

Introduction: The Dangerous Bias of the United Nations Goldstone Report

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The UN Fact-Finding Mission on the Gaza War, known more popularly as the Goldstone Report, best illustrates the fundamental problems associated with reliance on international mechanisms for assuring true accountability in a conflict like Operation Cast Lead. The Goldstone Report turned out to be heavily flawed. Originally, it was the initiative of the Geneva-based UN Human Rights Council, which named South African Justice Richard Goldstone to head it. It was promoted at the time by Cuba, Egypt, and Pakistan – not exactly the beacons of human rights – and had no support from Western democracies.

Strictly speaking, the report was primarily directed against Israel, which was seeking to bring to a complete halt the indiscriminate rocket and mortar fire by the international terrorist organization Hamas against Israeli towns and villages, that had been going on for nearly eight years. The Goldstone Report alleged that Israeli troops had committed “war crimes” by attacking purely civilian targets in the Gaza War. To make matters worse, the report failed to link Hamas to any violations of the laws of war, even though its continuing rocket attacks on Israeli civilians caused the Gaza War to begin with. There was only mention of anonymous “Palestinian armed groups.” It is probably for that reason that the Hamas second-in-command in Damascus, Musa Abu Marzuq, told the Saudi satellite channel *Al-Arabiya* that “the report acquits Hamas almost entirely.”

The net results of this attempt to create accountability in the war on terrorism were actually dangerous for pursuing the war against terror in the future. For what emerged was that an official report, with the stamp of the United Nations, made serious, but largely unsubstantiated, allegations about a state engaged in lawful self-defense, while letting the aggressor, an international terrorist organization, completely off the hook. Running through the report in incident

after incident is the charge that Israel *intentionally* attacked civilian targets. It did not conclude that civilian injuries were a product of collateral damage that occurs in many wars, but rather it resulted from a deliberate policy of the IDF. Israeli President Shimon Peres understandably called the Goldstone Report “scandalous” when he met UN Secretary-General Ban Ki-Moon in Jerusalem on March 20, 2010.

How did the Goldstone team produce such a result? It is essential to understand that its members had a very specific outlook of the nature of this kind of armed conflict that affected their conclusions. Colonel Desmond Travers of Ireland was the senior military figure on Goldstone’s panel and probably its most important member after Justice Goldstone. In a wide-ranging interview in *Middle East Monitor* from February 2, 2010, he utterly rejects that there is something called “asymmetric warfare” in which insurgent forces are introducing civilians into the battlefield against modern armies in a way that changes the nature of warfare. This outlook directly affected what Travers and his colleagues looked for as they gathered evidence, and how they went about the interviews that they conducted with Palestinians in the Gaza Strip.

Muhammad Abu Askar told the Goldstone panel that his house had been “unjustly” blown up by Israel. Yet his son Khaled worked for the military supply unit of Hamas and Iranian-supplied Grad rockets that were fired at Israel were stored in the cellar.

Take, for example, the case of Muhammad Abu Askar, a longtime Hamas member who served as the director-general of the Ministry of Religious Endowments in the Gaza government. He appeared before the Goldstone panel arguing that his house had been “unjustly” blown up by Israel, though he admitted that he was warned in advance by the IDF, who telephoned him directly, informing him that his home was to be targeted and he had better vacate the area. The Goldstone Report concludes that Abu Askar’s home was of an “unmistakably civilian nature.” If that was the case, then Israel would have violated one of the basic principles of international law by failing to discriminate between military and civilian objects and personnel during wartime.

Because the UN actually posted on its website video clips with the questioning of Abu Askar by the Goldstone panel, it is possible to examine how panelists reached their conclusions. They asked him detailed questions about the warning he received. They also asked about the other homes in the area. But the most pivotal question that would help them determine whether Abu Askar’s house was purely civilian in nature or was a legitimate military target was not even asked. No one bothered to confront him with the unpleasant but necessary question of whether Hamas munitions were being stored in his house.

In January 2010, the Israel Defense Forces completed its own internal investigation of many of the incidents that appeared in the Goldstone Report, including the case of Abu Askar. Israeli representatives submitted their findings to the UN secretary-general. It turned out that the cellar and other parts of Abu Askar’s house served as a storage facility for large stockpiles of weapons and ammunition, including Iranian-supplied Grad rockets that had been used against Israeli cities like Ashkelon, Ashdod, and Beersheba.

Indeed, the area around the house had been used as a launch site for attacking many Israeli towns and villages. If someone in the UN’s research division would have bothered to check the Arabic website of the Izz al-Din al-Qassam Brigades of Hamas, they would have disclosed that Khaled

Abu Askar, Muhammad's son, worked for the military supply unit of Hamas and provided its operatives with rockets and military equipment. The failure of the Goldstone panel to look into these issues and to ask the most basic questions of Muhammad Abu Askar regarding his use of his house to store rockets illustrates how unprofessional this investigation really was.

The Abu Askar case is only one of many incidents that appear in the Goldstone Report, but it is representative of a pervasive problem that appears throughout. In trying to reconstruct the reality of what occurred in the Gaza War, the team members refused to consider that Hamas was exploiting civilian areas to gain military advantage. In late October 2009, Colonel Travers confidently told *Harper's*: "We found no evidence that mosques were used to store munitions." He then added his own ideological position on the matter that helped him make such a conclusive assertion: "Those charges reflect Western perceptions in some quarters that Islam is a violent religion."

When Travers was asked how many mosques he inspected, he answered that he visited two. He did not even think that he needed to be more thorough, for he dismissed the very possibility that anyone would hide munitions in a place of worship. In contrast, in January 2010, Col. Tim Collins, a British veteran of the Iraq War, visited Gaza for BBC Newsnight and actually inspected the ruins of a mosque that Israel had destroyed because it had been a weapons depot. He found that there was evidence of secondary explosions caused by munitions stored in the mosque cellar. Travers clearly did not think it was necessary to make the same effort.

In other theaters of war in the Middle East, the militarization of mosques was very common. In 2004, U.S. forces in Iraq found weapons and insurgents in no less than 60 mosques in the town of Fallujah. While the Goldstone Report itself stated that it was unable to make a determination whether mosques were used for military purposes by the Palestinians, it nonetheless concluded that mosques were a "civilian object" and that Israeli operations against them were a violation of international law.

More generally, the Goldstone team simply refused to accept the argument that Hamas had used the Palestinian population in the Gaza Strip, as well as its civilian infrastructure, as human shields – a hallmark of the asymmetric warfare used by insurgents. Speaking about Hamas, Travers in his 2010 interview states point blank: "We found no evidence for the human shield phenomenon." As a result, from the Goldstone panel's worldview, Hamas had no responsibility for exploiting the Palestinian population to shield its military operations. Travers, in particular, was operating with ideological filters that prevented him from seeing evidence that contradicted his worldview.

From Israel's military experience, it was clear that Hamas used human shields effectively. A report by Israel's Intelligence and Information Center contains Israel Air Force video showing how on December 27, 2008, the first day of the Gaza War, after the residents of a building serving as a munitions storehouse were warned of an imminent Israeli air operation, they did not evacuate but ran to the roof of the building. As a result, Israel aborted the air strike it had planned. Other Israel Air Force videos show Hamas operatives deliberately moving toward groups of children or using them in the fighting in order to escape possible Israeli attack. Detained Hamas combatants confirmed this had been part of their military tactics.

However, the Goldstone panel did not want to consider the possibility that the Gaza War was part of an emerging battlefield in which private homes, mosques, and innocent civilians are being intentionally exploited by terrorist groups that seek to fight the West. In February 2010, Afghan officials reported that the Taliban were increasingly using human shields against U.S. and

allied forces trying to make inroads in Helmand province. Similar tactics have been employed by the Taliban in Pakistan as well.

With respect to the Gaza Strip, the Goldstone Report recommended that states open up criminal investigations against those whom it alleges may have committed war crimes. It also seeks the intervention of the International Criminal Court. Already, British courts have sought the arrest of former Israeli officers on the basis of complaints issued by Islamic and radical left-wing groups in London. Might not U.S. and other NATO officers be exposed to the same treatment on the basis of these precedents? Hamas created a legal arm, called *al-Tawthiq* (lit. documentation), which fed information to the Goldstone panel and today provides British lawyers with material to seek the arrest of Israelis in Britain. Why can't the Taliban find lawyers to do the same?

What needs to be done is to recognize that Western armies are going to be dealing increasingly with situations in which terrorist groups are embedding their military capabilities in the heart of civilian areas. In these circumstances, Western armies have three choices if their countries come under attack: 1) to surrender to terrorism and not defend their citizens, 2) to act like the Russians in Chechnya and use indiscriminate firepower, or 3) to find a way to separate the civilians from the military capabilities they hope to destroy.

Israel clearly chose the last option, using an unprecedented system of warnings to the Palestinian population by means of leaflets, breaking into Hamas radio broadcasts with special Arabic transmissions, and finally by telephone calls and text messages to the residents of a targeted area to evacuate and avoid danger.

The Goldstone Report never suggests how Israel was supposed to respond to eight years of rocket fire. Despite the multiple warnings that Israel issued to the Palestinian population, the report has the audacity to charge that Israeli soldiers "deliberately" killed Palestinian civilians, basing this accusation on biased interviews with Gaza residents whom it admitted were in "fear of reprisals." The Goldstone Report does not ask how it could charge that Israel had a policy of deliberately killing civilians, if Israel actually took extraordinary measures to warn the very same civilian population of impending attacks. But rather than being discredited, unfortunately the Goldstone Report picked up steam. The UN General Assembly voted on the report on November 5, 2009.

It was noteworthy that countries with forces deployed in insurgency wars, like in Afghanistan, either opposed or abstained. Yet in a second vote in late February 2010, Britain and France changed their vote from abstention to support for the Goldstone Report. In mid-March 2010, the European Parliament voted to endorse the report as well.

No one is suggesting that human rights be sacrificed on the altar of national security. The laws of war need to be carefully protected along with the lives of the innocent. The problem with the Goldstone Report is not the result of the need to revise those laws: They need to be applied correctly and not in a way that ignores what insurgent forces are doing on the ground. If a public building filled with munitions needs to be attacked at night when civilians are not present, it is not for reasons of revenge but rather from military necessity. The Goldstone panel did not want to consider that possibility because of its own prejudices and mind-set. Should that mind-set spread, then not only will Israel's security be endangered but also the security of the West as a whole.