers possessed the *mens rea* to commit war crimes or crimes against humanity, despite never having interviewed officials within the Israeli government or military and despite not even knowing the identities of those it condemned. It ignored the legal reality that the law of armed conflict requires any critique of military decisions to be based on the commander's perspective at the time of decision—not on the retrospective perception of international fact-finders far removed from the stress of combat.

9. It consistently failed to account for the inherent vagaries and stresses of war, assuming that potential mistakes can always be precluded and that a better approach is always available. As part of that misguided mentality, the Report repeatedly questioned the battlefield tactics employed by the Israeli military.

10. The reality is that combat is confusing, chaotic, and intense. Conditions are usually very imperfect. Inherent risks are mitigated when opposing forces follow the laws and customs of war that require that they distinguish themselves from the civilian population. In contrast, this risk is exacerbated when belligerents operate in a manner that disables the ability of their opponents to make this distinction—as Hamas did—particularly in a battle space with an extensive civilian presence like the Gaza Strip.

11. The Report accused Israel of, among other things, destroying property not justified by military necessity and deliberately killing innocent civilians. Many of the civilians that the Report alleged Israelis killed were active members of Hamas, whom the Report stated were merely civilian police officers. It ignored contrary evidence provided by Palestinians themselves.

12. The Report dismissed Israel's extensive efforts to minimise civilian casualties as inadequate. For instance, Israel used "knock-on-the-roof" missiles—teaser missiles with little or no explosives—that are fired onto the roof of a building to warn civilians to evacuate. Israel implemented this procedure because, as even the Report conceded, Hamas sent civilians to the top of buildings about to be attacked in the past. Israel's efforts were designed to counter Hamas's illegal tactics and save civilian lives.

13. Israel also dropped millions of leaflet warnings and made over 165,000 phone calls to warn civilians. The warnings were specific in nature when circumstances permitted, and there were even occasions when Israel warned Hamas members who could have been considered legitimate targets of military strikes. Instead of crediting Israel for these efforts, the Report accused it of sowing confusion among the Palestinian population and failing to comply with international law—without providing any textual basis for such legal conclusions.

14. The Report accused Israel of unlawfully using white phosphorous. In fact, Israel used it legally for the purpose of screening Israeli soldiers from enemy fire. It also accused Israel of imposing an illegal siege on Gaza and, in doing so, misstated the legal requirements of the Fourth Geneva Convention. Moreover, it dismissed Israel's efforts to substantially increase delivery of humanitarian aid to the area during the conflict and neglected to account for Hamas's illegal seizure of such aid in many instances.

15. Finally, the Report criticised Israel for not seriously investigating accusations of wrongdoing or illegality within its ranks and for undue delay in carrying out such investigations. In fact, Israel has investigated, and continues to investigate allegations of wrongdoing, and its legal and military systems are among the most vigilant in the world in prosecuting internal misconduct. Decisions are subject to review at the highest level of the Israeli legal system, and dozens of criminal investigations are already underway. The Report's implication that Israel's process is inadequate and that, therefore, universal jurisdiction should be exercised by bodies such as the International Criminal Court ("ICC") is not based on any credible legal authority.

16. In addition to the fact that Israel has not acceded to the ICC and that no Palestinian State exists that would enable it to accede to the ICC, Israel's strong, historical commitment to investigating and prosecuting wrongdoing in its own ranks precludes any exercise of jurisdiction by the ICC according to the complementarity provision of the Rome Statute.

17. For the foregoing reasons, and as further detailed in the attached legal memorandum, the Goldstone Report lacks credibility; it should not be relied upon by any international body, including the Security Council, or any court seeking to serve the cause of justice; and it should be more widely discredited in the public dialogue.