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From Durban to the Goldstone Report: the centrality of human rights NGOs in the political dimension of the Arab–Israeli conflict

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Disproportionate and unsubstantiated allegations of human rights violations, war crimes and racism have been employed as a form of political warfare designed to isolate Israel internationally. This strategy, based on the model used to defeat the apartheid government in South Africa, was adopted in 2001 at the NGO Forum of the UN-sponsored Durban Conference on racism, in which 1500 organizations participated. Since then, as demonstrated in this article, many human rights NGOs have consistently supported the political agenda of the Organization of the Islamic Conference (OIC), whose members dominate the UN Human Rights Council. In the decade following the Durban conference, the NGO network has issued frequent condemnations of Israel based on false or unverifiable allegations of human rights abuses and ‘war crimes’. The NGO campaigns, led by international groups such as Human Rights Watch and Amnesty International, are central in this process, from Jenin (2002), through the UNHRC’s Goldstone Report on the Gaza war (2009). Journalists, academics, diplomats, political leaders, and legal officials in liberal Western democracies frequently cite these generally unsubstantiated allegations in condemning Israeli policies, reflecting the ‘soft power’ of these NGOs acting to reinforce the Palestinian narrative and the objectives of the OIC.

Keywords: Israel; NGOs; Goldstone Report; Durban; de-legitimization; Tutu

If I had known then what I know now, the Goldstone Report would have been a different document . . . The allegations of intentionality by Israel were based on the deaths of and injuries to civilians in situations where our fact-finding mission had no evidence on which to draw any other reasonable conclusion . . . , the investigations published by the Israeli military and recognized in the UN committee’s report indicate that civilians were not intentionally targeted as a matter of policy. (Judge Richard Goldstone, 2 April 2011)¹

The ‘Report of the United Nations Fact-Finding Mission on the Gaza Conflict’ (the Goldstone Report) was published in September 2009, and immediately became a central text in the campaigns to brand Israeli soldiers and political leaders as war criminals, and in promoting boycotts and the ‘international isolation’ of Israel. According to Naomi Klein, a leading anti-Israel activist, ‘[t]he findings of the

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Goldstone Report have become a powerful tool in the hands of the growing movement for Boycott, Divestment and Sanctions' against Israel. For opponents of BDS and supporters of Israel, Klein asserted that Goldstone presents a particular problem due to 'his record as a judge on the world stage'.²

The Goldstone Report also became a cornerstone of the organized campaign calling for the prosecution of Israeli officials in the International Criminal Court and through exploitation of universal jurisdiction in foreign national courts. According to Ali Abunimah, co-founder of Electronic Intifada, 'the publication of the Goldstone Report may in hindsight be seen as a key turning point ... as a new wave of global civic mobilization sought justice and accountability'.³

As this campaign accelerated, the report's principal author, Judge Richard Goldstone, began to express doubts in public presentations regarding the publication that bears his name. On 2 April 2011, Goldstone publicly renounced his own report, stating: 'If I had known then what I know now, the Goldstone Report would have been a different document ... [T]he investigations published by the Israeli military and recognized in the UN committee's report ... indicate that civilians were not intentionally targeted as a matter of policy.'⁴ Two years after he accepted the biased UN mandate, Goldstone appears to have understood that he, as well as the language of human rights and international law, had been cynically exploited.

Origins

The Goldstone Report and the process that produced it were far from *sui generis*. Rather, they were the continuation of a much wider strategy led by Palestinians and their supporters, and using a combination of international organizations (particularly the United Nations human rights mechanisms), allied non-governmental organizations (NGOs) and false allegations of 'racism' and 'war crimes' targeted at Israel. This strategy was formally adopted in the NGO Forum of the 2001 UN Conference Against Racism, held in Durban, South Africa. The NGO Final Declaration referred to Israel as an 'apartheid state', guilty of 'racist crimes against humanity including ethnic cleansing, acts of genocide', and called for 'comprehensive sanctions and embargoes' as well as 'the full cessation of all links'. This was a declaration of political war through the use and abuse of the language of international law and human rights.⁵ Therefore, in analysing the Goldstone Report and its context, it is necessary to examine the Durban process, and the ongoing political campaigns of the UN Human Rights Council (UNHRC) and the allied NGOs that claim expertise in human rights and international law.

The 2001 Durban NGO Forum was a massive and unique gathering, which included thousands of representatives from an estimated 1500 organizations. The participants included major global actors such as Human Rights Watch (HRW) and Amnesty International (AI), and were joined by dozens of Palestinian NGOs such as MIFTAH, the Palestinian Committee for the Protection of Human Rights and the Environment, BADIL, Al Haq, and the Palestinian NGO Network

(PNGO). The final text was drafted during UN-sponsored regional and preparatory conferences, including one in Tehran during February 2001, from which Israelis and Jewish delegates were excluded.⁶ At the Durban NGO Forum, copies of anti-Semitic literature, such as the 'Protocols of the Elders of Zion' and cartoons of hook-nosed Jews with 'pots of money surrounding their victims', were distributed by the Arab Lawyers Union and other groups,⁷ and Jewish and Israeli participants were subject to physical intimidation.⁸

The centrality of the UN Commission on Human Rights – renamed the UN Human Rights Council in 2006 – and the role granted to NGOs promoting anti-Israel agendas at Durban and in subsequent activities, including the Goldstone process, reflect the power of the Organization of the Islamic Conference (OIC) in these activities. The OIC members, along with allies among closed totalitarian regimes such as Cuba, China, and Russia, dominate the UN's human rights mechanisms, set the agendas, and select the officials, including the commissioners, rapporteurs, and their staffs. Sessions were often chaired by officials from Libya or Iran, who focus attention on allegations against Israel. In order to participate in these events, many of the 'mainstream' NGOs represented in Geneva, such as HRW, Amnesty, and Fédération Internationale des ligues des droits de l'Homme (FIDH) followed the agendas of these dictatorial regimes.

For these international human rights NGOs and the many others involved in the Durban process, this cooperation also reinforced a political affinity based on post-colonial ideology. The framework includes strong anti-Western and anti-American beliefs, in which the political world is divided a priori into 'victims' and 'aggressors' and 'hegemons'. As Donna Robinson Divine has observed, 'post-colonialism typically uncovers traces of Western power lurking in the world's economy, its politics, and its so-called Western defined culture; and . . . projects the national heirs of former colonies as innocents and still powerless'. Post-colonial ideologues, including many NGO activists and officials, display a deep hostility and innate prejudice towards Israel.⁹

In this environment, and with the active participation of NGOs such as HRW and Amnesty, the NGO Forum adopted a Final Declaration that focused on Israel. Article 164 asserts: 'Targeted victims of Israel's brand of apartheid and ethnic cleansing methods have been in particular children, women and refugees.' Article 425 advocated 'a policy of complete and total isolation of Israel as an apartheid state . . . the imposition of mandatory and comprehensive sanctions and embargoes, the full cessation of all links (diplomatic, economic, social, aid, military cooperation, and training) between all states and Israel'. And Article 426 condemned states that 'are supporting, aiding and abetting the Israeli apartheid state and its perpetration of racist crimes against humanity including ethnic cleansing, acts of genocide'.¹⁰ (Similar language was removed from the text of the document adopted by the governmental forum of the Durban Conference, which was amended following a walkout by American and Israeli delegations.¹¹) As Anthony Julius wrote, this new 'anti-Zionism', as reflected in the Durban NGO Forum and subsequent actions, is 'predicated on the illegitimacy of the Zionist enterprise'.

Israel, in this view, was 'established by the dispossession of the Palestinian people ... enlarged by aggressive wars waged against militarily inferior forces, and ... maintained by oppression and brutality'.¹²

For some supporters of human rights, the Durban NGO Forum was recognized as a disaster. In writing about the Ford Foundation's role as one of the main funders for NGO participants, William Korey notes that 'Durban turned out to be a propagator of vulgar anti-Semitism'.¹³ Previous 'world conferences against racism' had focused on South African apartheid. With the end of the apartheid regime, many of the participants in the Durban process turned their focus and energies to resuming the attempts to label Zionism as racism. This campaign, which is a continuation of the efforts to delegitimize Israel that began with the recognition of the state in 1948, produced UN General Assembly (UNGA) resolution 3379 on 10 November 1975. While the resolution was repealed by a majority vote of the UNGA in 1991, the campaign continued and was revived globally at the Durban Conference. The Goldstone Report, and its role as a central weapon in the efforts to isolate Israel and to restart the 'Zionism is racism' campaign, was a direct result of the 'Durban strategy'.

Implementing the Durban strategy – template for Goldstone

The Durban NGO strategy was first implemented in April 2002, following the Israel Defence Forces' (IDF's) Defensive Shield counter-terrorist operation in the West Bank, in response to a series of Palestinian suicide bombing attacks that killed and injured hundreds of Israeli civilians. Palestinian officials claimed that the IDF had committed a 'massacre' in the Jenin refugee camp,¹⁴ and NGO officials immediately echoed these allegations. On 16 April, *Le Monde* cited HRW's statements alleging that Israel had committed 'war crimes' and demanding the appointment of what they referred to as an 'independent investigative committee'.¹⁵ And on 18 April, the BBC quoted an Amnesty official, Derrick Pounder, who repeated these massacre allegations.¹⁶ Shortly afterwards, an AI statement declared, 'The evidence compiled indicates that serious breaches of international human rights and humanitarian law were committed, including war crimes', and, like HRW and Palestinian officials, also called for an 'independent inquiry'.¹⁷ Other influential NGOs issued similar statements, reports, and condemnations, including Caritas (a European Catholic group),¹⁸ as well as Palestinian NGOs funded by European governments, such as MIFTAH.

HRW was particularly active in this campaign, issuing 15 press releases and reports condemning Israel in 2002,¹⁹ and reflecting the obsessive and highly ideological focus on Israel that is characteristic of the overall organization and the Middle East and North Africa division.²⁰ HRW's 50-page report, 'Jenin: IDF Military Operations', was composed of claims from unverifiable 'eyewitness testimony' from Palestinians.²¹ Only one sentence mentioned the justification for the operation – 'the Israelis' expressed aim was to capture or kill Palestinian militants responsible for suicide bombings and other attacks that have killed more

than seventy Israeli and other civilians since March 2002'.²² In contrast, HRW's detailed indictment against Israel included allegations that 'IDF military attacks were indiscriminate ... failing to make a distinction between combatants and civilians ... the destruction extended well beyond any conceivable purpose of gaining access to fighters, and was vastly disproportionate to the military objectives pursued'. It alleged that the IDF had used Palestinian civilians as human shields 'to screen Israeli soldiers from return fire'. It also referred to the death of Munthir al-Haj, acknowledged as an 'armed Palestinian militant', as a case of 'murder' and 'willful killing'.²³ (Such claims, categorizations, and legal analysis by human rights NGOs in the context of armed conflict have been shown to be inconsistent and highly problematic.²⁴)

The campaign led by NGOs and Palestinian supporters had a direct influence on UN Secretary-General Kofi Annan, who appointed a 'fact-finding team' to 'investigate' the allegations of Israeli war crimes. Committee members included former Finnish president Martti Ahtisaari, who was referred to as 'a long-time Arafat favorite: on December 12, 1994, after receiving his Nobel Peace Prize, Arafat flew to Finland to thank Ahtisaari personally for Finland's support of the Palestine Authority'. Later, Ahtisaari joined an organization known as The Elders, led by Jimmy Carter and Archbishop Desmond Tutu, who are known for their hostility towards Israel (see below). The two other members of the UN's Jenin investigation committee were also seen as predisposed towards the Palestinian narrative of victimization.²⁵

The Israeli government refused to cooperate with what it viewed as a biased committee, and this group was disbanded. However, led by the OIC and its allies, the General Assembly then adopted resolution ES-10/10 on 7 May 2002, 'in which the Assembly requested the Secretary-General to present a report ... on the recent events that took place in Jenin and other Palestinian cities'. Israel also rejected the legitimacy of this group, and denied its members access, as noted in the report issued by the Secretary-General.²⁶

This UN report generally followed the lead of HRW and other NGOs, and, as the Israeli government had anticipated, was similarly one-sided.²⁷ This process, from the prejudicial NGO allegations to the unverifiable and false 'evidence', and with recommendations of legal and other sanctions against Israel, provided the step-by-step template used in the Goldstone Report seven years later.

From Jenin to Beit Hanoun – improving the template

Between Jenin and the Gaza war that began in December 2008 and was the trigger for the Goldstone Report, the Durban strategy was expanded and revised in numerous instances. Each instance followed a similar pattern in which Israeli military responses to attack were condemned by NGOs (with HRW often in the lead) as alleged war crimes and violations of human rights, accompanied by demands for 'independent investigations', followed by the formation of a 'fact-finding mission' under the auspices of the UNHRC. The members of the

mission often reflected a strong anti-Israel prejudice, and their reports included significant portions of statements and reports from NGO publications and submissions, which themselves were based on unverifiable 'eyewitness testimony', combined with distorted international legal claims and constructions.

In 2004, NGOs joined the campaign to condemn Israel's separation or security barrier, which was constructed in response to large scale terrorist attacks. They issued press releases, letters, and reports calling on the UN to take action, and demanding that the US and the EU penalize Israel.²⁸ NGOs active in this campaign included HRW, Amnesty International, Christian Aid, World Vision,²⁹ the Palestinian Environmental NGO Network (PENGON), the Palestinian Grassroots Anti-Apartheid Wall Campaign, Palestinian affiliates of the Geneva-based International Commission of Jurists, the UK-based War on Want, the Mennonite Central Committee, and *Médecine du Monde* (France). Christian Aid lobbied the British government, issuing a press release entitled 'Why the Israeli "barrier" is wrong', which referred to hardships inflicted on Palestinians by Israel's 'land grab'.³⁰ In this case, instead of an investigation, report, and condemnation by the UN Commission on Human Rights, the NGO-led process contributed to the UN General Assembly adoption of a highly one-sided resolution that sent the allegations of Israeli violations regarding the security barrier to the International Court of Justice in The Hague for an 'advisory opinion'.³¹ After a political majority issued the expected advisory decision condemning Israeli actions (accompanied by a blistering minority opinion and critique), the NGOs began to quote and cite the majority text as if it were legally significant and not merely advisory.³²

Another effort based on the Durban strategy of delegitimizing Israel was initiated over what was known as the 'Gaza Beach incident', again led by HRW and other NGOs. On 9 June 2006 an explosion occurred on the Beit Lahiya beach in Gaza, resulting in the reported death of eight Palestinian civilians. Though the details were and remain confused, HRW immediately initiated a major campaign condemning Israel, based on the analysis of Marc Garlasco, their 'senior military analyst'. In a series of highly publicized statements and a press conference, the purported details of the explosives and technical information, which relied on dubious sources such as a 'forensics' facility in Gaza, changed rapidly. HRW and Garlasco repeatedly accused the IDF of being 'incapable of uncovering the truth', and repeated the call for an 'independent, international investigation'.³³ (Garlasco's 'military expertise' has been widely questioned – see discussion below.³⁴)

In the following months, Gaza was the main focus of the NGO network's campaign focusing on Israel and implementing the Durban strategy. Increasing rocket fire followed by the abduction of Gilad Shalit (25 June 2006) in a cross-border raid triggered an Israeli response³⁵ that was condemned by Palestinian and international NGOs as 'collective punishment'³⁶ and creating a 'humanitarian crisis'.³⁷ After the violent Hamas takeover of Gaza in June 2007 and the imposition of a blockade, these claims were amplified and used to accuse Israel of human

rights violations in a series of joint reports by major NGOs such as Amnesty International and Save the Children.³⁸

The Durban/Jenin pattern was also followed in the 2006 Lebanon War, which began in July with a Hezbollah missile bombardment and cross-border raid in which eight Israelis were killed and two kidnapped. The Israeli military response in Lebanon, rather than the initial attack, drew a barrage of intense NGO and UNHRC condemnations, which continued throughout the six-week war and for many months afterwards.

HRW, for example, issued over 50 documents, including letters, op-eds, and long reports on the war. These reports emphasized claims that the IDF had 'deliberately indiscriminately' bombed civilian targets, used 'indiscriminate force', and displayed a 'disregard' towards international law.³⁹ Most of the condemnations were published during the war, and while HRW mentioned Hezbollah activity briefly, its only report on Hezbollah's indiscriminate rocket fire into Israel was published a full year after the war ended.⁴⁰ As in the past, the numerous reports focusing on Israel were based mainly on 'eyewitness' accounts that had little credibility and could not be verified. On this thin basis, HRW argued that 'Israeli Commanders who . . . ordered such attacks would be subject to prosecution for war crimes'.⁴¹

Following the by now standard pattern, the UNHRC created a committee with a clearly one-sided mandate:

to investigate the systematic targeting and killings of civilians by Israel in Lebanon; To examine the types of weapons used by Israel and their conformity with international law; To assess the extent and deadly impact of Israeli attacks on human life, property, critical infrastructure and the environment.

The resolution also condemned the many 'massacres' committed by Israel.⁴²

Because the 'fact-finding' took place only in Lebanon, the question of Israeli cooperation was moot in this case (and perhaps mitigated by Israel's own commission looking into the conduct of the war). The UN inquiry was completed and published less than three months after the formation of the commission. The three commission members (João Clemente Baena Soares – Brazil, Mohamed Chande Othman – Tanzania, and Stelios Perrakis – Greece) were not well known and had not displayed a strong bias.⁴³ While the committee members noted the inherent bias in the mandate, the report stated that '[i]t is not for the Commission to comment on the political-legal context of the adoption of resolution S-2/1, nor to make judgment on the content of its mandate'.⁴⁴ Their report, based on material supplied by the Lebanese sources, UN agencies, NGOs, and the Hezbollah affiliated 'Jihad el-binaa',⁴⁵ refers to 'grave violation of international humanitarian law, which may amount to war crimes'⁴⁶ and 'systematic targeting of civilians and their property'.⁴⁷ But the report attracted little attention, and the recommendations were not acted upon.

At the end of 2006, following an IDF shelling incident of Beit Hanoun in Gaza on 8 November, in which 19 Palestinian civilians were allegedly killed, the NGO-UNHRC network escalated the application of the Durban strategy.

Palestinian Authority head Mahmoud Abbas described the killings as a massacre and demanded intervention by the United Nations.⁴⁸ Human Rights Watch added its voice to this demand, calling for a ‘comprehensive independent investigation’, and rejecting the Israeli investigations into the event. Amnesty International also called for ‘an immediate, independent investigation and for those responsible to be held accountable’.⁴⁹

A special session of the UNHRC was convened and, as in the past, adopted a resolution creating a ‘fact-finding investigation’. As in the previous cases, and later in the Gaza–Goldstone example, the mandate prejudged the outcome, condemning the IDF’s alleged ‘gross and systematic’ human rights violations ‘in the occupied Palestinian territories’ and calling on the committee to ‘recommend ways to protect Palestinian civilians against further Israeli attacks’. The context and details of the deadly Palestinian attacks that triggered the IDF response were erased and ignored.⁵⁰ At this session, HRW and the Palestinian Center for Human Rights (PCHR) claimed that ‘[t]he level of killing and destruction was unprecedented by all means and standards’ and that ‘[a]lmost all shelling attacks on Gaza had targeted civilians’.⁵¹

In this case, the Palestinian–NGO–UN alliance approached international personalities to officially head the pseudo-investigation, including Canadian Professor Irwin Cotler, a leading human rights expert and advocate, who had defended Nelson Mandela, among other prominent dissidents; and Archbishop Desmond Tutu, who was a leader of the anti-apartheid struggle in South Africa. Cotler, who was also a member of the Canadian parliament at the time, and would become minister of justice, refused the appointment, stating that he ‘could not accept a mandate to hear only one side of a dispute . . . which denied the other side the right to a hearing . . . and which denied the presumption of innocence’.⁵²

In contrast, however, Tutu accepted the position and the mandate.⁵³ Tutu was known for his positions in support of the PLO⁵⁴ and against Israel and the Jews, stating that the Jewish lobby in the US is ‘very powerful’ as were the ‘apartheid government’ and ‘Hitler, Mussolini, Stalin, Pinochet, Milosevic, and Idi Amin’.⁵⁵ Tutu had already repeated the allegations regarding the Beit Hanoun incident, calling it an ‘outrage that cries out to heaven’.⁵⁶ Professor Christine Chinkin was appointed as Tutu’s ‘co-expert’, and, as Israelis noted, Chinkin had also expressed consistent anti-Israel prejudice. Given the bias in the mandate and the composition of the committee, the Israeli government rejected the legitimacy of the investigation and refused to cooperate or to allow it to work in Israel.

In May 2008, Tutu acknowledged that ‘We have tried three times in 18 months to secure the cooperation of the Israeli Government to no avail’.⁵⁷ In contrast to the Jenin case, the Israel government’s refusal to grant the mission legitimacy or access did not terminate the process, and the report and recommendations, written largely on the basis of NGO statements, were particularly damaging when they were presented to the UNHRC and adopted in late 2008, just prior to the beginning of the Gaza war.⁵⁸ This 24-page report endorsed the Palestinian narrative without hesitation, and claimed that Israel, as ‘the occupying power’,⁵⁹ had committed

'gross violations of human rights and international humanitarian law'. The report also repeated the NGO claim that the Israeli blockade of Gaza was 'collective punishment'.

The commission's bias was reflected in the 'rights-based definition of "victim"' used to analyse the event. Israel was found to be in violation of the 'right to life'; '[t]he right to physical and mental health'; '[t]he right to an adequate standard of living'. Israel was also found to be infringing on the 'freedom of movement' and women's rights, including a 'rise in domestic violence in Gaza as a result of the blockade'.⁶⁰ The report asserted that 'there is evidence of a disproportionate and reckless disregard for Palestinian civilian life, contrary to the requirements of international humanitarian law and raising legitimate concerns about the possibility of a war crime having been committed'.⁶¹ All of the information that formed the basis of these allegations came from unverifiable Palestinian sources more than 18 months after the event, and from Israeli, Palestinian, and international NGOs.⁶²

Goldstone and Gaza: the perfect (Durban) storm

The resumption of the deadly rocket attacks from Gaza to Israel, and the resulting Israeli military operation that began on 28 December 2008, provided the framework for an expanded implementation of the Durban strategy. Each of the elements that had been used in the previous rounds – from Jenin to Beit Hanoun – were employed in a highly coordinated and intensive manner. Because the Israeli military operation was anticipated, the Palestinians and their supporters in the UN framework and among the NGO network were able to plan the tactics of the political assault in detail. The Gaza conflict was an opportunity to perfect the procedures and processes that had been used with increasing success to attack Israel using charges of 'war crimes' and violations of international law. This objective was embodied in the UNHCR's Goldstone 'fact-finding mission' and report, which has served as the justification for a major increase in the Durban strategy.

On the Israeli side, the political and legal assault was also anticipated, and some new tactics were employed, particularly by the Foreign Ministry's legal division and the prime minister's spokesman.⁶³ However, as events began to unfold, it became clear that Israel was still unable to respond effectively to the scale and nature of the allegations of 'war crimes', violations of international law, and similar claims, as well as the nature of the campaign. The Israeli government was certainly surprised and outflanked by the appointment of Judge Richard Goldstone to lead this assault.

As in the past, the NGO network led the process, and during the three weeks of this conflict, their activities far exceeded the rate during the 2006 Lebanon War. Over 500 NGO documents and statements were published, often accompanied by press conferences, op-ed articles, and media interviews. Human Rights Watch again played a leading role in this assault, with particular emphasis on allegations of 'illegal' use of white phosphorous. As in 'Gaza Beach', Marc Garlasco, HRW's 'senior military analyst', led the campaign, which resulted in widespread

media focus on this issue. (Garlasco, whose sparse credentials as a weapons expert and record of false claims have been documented,⁶⁴ was later dismissed by HRW after he was revealed to be an obsessive collector of Nazi memorabilia. In addition, the heads of the Middle East and North Africa division of HRW are political activists rather than experts on international law. These individuals have led HRW's obsessive focus on attacking Israel.⁶⁵)

On this foundation, HRW and other NGOs resumed the campaigns demanding an independent investigation. HRW's executive director Ken Roth called on UN Secretary-General Ban Ki-Moon to 'lean on all actors, protect civilians, and ensure accountability. Only an impartial international investigation can achieve that'.⁶⁶ Amnesty International demanded 'a comprehensive international investigation that looks at all alleged violations of international law'.⁶⁷ PCHR supported an inquiry commission 'to investigate crimes committed by IOF [Israel Occupation Forces – sic] against Palestinian civilians, including IOF's use of internationally prohibited weapons'.⁶⁸

A UNHRC special session (9–12 January 2009) adopted a resolution establishing the framework for a 'fact-finding investigation'. The resolution was passed with 33 countries voting in favour, led by the members of the OIC and other non-aligned countries.⁶⁹ During this session, a number of NGOs also submitted their publications to the council and their representatives participated in the meetings, including the Palestinian NGOs BADIL and Al Haq, together with Arab-Israeli NGO Adalah. These NGOs accused Israel of 'grave breaches of international humanitarian law . . . that amount to war crimes'.⁷⁰

Following the Beit Hanoun precedent, the leaders of this campaign sought another high-profile figure, such as Tutu, as the commission chair. After Mary Robinson, the former UN Commissioner of Human Rights, declined to head this 'fact-finding mission', citing the imbalance in the mandate, Judge Richard Goldstone was offered the position.

In many ways, Goldstone was the perfect candidate for the Durban strategy. As a South African judge, he became involved in the transition from the apartheid regime, and was later appointed by Nelson Mandela to the Constitutional Court. As in the 2001 UN conference held in Durban, South Africa, and the appointment of Tutu, Goldstone's recruitment to head the UNHRC's Gaza 'fact-finding mission' highlighted the campaign to link Israel and Zionism to the apartheid label.

Furthermore, Goldstone's Jewish background and affiliation with Zionist causes added to the impact he would have as Israel's main accuser in this process. Robert Bernstein, the founder of HRW, noted the efforts of UNHRC officials to recruit 'prominent Jews known for their anti-Israel views to head their investigations'.⁷¹ As in the case of Richard Falk, the UNHRC's Special Rapporteur on 'the situation of human rights in the Palestinian territories occupied since 1967',⁷² having Goldstone as head of the Gaza inquiry was seen as a means of neutralizing the claims of bias against Israel in the process.

HRW was deeply involved in the nomination of Goldstone. Ken Roth, a friend of Goldstone, was instrumental in offering him the position. Goldstone was

also a member of HRW's board and only resigned after this conflict of interest was pointed out. Between Goldstone's appointment in April 2009 and the 15 September release date, HRW issued more than 15 calls praising the establishment of the inquiry, promoting Goldstone's 'eminent' character, demanding that Israel cooperate despite the inherent bias, and lobbying the US and others to pressure Israel.

Other members of the fact-finding mission included Chinkin, who, as noted above, had been a consultant for Amnesty and joined Tutu in the UNHRC-appointed 'fact-finding' mission on Beit Hanoun. During the Gaza conflict, Chinkin signed a controversial public letter claiming that 'Israel's bombardment on Gaza is not self-defense – it's a war crime'.⁷³ The other members of the team – Hila Jilan, Desmond Travers, and Goldstone himself – also signed a highly biased letter spearheaded by Amnesty accusing Israel of 'war crimes', before their appointment to the UN body.⁷⁴

Between April and September 2009, the four committee members and their staff took testimony from invited witnesses in Geneva and during two short visits to Gaza, reviewed NGO submissions, and held meetings also involving NGOs such as Amnesty and HRW. (The process was reportedly funded by the Arab League.⁷⁵) As in Jenin and Beit Hanoun, the Israeli government rejected any cooperation with Goldstone's group, citing the one-sided mandate and inherent bias of both the UNHRC and the members of the 'fact-finding mission'.

The Goldstone Report, issued on 29 September 2009, was a massive 452-page tome, and purported to document 36 incidents of alleged war crimes in detail, using primarily the same unverified NGO claims, as well as other complaints against Israel unrelated to the Gaza war. Goldstone publicized the report and its recommendations in a press conference, broadcast live on CNN and elsewhere, held at the UN headquarters in New York.

As expected when the Goldstone process began, the allegations and recommendations repeated the themes of the NGO Forum declaration at the 2001 Durban Conference, and in the UN reports regarding Jenin and the other incidents. Once again, Israel was singled out and subjected to unique criteria and methodologies that are not applied to other nations in considering counter-terrorism defence. As in the previous reports, testimony on alleged war crimes was not subject to cross-examination, blatant internal contradictions were ignored, and much of the 'evidence' was never made public or subjected to critical analysis. At the time, Goldstone himself acknowledged that while the language and framework of the report and proceedings were rigidly legalistic, the analyses and recommendations would not have been accepted by a duly constituted court of law.⁷⁶

The Goldstone Report had more force and did more damage to Israel than the others, including accusations of systematic 'war crimes', 'crimes against humanity', and deliberately targeting 'the people of Gaza as a whole'. Goldstone's reputation gave the recommendations much greater force than in past – including calling on the UN Security Council to refer the situation to the International Criminal Court⁷⁷

and for other countries to start criminal investigations in national courts using universal jurisdiction.⁷⁸

In the month immediately after the publication of the report, HRW issued 12 statements in support of Goldstone, and HRW officials were widely quoted in the media.⁷⁹ Many repeated the central accusation that Israel had been guilty of 'wilfully' killing civilians. HRW's campaign continued in 2010, with 14 publications alleging the 'inadequacy' of Israeli investigations into the Gaza war.⁸⁰

More broadly, as noted above, the Goldstone Report was embraced and exploited by the supporters of intense efforts to delegitimize Israel, including the BDS movement, 'lawfare' campaigns, and 'Israel Apartheid Week' activities.

Goldstone reconsiders

As the campaign to sell the report expanded, the numerous fundamental flaws in the entire process slowly received greater attention. Such cynical exploitation of moral and legal frameworks was seen to be highly destructive to international norms, as well as a major threat to the existence of Israel as the nation state of the Jewish people, and its sovereign equality among the nations. The obsessive assault on Israel through the use of false claims and the gross distortion of legal arguments was increasingly understood to go beyond any substantive aspects of the Gaza conflict.

In addition, an examination of the ways in which the claims were being used refutes the pretence that the numerous accusations against Israel are responses to the post-1967 occupation, settlements, and related issues. Similarly, there is no basis for the speculative belief that had Israel agreed to cooperate with a series of UN-appointed and biased 'investigations', the allegations of 'war crimes' would have been mitigated. An equally persuasive thesis would posit that any Israeli submissions to the Goldstone Commission on the Gaza war, for example, would most likely have been twisted and distorted to suit the predetermined conclusions.

In the months that followed publication of the report, details of many of the factual claims and refutation of the legal arguments increased. In March 2010, the semi-official Intelligence and Terrorism Information Center published a 341-page compilation of the results of Israeli military investigations into many of the allegations, demonstrating that the evidence cited in the Goldstone Report was often inconsistent with the facts.⁸¹

As the criticism of the committee and the report expanded, Judge Goldstone's speeches and public comments reflected increasing unease and greater efforts to explain and defend the publication. This reconsideration began to be visible while Goldstone was at Yale University, in autumn 2010, approximately one year after the report was published, and increased steadily during a series of lectures during a visiting faculty appointment at Stanford University in the first months of 2011.⁸² In his public presentations during this period, Goldstone did not take questions, perhaps in the effort to avoid having to respond to the evidence that demonstrated his lack of understanding of many of the false claims and the contradictions contained in

the report written in his name. However, with each of Goldstone's presentations, the emphasis on the discrepancies and inconsistencies became stronger.

On 2 April 2011, Goldstone published an op-ed article in *The Washington Post*, in which he recanted the essential claims of the report. Eighteen months after the UN publication, Judge Goldstone acknowledged that 'our fact-finding mission had no evidence' to verify the allegations supplied by the radical NGOs. He retracted the allegations that Israel had deliberately targeted civilians, confessed to having ignored the war crimes of Hamas, and recognized that the UNHRC is fundamentally biased against Israel.

Goldstone's retraction slowed the efforts to use this report to further promote the international isolation of Israel through the Durban NGO strategy, including the efforts to initiate proceedings in the International Criminal Court. While Goldstone's colleagues in this process, as well as the major NGO contributors, particularly HRW and Amnesty International, pretended that Goldstone's reversal was based on minor issues, the political momentum that had propelled the process may have dissipated.

While the impact of the Goldstone Report on Israel may not be clear for a number of years, it is possible that this will be seen as having marked the turning point in the Durban strategy of using international legal claims about responses to terrorist attacks to isolate Israel politically. As noted, the campaigns resulting from the Gaza war constituted the most intense efforts to promote this agenda, and a failure to produce tangible political or legal results may mark the beginning of the end of the Durban strategy.

Notes on contributor

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