

United Nations Fact Finding Mission on the Gaza Conflict, a.k.a The Goldstone Report

The Resolution: Original Mandate

The United Nations Human Rights Council (UNHRC) adopted Resolution S-9/1, to "dispatch an urgent, independent international fact-finding 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 occupied Gaza Strip, due to the current aggression, and calls upon Israel not to obstruct the process of investigation and to fully cooperate with the mission." The resolution explicitly limited the mission to investigating solely Israel.

About the UNHRC

The UN Human Rights Council has a checkered history. The General Assembly established the UNHRC by adopting a resolution (A/RES/60/251) on 15 March 2006 to replace the previous CHR, which had been heavily criticized for having countries with poor human rights records as members. The change in the organization appears to be in name only. The council has been widely criticized within the UN and from outside, including by Secretaries-General Kofi Annan and Ban Ki-Moon. Former UN High Commissioner for Human Rights Mary Robinson expressed regret for what she called the council's practice of "adopting resolutions guided not by human rights but by politics."

Of the 26 resolutions passed by the UNHRC in its three years of existence, 20 targeted Israel for condemnation.

Richard Goldstone appointed to head Fact-Finding Mission

On April 3, 2009, South African Richard Goldstone was named as the head of the independent United Nations Fact-Finding Mission to investigate international human rights and humanitarian law violations related to the Gaza War. Richard J. Goldstone (born October 26, 1938) is a former South African Constitutional Court judge. He served as the chief prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and for Rwanda from August 15, 1994 to September 1996. Goldstone is an actively pro-Israel, Jewishly involved figure who also is a hero of the human rights community. He is a trustee of the Hebrew University in Jerusalem and a president emeritus of World ORT, the Jewish organization that is a leader in vocational training and education. According to his daughter Nicole, who lives in Israel, Goldstone "is a Zionist and loves Israel." Goldstone himself, in a 2000 speech in Jerusalem, noted that "bringing war criminals to justice stems from the lessons of the Holocaust." His legal bona fides, his standing in the Jewish community (prior to this appointment), and his academic achievements are noteworthy.

The Mission: Expanded Mandate

In a July 16 interview, Goldstone said "at first I was not prepared to accept the invitation to head the mission". "It was essential," he continued, to expand the mandate to include "the sustained rocket attack on civilians in southern Israel, as well as other facts." He set this expansion of the mandate as a condition for chairing the mission. The next day, he

wrote in the New York Times "I accepted because the mandate of the mission was to look at all parties: Israel; Hamas, which controls Gaza; and other armed Palestinian groups." The UNHRC press release announcing his nomination documents the changed mandate. However, it is not clear whether the original mandate was formally changed by UNHRC or whether the changes were undertaken without UNHRC official legislative authority.

It should be noted that Israel refused to cooperate with the inquiry and did not allow UN investigators access between Gaza and Israel or the West Bank. Israel's former ambassador to the UN, Danny Gillerman, said Israel was right not to cooperate with the inquiry, saying, "The findings would never have been objective." He declared that the UNHRC should never have been set up in the first place, and reminded that former UN secretary-general Kofi Annan had said that allowing the UNHRC's establishment was one of his biggest mistakes. Some believe Israel should have cooperated because with Goldstone heading the inquiry, they would get the best hearing possible. His daughter, Nicole, said in an interview conducted in Hebrew with Army Radio the day after the report was released: "My father's participation softened the UN Gaza report."

The Goldstone Report – Sept 18, 2009

On September 15, 2009, the UN Fact-Finding mission released its report. The report found that there was evidence "indicating serious violations of international human rights and humanitarian law were committed by Israel during the Gaza conflict, and that Israel committed actions amounting to war crimes, and possibly crimes against humanity." The mission also found that there was evidence that "Palestinian armed groups committed war crimes, as well as possibly crimes against humanity, in their repeated launching of rockets and mortars into Southern Israel." The mission called for referring either side in the conflict to the UN Security Council for prosecution at the International Criminal Court if they refuse to launch fully independent investigations by December, 2009.

UNHRC Endorses Goldstone Report - Oct 16, 2009

On Oct 16, 2009, the UNHRC voted 25-6 to endorse the Goldstone Report. The UNHRC then sent the Goldstone report to the U.N. Security Council. The report recommends that Israel and authorities in the Gaza Strip prosecute fighters for alleged war crimes committed during last winter's Gaza war and, should that not happen within six months, for the U.N. Security Council to pursue such prosecutions. The Human Rights Council resolution cites only Israel. Goldstone, who agreed to lead the fact-finding mission only if he could investigate Hamas as well, said he was "saddened" by the resolution. "There is not a single phrase condemning Hamas as we have done in the report," Goldstone was quoted as saying by AFP, the French press agency.

The vote tally is as follows:

Yes: Argentina, Bahrain, Bangladesh, Bolivia, Brazil, Chile, China, Cuba, Djibouti, Egypt, Ghana, India, Indonesia, Jordan, Mauritius, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russia, Saudi Arabia, Senegal, South Africa and Zambia.

No: Holland, Hungary, Italy, Slovakia, Ukraine and the United States.

Abstained: Belgium, Bosnia, Burkina-Faso, Cameron, Gabon, Japan, Mexico, Norway, Slovenia, South Korea and Uruguay.

Madagascar and Kyrgyzstan were not present during the vote; Britain and France refused to vote.

Both Russia and China voted in favor of the resolution to endorse the Goldstone Report but both declared opposition to any discussion of the Report by the UN Security Council. The Chinese officials said the UN Human Rights Council has enough tools to examine the issue closely without the involvement of additional UN institutions.

Congress Introduces Resolution on Goldstone Report - October 23, 2009

A non-binding resolution introduced October 23rd by U.S. Rep. Howard Berman (D-CA), the chairman of the House of Representatives Foreign Affairs Committee, and Rep. Ileana Ros-Lehtinen (R-FL), the committee's ranking Republican, "calls on the President and the Secretary of State to strongly and unequivocally oppose any further consideration of the 'Report of the United Nations Fact Finding Mission on the Gaza Conflict' and any other measures stemming from this report in multilateral fora."

Also signing on as sponsors were the Middle East subcommittee's chairman and ranking member, Reps. Gary Ackerman (D-NY) and Dan Burton (R-IN).

UN General Assembly to discuss Goldstone report in November

On October 27, 2009 the French news agency AFP reported that the UN General Assembly will discuss the Goldstone Report sometime in November, at the request of a representative of the Arab League, who said the Arab League's intention was to "propose the General Assembly pass a resolution approving the Goldstone report and 'requesting the (UN) Security Council to take it' up in formal debate."

The Obama administration has called the Goldstone Report flawed and is opposed to furthering the report in international committees.

Criticisms

The UNHRC resolution that established the mandate for the investigation was hostile to Israel. In an Orwellian approach to international law, the mandate effectively declared Israel as a perpetrator of war crimes and then established a fact-finding mission to validate that claim. Much of the criticism of the Goldstone Report is criticism of the UNHRC and its original mandate.

The organization UN Watch, which is largely pro-Israel, said: "no one has ever disputed that the Arab-controlled Human Rights Council deliberately selected individuals who had made up their mind well in advance - not only that Israel was guilty, but that a democratic state with an imperfect but respected legal system should be considered the same as, or worse than, a terrorist group."

An open letter signed by some 50 British and Canadian lawyers protested the inclusion of Christine Chinkin in the mission, noting that Chinkin had signed a public letter in January 2009 that called Hamas' and Israel's actions in the conflict "war crimes." The lawyers contended that this disqualified her from participating in an international panel investigating whether Hamas and Israel had, in fact, committed war crimes. Israeli officials all along the political spectrum were critical of the report. President Shimon Peres responded to the Report saying that it "makes a mockery of history" and that "it does not distinguish between the aggressor and the defender." According to Peres, "War is crime and the attacker is the criminal. The defender has no choice. The Hamas terror organization is the one who started the war and also carried out other awful crimes. Hamas has used terrorism for years against Israeli children. The report gives de facto legitimacy to terrorist initiatives and ignores the obligation and right of every country to defend itself, as the UN itself had clearly stated."

Susan Rice, the US permanent representative to the UN, said: "We have long expressed our very serious concern with the mandate that was given by the Human Rights Council prior to our joining the council, which we viewed as unbalanced, one-sided and basically unacceptable." State Department spokesman Ian Kelly said: "Although the report covers both sides of the conflict, it focuses overwhelmingly on Israel's actions", adding that Goldstone opted for "cookie cutter conclusions" about Israel's actions, while keeping "the deplorable actions of Hamas to generalized remarks."

The Anti-Defamation League (ADL) was highly critical of the vote by the UN Human Rights Council endorsing the findings of the Goldstone inquiry. "Despite the efforts of the United States to fend off adoption by the council of a one-sided resolution, this vote continues the Human Rights Council's unwavering and biased focus on all things related to Israel," ADL National Director Abraham Foxman said in a press release. "Given the makeup of the membership of the HRC, it is virtually guaranteed that certain countries, among them some of the most notorious human rights violators in the world, will automatically vote in favor of anything that singles out Israel for condemnation."

The Jerusalem Center for Public Affairs conducted an analysis of the report and concluded that flaws in the commission's methodology "raise serious questions about its intentions to discover the truth". The center provided specific examples in which, it charged, testimony by Hamas operatives was accepted uncritically by the commission despite being contradicted by freely accessible Palestinian sources.

In a related matter, the founder of Human Rights Watch and its chairman emeritus, Robert L. Bernstein, wrote an op-ed in the New York Times criticizing his organization for issuing "far more condemnations of Israel for violations of international law than any other country in the region... Human Rights Watch had as its original mission to pry open closed societies, advocate basic freedoms and support dissenters. But recently it has been issuing reports on the Israeli-Arab conflict that are helping those who wish to turn Israel into a pariah state." Bernstein calls upon Human Rights Watch (and by extension the UNHRC) to recognize the distinction between

open and closed societies. Open, democratic societies commit faults and abuses, but they have the ability to correct them through vigorous public debate, an adversarial press and many other mechanisms that encourage reform.

Conclusion

The Jewish community is skeptical of the Goldstone report. The major disqualifier is the UNHRC and its bias against Israel. That 20 of 26 resolutions in three years have been critical of Israel is indicative of that bias, unless you believe Israel is the worst human rights violator in the world – worse than Sudan, Congo, North Korea, China, or Iran. Beyond the mandate, the report itself is problematic, but our guess is that few people have read the report – all 575 pages of it. Not that there may not be human rights violations on Israel's part, but the idea that you can fight a "proportional" war against a non-state terrorist-led foe is questionable. Can you fight a war with minimum civilian casualties? Can a civilian fact-finding mission, with no military expertise, evaluate how a war can and should be fought? Inadequate space was given to the historical context of the Arab-Israeli conflict. Investigators found little evidence of Palestinian use of civilians as human shields; nor were they satisfied with Israeli efforts to minimize civilian casualties -- despite indications to the contrary. The report seemed to establish equivalence between a Democratic country, however flawed, and a terrorist organization fighting a perpetual guerilla war. It insists that Israel should target "military installations," but do such military targets exist in a non-country with a non-army? In the end, the report called upon Israelis and Palestinians to conduct their own internal investigation into the findings. So far, PM Netanyahu has refused, but Kadima party MK Nachman Shai says "The time has come to put an end to the government's misgivings concerning the Goldstone report and to conduct a judicial inquiry into Operation Cast Lead." Defense Minister Ehud Barak opposes establishing such an investigation. Intelligence Affairs Minister Dan Meridor supports the establishment of such an inquiry, and he says that his support is due to his confidence in the IDF rather than any doubts concerning its performance.

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Joint Action Committee