

'Goldstone report – the terrorists' Magna Carta'

Former justice minister Daniel Friedmann takes aim at the UN Human Rights Council's fact-finding mission to Gaza, and in so doing exposes a mission that, he says, was created with a dubious mandate, populated by biased members, influenced by Hamas observers, and conducted with a disregard for Israeli evidence and witnesses



GOLDSTONE: A REBUTTAL

EXCLUSIVE • By PROF. DANIEL FRIEDMANN

I don't think there has ever been a time in the history of warfare when any army has made more efforts to reduce civilian casualties and deaths of innocent people than the IDF is doing today in Gaza," Col. Richard Kemp, former commander of the British forces in Afghanistan, said during an interview with the BBC during Operation Cast Lead in Gaza in January.

Kemp later appeared before the UN Human Rights Council on October 2009 and reiterated: "[T]he

Gaza civilians notice of targeted areas, dropping over 2 million leaflets, and making over 100,000 phone calls. Many missions that could have taken out Hamas military capability were aborted to prevent civilian casualties. During the conflict, the IDF allowed huge amounts of humanitarian aid into Gaza [...] the civilian casualties were a consequence of Hamas' way of fighting. Hamas deliberately tried to sacrifice their own civilians..."

This is a fair description of what happened. But to see how white is turned into black, how truth is twisted, justice perverted and falseness prevails, take a good look at the Human Rights Council and its Goldstone report.

False accusations against Israel are made in the absence of evidence or even contrary to the evidence, while the innocence of the terrorists is presumed even in the face of convincing evidence of guilt

A commission created in sin gives birth to an aberration

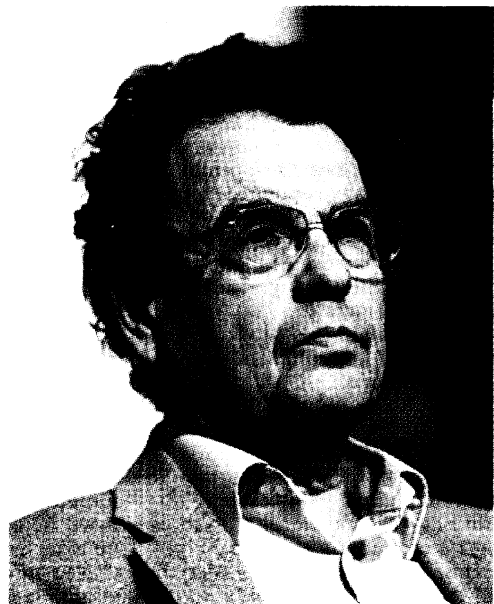
Israel has suffered from terrorism since its establishment, long before it was blamed for having conquered territories from which attacks against it were launched. The war of terror changed phases, becoming more and more sinister. From "simple" murder of women and children, it turned into airplane hijackings, murdering hostages, suicide bombers and global terror – including the mass murder of members of the Israeli team during the Olympic Games in Munich. During the past eight years a new mode of terror has developed – that of firing rockets on civilian targets from the Gaza Strip. Some 12,000 rockets have been fired, terrorizing hundreds of thousands of Israelis and causing tremendous damage to the economy.

None of these actions triggered UN intervention. Moreover, other countries involved in the war against terror elsewhere in the world – such as in Iraq, Sri Lanka, Chechnya, Afghanistan, Pakistan, and Turkey – have remained immune to fact-finding missions by the Human Rights Council, despite the thousands of civilians killed or wounded in these conflicts, and the hundreds of thousands who have been displaced. Israel, the victim of incessant rocket

A HAMAS gunman trains in the Gaza Strip. According to a Hamas police spokesman, "police officers received clear orders from the leadership to face the [Israeli] enemy" during Operation Cast Lead. (Bloomberg)

attacks and endless acts of terror, has been singled out for special treatment.

The Human Rights Council's obsession with targeting Israel is common knowledge. Since its establishment in 2006, five out of its 11 special sessions have been devoted to matters involving the Jewish state. Yet in its resolution to establish the fact-finding mission in



DANIEL FRIEDMAN. 'Truth is trusted, justice percerted.' (Ariel Jerozolimski)

Israeli Defense Forces did more to safeguard the rights of civilians in a combat zone than any other army in the history of warfare. Israel did so while facing an enemy that deliberately positioned its military capability behind the human shield of the civilian population...

"The [...] IDF took extraordinary measures to give



RICHARD GOLDSTONE. 'Detached from reality?' (AP)

Gaza, the council outdid itself. Employing extremely biased wording, the council's charge directed its mission "to investigate all violations of international human rights law and international humanitarian law by the occupying power, Israel, against the Palestinian people... particularly in the

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occupied Gaza Strip, due to the current aggression..."

Israel is thus declared culpable even before the investigation begins.

Many states on the council refused to support this one-sided resolution, including the member states of the European Union, Switzerland, Canada, Korea and Japan.

The council never changed its outrageous mandate, but its president stated the mission's mandate in more moderate terms: "To investigate all violations of international human rights and international human rights law that might have been committed [...] in the context of the military operation in Gaza..."

Despite the reworded resolution, it seems that the mission acted in the spirit of its original mandate.

The composition of the mission

The prejudicial nature of the mission led several distinguished individuals, including former high commissioner for human rights Mary Robinson, to refuse invitations to chair it. Justice Richard Goldstone was, however, happy to comply. Other members of the mission included Hina Jilani of Pakistan, a country that has no diplomatic relations with Israel, and Prof. Christine Chinkin, who was one of the signatories of a letter, published in the *Sunday Times* on January 11, 2009, and entitled, "Israel's bombardment of Gaza is not self-defense – it's a war crime."

The amazement at Chinkin's appointment is dwarfed by the way Goldstone justified the refusal to disqualify her. In an interview on Israel TV, he was asked about Chinkin serving on the mission. He had no qualms explaining that "it is not a judicial inquiry. It's a fact-finding mission." Further, he said that he found Chinkin "to be an intelligent, sensible, even-handed person," and he was "satisfied that she's got a completely open mind."

"She is one of four people on the committee," he continued, adding that he did not "believe that any prima facie views she might have held at an earlier stage is going to [...] affect [...] the report."

Goldstone thus justified an appointment that militates against basic rules of fairness, due process and natural justice. His untenable reasoning, which would have failed a first-year law student, casts grave doubts about the justice himself.

Moreover, Goldstone's claim that he was leading "a fact-finding mission" is refuted by the report, which is highly judicial, replete with purported legal analysis of international law, detailed legal findings and reaching judicial determinations on "war crimes."

group which deliberately and consistently pursues a policy of disinformation. It is highly improbable that the mission could get a true picture of Hamas's misdeeds and of what really happened. Indeed, the report admits that the witnesses interviewed appeared "reluctant to speak about the presence or conduct of hostilities by the Palestinian armed groups" – a reluctance which "may have stemmed from a fear of reprisals" (p. 438).

This behavior by the Islamic group has been aptly described by Kemp:

"Hamas, like Hizbullah, are expert at driving the media agenda. Both will always have people ready to give interviews condemning Israeli forces for war crimes. They are adept at staging and distorting incidents."

The scope of this article does not allow for a full exposition of all the falsenesses and distortions included in the report. However two examples will be briefly discussed – that of the civilian casualties and that of the use of human shields by Hamas. In addition, a few words will be devoted to the damage suffered by the Gazan infrastructure.

The civilian casualties

According to the IDF 1,166 Palestinians were killed in the operation, and the great majority, 709 of them, were members of the Hamas and other terrorist groups. An additional 295 were civilians. It is unclear whether the remaining 162 (all male) fatalities were involved in the fighting. It is also not clear how many of the non-combatants were killed by Hamas fire, a possibility which was even raised by the mission (p. 361).

The mission did not bother to inquire about the number of civilian casualties, nor about the ratio between civilian and combatant casualties in recent wars, which could indicate the degree of care taken by the IDF to avoid civilian casualties as compared to other armies in the world.

One of the most vicious, false accusations leveled by the report against Israel is that civilians were deliberately targeted. This falseness is based on the fact that the IDF receives legal advice and possesses advanced technology, and that its operations are carefully planned. In addition, the misinterpretation of statements made by Israeli officials (p. 61 and p. 1182-1188) further twisted the mission's conclusion, which runs contrary to a large body of available evidence.

It is well known that a number of Israeli soldiers were killed in the operation by friendly fire. According to the reasoning of the mission, these casualties must have been killed on purpose. Moreover, the mission's reasoning applies to all other armies engaged in the war against terror, in which thousands of noncombatants

egg market." (p. 51) The discussion is replete with harshly-worded language denouncing Israel, and ends with a malicious conclusion as to Israel's culpability. Apparently, the mission did not even bother to hide its prejudice against Israel. The destruction of the flour mill was "wanton," and the mission has no scruples in jumping to the conclusion that this was done "for the purposes of denying sustenance to the civilian population" (sic.) which "may constitute a war crime" (p. 50). Such a conclusion, of course, is contrary to the clear evidence available to the mission that during the operation, as well as before and after, Israel allowed ample supply of food to be brought into Gaza, and that Israel did and continues to do its best to prevent a shortage of essential supplies in the Strip.

In this respect, the report seems to be in line with the propaganda of Hamas, which created the false impression of total destruction in the area.

Such findings may be contrasted with a report by British journalist, Tim Butcher, which was published in the *Telegraph*, on January 20, 2009. Mr. Butcher who arrived in Gaza shortly after the end of the operation, says: "I knew Gaza well before the attacks [...] One thing was clear. Gaza City 2009 is not Stalingrad 1944. There had been no carpet bombing of large areas, no firebombing of complete suburbs. Targets had been selected and then hit, often several times, but almost always with precision munitions [...] for the most part, I was struck by how cosmetically unchanged Gaza appeared to be."

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No less important is the fact that the great majority of infrastructure installations in Gaza were not hit and remained unscathed. A conspicuous example is the power plant in Gaza. It is obvious that had Israel intended to destroy infrastructure, the plant would have been targeted. It was not. Even in the case of the flour mill, the mission concedes that "no other buildings in the industrial compound belonging to the Hamadas (owners of the mill) were damaged at the time of the strikes" (p. 924). This is in line with the clear policy of Israel to avoid damaging civilian property. To the extent that the mill and few other installations were destroyed, it was presumably either a result of a mistake or because they were suspected as being used for military purposes. The mission clearly could not get reliable evidence clarifying

and reaching judicial determinations on "war crimes."

The inescapable conclusion is that the whole report is invalid and cannot form a basis for any decision or action.

It is also not surprising that Goldstone's report became what it is – a complete aberration.

The mission's general approach

The report makes every effort to downplay Hamas crimes. Hamas and other terrorist entities are described by the benign term "Palestinian armed groups." In some cases, the mission simply declines to examine Hamas misdeeds. One example of this inaction regards Shifa Hospital in Gaza. Despite ample grounds indicating that a Hamas command center was located in the hospital, the report states that it did "not investigate the case of Al-Shifa hospital and is not in a position to make any finding with regard to these allegations" (p. 466).

Clear evidence unfavorable to Hamas is either discarded or "reinterpreted." For instance, during the operation, Islam Shahwan, spokesman for the Hamas police force, stated that "police officers received clear orders from the leadership to face the [Israeli] enemy." However, this clear admission as to the role of the Hamas police takes on new meaning when the mission uncritically accepts Shahwan's explanation that his intention was that in the event of an invasion, the police would continue to uphold public order and ensure the movement of essential supplies (p. 414). A statement by the commander of Hamas's Executive Force (p. 410) that his group acted as "resistance fighters" received similar benign interpretation (p. 416).

Reliable evidence supporting the Israeli position received completely different treatment.

In an effort to explain its targeting of sensitive locations, Israel submitted to the mission photographic evidence showing the launching of rockets from within or near residential buildings, schools, mosques and hospitals. However, the mission had no qualms in discounting them on the grounds that it could not determine whether the photos showed what is alleged, and that many photos related to firing of rockets from Gaza before the operation (p. 449).

The mission even denied requests to invite witnesses such as Col. Kemp, who was likely to support the Israeli position. The explanations offered by Goldstone for this unbalanced treatment are not much stronger than those he provided for keeping Chinkin on the mission.

Much of the evidence gathered by the mission was most likely tainted. Members of the mission were accompanied during their visit to Gaza by Hamas officials, a

armies engaged in the war against terror, in which thousands of noncombatants have been killed. The Americans, the British, NATO, the Russians and the Turks all employ sophisticated weapons, and their operations are all carefully planned. Does this mean that the civilians killed in their operations were intentionally targeted, as well?

The mission disregarded the fact that Israel has a clear policy of protecting civilians. It also disregarded the myriad of statements made by the IDF regarding this policy and its implementation in the Gaza operation. Kemp, whose evidence the mission declined to hear, also described this.

Israel made great efforts to issue warnings to the civilian population through thousands of telephone calls, leaflets and radio broadcasts. While the mission acknowledged these facts (p. 37), it immediately attempted to show that the actions were insufficient. Regardless, these warnings clearly refute the unfounded allegation that there was a purposeful intention to target civilians.

The use by Hamas of human shields

It is common knowledge that Hamas uses civilians as human shields. Even the mission could not escape the facts that Hamas fires rockets from urban areas (p. 446-447), that its gunmen mingle with the civil population and that "members of Palestinian armed groups were not always dressed in a way that distinguished them from civilians" (p. 481). The use of human shields is openly admitted by a Hamas member who states that:

"[Hamas] created a human shield of women, children, the elderly and the mujahideen, against the Zionist bombing machines" (p. 475).

Nevertheless the mission incredibly states that it has not been able to obtain any direct evidence that the firing of rockets from urban areas "was done with the specific intent of shielding the rocket launchers from counterattacks by the Israeli armed forces" (p. 480). Similarly "the mission found no evidence that Palestinian combatants mingled with the civilian population with the intention of shielding themselves from attack" (p. 481).

A more blatant example of a double standard can hardly be imagined. False accusations against Israel are made in the absence of evidence or even contrary to the evidence, while the innocence of the terrorists is presumed even in the face of convincing evidence of guilt.

Damage to Infrastructure

The mission also discusses the destruction of infrastructure in Gaza, notably a flour mill, a wall of one of the raw sewage lagoons, and chicken farms that "reportedly supplied over 10 percent of the Gaza

for military purposes. The mission clearly could not get reliable evidence clarifying this matter, as the reluctance of a witness to give evidence detrimental to Hamas which "may have stemmed from a fear of reprisals" (p. 438) already demonstrated. In any, event the evidence clearly suggests the absence of any intention by Israel to destroy civilian infrastructure.

Iran and the failure to investigate

The mission failed to examine highly relevant topics such as the use of Shifa Hospital in Gaza as a Hamas command center, and the use of mosques to store weapons. The mission also failed to investigate the major role played by Iran in supporting and instigating terror, such as by training gunmen and supplying weapons and rockets intended to be used against civilians. Is Iran's involvement in line with international law? Such an investigation would have enabled the mission to better understand what it terms "the blockade" – the closure imposed by Israel on the Gaza Strip which attempts to prevent illegal arms smuggling while simultaneously allowing for the influx of food and other essential supplies.

The recommendations

I shall not elaborate upon the mission's biased recommendations which are not devoid of a ludicrous aspect. "The mission recommends that Palestinian armed groups undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians" (p. 1770). This recommendation is a plea to fundamentalist terrorists for whom terror against civilians is their *raison d'être*, who regard suicide bombers and murderers as heroes. Is this recommendation, which seems like recommending to the Mafia to respect the law, a lip service to objectivity, naiveté, or evidence of complete detachment from reality?

One wonders whether this kind of recommendation should not also be sent to the Taliban and al-Qaida. Why should they be deprived of Goldstone's learned advice?

The aftermath

Goldstone's report is well on its way to becoming the Magna Carta of the terrorists, who will regard it as their guardian angel. But the world community cannot allow international law to be hijacked by terrorists, nor appropriated by biased scholars or naïve jurists who are detached from reality. International law must be interpreted, implemented and developed to deal with terror launched from populated areas behind human shields.

The report is likely to damage the cause of peace and increase violence in the area, while the operation in Gaza brought a lull in rockets attacks against civilians. But the terrorists may now feel that they can renew the terror since the report gives them immunity. The report also strengthens extremism, thus hindering efforts by the Palestinian Authority – whom the extremists strive to topple – to make peace with Israel. •

The writer is a professor of law (emeritus) and a former justice minister of Israel.