

Israeli campaign to avoid accountability for Gaza war crimes must be rejected

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Recent Israeli government calls for the UN to retract the 2009 report of its Fact-Finding Mission on the Gaza Conflict are a cynical attempt to avoid accountability for war crimes and deny both Palestinian and Israeli victims of the 2008-2009 conflict the justice and reparations they deserve, Amnesty International said today.

Statements by leading Israeli politicians that Israel's conduct in the 22-day conflict in Gaza and southern Israel has been vindicated, following the publication of a Washington Post opinion piece by Justice Richard Goldstone on 1 April 2011, are based on a deliberate misinterpretation of Justice Goldstone's comments. The international community must firmly reject these attempts to escape accountability and act decisively for international justice, as it has done on Libya, Sudan and other situations where war crimes and possible crimes against humanity have been committed.

The UN Fact-Finding Mission on the Gaza Conflict, composed of Justice Goldstone and three other eminent international jurists, examined violations of international humanitarian and international human rights law committed by all sides during the 2008-2009 conflict. Its September 2009 report echoed the findings documented by Amnesty International, other human rights organizations and independent observers, and called on the Israeli and Palestinian authorities to conduct credible, independent investigations into alleged war crimes and possible crimes against humanity within six months or face potential UN Security Council referral to the International Criminal Court.

The report's recommendations concerning potential international justice mechanisms remain unimplemented more than 18 months later, despite the fact that the Israeli authorities and Hamas de facto administration have both failed to conduct investigations that are prompt, thorough, independent, impartial, and effective, as required by the UN General Assembly.

Israeli Prime Minister Benjamin Netanyahu, Foreign Minister Avigdor Lieberman, Defence Minister Ehud Barak, and other senior Israeli politicians have seized on Justice Goldstone's new statement that the Israeli military did not intentionally target civilians during the conflict and has conducted some investigations to call for the entire Fact-Finding Mission's report to be retracted – or, as Prime Minister Netanyahu put it, “tossed into history's trash can”. The US State Department has supported this position, with a spokesperson saying that the US government did not see any evidence that the Israeli government had committed any war crimes during the conflict.

As a spokesperson for the Human Rights Council has today made clear, comments made in an opinion piece do not provide a sufficient legal basis for overturning a UN report that has been

discussed and endorsed by both the Human Rights Council and the General Assembly. Nor are the self-serving calls of Israeli political leaders, some of whom were members of the Israeli war cabinet which made the policy decisions during Operation “Cast Lead”, the 22-day conflict in which some 1,400 Palestinians, including some 300 children, were killed by Israeli forces. Aborting the process towards an international justice solution would also preclude any possibility of justice or reparations for Israeli victims of the conflict, who suffered from hundreds of indiscriminate rockets and mortars launched into southern Israel by Hamas’ military wing and other Palestinian armed groups in Gaza.

Amnesty International has monitored and critiqued the Israeli military investigations into its actions during Operation “Cast Lead”, and has condemned both the continuing failure of the Hamas authorities to investigate alleged violations committed by Palestinian armed groups during the conflict and the ongoing firing of indiscriminate rockets into southern Israel.

In consequence of the failure of both the Israeli and Palestinian sides to conduct proper independent investigations and ensure accountability and justice for the victims, Amnesty International has called on a range of international actors to now bring international justice mechanisms to bear in order to meet these objectives and end impunity.

In particular, Amnesty International has called on the General Assembly to consider the Fact-Finding Mission’s report at its 66th session starting in September 2011, and submit the report to the UN Security Council with a recommendation that the latter body consider referring the situation to the Prosecutor of the International Criminal Court (ICC). This recommendation was also included in a resolution passed by the Human Rights Council on 25 March 2011.

Amnesty International also urged the ICC Prosecutor to seek a legal determination from the Pre-Trial Chamber on whether an investigation could be launched on the basis of a 2009 declaration by the Palestinian Authority accepting the Court’s jurisdiction over crimes committed on the Palestinian territories. Finally, we have consistently called for national authorities of other states to exercise universal jurisdiction over war crimes committed during the 2008-2009 Gaza conflict, just as we urge states to exercise universal jurisdiction over war crimes in other conflicts where the domestic authorities are unwilling or unable to act.

Background

In a personal op-ed, Justice Goldstone contrasted the investigations conducted by the Israeli military into alleged violations by Israeli forces with the Hamas de facto administration’s failure to investigate alleged violations by Palestinian armed groups in Gaza. He also commented that the Israeli military investigations indicate that civilians in Gaza “were not intentionally targeted as a matter of policy” by Israeli forces. The op-ed is available at:

<http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/0>

While Justice Goldstone’s comments question one of the Fact-Finding Mission’s conclusions – that certain Israeli attacks during Operation “Cast Lead” intentionally targeted civilians – the op-ed in no way constitutes a retraction of the entire Fact-Finding Mission report. The other three members of the UN Fact-Finding Mission have not issued similar public comments questioning any of the report’s conclusions.

The Fact-Finding Mission report examined 11 incidents in which Israeli forces launched direct attacks against civilians that resulted in civilian deaths, and found that in these incidents, “the conduct of the Israeli armed forces constitutes grave breaches of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons and, as such,

give[s] rise to individual criminal responsibility.” Justice Goldstone’s op-ed mentions only one of these incidents, an Israeli attack on 5 January 2009 which killed 21 members of the al-Sammouni family, which is the subject of an ongoing Israeli military investigation. Assessing whether specific Israeli attacks on civilians during the conflict were deliberate is extremely difficult because the Israeli military has not released the evidence that would allow independent parties to evaluate its conclusions. Amnesty International has not argued that the Israel Defense Forces (IDF) targeted Palestinian civilians “as a matter of policy”, but rather that IDF rules of engagement and actions during the conflict failed to take sufficient precautions to minimize civilian casualties. Justice Goldstone’s recent comments do not dispute this assessment.

Amnesty International, the Fact-Finding Mission, and other human rights organizations documented many other serious violations by Israeli forces, including war crimes, during the conflict. These include indiscriminate attacks and the use of weapons such as white phosphorus and flechettes in civilian areas; wanton destruction of civilian property and infrastructure; attacks on UN facilities, medical facilities and personnel; and the use of Palestinian civilians as “human shields”. While the Israeli authorities have investigated some of these incidents, all the investigations have been conducted by the Israeli military, and overseen by the Military Advocate General Corps, the same body which was responsible for providing legal advice to the IDF during Operation “Cast Lead”.

As noted in the recent report of the UN Committee of Independent Experts appointed to monitor and assess the investigations, Israel has failed to investigate the actions of “those who designed, planned, ordered and oversaw Operation Cast Lead”, the Israeli military investigations have lacked transparency, and more than one third of the incidents highlighted by the Fact-Finding Mission are still “unresolved or unclear”. To date, only four Israeli soldiers have been indicted on criminal charges relating to Operation “Cast Lead”, and only one has served prison time for credit card theft.

Amnesty International’s own assessment of the Israeli investigations concurred with the Committee of Independent Experts’ report. More than two years after the conflict, there is no way for objective, impartial observers to view Israel’s investigations as adequate, independent, or effective in bringing perpetrators of alleged violations to justice.

The Committee of Independent Experts’ report, released on 18 March 2011, is available at:
http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24_AUV.pdf

Amnesty International’s latest assessment of the Israeli and Palestinian investigations into the Gaza Conflict, released on 18 March 2011, is available at:
<http://www.amnesty.org/en/library/info/MDE15/018/2011/en>
