



The Goldstone Report does not need correction

Judge Richard Goldstone headed the Fact-Finding Mission appointed by the UN Human Rights Council to investigate events surrounding Operation Cast Lead, Israel's military assault on Gaza in December 2008/January 2009.

In an Op-Ed in the Washington Post on 1 April 2011, he gave the impression that significant new facts have emerged which prove that aspects of the Mission's report are incorrect. He wrote:

"We know a lot more today about what happened in the Gaza war of 2008-09 If I had known then what I know now, the Goldstone Report [\[1\]](#) would have been a different document." [\[2\]](#)

Professor Christine Chinkin, Hina Jilani and Colonel Desmond Travers, who served with him on the Fact-Finding Mission and co-wrote its Report, do not share his view. They say that

"there is no justification for any demand or expectation for reconsideration of the report as nothing of substance has appeared that would in any way change the context, findings or conclusions of that report with respect to any of the parties to the Gaza conflict." (Guardian, 14 April 2011, [\[6\]](#))

One piece of new information

In fact in his Op-Ed, Judge Goldstone mentions only one piece of new information about one out of the 36 incidents investigated by the Fact-Finding Mission he led. This was one of 11 incidents the Mission categorised as deliberate attacks by Israeli forces against civilians (see Goldstone Report, Chapter XI, paragraphs 702ff).

In this incident, around 100 members of the al-Samouni extended family, the majority women and children, were assembled in a house belonging to Wa'el al-Samouni. Many of them had been ordered by Israeli soldiers to move to this house from others nearby. The house was struck by 3 or 4 Israeli missiles, killing 21 people and injuring 19. Attempts by ambulances to reach the injured and take them to hospital were blocked by Israeli forces for over 48 hours.

Here's what Goldstone had to say about this incident in his Op-Ed:

"... the most serious attack the Goldstone Report focused on was the killing of 29 members of the al-Simouni family in their home. The shelling of the home was apparently the consequence of an Israeli commander's erroneous interpretation of a drone image, and an Israeli officer is under investigation for ordering the attack."

So, he now believes the targeting of the house was an unfortunate accident.

As recommended in the Goldstone Report, the UN Human Rights Council appointed a committee of independent experts to monitor domestic investigations by Israeli and Palestinian authorities of the incidents on which the Report focussed. The committee reported on 18 March 2011 [\[3\]](#) that it

“does not have sufficient information to establish the current status of the on-going criminal investigations into ... the attack on the Wa’el al-Samouni house” (Paragraph 27).

The committee doesn't mention the explanation which led Goldstone to conclude that the attack was an unfortunate accident.

One correction

That is the only qualification that Goldstone entered about the findings of the Mission in his Op-Ed, as he confirmed in an interview with the Associated Press on 6 April 2011, saying:

"As appears from the Washington Post article, information subsequent to publication of the report did meet with the view that one correction should be made with regard to intentionality on the part of Israel. ... Further information as a result of domestic investigations could lead to further reconsideration, but as presently advised I have no reason to believe any part of the report needs to be reconsidered at this time." [\[4\]](#)

The Israeli Government and others have asserted that in his Op-Ed Goldstone retracted completely all the Mission's findings that Israeli forces had deliberately targeted civilians [\[5\]](#). He didn't. The Mission came to the conclusion that in 11 incidents Israeli forces deliberately targeted civilians. He made a case, based on information of uncertain reliability, that this number should be reduced to 10.

International Criminal Court

The Mission recommended that these matters end up at the International Criminal Court (ICC), with individuals being indicted for war crimes and/or crimes against humanity, if the evidence warrants. Needless to say, in the preparation of any indictments, the ICC Prosecutor would be free to examine evidence gathered by a variety of past investigations, for example, by Human Rights Watch and Amnesty International, as well as the Mission led by Judge Goldstone, but also to take into account any new evidence that emerges from whatever source.

The ICC hasn't got jurisdiction over these matters at the moment, since neither Israel nor Palestine are parties to the ICC. How can it acquire jurisdiction? In theory, there are two ways in which this can come about.

First, in January 2009, the Palestinian Authority informed the ICC that “the Government of Palestine hereby recognizes the jurisdiction of the Court for the purposes of identifying, prosecuting and judging the authors and accomplices of acts committed in the territory of Palestine since 1 July 2002” [\[7\]](#).

More than two years later, the ICC Prosecutor has yet to decide whether or not it is permissible under the Rome Statute of the Court [\[8\]](#) for the ICC to accept jurisdiction. The decision hinges on whether Palestine is a state, within the meaning of Article 12(3) of the Rome Statute.

If the ICC were to accept jurisdiction, it would not only allow for the indictment of Israelis for offences committed during Operation Cast Lead, but also for other actions taken in the Occupied Palestinian territories since 1 July 2002, for example, settlement building.

(Article 8.2(b)(viii) of the Rome Statute defines “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” as a war crime. There would seem to be an open and shut case that Israelis active in the settlement building programme are guilty of war crimes.)

The second possibility is that the Security Council refers events in Gaza during Operation Cast Lead to the ICC. The present situation in Libya was referred to the ICC recently, as was the situation in Darfur in July 2005. Neither Libya nor Sudan is party to the ICC. Since, unlike Libya and Sudan, Israel is an ally of the US, the US would almost certainly veto any attempt in the Security Council to refer events in Gaza during Operation Cast Lead to the ICC.

On 21 March 2011, the UN Human Rights Council, which established the Fact-Finding Mission, passed resolution 16/31 [\[9\]](#), which asked the UN General Assembly to reconsider the Goldstone Report in the autumn and urged it to submit the Report to the Security Council with a recommendation that the situation be referred to the ICC.

Operation Cast Lead completely unnecessary

In response to Goldstone’s Op-Ed, the Israeli Ambassador in Dublin, Boaz Modai, wrote in the Irish Times on 12 April 2011:

“[Operation Cast Lead] aimed to end the eight-year campaign by Gaza’s Hamas rulers during which it had fired over 10,000 rockets and mortar shells from Gaza into civilian communities in southern Israel. These attacks had escalated to such intolerable levels that Israel was forced to launch Operation Cast Lead ...” [\[10\]](#)

Ambassador Modai is being economical with the truth: far from escalating to intolerable levels in 2008, Hamas rocket and mortar firing out of Gaza ceased from 19 June to 4 November 2008 (see the Sadaka Briefing *The Israel-Hamas ceasefire: The peaceful alternative to Operation Cast Lead that Israel rejected* [\[11\]](#)).

The most important fact about Operation Cast Lead is that it was unnecessary in order to stop firing out of Gaza. No Israeli or Palestinian blood needed to be spilt in order to bring about that desirable state of affairs. All Israel needed to do was stick to the terms of the ceasefire it negotiated with Hamas in June 2008.

During this ceasefire, southern Israel was completely free from Hamas rocket and mortar fire for four and a half months from 19 June to 4 November. This was confirmed by the Israeli Prime Minister’s spokesman, Mark Regev, on More4 News on 9 January 2009 [\[12\]](#). However, on the evening of 4 November, when the world was watching the election of Barack Obama, Israel brought this peaceful situation to an end by breaking the ceasefire agreement.

Under this agreement, in exchange for Hamas ceasing rocket and mortar fire out of Gaza, Israel undertook to lift its blockade of Gaza and cease military incursions into Gaza. But Israel didn't keep its side of the bargain – it didn't ease the blockade, let alone lift it, and then on 4 November it brought the ceasefire to an end, by making a military incursion into Gaza, for the first time since 19 June, killing 7 members of Hamas.

In November 2008, Israel had a solution to the problem of firing out of Gaza, but threw it away. Operation Cast Lead was completely unnecessary in order to keep southern Israel free from this firing. All Israel had to do was to stick to its ceasefire agreement with Hamas. It chose not to do so. Had it done so, most likely southern Israel would have been free from firing from that day to this, a state of affairs which Operation Cast Lead manifestly failed to bring about.

David Morrison
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References:

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- [4] www.cbsnews.com/stories/2011/04/06/ap/middleeast/main20051164.shtml
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- [6] www.guardian.co.uk/commentisfree/2011/apr/14/goldstone-report-statement-un-gaza
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- [12] uk.youtube.com/watch?v=SILJxPTqjAM

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