

The Goldstone Report Does Not Need Correction



Compiled for Sadaka by Dr. David Morrison

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Executive summary

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 would have been a different document."

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)

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 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.

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."

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. 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.

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”.

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 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, 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.

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 ..."

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.

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. 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.

The Goldstone Report does not need correction

In an Op-Ed in the Washington Post on 1 April 2011, Justice Richard Goldstone wrote:

“We know a lot more today about what happened in the Gaza war of 2008-09 than we did when I chaired the fact-finding mission appointed by the UN Human Rights Council that produced what has come to be known as the Goldstone Report [\[1\]](#). If I had known then [in September 2009] what I know now, the Goldstone Report would have been a different document.” [\[2\]](#)

Israel's normal approach to countering the outcome of an inquiry into its behaviour is to engage in character assassination against the people responsible, to shoot the messenger, as it were.

However, in the case of this UN Fact-Finding Mission, it was more difficult than usual for Israel to undermine the reputation of the person most responsible, since he is (a) a Jew, (b) a Zionist and (c) an international jurist of considerable reputation, having been a former member of the South African Constitutional Court and former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, with honorary doctorates in law from the Hebrew University of Jerusalem and a host of other academic institutions.

Messenger shot himself

Happily for Israel, the messenger has now shot himself by giving the impression that the message he brought was all wrong. Although he pretends that this dramatic alteration to the message is a result of significant new information coming to light, in reality it is a result of a sustained campaign of intimidation and character assassination against him by Israel and its Zionist allies around the world.

The campaign went so far as to attempt to prevent him participating in his grandson's bar mitzvah in Johannesburg. This attempt was led by the chairman of the South African Zionist Federation, Avrom Krengel, who said that “Goldstone caused irreparable damage to the Jewish people as a whole” and threatened to picket the synagogue during the ceremony [\[3\]](#). This was backed by South Africa's Chief Rabbi, Warren Goldstein, who condemned Goldstone for “doing great damage to the State of Israel”.

Goldstone's action in writing the Op-Ed in the Washington Post was clearly an attempt to appease Zionists, who had subjected him to this campaign. Avrom Krengel claimed credit for his apparent turnabout, saying:

“He suffered greatly, especially in the city he comes from. We took sides against him, and it encourages us to know that our way had an effect against the international pressure and made him admit and regret his remarks.” [\[4\]](#)

The Op-Ed gives the impression that significant new facts have emerged which prove that important aspects of the Goldstone Report are wrong. This has enabled Israeli Prime Minister, Benjamin Netanyahu, to say:

“Everything we said has proven to be true: Israel did not intentionally harm civilians, its institutions and investigative bodies are worthy, while Hamas intentionally fired upon innocent civilians and did not examine anything. The fact that Goldstone backtracked must lead to the shelving of this report once and for all.” [\[5\]](#)

What new facts?

So, what new facts has Goldstone become aware of that have led him to the momentous conclusion that “the Goldstone Report would have been a different document” had he known them when the report was written? In his Op-Ed, he 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 which the Mission categorised as deliberate attacks by Israeli forces against civilians (see Goldstone Report, Chapter XI DELIBERATE ATTACKS AGAINST THE CIVILIAN POPULATION, paragraphs 702ff).

In this incident, which occurred in Zeytoun on 5 January 2009, 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 (see Goldstone Report, paragraph 710ff). Many of them had been ordered by Israeli soldiers to move to this house from others nearby. At that time, no combat was going on in the vicinity. Israeli forces were in complete control of the area.

The house was struck by 3 or 4 Israeli projectiles, the precise nature of which the Mission was unable to ascertain. The first one struck when five men were leaving the house in order to gather firewood, in full view of Israeli soldiers positioned on the roofs of nearby houses, the others a few minutes later after the survivors of the first attack had retreated back into the house. In all, 21 people were killed and 19 injured. 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, the targeting of the house was an unfortunate accident, he now believes.

This information clearly came from an Israeli investigation into the incident. The impression he gives is that this explanation has been accepted by Israeli investigators. However, there has been no judicial process to test whether the explanation stands up.

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. The committee reported on 18 March 2011 [\[6\]](#) 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 caused Goldstone to conclude that the attack was an unfortunate accident. Clearly, he has access to information from Israeli sources that were not available to the committee.

One correction

The Fact-Finding Mission investigated 36 incidents in all, 11 of which were deemed to be deliberate attacks by Israeli forces against civilians. Of the latter incidents, the Mission concluded:

“From the facts ascertained in all the above cases, the Mission finds that the conduct of the Israeli armed forces constitute grave breaches of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons and as such give rise to individual criminal responsibility.” (Paragraph 46)

Goldstone has suggested that one of those 11 was not a deliberate attack but an unfortunate mistake. That is the only qualification that he has entered about the findings of the Mission.

Goldstone himself confirmed this in an interview with the Associated Press on 6 April 2011. Here’s what he said:

"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." [\[7\]](#)

In this interview, he also confirmed that he was not seeking to have the report withdrawn, as Israel has been demanding.

This is a very different message from the one given in his Op-Ed in the Washington Post, which gave the impression that lots of new information had emerged and that, had this information been available in September 2009, the Goldstone Report “would have been a different document”.

Series of impressions

Goldstone’s Op-Ed contained one piece of new information, of unknown reliability. However, it also contained a whole series of impressions that were music to Israel’s ears.

The most important of these was his apparent retraction of allegations in the Goldstone Report that Israel targeted civilians. He wrote:

“The allegations of intentionality by Israel were based on the deaths of and injuries to civilians in situations where our fact-finding mission had no evidence on which to draw any other reasonable conclusion. While the investigations published by the Israeli military ... have established the validity of some incidents that we investigated in cases involving individual soldiers, they also indicate that civilians were not intentionally targeted as a matter of policy.”

He then went on to cite the new “evidence” that the al-Samouni killings had been due to the misinterpretation of drone image. Later, he wrote:

“Although the Israeli evidence that has emerged since publication of our report doesn’t negate the tragic loss of civilian life, I regret that our fact-finding mission did not have such evidence explaining the circumstances in which we said civilians in Gaza were targeted, because it probably would have influenced our findings about intentionality and war crimes.”

The Fact-Finding Mission came to the conclusion that in 11 incidents it investigated Israeli forces deliberately targeted civilians. If accurate, Goldstone's new information merely reduced that number from 11 to 10.

However, his words enabled the Israeli Ministry of Foreign Affairs to say in its official response (titled *The Goldstone Report refuted - by Goldstone himself*):

"The most important sentence in Goldstone's article is the statement that, in hindsight, his report to the UN should not have reached the conclusions it did as far as Israel is concerned. ... Key among these conclusions, based on reliable Israeli investigations, is that civilians were not intentionally targeted as a matter of policy, thereby refuting one of the most heinous allegations contained in the original report." [\[8\]](#)

Other comments in the Op-Ed that are quoted enthusiastically in this response are:

- his support for Israel's self-defense justification for Operation Cast Lead (of which more later);
- his praise for Israel's subsequent investigations (the vast majority of which have yet to reach a conclusion, as we will see);
- his condemnation of Hamas as serial war criminals, unlike Israel, for allegedly continuing to fire rockets and mortars out of Gaza (NB Since Operation Cast Lead until 10 April this year, Israel has killed 167 Palestinians in Gaza, 49 this year; in the same period, no Israeli, civilian or military, was killed by rocket or mortar fire out of Gaza [\[9\]](#));
- his condemnation of the UN Human Rights Council, which set up the Mission he headed, saying its "history of bias against Israel cannot be doubted", thereby justifying Israel's refusal to co-operate with the Mission.

Goldstone's colleagues stand by report

The Goldstone Report was endorsed by the UN Human Rights Council and the UN General Assembly in October/November 2009. It is not going to be withdrawn as a result of an Op-Ed, even one by the head of the Mission that drew it up. Cedric Sapey, a spokesman for the Council, said:

"The UN will not revoke a report on the basis of an article in a newspaper. The views Mr Goldstone expressed are his own personal views. A move to change or withdraw the report would either require a formal written complaint from Goldstone, backed unanimously by his three fellow authors, or a vote by the UN General Assembly or the Human Rights Council." [\[10\]](#)

The other members of the Mission, and fellow authors of the Report, were Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, Hina Jilani, Advocate of the Supreme Court of Pakistan, and Colonel Desmond Travers of the Institute of International Criminal Investigations in The Hague and a former officer in the Irish Armed Forces.

They have issued a detailed statement standing by the findings of the Mission as expressed in the Goldstone Report:

"We concur in our view 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. Indeed, there is no UN procedure or precedent to that effect.

"The report of the fact-finding mission contains the conclusions made after diligent, independent and objective consideration of the information related to the events within

our mandate, and careful assessment of its reliability and credibility. We firmly stand by these conclusions.” (Guardian, 14 April 2011, [\[11\]](#))

Domestic investigations

The Fact-Finding Mission recommended that the Israeli and Palestinian authorities be requested to carry out independent investigations into the incidents where the Mission found evidence of violations of international law. This request was made by the UN General Assembly in resolution 64/10 passed on 5 November 2009 [\[12\]](#).

The Mission also recommended that a committee of independent experts be appointed to monitor the independence and effectiveness of these domestic proceedings, if any, and that, if domestic investigations prove to be inadequate, these matters be referred to the International Criminal Court (ICC).

A committee of experts was appointed by the UN Human Rights Council. Its current members are Judge Mary McGowan Davis (Chair), former Justice of the Supreme Court of the State of New York, and Swedish Judge Lennart Aspegren.

Israel has adopted a policy of non-cooperation with the committee, as it did with the Mission itself. The committee’s latest report published on 18 March 2011 [\[6\]](#) says:

“According to available information, the Government of Israel has conducted some 400 command investigations in relation to Operation Cast Lead. Reports indicate that the Israeli Military Advocate General (MAG) has opened 52 criminal investigations into allegations of wrongdoing. Of these 52 investigations, thus far three cases have been submitted to prosecution; two have resulted in convictions, while the trial of one case is still ongoing.” (Paragraph 24)

Command investigations are operational, not legal, inquiries and are conducted by personnel from the same command structure as those under investigation.

One of the convictions was for the theft of a credit card, for which a soldier was sentenced to seven and a half months’ imprisonment. The other conviction was for using a Palestinian child as a human shield, for which a soldier received a suspended sentence of three months.

The committee expressed serious concern about the delay in starting investigations and their slow progress (Paragraph 42). Out of the 36 incidents relating to Gaza described in the fact-finding mission report, more than a third remain unresolved or without a clear status over two years after the conflict. The committee could identify significant changes in the status of only two cases since its previous report in September 2010. In addition, the committee states that there is “no indication that Israel has opened investigations into the actions of those who designed, planned, ordered and oversaw Operation Cast Lead” (Paragraph 79).

Overall, the committee did not view Israel’s investigations as adequate.

ICC investigations?

What are the chances of these matters being investigated by the International Criminal Court (ICC) and individuals being indicted? They are very small.

Israel is not a party to the ICC. In this respect, it is no different to about 80 other states in this world, for example, the US, Russia, China, Sudan and Libya.

The ICC has jurisdiction for certain offences committed in the territories of states that are party to it, or by nationals of states that are party to it. These offences – genocide, war crimes and crimes against humanity – are defined in the Rome Statute of the ICC. In principle, the ICC can prosecute any individual responsible for these crimes, regardless of his/her civilian or military status or official position.

However, the primary responsibility for prosecuting these crimes lies with the state in which they were committed – and the ICC only acquires jurisdiction to prosecute them if the state fails to do so, which is why the Fact-Finding Mission recommended that Israeli and Palestinian authorities be requested to carry out domestic investigations first.

If the ICC did acquire jurisdiction, its investigations would not be limited to the findings in the Goldstone Report. Investigations have also been carried out by, for example:

Human Rights Watch

Rain of Fire: Israel's Unlawful Use of White Phosphorus in Gaza [\[13\]](#)

Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles [\[14\]](#)

White Flag Deaths: Killings of Palestinian Civilians during Operation Cast Lead [\[15\]](#)

Turning a Blind Eye: Impunity for Laws-of-War Violations during the Gaza War [\[16\]](#)

"I Lost Everything": Israel's Unlawful Destruction of Property during Operation Cast Lead [\[17\]](#)

Amnesty International

Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction [\[18\]](#)

Arab League Fact Finding Committee

No Safe Place [\[19\]](#)

All of these reports found prima facie evidence of violations by Israeli forces. These include indiscriminate attacks using heavy artillery and white phosphorus in densely populated areas, deliberate destruction of civilian buildings and infrastructure, attacks on UN facilities, medical facilities and personnel and the use of Palestinian civilians as human shields.

All of these, and more, would be available to the ICC as the basis for its own independent investigations into the events surrounding Operation Cast Lead and for the preparation of indictments against individuals where the evidence warrants.

There are two possibilities for the ICC acquiring jurisdiction for offences committed in Gaza during Operation Cast Lead.

Palestinian Authority accepts ICC jurisdiction

First, in January 2009, the Palestinian Authority sought to grant the ICC jurisdiction for such offences. It forwarded a declaration to the ICC Prosecutor in the following terms:

“Pursuant to the provisions of Article 12 paragraph 3 of the Statute of the International Criminal Court, the Government of Palestine hereby recognizes the jurisdiction of the Court for the purposes of identifying, prosecuting and judging the authors and accomplices of acts committed in the territory of Palestine since 1 July 2002.” [\[20\]](#)

(The ICC came into operation on 1 July 2002 and it cannot try offences committed prior to this date.)

Article 12(3) of the Rome Statute says:

“If the acceptance of a State which is not a Party to this Statute is required under paragraph 2 [for jurisdiction to be accepted by the ICC], that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question.” [\[21\]](#)

Clearly, the decision to accept jurisdiction depends on whether the Prosecutor decides that Palestine qualifies as a “state” within the meaning of this paragraph.

More than two years after the Palestinian Authority submitted this declaration, the Prosecutor has yet to make a decision. The Fact-Finding Mission recommended that a decision “should be made by the Prosecutor as expeditiously as possible” (Paragraph 1767).

It is unlikely that the ICC will accept jurisdiction because of the enormous political implications of doing so. It would not only allow for the indictment of Israelis for offences committed in Gaza during Operation Cast Lead, but also for other actions taken in the Occupied Palestinian territories since 1 July 2002, including 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.

Security Council referral

The second possibility for the ICC to acquire jurisdiction is that the Security Council refer events in Gaza during Operation Cast Lead to the ICC. Article 13(b) of the Rome Statute allows this to happen. Under it, the ICC may exercise jurisdiction in respect of genocide, war crimes and crimes against humanity if:

“A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;”

On 26 February 2011, the Security Council voted unanimously, in resolution 1970, to refer Libya to the ICC. To be precise, it decided

“to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court;” [\[22\]](#)

In July 2005, it voted “to refer the situation in Darfur since 1 July 2002”, which led to the indictment of the Sudan’s President al-Bashir for the offence of genocide.

Of course, Israel has a crucial advantage over Sudan and Libya – it has the US as an ally, and the US wields a veto on the Security Council. It is very unlikely that the US would allow the situation in Gaza during Operation Cast Lead to be referred to the ICC. However, one cannot but hope that the matter will be pressed in the Security Council to the point where the US is forced to wield its veto to protect Israel.

A step on the road to this was taken on 21 March 2011, when the UN Human Rights Council passed resolution 16/31, which included a recommendation that

“the General Assembly reconsider the report of the United Nations Fact-Finding Mission on the Gaza Conflict at its sixty-sixth session, and urges the Assembly to submit that report to the Security Council for its consideration and appropriate action, including

consideration of referral of the situation in the Occupied Palestinian Territory to the prosecutor of the International Criminal Court, pursuant to article 13(b) of the Rome Statute;" [\[23\]](#)

It is now up to the General Assembly to refer the matter to the Security Council.

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, with the clear avowal that its target was Hamas infrastructure and rocket facilities" [\[24\]](#)

That is simply a lie: 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 Paper, *The Israel-Hamas ceasefire: The peaceful alternative to Operation Cast Lead that Israel rejected* [\[25\]](#)).

The most important fact about Operation Cast Lead is that it was completely unnecessary in order to stop rocket and mortar fire 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. Israel's self-defence justification for Operation Cast Lead is bogus.

During the 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 [\[26\]](#).

There was a small amount of firing by other Palestinian groups, but Israel accepted that Hamas was trying to restrain them and the restraint was working. In the whole of October 2008, only 1 rocket and 1 mortar were fired out of Gaza, compared with 153 rockets and 241 mortars in the first 18 days of June, immediately before the ceasefire came into operation. 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 the firing of rockets and mortars 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 has manifestly failed to bring about.

The irresistible conclusion is that in 2008 Israel had decided to launch a military assault on Gaza and required a justification that could be sold to the world for doing so. In October 2008, with the civilian population of southern Israel having been almost completely free

from rocket and mortar fire for four months and a half months, a justification of self-defence would not have been credible. To justify such an assault as self-defence, Hamas had to be provoked into resuming firing out of Gaza. That's why Israel broke the ceasefire on 4 November 2008.

David Morrison
April 2011

References:

- [1] www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf
- [2] www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html
- [3] electronicintifada.net/v2/article11895.shtml
- [4] www.ynetnews.com/articles/0,7340,L-4051403,00.html
- [5] http://www.mfa.gov.il/MFA/Government/Communiques/2011/PM_Netanyahu_to_UN_cancel_Goldstone_Report_2-Apr-2011.htm
- [6] www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24_AUV.pdf
- [7] www.cbsnews.com/stories/2011/04/06/ap/middleeast/main20051164.shtml
- [8] www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/Behind-The-Headlines-The-Goldstone-Report-Refuted%E2%80%93By-Goldstone-Himself-3-Apr-2011.htm
- [9] www.btselem.org/english/statistics/casualties.asp?sD=19&sM=01&sY=2009&filterby=event
- [10] www.guardian.co.uk/world/2011/apr/05/goldstone-gaza-report-stands-un
- [11] www.guardian.co.uk/commentisfree/2011/apr/14/goldstone-report-statement-un-gaza
- [12] unispal.un.org/unispal.nsf/a06f2943c226015c85256c40005d359c/9cc062414581d038852576c10055b066
- [13] www.hrw.org/sites/default/files/reports/iopt0309web.pdf
- [14] www.hrw.org/sites/default/files/reports/iopt0609web_0.pdf
- [15] www.hrw.org/sites/default/files/reports/ioptwf0809webwcover_2.pdf
- [16] www.hrw.org/sites/default/files/reports/iopt0410webwcover_0.pdf
- [17] www.hrw.org/sites/default/files/reports/iopt0510webwcover_1.pdf
- [18] www.amnesty.org/en/library/asset/MDE15/015/2009/en/8f299083-9a74-4853-860f-0563725e633a/mde150152009en.pdf
- [19] www.arableagueonline.org/las/picture_gallery/reportfullFINAL.pdf
- [20] www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122PalestinianDeclaration2.pdf
- [21] www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf
- [22] www.un.org/Depts/dhl/resguide/scact2011.htm
- [23] unispal.un.org/unispal.nsf/9a798adb322aff38525617b006d88d7/f7e0b877a8009ed5852578610065adfc
- [24] www.irishtimes.com/newspaper/opinion/2011/04/12/1224294483347.html
- [25] www.sadaka.ie/Articles/Papers/PAPER-Gaza_Ceasefire.pdf
- [26] uk.youtube.com/watch?v=SILJxPTqjAM



Sadaka – an Arabic term for ‘friendship’ – is an Association established in Ireland in 2009 to maximise support in Ireland for the Palestinian people in their struggle for national, democratic and human rights. It aims to persuade those in government to champion the cause of justice for Palestine.

The Board of Sadaka consists of Marie Crawley (Chair), Noreen Byrne (Secretary), Adnan Shabab (Treasurer), Dr. David Morrison, Alan Lonergan, Dr. Des McGuinness, Hilary Minch, Philip O’Connor, Dr. Elaine Murtagh and Caitlin Ni Chonail.

If you would like to become a supporter of Sadaka or donate to our campaign, please contact us at:

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Sadaka supports a peaceful settlement in Israel/Palestine based on the principles of democracy and justice, be that in two states or in one state. We maintain an independent position on internal politics within Palestine, favouring neither Fatah, Hamas nor any other Palestinian political organisation.