

Operation Cast Lead: a Critical Study of the Goldstone Report

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Introduction

It has been one year since Israel launched its 22-day long attack codenamed Operation Cast Lead (OCL) on the Gaza Strip. Last week a British court issued an arrest warrant for Israeli Kadima opposition leader Tzipi Livni for her role in orchestrating the assault. Livni, who was Israel's foreign minister at the time, was scheduled to visit the UK but ended up calling off her trip; the arrest warrant was cancelled as a result. However the issuing of the warrant in and of itself is an incredible feat. It is also a direct result of recommendations made in the Goldstone Report concerning how to bring justice to the Palestinian victims of OCL.

Israel launched OCL in what it said was response to years of rocket and mortar fire emanating from armed Palestinian groups operating in the Strip, invoking self-defense under Article 51 of the United Nations Charter as justification for the attack. Article 51 of the charter reads "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations..."ⁱ

Israel maintains that the operation was indeed necessary for self-defense, and stated that the aim of the operation was to end rocket attacks into southern Israel from the Gaza Strip, to dismantle the ability of Hamas and other armed Palestinian groups to launch rockets and mortars into southern Israel, and to restore Israel's deterrent capability. Yet on the first day of the operation and within the first few minutes of OCL alone, Israeli forces killed 99 members of the Palestinian police force in Gaza.ⁱⁱ The attack occurred in midday when the streets were full of people, including many school children, which spiked the death toll of the first day to over 200.

In the days that followed, the death toll increased significantly, drawing the condemnation of Palestinians, human rights groups and the international community who decried the operation as having a disproportionate and what seemed an intentional impact on civilians. The number of Palestinians killed during the operation varies, but most human rights groups put the number around 1,400 and say that an overwhelming number of those killed were civilians, including approximately 300 children.ⁱⁱⁱ Additionally, there was extensive and severe damage to civilian objects and infrastructure; the overall impact of OCL on the civilian population of Gaza caused widespread international outcry and protests, which led to the establishment of the UN Fact Finding Mission to Gaza, and ultimately resulted in the Goldstone Report.

The United Nations Fact Finding Mission to Gaza

The United Nations Fact Finding Mission to Gaza was established on 3 April 2009 by the President of the United Nations Human Rights Council with the purpose of investigating "all violations of international human rights law and international humanitarian law that might

have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.”^{iv}

The fact-finding mission emerged as a result of UN resolution S-9/1 adopted on 12 January 2009 by the United Nations Human Rights Council at the conclusion of its 9th special session, and was drafted by Cuba, Egypt and Pakistan.^v Resolution S-9/1 initially sought the investigation only of Israeli violations during OCL, drawing criticism that the resolution was biased against Israel. However, prior to the drafting of the resolution, eight Israeli NGOs wrote to Israeli Attorney General Mr. Meni Mazuz requesting an independent international investigation into the allegations of grave Israeli violations of the laws of war during the Gaza operation. The eight NGOs additionally expressed their concern at the inability of the Military Advocate General’s office to initiate a fair and neutral investigation.^{vi} Thus there was also a very strong push from within Israel itself for a fair and independent international investigation into the allegations that the laws of war were seriously violated during OCL.

South African Justice Richard Goldstone, former judge of the Constitutional Court of South Africa, was selected by the President of the Human Rights Council to head the commission. Justice Goldstone, a Jew and self-proclaimed Zionist who sits on the board of Governors of Hebrew University, is a man of impressive stature with an impeccable reputation for fairness and justice. He headed the former prosecution for the International Criminal Tribunals for Rwanda and the former Yugoslavia, and agreed to head the fact-finding mission to Gaza only after asking that all violations of international law be investigated, not just allegations against Israel. According to the mandate, “the mission determined it was required to consider any actions by all parties that might have constituted violations of international human rights law or international humanitarian law.”^{vii}

This allowed the mission to investigate and document Palestinian violations as well, making it more difficult to claim that the findings of the report were biased. However, aside from drafting a report that would be deemed fair and balanced, the mission also held the opinion that denying accountability on both sides only serves to reinforce impunity, which has a negative impact on the credibility of the UN, the international community and the peace process itself.^{viii} Thus the overall aim of the Goldstone Report seemed to be concerned with ending the cycle of violence by halting impunity from violations of international law through holding those violators accountable. The report asserts that accountability would deter the eruption of such extreme violence in the future.

In addition to investigating violations of international law during the military operations, the mandate also required it to review related actions in the entire Occupied Palestinian Territory and Israel, thereby providing a larger framework through which to understand the context from which the violence of Operation Cast Lead emerged.”^{ix} The mission considered both Israeli and Palestinian actions from 1967 through January 2009, placing particular emphasis on the Israeli imposed blockade of the Gaza Strip, and placing OCL within the context of the ongoing blockade of the Strip and overall Israeli policies toward the occupied Palestinian territory.^x

In this sense the report is exhaustive, thorough and meticulously documents Israeli occupation practices that violate international law and the human rights of Palestinians, drawing a direct correlation between these practices and OCL. The report gives considerable attention to Israeli policies of house demolitions, evictions, construction of the wall and settlements, settler violence against Palestinians, the separation of the West Bank from east Jerusalem and Gaza, Israeli detention policies, and the denial of due process to Palestinian prisoners. The mission also examined discriminatory policies within Israel against its Palestinian citizens and attempts to stifle dissent within Israel. In this regard, the report is extraordinary in its scope and deeply profound in its findings. Simply put, the conclusions of the report cannot and should not be ignored in the pursuit of peace and justice for Palestine and Israel.

The Mission's Framework and Methodology

The task of the mission was very specific and according to the report itself "interpreted the mandate as requiring it to place the civilian population of the region at the center of its concerns regarding the violations of international law."^{xi} The mission conducted its investigation of the impact of the operation on civilians within the framework of general international law, the United Nations Charter, international humanitarian law, international human rights law and international criminal law.

Because the mandate of the mission very specifically required it to investigate the impact on civilians according to international humanitarian law (IHL) and the laws of war, it was not intended or permitted to investigate deeper questions of aggression and how Operation Cast Lead was initiated. The framework of the report assumed that Israel had the right to self-defense according to Article 51 of the United Nations Charter. Thus the investigation did not specifically explore whether or not OCL was a war of last resort or if all other diplomatic options had been exhausted in dealing with the rocket fire from Gaza.

The Goldstone Report does document very thoroughly all terms and breaches of the six-month Egyptian-brokered truce between Israel and Hamas, which was intended to halt the rocket and mortar fire and ease the Israeli blockade of the Strip. The report also acknowledges that the Israeli blockade of the Strip was not eased during the truce, and notes that the Israeli incursion into the Strip on 4 November 2008 in which six Hamas operatives were killed played a significant role in the breakdown of the truce.^{xii} However, it does not provide any recommendations or draw any conclusions regarding the success of the truce in reducing rocket and mortar fire from the Strip. Instead, the mission focused on examining to what extent Israel took feasible precaution in protecting the civilian population of Gaza, to what extent Palestinian armed groups took feasible precaution in protecting the civilian population of Gaza, and to what extent Palestinian armed groups placed the civilian population of southern Israel in danger.

Israel's Reactions

In response to allegations that OCL had a disproportionate impact and effect on Palestinian civilians, Israel responded that Hamas launched attacks from within civilian areas and near civilian objects including schools, hospitals, ambulances and mosques, thereby using the

population of Gaza as a human shield. Because of this, Israel claimed that Hamas had forced the Israeli military into a type of urban warfare that could not distinguish between military and civilian objects and that civilian casualties were an unfortunate but justified result of this type of warfare.^{xiii} Israel's government officials continue to insist that OCL was not directed at the civilian population of Gaza, but at those responsible for firing rockets and mortars at civilian centers in southern Israel.

For example, in response to the recent arrest warrant issued against her, Livni's office said she was "proud of all her decisions regarding Operation Cast Lead."^{xiv} This should not be surprising considering that OCL enjoyed an overwhelming majority of Israeli approval; 90% of the Israeli public supported the operation in Gaza and continue to insist that it was a just war.^{xv} In fact during the operation some Israelis, many of them from the southern Israeli town of Sderot which has been one of the primary areas impacted by the rocket and mortar attacks, gathered with journalists on a string of sandy hilltops near the Gaza border to watch the bombardment of the coastal enclave. Spectators brought binoculars, lawn chairs, sack lunches and snapped photos of each other with plumes of smoke rising from the besieged Strip in the background.^{xvi} Most expressed gratitude that the Israeli government was finally taking action against the rocket and mortar attacks from Gaza, rejecting accusations that the force used was disproportionate and placing the blame for the assault squarely onto the shoulders of the people of Gaza.

Moreover, last March in the wake of the operation Israeli Major General Yoav Galant reiterated this sentiment about OCL when he said "A feeling of pride washes over me because we have a moral army that adheres to international law."^{xvii} This statement seems to reflect the general Israeli popular opinion concerning OCL, and explains why there was such anger and outrage over the Goldstone Report within Israel, which dismissed the report as unfair, biased and an attempt to undermine Israel's right to defend itself. It also seems to indicate a severe lack of awareness and understanding amongst the Israeli public concerning the origins of the violence and the reality of Israel's policies in the Palestinian territories.

It is no surprise then that Israel rejected the report's findings and that most Israelis have not bothered to read the report, the contents of which are unsettling and deeply disturbing to them, particularly for a population that can easily choose to live in denial about Israeli policies in the Palestinian territories. The conclusions reached by the United Nations Fact Finding Mission on the Gaza Conflict determined that the overall aims of OCL were not based upon self-defense from the rocket attacks but were "directed at the people of Gaza as a whole, in furtherance of an overall and continuing policy aimed at punishing the Gaza population."^{xviii} Thus the conclusions of the report directly contradict and challenge the dominant Israeli narrative that Israel operated according to and with respect for international law. Moreover, the report punches a dramatic hole in the assertion that the Israeli army is the most moral army in the world. It is very difficult for many Israelis to grapple with the assertion that their government and military intentionally target Palestinian civilians. In the collective Israeli consciousness in which Israelis are morally superior, it is imagined that only Palestinians target civilians.

International Law

Under international law, both Israeli military forces and armed Palestinian groups are entitled to engage in military action against the other, and both are entitled to engage in military action for purposes of self-defense. However, any such attacks must be undertaken and designed to achieve military objectives and target military objects.^{xix} In order for an object to be considered a military object, two criteria must be fulfilled; the object has to contribute effectively to the military action of the enemy, and its destruction, capture or neutralization must offer a definite military advantage for the other side.^{xx} The principle of distinction under customary IHL prohibits direct attacks on civilians and civilian objects.

In the event that attacks from civilian objects occur, the principle of proportionality must be considered, in which disproportionate harm to civilians that produces no clear military advantage become prohibited. The principle of distinction also holds true even in the event that one party to a conflict does not have the means or the military capability to attack the enemy's military targets.^{xxi}

This has always been a dilemma for the Palestinians who have never had the military means or military strength to fight Israel equally; as the occupying power Israel has always maintained military and strategic dominance over the Palestinian people. Thus the conflict has always been an asymmetrical one – these are not two equal powers fighting each other on equal ground with equal means. Israel is the world's 4th strongest military power and has access to the most sophisticated and deadly weaponry. Palestinians, on the other hand remain a stateless and occupied people who have access to very limited military weaponry and capability.

Yet the Goldstone Report undoubtedly recognizes the legitimate right of the Palestinian people to struggle for their inherent right to self-determination. However, the mission and the report reject claims made by a minority of individuals within armed Palestinian groups that the deliberate targeting of Israeli civilians with the rocket and mortar attacks is justified. The report rejects that reprisals in response to the killing of Palestinian civilians by Israeli military are legitimate. According to the Goldstone Report, under international law "resistance movements against colonialism and occupation are regarded as international armed conflicts" in which "any action of resistance pursuant to the right of self-determination should be exercised with full respect of other human rights and IHL."^{xxii}

One can argue the logistics of how an occupied people without the necessary military means to strike at purely military targets ought to resist their occupation, particularly when negotiations and the international community have repeatedly failed them. Nonetheless, the Goldstone Report is clear in its condemnation of the rocket and mortar attacks and Palestinian violence directed at Israeli civilians: this type of violence is intended to spread terror amongst the civilian population, constituting war crimes and possibly crimes against humanity, and under no circumstances can it be tolerated.

Yet the report also acknowledges the high number of Palestinian casualties in Gaza during the time period the rocket and mortar attacks have occurred. Death tolls from two particular

incidents are worth noting. From the Israeli “disengagement” from Gaza in 2005 until November 2006, Israeli forces killed 525 Palestinians in Gaza. Then in February of 2008 during operation “Hot Winter,” Israeli forces killed 202 Palestinians in Gaza.^{xxiii} The report thus asserts that the cycle of violence makes it difficult for Israelis to believe that Palestinians intend to let them live in peace and security in their state, and for Palestinians to believe that Israelis intend to let them live in peace and security in a state of their own. This distrust serves to feed the vicious cycle.

The Mission’s Findings

Despite Israel’s claims that the report singled it out alone, the mission found that both Israel and armed Palestinian groups committed war crimes and possibly crimes against humanity. As the occupying power Israel receives the majority of the attention throughout the report, although all Palestinian abuses are well documented in the report including inter-Palestinian violence between Hamas and Fatah, abuses against the Palestinian people by both the PA and Hamas, Palestinian attacks directed at Israeli civilians and the protections and rights thus denied to captured Israeli soldier Gilad Shalit as a prisoner of war.

In relation to Israel and OCL, the mission examined very specific incidents and cases in which international humanitarian law was explicitly violated, particularly in relation to the principles of distinction and proportionality. This included the deliberate and intentional disabling of what little remained of Gaza’s civilian infrastructure including the destruction of wells, agricultural land, Gaza’s only operating flour mill, chicken farms and a cement factory in addition to the destruction and razing of civilian homes.^{xxiv} The mission found that these actions were not in response to a direct threat to Israeli military forces and that no military advantage was gained from their destruction; the mission concluded these attacks were deliberate and intended to produce increased suffering of the civilian population of Gaza.

The mission also took particular interest in the attack on the UNRWA compound, which seems to offer exceptional representation of Israel’s overall aims and policies during OCL. The UNRWA compound was sheltering some 700 Palestinian civilians when it came under Israeli attack with seven white phosphorous shells and three high explosive missiles on 3 January 2009. What troubled the mission most about the nature of the attack is that the UNRWA compound had a large fuel depot, with 120,000 liters of fuel stored underground and 49,000 liters of fuel stored in tankers above ground, which could have resulted in an immense catastrophe had the fuel ignited.^{xxv} The compound also stored substantial quantities of food, medical supplies and blankets, which according to former UNRWA Director-General Karen AbuZayd were the supplies for all the humanitarian agencies in the Gaza Strip.^{xxvi} Fires resulting from Israeli shelling destroyed much of the aid.

UN officials at the compound were in constant communication with Israeli authorities that had coordinates of all UN facilities, including the UNRWA compound. Moreover, Israeli military officials were aware of the most vulnerable parts of the compound, in particular the fuel depot.^{xxvii} On the day of the attack on the compound, numerous phone calls were made to inform the Israelis of the attack on the compound and the immediate danger due to the fuel

depot. However, the attacks continued unabated for more than three hours despite the exceedingly high level of communication between UN officials in the compound and the Israeli military.^{xxviii}

In response to the attack on the UNRWA compound, the Israelis initially asserted that they had been attacked from the compound. Later they backtracked and said that the white phosphorous shells had been fired to produce a smoke screen to provide cover from Hamas fighters who were in the area, and that all remnants of munitions that landed in the compound were unintended. The mission rejected this claim because the munitions landed directly inside the compound in extremely vulnerable parts of it. The mission also concluded that due to the precision of Israeli military technology it is unlikely that mistakes of this nature were made, and also unlikely that the same mistake could have been made ten times over a three-hour time period. Moreover, all witnesses interviewed whom the mission deemed to be credible reported that there was no fire coming from within or near the compound while it was being shelled.^{xxix}

The mission found that even if Israeli claims were taken at face value despite their contradictions the attack on the UNRWA compound failed to strike a balance between risk to civilian life and military advantage gained. In this sense, the mission was more than willing to give the benefit of the doubt to Israeli military commanders in what would otherwise appear to be a deliberate attack on a well-known and easily identifiable civilian object with an extremely high risk for civilian casualties. Moreover, the fact that fires destroyed much of the humanitarian aid being stored in the compound would seem to indicate that this may have been the intention of the shelling of the compound, fitting into the overall policy of inflicting greater suffering upon the civilian population of Gaza.

Additionally the mission found many instances in which Palestinian civilians, whose status as civilians was known to Israeli military forces, were intentionally targeted and killed. The mission also found that Israeli forces used Palestinians as human shields, forcing them to enter buildings ahead of Israeli soldiers to check for combatants or booby traps. Furthermore, the mission concluded from facts gathered that Israel committed the following grave breaches of the 4th Geneva Convention: “willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury to body or health, and extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly.”^{xxx} The Mission also indicated that the use of human shields constitutes a war crime.^{xxxi}

Additionally, the mission concluded that Israel’s efforts to warn Palestinians of imminent attacks through phone calls, dropping of leaflets and the use of lighter explosives as warning indicators were insufficient and did not relieve Israeli forces from taking all additional precautions in protecting the civilian population of Gaza. The mission reached this conclusion because warnings were often unclear, or directed civilians to city centers that had previously come under heavy attack.^{xxxii} The report also draws necessary attention to the deadly predicament the population of Gaza found itself in; they were extremely limited in their ability to flee to safety. Gaza is one of the world’s most densely populated areas, of which all borders were sealed and closed. Thus they did not have the option to become refugees – there was literally no place for them to go.

Palestinian Violations

The mission found that Palestinian armed groups were present in urban areas during hostilities and did launch rockets from urban areas. The mission concluded that some armed Palestinians might not have distinguished themselves from civilians at all times. However the mission found no evidence to suggest that civilians were directed to areas where attacks were being launched, nor that they were forced to stay in areas where attacks were underway.^{xxxiii} In this sense, the mission largely rejects the Israeli assertion that Palestinian armed groups used the civilian population of Gaza as a human shield in order to deter Israeli attacks. Moreover, the mission noted that the government of Israel has produced absolutely no evidence to support its claims that Palestinian combatants “mingle routinely with civilians in order to cover their movements.”^{xxxiv}

Further, the mission could not conclude that mosques were used for military purposes, nor did they find any evidence that attacks were launched from hospitals or that ambulances were used for military purposes. Moreover, the mission concluded that UN facilities were not used to stage attacks or military activities, though it could not discount the possibility that Palestinian armed groups may have been active in the vicinity of UN facilities. If Palestinian armed groups engaged in military activity in the vicinity of civilian or protected buildings, the mission concluded that this would unnecessarily place the civilian population of Gaza in danger. However the conduct of military action in urban areas does not by itself violate international law.^{xxxv}

Rocket Attacks

In relation to the Palestinian rocket and mortar attacks the mission noted their psychological impact on the civilian population of southern Israel. The attacks have killed 19 Israeli civilians within Israel between June 2004 and January 2009.^{xxxvi} The mission noted that the attacks interfere with their right to education, the ability of Israelis to lead a normal social life, and have caused destruction to property. The mission found that the rocket and mortar fire constitutes indiscriminate attacks on the civilian population of southern Israel, and that such attacks are deliberate and intended to spread terror, which constitutes a violation of international law in the form of war crimes and possibly even crimes against humanity.^{xxxvii}

The mission also found that public declarations by Hamas and other armed Palestinian groups of the intention to target civilians as reprisals to Israeli violence against Palestinians is contrary to international humanitarian law.^{xxxviii} However, the mission also noted with concern that many Bedouin communities in southern Israel within rocket and mortar range, which remain unrecognized by Israel do not have warning systems, nor are any of their structures reinforced to protect them from rocket attacks. Furthermore, Palestinian towns in southern Israel that lie within rocket range are not afforded reinforcements for any of their structures; only the

predominantly Jewish towns are.^{xxxix} This finding brings attention to discriminatory policies and practices within Israel against its non-Jewish citizens.

Additionally, the mission concluded that Gilad Shalit meets prisoner of war status and should be afforded all rights due to him under the 3rd Geneva Convention including protection, humane treatment, external communication, and visitation by the International Committee of the Red Cross (ICRC) without delay.^{xi} However the mission noted that the continued blockade of Gaza until Shalit's release would constitute collective punishment against the civilian population of Gaza.

The Israeli Blockade of Gaza

The mission examined OCL as part and parcel of the Israeli siege of the Gaza Strip. Israel began blocking aid to Gaza in 2006, following the success of Hamas in the Palestinian parliamentary elections with the intention of convincing the population of Gaza to withdraw their support from Hamas.^{xii} When Hamas seized power of Gaza in 2007 Israel put much greater restrictions on the flow of goods including fuel, electricity and food into the Strip.^{xiii} Additionally, Israel declared Gaza a hostile entity and insists it is no longer the occupying power of Gaza due to its withdrawal of settlers and military forces from Gaza in 2005; on this basis Israel asserts it is no longer responsible for Gaza's welfare.

The impacts of the blockade have been severe, and the mission placed much emphasis on examining the effects of the blockade. The mission found that "by December 2008 the destructive impact of the blockade on the local economy had doubled unemployment levels. While in 2007 79% of households lived below the official poverty line (US\$ 4 per capita/day) and some 70% below the deep poverty line (US\$ 3 per capita/day), these figures were expected to increase by the end of 2008" and this was before OCL, which greatly exacerbated the already dire circumstances.^{xiiii} Further, the mission determined that "the blockade and the military hostilities have created a situation in which most people are destitute. Women and children have been particularly affected. The current situation has been described as a crisis of human dignity."^{xlv}

Finally, the mission concluded that "the expected impact" and what it believes was the primary purpose of the blockade "was to bring about a situation in which the civilian population would find life so intolerable that they would leave (if it were possible) or turn Hamas out of office, as well as to collectively punish the civilian population."^{xlv} The mission saw OCL as a continuation of the policy of punishing the population of Gaza as a whole, intended to increase their level of suffering.^{xlvi} The deliberate targeting of the food and sanitation infrastructure, along with the targeting of the UNRWA compound, which destroyed much of Gaza's humanitarian aid, makes this assertion difficult to refute.

Conclusions of the Report

Given the advanced Israeli military technology and ability for precision, the mission concluded that "the incidents and patterns of events considered in the report are the result of deliberate planning and policy decisions."^{xlvii} Tactics used in Gaza were consistent with practices in the

Israeli war on Lebanon in 2006 and reflect what is known as the Dahiya Doctrine. The Dahiya Doctrine transforms civilians and civilian objects into military targets, and proscribes the infliction of disproportionate force and damage to civilian property and infrastructure, and thereby great suffering to civilian populations to achieve political aims. The mission found little doubt that disproportionate destruction and violence against Palestinian civilians during OCL were part of deliberate Israeli planning and policy.^{xlviii}

The mission further concluded that the blockade on Gaza, which was severely worsened by Operation Cast Lead, constitutes collective punishment in violation of international humanitarian law. In further relation to the blockade, the mission found that the denial to Palestinians of their right to sustenance, employment, housing, water, freedom of movement, and the limitation of their access to a court of law could amount to persecution, which is a crime against humanity.^{xlix} The mission also found that “Israel is still duty bound under the 4th Geneva Convention... to ensure the supply of foodstuff, medical and hospital items and others to meet the humanitarian needs of the population of the Gaza Strip without qualification.”^l This last finding is particularly important because Israel is trying to escape responsibility for the welfare of the population of Gaza by denying it is still the occupying power there.

Finally, the mission reached a very significant and profound conclusion regarding the source of violence and the way to redress it. According to the Goldstone Report:

“As the Mission focused on investigating and analyzing the specific matters within its mandate, Israel’s continuing occupation of the Gaza Strip and the West Bank emerged as the fundamental factor underlying violations of international humanitarian and human rights law against the protected population and undermining prospects for development and peace. Israel’s failure to acknowledge and exercise its responsibilities as the Occupying Power further exacerbated the effects of occupation on the Palestinian people, and continue to do so. Furthermore, the harsh and unlawful practices of occupation, far from quelling resistance, breed it, including its violent manifestations. The Mission is of the view that ending occupation is a prerequisite for the return of a dignified life for Palestinians, as well as development and a peaceful solution to the conflict.”^{li}

Recommendations of the Report

According to international law, when serious violations of human rights occur, investigations must be conducted, and if appropriate, prosecution of allegations of serious violations must ensue.^{lii} The Goldstone Report was endorsed by the Human Rights Council on 16 October 2009 and will now go on to the Security Council for further consideration. The Security Council can then refer the report to the International Criminal Court (ICC) should Israel and Hamas fail to conduct proper investigations into the allegations of war crimes and possibly crimes against humanity, which would allow for the trying of those directly involved in the planning and

implementing of OCL. However, the report will more than likely not move beyond the Security Council because the US is likely to veto further consideration of it.

If that happens, there are two additional options. The UN Secretary General can refer the matter to the UN General Assembly, which under Resolution 377 can take action if the Security Council fails to act in matters that produce a threat to peace, a breach of peace or an act of aggression.^{liii} This would potentially allow the General Assembly to refer the matter to the ICC if it does not move beyond the Security Council.

However, the most likely possibility is that those guilty of committing war crimes and crimes against humanity will be arrested and tried under universal jurisdiction. Universal jurisdiction allows national courts to try cases of war crimes and crimes against humanity, even when those crimes are not committed in the nation trying the case, and even when those guilty of the crimes are not nationals of the nation trying the case.^{liv} The recent arrest warrant issued for Tzipi Livni in the UK was an exercise of this power.

However, it remains to be seen if the Goldstone Report will have enough influence to result in a prosecution. Attempts were made to try former Israeli Prime Minister Ariel Sharon in Belgium for his roles in the attack on the West Bank village of Qibya in 1953, and the 1982 Israeli invasion of Lebanon, including the infamous massacre in the Sabra and Shatila refugee camps. The attempts to arrest and try him failed, and given the immense political pressure Israel will exert to avoid the arrest and trial of any of its military commanders or political leaders, it is uncertain if the Goldstone Report will be able to deliver this kind of justice. Case in point, UK Foreign Secretary David Miliband said in the wake of Livni's arrest warrant that changes to the UK's legal system might be necessary to prevent this kind of situation from arising again.^{lv}

In addition to the recommendation of referral to the ICC should Israel and Hamas fail to conduct proper investigations, civilian victims of war crimes and grave violations of international law are entitled to reparations for damages or losses incurred during hostilities. The mission reached the conclusion that there is very limited room, if any for Palestinians to seek reparations from Israel. Thus the mission recommended the establishment of an international mechanism to provide compensation for Palestinian victims of OCL.^{lvi}

Conclusion

The Goldstone Report took note that Palestinians and human rights organizations have grown weary in the face of numerous reports and initiatives that have failed to produce any meaningful or tangible results in the pursuit of peace and justice. The report further notes the enabling impact this has on the formation and implementation of Israeli policies in the Palestinian territories that violate IHL. Thus we have arrived at a critical juncture for the future of Palestine and Israel; Justice Goldstone has said in interviews that he does not believe there is a genuine peace process. Yet there is an obvious and urgent need for one that incorporates respect for and adherence to international humanitarian law.

The trial and prosecution of war criminals would be a major victory in the pursuit of justice for victims of OCL. However, it will prove futile if it does not deter future inflictions of gross

violence from occurring. Perhaps then the most profound revelations of the Goldstone Report do not pertain to the allegations and assertions that war crimes and possibly crimes against humanity were committed during OCL. Perhaps the more important revelations of the report, and the ones we should concern ourselves with are the ones that attempt to uncover the root causes of the violence; the occupation and the denial of the right to self-determination of the Palestinian people.

Finally, the report also cautions against the use of the kind of grotesque military violence witnessed during OCL, drawing much needed attention to the long-term consequences of it. Both Palestinian and Israeli victims are likely to develop feelings of hatred in response to attacks on civilians. However, the level of violence inflicted on the people of Gaza was severe, deep and far-reaching; the impacts will be felt for generations to come. The mission found that 30% of children screened in UNRWA schools in Gaza have mental health problems, while 10% lost family, friends, their homes and all of their belongings.^{lvii} Additionally, the World Health Organization has estimated that 30,000 children in Gaza will need prolonged psychological support, and warned of the potential for many of these children to grow up with aggressive attitudes and hatred.^{lviii}

The question that needs to be asked, and ultimately addressed, is what kind of future will the use of this kind of violence create? OCL demonstrated an escalation in the level of violence, and seems to indicate that the level of violence will only grow more severe. For this, the Goldstone Report condemns Israel for “failing to protect its own citizens by refusing to acknowledge the futility of resorting to violent means and military power.”^{lix} Thus there is much to be gained and learned from the results of the fact-finding mission to Gaza. Israel should not bury its head in the sand in the face of the report’s findings, nor should the international community continue its failure to act. Justice just might be the first step on the road to peace. In order for that to happen, the era of impunity needs to be replaced by an era of accountability. This is the ultimate message of the Goldstone Report, and one that will hopefully be received.

ⁱ <http://www.worldpress.org/specials/iraq/article51.htm>

ⁱⁱ Goldstone Report page 133

ⁱⁱⁱ Goldstone Report pages 106-107

^{iv} Goldstone Report

http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf

^v <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm> the text of the resolution is available under the subheading: Appointment of the United Nations Fact Finding Mission on the Gaza Conflict, Resolution 9/1

^{vi} Goldstone Report page 495

^{vii} Goldstone Report page 45

^{viii} Goldstone Report page 543

^{ix} Goldstone Report page 6

^x Goldstone Report page 52

^{xi} Goldstone Report Page 5

^{xii} Goldstone Report pages 71-82

^{xiii} Goldstone Report pages 135-136

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- ^{xiv} <http://www.guardian.co.uk/world/2009/dec/14/tzipi-livni-israel-gaza-arrest>
- ^{xv} <http://www.menassat.com/?q=en/news-articles/5820-war-gaza-fuel-israeli-elections>
- ^{xvi} <http://online.wsj.com/article/SB123136613816062175.html>
- ^{xvii} <http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/ShowFull&cid=1237727530093>
- ^{xviii} Goldstone Report page 523
- ^{xix} Marco Sassoli, International Humanitarian Law Research Initiative, "Legitimate Targets of Attacks Under International Humanitarian Law." Published by the Program on Humanitarian Policy and Conflict Research at Harvard University. See pages 4-5:
<http://209.85.229.132/search?q=cache:7mqL2fcpnBMJ:www.ihlresearch.org/ihl/pdfs/Session1.pdf+principle+of+d+distinction&cd=1&hl=en&ct=clnk>
- ^{xx} Ibid
- ^{xxi} Ibid
- ^{xxii} Goldstone Report page 94
- ^{xxiii} Goldstone Report page 59
- ^{xxiv} Goldstone Report pages 260-280
- ^{xxv} Goldstone Report page 164
- ^{xxvi} <http://iadiedee.wordpress.com/2009/01/15/>
- ^{xxvii} Goldstone Report page 170
- ^{xxviii} For detailed information about the attack on the UNRWA Compound, see Goldstone Report pages 162-174
- ^{xxix} Ibid
- ^{xxx} Goldstone Report page 537
- ^{xxxi} Ibid
- ^{xxxii} For a detailed account of the mission's findings concerning Israel's warning mechanisms, see Goldstone Report pages 151-162
- ^{xxxiii} Goldstone Reports pages 12-13 covers the mission's findings concerning allegations that armed Palestinian groups used the civilian population as a human shield
- ^{xxxiv} Goldstone Report page 146
- ^{xxxv} Ibid covers the mission's findings concerning Israeli allegations that armed Palestinian groups launched attacks from civilian objects
- ^{xxxvi} http://www.btselem.org/english/israeli_civilians/qassam_missiles.asp
- ^{xxxvii} http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf page 32
- ^{xxxviii} http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf page 33
- ^{xxxix} Goldstone Report page 461, 469, 470
- ^{xl} Goldstone Report page 541
- ^{xli} Goldstone Report page 95
- ^{xlii} Goldstone Report page 96
- ^{xliii} Goldstone Report page 338
- ^{xliv} Goldstone Report pages 336-337
- ^{xlv} Goldstone Report page 333
- ^{xlvi} Goldstone Report page 523
- ^{xlvii} http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf page 21
- ^{xlviii} Goldstone Report page 329
- ^{xlix} http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf page 24
- ^l http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf page 10
- ^{li} Goldstone Report page 526
- ^{lii} Goldstone Report page 36
- ^{liii} <http://www.un.org/ga/about/background.shtml>
- ^{liv} <http://www.globalpolicy.org/international-justice/universal-jurisdiction-6-31.html>
- ^{lv} <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/6821532/Tzipi-Livni-arrest-warrant-provokes-Britain-Israel-diplomatic-row.html>
- ^{lvi} Goldstone Report page 38

lvii Goldstone Report page 356
lviii Ibid
lix Goldstone Report page 532