

[On House Resolution 867:  
The Real Issue Is the Israeli Occupation](#)  
by Brian Napoletano

On 3 November 2009, the United States House of Representatives voted 344-36 in favor of House Resolution 867, making it Congress' official response to the 575-page Report submitted by Justice Richard J. Goldstone to the United Nations Human Rights Council at the conclusion of a "fact-finding" mission on the Gaza conflict. The Resolution does little more than recycle traditional rhetoric about an anti-Israel bias, Qassam rocket attacks, Hamas' use of human shields, and Israel's right of self-defense, all in an effort to ignore the reality of the Israeli occupation of the Palestinian Territories and the devastating effects it has had on the region. By passing HR 867, Congress has opted to join the Israeli government in rejecting international efforts to defend the civilians in Palestine and to hold Israeli and Palestinian forces accountable to international law.

The Israeli government has openly opposed the Mission led by Justice Goldstone and Professor Christine Chinkin, Ms. Hina Jilani, and Colonel Desmond Travers from the onset, resorting to tactics such as denying access to the Gaza entrances (the team eventually entered Gaza from Egypt via the Rafah crossing) and detaining a Palestinian citizen from the West Bank who chose to appear before the investigators. Israeli Prime Minister Benjamin Netanyahu has repeatedly attacked the Report, declaring in a speech to the Knesset (the Israeli parliament) that it "encourages terrorism" and "undermines peace," and that he "will not allow Ehud Olmert, Tzipi Livni and Ehud Barak, who sent our sons to war, to arrive at the international court in the Hague."

Netanyahu's rhetoric differs little from that in HR 867. Drafted by Representative Ileana Ros-Lehtinen (R) of Florida, whose campaign, according to the [Center for Responsive Politics](#), received more than \$85,000 from pro-Israel lobbyists in 2008, HR 867's attacks bear little relevance to the actual content of the Goldstone Report and reflect only the House's disdain for reality when it comes to Israel. Ros-Lehtinen's Resolution flatly rejects the credibility of the United Nations Human Rights Council and accuses Justice Goldstone and his colleagues of deliberately falsifying their findings, when in fact it is the House that has just eliminated its own credibility and that of Ros-Lehtinen who has falsified the Report's findings. The real aim of HR 867 seems to be the denial of the reality that Israel is illegally occupying the Palestinian Territories and is preventing even humanitarian aid from entering the Gaza strip. This is evident in a cursory review of most of the Resolution's claims, which are either patently false or gross distortions of the Mission's actual findings and can be generalized into one of the following four classes:

### **Claims That Both the Mandate and the Mission Were Biased against Israel**

HR 867 claims that the mandate by the Human Rights Council (HRC) "pre-judged the outcome of its investigation, by one-sidedly mandating the 'fact-finding mission' to 'investigate all violations of international human rights law and International Humanitarian Law by . . . Israel, against the Palestinian people . . . particularly in the occupied Gaza Strip, due to the current aggression.'" The bits of the quote from UN HRC resolution S-9/1 that the author of HR 867 cut out refer to Israel as an occupying power, indicating that the

author of the resolution was attempting to downplay, if not deny outright, the Israeli occupation of the Palestinian territories. The verbatim text of the mandate reads, ". . .to investigate all violations of international human rights law and international humanitarian law by *the occupying Power*, Israel, against the Palestinian people *throughout the Occupied Palestinian Territory*, particularly in the occupied Gaza Strip, due to the current aggression. . . ."

Israel was not being "singled out" for investigation because it is a "Jewish state," but because it is illegally occupying the Palestinian territories. Moreover, Justice Goldstone's interpretation of this mandate was that it called for investigations into both the Israeli and Palestinian leadership. As both the occupying state and the aggressor in the conflict (Israel had already been responding to the rockets with attacks of its own), Israel legitimately bears a greater responsibility for human rights violations stemming from its occupation.

While Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, did sign [a public letter](#) with 30 other academics in the 11 January 2009 edition of the *Sunday Times* that included the statement, "the blockade of humanitarian relief, the destruction of civilian infrastructure, and preventing access to basic necessities such as food and fuel, are *prima facie* war crimes," claiming that she had "already declared Israel guilty," as HR 867 does, essentially accuses Professor Chinkin of being unable to conduct an impartial investigation and ignores the fact that the letter also condemned the rocket attacks.

The Resolution also claims that the Mission "considered public statements made by Israeli officials not to be credible," but that it gave, "uncritical credence to statements " given by Hamas. This claim is false on two levels. First, it ignores the fact that the Israeli government refused the Mission all cooperation, forcing the investigators to glean information about the Israeli government's planning and intentions from its public statements and speeches. The Israeli government's refusal to provide any information about potential independent investigations to the Mission or to eight Non-government Organizations within Israel also lead the Mission to question Israel's willingness to carry out impartial investigations. Second, the Mission was, if anything, more skeptical of claims by the Palestinian authorities, and concluded that it is "unable to consider the measures taken by the Palestinian Authority as meaningful for holding to account perpetrators of serious violations of international law and believes that the responsibility for protecting the rights of the people inherent in the authority assumed by the Palestinian Authority must be fulfilled with greater commitment."

Justice Goldstone's statement to the Jewish Daily *Forward* that, "[i]f this was a court of law, there would have been nothing proven," was also used to attack the Report's findings with the claim that they were unsubstantiated. This argument, however, is a distortion of Justice Goldstone's comment and the nature of a "fact-finding" mission, which is to identify issues that should be addressed in a thorough, independent investigation. Justice Goldstone himself explains this in the same article when describing the role of a similar "fact-finding" report in his service as chief prosecutor for the international war crimes tribunal in Yugoslavia in 1994:

We couldn't use that report as evidence at all. But it was a useful roadmap for our investigators, for me as chief prosecutor, to decide where we should investigate. And that's the purpose of this sort of report. If there was an independent investigation in Israel, then I think the facts and allegations referred to in our report would be a useful road map.

The purpose of the "fact-finding" Mission in Gaza was to determine whether sufficient evidence of war crimes existed to merit further investigations and prosecutions by the relevant parties. This attempt to distort the nature of the Gaza Mission raises more questions about the credibility of the Representatives who supported HR 867 than it does about Justice Goldstone and his colleagues.

### **Claims That the Mandate and Subsequently the Mission Ignored Rocket Attacks against Israel**

The claim that the mandate "makes no mention of the relentless rocket and mortar attacks . . . that necessitated Israel's defensive measures" is a complete fabrication. Setting aside for the moment the gross disparity between the Israel Defense Force's (IDF) military technology and the antiquated Qassam rockets, section two of the mandate explicitly states, "[The Human Rights Council]Calls for the immediate cessation of Israeli military attacks throughout the Palestinian Occupied Territory, particularly in the occupied Gaza Strip, which to date have resulted in the killing of more than nine hundred and injury to more than four thousand Palestinians, including a large number of women and children, *and the end to the launching of crude rockets against Israeli civilians, which have resulted in the loss of four civilian lives and some injuries*" (emphasis added).

On the other hand, the Israeli government denied the Mission access to the sites of rocket attacks in southern Israel and ignored its requests for information about the rocket attacks. The Mission still managed to interview Israeli residents in regions affected by the rocket attacks, and representatives from the Israel Trauma Center for Victims of Terror and War, devoting 25 pages to them in the final report. This also contradicts the claim in HR 867 that the Mission "never noted the fact that Israel had the right to defend its citizens." The point of the Mission was to ascertain whether war crimes had been committed, and not to legitimize the use of violence by any parties, and it concluded that indiscriminate rocket attacks on civilians in southern Israel would constitute war crimes and "may amount to crimes against humanity."

HR 867 raises the issue of rocket attacks once again in its denunciation of the Goldstone Report's call for reparations. The Resolution maintains that the Report calls for compensation to Palestinians in Gaza who have suffered because of "Operation Cast Lead" (once again the Resolution carefully censors references to the blockade and occupation), but ignores the issue of compensation for Israelis who have been subjected to rocket attacks in southern Israel. While the incredible disparity between the isolated rocket attacks in southern Israel and the violence visited on the residents of Gaza alone is enough to render this claim an absurdity, Israel already forcibly extracts its compensation from the Palestinian Authority (PA) by deducting the money from the tax payments that Israel collects on the PA's behalf.

## Claims That the Report Denies Hamas' Use of "Human Shields"

HR 867 accuses Justice Goldstone's Report of the unpardonable sin of "cast[ing] doubt upon that claim [that Hamas uses human shields]." As evidence of this gross transgression, the resolution cites a single instance where "the Report stated that it did not consider the admission of a Hamas official that Hamas often 'created a human shield of women, children, the elderly and the mujahideen, against [the Israeli military]' specifically to 'constitute evidence that Hamas forced Palestinian civilians to shield military objectives against attack.'" In its original context in the report, this statement was part of an explanation that the Mission did not find evidence that Hamas *forced* civilians to act as shields, and it was followed by the observation that the Israeli government has not identified any instances where Hamas forced civilians to shield military objectives.

The Mission apparently carefully researched Israel's allegations of human shields, and found that Palestinian militants did launch some rockets from urban areas, but found no evidence that this was done with the intent of using civilians as shields against a counterstrike. Moreover, the Mission also determined that there was no armed presence in the al-Wafa hospital when it was attacked by Israeli forces, nor was any such a presence in the al-Quds hospital or the UNRWA facilities, both of which were destroyed by Israeli forces using high explosive and white phosphorus shells. While it found no evidence of Hamas forcing civilians to act as shields, the Mission did find evidence that Israeli forces had regularly used Palestinian civilians and prisoners as human shields.

These findings are consistent with those of Amnesty International and Human Rights Watch, both of which found that Israeli forces repeatedly endangered the lives of Palestinian civilians by forcing them to act as shields.

## Claims That the Report Denies Israel the Right of Self-defense

The single most frequently repeated claim in HR 867 is that the Report by Justice Goldstone and his colleagues somehow seeks to deny Israel the right to defend itself.

This claim persists despite the fact that the Report clearly states that, "[t]he normative framework for the Mission has been general international law, the Charter of the United Nations, international humanitarian law, international human rights law and international criminal law." None of these international agreements denies Israel or any other state the right to defend itself against an attack from another state, but they do mandate certain protections for civilians and for prisoners of war. Retaliatory violence against civilian populations, for instance, is expressly forbidden, as is the torture or execution of civilian or military prisoners. To the extent that both Israeli and Palestinian combatants failed to adhere to the laws governing armed conflict, they are both culpable for war crimes. The Report also offers Israeli forces significant leeway on several issues pertaining to urban combat. That the Report still found sufficient evidence of deliberate attacks on civilians to merit an investigation indicates egregious violations by Israeli forces.

The Resolution also claims that the principle of universal jurisdiction is being used unfairly to attack both Israel's and the United States' rights to self-defense, and that application of the principle has "unfairly impeded the travel of those individuals" who have courageously defended the U.S. and Israel. The Resolution also claims that the Report's

resort to universal jurisdiction ignores the fact that Israel has an "independent judicial system with a robust investigatory capacity" that has already investigated the issues raised in the report, just like the U.S. military already investigated the allegations of abuse and torture in Iraq and Afghanistan. The Goldstone Report addressed these investigations, however, and found that they lacked both the independence and the thoroughness required to satisfy the standards of international law. The concept of universal jurisdiction exists specifically to address situations such as this, where the state responsible for war crimes or crimes against humanity refuses to carry out the appropriate investigations. Given its use of extraordinary rendition, which involves illegally entering another nation to forcibly extract a person, the U.S. government is an unlikely critic of universal jurisdiction.

### **What HR 867 Overlooks**

The most straightforward explanation for the distortions and fabrications that abound in HR 867 is that the Resolution is designed to keep particular aspects of the original Report out of the public record, not only in the international forum, but even more so in the U.S.

This raises the question of what in the Goldstone Report is so damning that so many Representatives are willing to throw their credibility away on a Resolution as absurd as HR 867.

One possible answer to this question has already been discussed, which is the Israeli occupation of Palestinian Territories. As the Report describes, Israel captured the West Bank and Gaza Strip from Jordan and Egypt respectively in 1967. The international community, including the United States, rejected Israel's attempts to expand its territory through military conquests, and issued a resolution on 22 November 1967 calling on Israel to withdraw its forces. Israel ignored the resolution and has subjected the inhabitants to a military occupation while simultaneously displacing them through the establishment of illegal Israeli settlements, which now occupy more than 40 percent of the West Bank. The Palestinian people have repeatedly attempted to resist this expulsion, organized an uprising (intifada) in 1987 that continued until the first Oslo accords of 1993, and then launched a second uprising in response to Ariel Sharon's provocative visit to al-Haram al-Sharif in 2000. In 2001 Ariel Sharon discontinued talks with the Palestinian leadership while militants began firing rockets from Gaza into Israel. The Israeli government began building the annexation wall in 2002, and the International Court of Justice ruled that it was illegal in 2004. Israeli forces formally withdrew from the Gaza Strip in 2004, but retained control over Gaza's airspace, borders, and waterways, thereby continuing the occupation. When Hamas successfully won the elections in 2006, Israel responded by tightening the border controls even further and restricting humanitarian aid to Gaza. The Israeli government also assassinated a number of Hamas officials in 2006 after Palestinian militants unaffiliated with Hamas captured an IDF corporal. In 2007, Fatah and Hamas forces clashed in Gaza, at which point Hamas gained control over the government facilities. The president of the Palestinian Authority responded by declaring a state of emergency and establishing an emergency government in the West Bank. The Israeli government also declared the Gaza Strip "hostile territory" in 2007 and restricted the flow of goods across the borders to almost nothing. The IDF continued to retaliate against rocket attacks from Gaza with artillery fire and aerial bombardments from 2001 through

2008, resulting in large numbers of Palestinian deaths. The Israeli government also continues to restrict movement between the West Bank and the Gaza Strip, effectively isolating the Territories from one another. The Mission determined that this occupation of the Palestinian Territories by Israel was critical to an understanding of the recent conflict in the Gaza Strip and accordingly included this information in the Report.

In addition to discussing the historical context of the Israeli occupation (at least since 1967), the Goldstone Report raises the uncomfortable issue of the unequal treatment of Jewish and Palestinian citizens of Israel. Although it refrains from discussing the land ownership laws and the disparity between the Jewish and Palestinian right of return, it does describe instances where Jewish citizens were granted preferential treatment over Palestinian citizens. For instance, Israeli protesters who remained in detention while awaiting trial were disproportionately Palestinian. A more serious instance of discrimination was the disparity in advance warning services and shelters available to Jewish and Palestinian towns in the range of rocket attacks in southern Israel.

Perhaps the most unwelcome aspect of the Goldstone Report is what its findings imply about the "most moral army in the world." The Report notes the efforts by the Israeli government to prevent activists, NGOs, and the media from scrutinizing its operations too closely. This may be because the accounts of deliberate attacks on unarmed civilians during the attack on Gaza reveal a ruthlessness in the occupation that Israel's apologists have worked hard to suppress. Contrary to the claim in HR 867 that the references to attacks on civilians were "sweeping and unsubstantiated," the Report carefully documents, in addition to deliberate attacks on civilian infrastructure and food production facilities, 11 separate instances where multiple eyewitnesses corroborated accounts of Israeli forces deliberately killing unarmed civilians. The severity of these attacks on civilian targets lead the authors of the Report to recall the "Dahiya doctrine," an Israeli policy adopted in the 2006 invasion of Lebanon that mandates the inflicting of massive civilian suffering to achieve political victory. The first two incidents of deliberate attacks on civilians described in the Report are accounts of Israeli soldiers firing indiscriminately into Palestinian homes that the soldiers knew to be free of hostile forces. In another 7 incidents, Palestinian civilians attempting to flee from their homes -- one of which was shelled with white phosphorus -- while waving white flags were shot and killed by Israeli soldiers. In another incident, Israeli forces attacked a mosque during evening prayer, killing 15 people. In the final instance, Israeli forces struck an ambulance with flechette missiles, killing one of the volunteer paramedics. The following day, Israeli forces attacked the condolence tents where the victim's friends and family were mourning, killing another five people. In addition to these deliberate attacks on civilians, the Goldstone Report also details attacks by Israeli forces on government buildings, civilian police officers, food production, sewage treatment, water treatment, housing, and industrial infrastructure, all of which are in violation of the international laws of war. The disregard for civilian lives demonstrated in the various firsthand accounts of the Israeli invasion may explain why proponents of the Israeli occupation would like to see the Goldstone Report buried.

## **Conclusion**

The Israeli government has repeatedly ignored calls by the international community to cease its occupation of Palestine, and its continued efforts to reject a peaceful settlement have begun to cost the state supporters in Europe and the United States. While none of the Goldstone Report's findings are particularly revolutionary, it is one of the more comprehensive and carefully researched analyses of the full scale of the Israeli occupation to come out of the United Nations. Despite the Bush administration's best efforts to convince the public that the international community is irrelevant, enough people still respect the UN to the extent that careful scrutiny of its record by the General Assembly could inflict severe damage on Israel's credibility as a civilized nation.

The U.S. Senate, perhaps waiting to see what type of fallout the House Resolution generates, has not yet issued its statement condemning the Goldstone Report. The Obama administration has also not yet commented on the Resolution, although the U.S. Ambassador to the United Nations naturally voted against considering the Report in the General Assembly. Coincidentally, it is the United States' ongoing unconditional political and military backing of Israel that the Goldstone Report completely overlooks. While the House was quick to complain that the Report failed to investigate the role that the Syrian and Iranian governments purportedly played in arming Hamas and other militants, it forgot to praise the Report for overlooking the fact that it was the U.S. government who supplied Israeli forces with much of the military hardware, including the white phosphorus artillery rounds, that was used against civilians. This is an unfortunate oversight on the part of the Mission, as U.S. aid has been instrumental in perpetuating the Israeli occupation of the Palestinian Territories and the slaughter of the Palestinian people. Perhaps the House can take some small comfort in the fact that the \$30 billion in military aid that Israel is receiving from the U.S. over the next several years has thus far gone unmentioned. On the other hand, the General Assembly is not subject to the same unilateral vetoes that the Security Council is, and human rights organizations have already raised the issue of foreign weapons supplies to Israel and Palestine and called on the United States to suspend the delivery of further military supplies to Israel. Already isolated by their stances on the Israeli occupation of Palestine and recent U.S. military adventures, both the U.S. and Israeli government may soon find themselves facing increased pressure from the international community and their own citizens to respect the rule of international law and human rights.

## References

To increase the accessibility of this article, I have refrained from citing references directly. The statistics, information, and quotes contained in this article can be found in the following sources:

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