

Goldstone Report Commission: Read the allegations - Read the facts - Judge for yourself

Refutation of the CIC's allegations.

By [Canadians for Justice and Peace in the Middle East](#)

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Ottawa, December 9th, 2009 – On Dec. 3rd, 2009, the Canada-Israel Committee (CIC) distributed an email to all members of Parliament entitled, “Backgrounder – Goldstone Commission.”[1] The CIC email made false allegations about the Goldstone Report [2], many of which are addressed plainly in the Goldstone Report itself. Canadians for Justice and Peace in the Middle East (CJPME) provides the following refutation of the CIC’s false allegations.

CIC Allegation 1:

The Goldstone report fails to recognize Israel’s right to self-defense after years of rocket attacks against its civilians.

The Goldstone report fails to recognize Israel’s actions in Gaza were part of a legitimate response to ongoing rocket and terrorist attacks by Hamas and other terrorist groups.

Fact 1:

The Goldstone report is foremost a summary of findings of human and humanitarian rights abuses committed by Israel and the Palestinians in the conflict which began Dec. 27th, 2008. It neither questioned nor asserted the right of either party to engage in the conflict. Nevertheless, the Goldstone report concluded that, based on the way that Israel conducted itself in the conflict, self-defence could not have been its only justification:

Goldstone Report: 1883. The Gaza military operations were, according to the Israeli Government, thoroughly and extensively planned. While the Israeli Government has sought to portray its operations as essentially a response to rocket attacks in the exercise of its right to self-defence, the Mission considers the plan to have been directed, at least in part, at a different target: the people of Gaza as a whole.[3]

Note that – as meticulously respected by the Goldstone Commission’s methodology – the standards of international law apply to all combatants, at all times, irrespective of whether initiating the conflict was ‘legitimate’, ‘justified’, ‘legal’ or not.

CIC Allegation 2:

The report equates the actions of a terrorist group (Hamas) with those of a democratic

country (Israel) reluctantly taking action to defend itself from terrorism while at the same time taking unprecedented steps to minimize civilian casualties. Israel had already endured more than 12,000 indiscriminate rocket and mortar attacks during the previous 8 years.

Fact 2:

The standards of international law apply to all combatants, at all times, irrespective of whether or not one or both sides believe they are “in the right,” or justified.

Goldstone Report: 1876. In carrying out its mandate, the Mission had regard, as its only guides, for general international law, international human rights and humanitarian law, and the obligations they place on States, the obligations they place on non-State actors and, above all, the rights and entitlements they bestow on individuals. This in no way implies equating the position of Israel as the occupying Power with that of the occupied Palestinian population or entities representing it. The differences with regard to the power and capacity to inflict harm or to protect, including by securing justice when violations occur, are obvious and a comparison is neither possible nor necessary. What requires equal attention and effort, however, is the protection of all victims in accordance with international law.[4]

CJPME also points out that, in terms of deaths, casualties, and physical damage, the Palestinians of Gaza have endured outcomes hundreds of times worse than those of their Israeli neighbours.

CIC Allegation 3:

The report also ignores overwhelming evidence of Hamas’ deliberate and callous use of civilian infrastructure to hide its terrorist activity. Hamas located its terrorist infrastructure in densely populated residential neighbourhoods, near and in hospitals, schools, mosques, as well as U.N. facilities in order to make it more difficult for Israel to target them – facts disregarded by the Commission.

Fact 3:

The Goldstone Mission investigated these allegations advanced by the Israelis, and concluded the following:

Goldstone Report: 36. Although the situations investigated by the Mission did not establish the use of mosques for military purposes or to shield military activities, it cannot exclude that this might have occurred in other cases. The Mission did not find any evidence to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities and that ambulances were used to transport combatants or for other military purposes. On the basis of its own investigations and the statements by UN officials, the Mission excludes that Palestinian armed groups engaged in combat activities from UN facilities that were used as shelters during the military operations.[5]

Goldstone Report: 449. The Mission reviewed the pictures allegedly showing the launching of rockets “from within or near residential buildings, including schools, mosques and hospitals” in the Israeli Government’s paper and in several of the submissions it received. The Mission notes that it is not reasonably possible to determine whether those photographs show what is alleged. As the Israeli Government concedes, many of them refer not to the

December 2008 – January 2009 period, but to previous alleged instances of firing of rockets from Gaza.[6]

CIC Allegation 4:

The report also ignores Iran's role in arming and funding Hamas as part of their mutual goal of destroying Israel.

Fact 4:

An investigation of the provenance of the rockets fired by the Palestinians was never on the Mission's agenda, nor did it have the facilities or capability of investigating such allegations. Goldstone has stated that, if the Government of Israel had requested the Mission to investigate that issue, it would have done its best to do so.[7]

CIC Allegation 5:

The Goldstone report is part of a pattern at the U.N. of singling out Israel for criticism and condemnation.

Fact 5:

The Goldstone Report examined the action both of Israel and the Palestinians, and documents evidence of grave "violations of international human rights and humanitarian law and possible war crimes and crimes against humanity (1968 b.)" [8] committed by both Israel and the Palestinians. It found that rocket and mortar fire from armed groups in Gaza against Israel constitute a "[...] deliberate attack against a civilian population. These acts would constitute war crimes and may amount to crimes against humanity (108)." [9]

CIC Allegation 6:

The Goldstone Commission is part of long series of biased, one-sided actions taken by the U.N. Human Rights Council, which already has passed 27 anti-Israel resolutions out of 34 motions to censure countries since the Council's inception in June 2006.

Fact 6:

Goldstone's mandate was not one-sided. It reads: To investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.[10]

Furthermore, from the Goldstone Report:

17. The Mission based its work on an independent and impartial analysis of compliance by the parties with their obligations under international human rights and humanitarian law in the context of the recent conflict in Gaza, and on international investigative standards developed by the United Nations.[11]

20. By refusing to cooperate with the Mission, the Government of Israel prevented it from meeting Israeli Government officials, but also from travelling to Israel to meet Israeli victims

and to the West Bank to meet Palestinian Authority representatives and Palestinian victims.[12]

26. In order to provide the parties concerned with an opportunity to submit additional relevant information and express their position and respond to allegations, the Mission also submitted comprehensive lists of questions to the Government of Israel, the Palestinian Authority and the Gaza authorities in advance of completing its analysis and findings. The Mission received replies from the Palestinian Authority and the Gaza authorities but not from Israel.[13]

CIC Allegation 7:

Canada opposed the Goldstone Mandate from the outset, voting against its establishment at a Special Session of the UN Human Rights Council on Jan. 12.

Fact 7:

Sadly, Canada was the only one of the 47 members of the UN Human Rights Council to vote against the establishment of the Fact-Finding Mission [14]. It is not clear why the Canadian government would be disinterested in whether or not human and humanitarian rights might have been committed.

CIC Allegation 8:

On Oct. 15, the Human Rights Council held another special session to discuss the Goldstone report. The session was only the 12th special session since 2006, but the sixth to address the Israeli-Palestinian conflict.

On Oct. 16, Canada's representative to the UN in Geneva stated the following: "We are concerned about the continued and unbalanced attention given by the Council to Middle East issues. This is at the expense of serious human rights situations around the world which the council has failed to pay attention to. We consider this Special Session a very poor precedent for the Council which undermines its integrity."

Fact 8:

Of the 12 Special Sessions of the UN Human Rights Council to date, five have dealt with events and conditions in the Occupied Palestinian Territories and one has dealt with Lebanon. The other six have dealt with Darfur, Myanmar, Congo, Sri Lanka, the Right to Food, and the global financial crisis.

CJPME points out that the Israel-Palestine conflict is unique among world conflicts for many reasons, foremost being that Israel's occupation of Palestinian and other territories is the longest military occupation in modern history.

CIC Allegation 9:

Israel's actions in Gaza were consistent with international law and subject to rigorous internal legal scrutiny.

Fact 9:

Goldstone Report: 1893. The operations were carefully planned in all their phases. Legal opinions and advice were given throughout the planning stages and at certain operational levels during the campaign. There were almost no mistakes made according to the Government of Israel. It is in these circumstances that the Mission concludes that what occurred in just over three weeks at the end of 2008 and the beginning of 2009 was a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability.[15]

CIC Allegation 10:

Article 51 of the United Nations Charter clearly establishes the right of every nation to act in self-defense against those who willfully attack innocent citizens.

Fact 10:

UN Charter: Article 51. Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security [...].[16]

It is not clear that sporadic rocket fire over a period of eight years constitutes an “armed attack” to which Article 51 would apply, even if Gaza were not occupied territory. Furthermore, there was virtually no rocket fire between June 16 and November 4, 2008, when Israel broke the ceasefire with Hamas.

CIC Allegation 11:

Consistent with international law, Israel sought to limit its actions to legitimate military targets that threatened its civilian population with mass casualties.

Fact 11:

Goldstone Report: 1891. It is clear from evidence gathered by the Mission that the destruction of food supply installations, water sanitation systems, concrete factories and residential houses was the result of a deliberate and systematic policy by the Israeli armed forces. It was not carried out because those objects presented a military threat or opportunity, but to make the daily process of living, and dignified living, more difficult for the civilian population.[17]

As one specific example, Goldstone Report: 51. The chicken farms of Mr. Sameh Sawafeary in the Zeytoun neighbourhood south of Gaza City reportedly supplied over 10 percent of the Gaza egg market. Armoured bulldozers of the Israeli armed forces systematically flattened the chicken coops, killing all 31,000 chickens inside, and destroyed the plant and materials necessary for the business [...].[18]

CIC Allegation 12:

Israel facilitated humanitarian assistance to Palestinians in Gaza throughout the entire operation even while its soldiers and civilians were being attacked.

Fact 12:

Note: Under international law, civilians must be protected and given access to medical attention at all times, not just for a few hours a day.[19]

After a week of fighting, Israel allowed a three-hour-per-day “humanitarian corridor” ostensibly to facilitate the movement of aid and to permit the evacuation of the wounded. This was not sufficient time to reach people or to bring in emergency supplies. The Israeli army continued to block access to affected neighbourhoods during the “humanitarian corridor” and the UN temporarily suspended aid delivery on January 8 after a UN convoy came under Israeli fire, killing two UNRWA contract workers.

CIC Allegation 13:

Article 28 of the Fourth Geneva Convention says the responsibility for civilian casualties lies with the party that deliberately places them at risk, namely Hamas, which used them as human shields.

Fact 13:

Fourth Geneva Convention: Article 28. The presence of a protected person may not be used to render certain points or areas immune from military operations.[20]

Note that Article 28 does not relieve the other side from its obligation to distinguish between combatants and protected persons, and to avoid harming the latter.

The Fact-Finding Mission found no evidence of Palestinian forces using human shields:

493. [...] Fighting within civilian areas is not, by itself, sufficient for a finding that a party is using the civilian population living in the area of the fighting as a human shield. As the words of article 57 (1) show (“shall not be used to render”, “in order to attempt to shield”), an intention to use the civilian population in order to shield an area from military attack is required.[21]

494. From the information available to it, the Mission found no evidence to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or forced civilians to remain within the vicinity of the attacks.[22]

On the other hand, Israel did oblige Palestinian civilians to serve as human shields:

55. The Mission investigated four incidents in which the Israeli armed forces coerced Palestinian civilian men at gunpoint to take part in house searches during the military operations (chap. XIV). The men were blindfolded and handcuffed as they were forced to enter houses ahead of the Israeli soldiers. In one of the incidents, Israeli soldiers repeatedly forced a man to enter a house in which Palestinian combatants were hiding. Published testimonies of Israeli soldiers who took part in the military operations confirm the continuation of this practice, despite clear orders from Israel’s High Court to the armed forces to put an end to it and repeated public assurances from the armed forces that the practice had been discontinued. The Mission concludes that this practice amounts to the use of Palestinian civilians as human shields and is therefore prohibited by international humanitarian law. It puts the right to life of the civilians at risk in an arbitrary and unlawful manner and constitutes cruel and inhuman treatment. The use of human shields also is a war crime. The Palestinian men used as human shields were questioned under threat of

death or injury to extract information about Hamas, Palestinian combatants and tunnels. This constitutes a further violation of international humanitarian law.[23]

CIC Allegation 14:

Throughout its operations in Gaza, Israel made extraordinary and unprecedented efforts to avoid civilian casualties. Israel transmitted specific warnings via leaflets, radio, and hundreds of thousands of telephone calls to Gazans warning them about impending actions against Hamas targets.

Fact 14:

Goldstone Report: 37. The Mission examined how Israeli forces discharged their obligation to take feasible precautions to protect the civilian population of Gaza, including particularly the obligation to give effective advance warning of attacks (Chapter IX). The Mission acknowledges the significant efforts made by Israel to issue warnings through telephone calls, leaflets and radio broadcasts and accepts that in some cases, particularly when the warnings were sufficiently specific, they encouraged residents to leave an area and get out of harms way. However, the Mission also notes factors that significantly undermined the effectiveness of the warnings issued. These include the lack of specificity and thus credibility of many pre-recorded phone messages and leaflets. The credibility of instructions to move to city centres for safety was also diminished by the fact that the city centres themselves had been the subject of intense attacks during the air phase of the military operations. The Mission also examined the practice of dropping lighter explosives on roofs (so-called “roof knocking”). It concludes that this technique is not effective as a warning and constitutes a form of attack against the civilians inhabiting the building. Finally, the Mission stresses that the fact that a warning was issued does not relieve a commander and his subordinates of taking all other feasible measures to distinguish between civilians and combatants.[24]

CIC Allegation 15:

As befitting a democratic nation with an independent judiciary and army that prides itself on conducting its operations in an ethical manner, Israel has launched investigations into more than 100 allegations regarding the conduct of its forces during the operation. Despite this, the Goldstone report totally rejected Israel’s ability to conduct fair and serious inquiries.

Fact 15:

Goldstone Report: 1830. The change of [Israeli] policy instituted in 2000 determining that full criminal investigations are possible only after “operational debriefings” have been carried out means that in practice criminal investigations do not begin before six months after the events in question. By that time evidence may be corrupted or no longer available.[25]

Goldstone Report: 1832. The Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the Israeli system presents inherently discriminatory features that have proven to make the pursuit of justice for Palestinian victims very difficult.[26]

The Report also expressed doubts about the Gaza authorities, and recommended that the Security Council require both the government of Israel and the Gaza authorities to conduct appropriate investigations and inform it of actions to prosecute violations within six months. Failing those outcomes, as determined by a committee of experts, the Security Council should refer the matter to the prosecutor of the International Criminal Court.

Notes

[1] For the convenience of the reader who might not have seen the CIC email, “Backgrounder – Goldstone Commission”, it has been reproduced electronically, and can be found [here](#).

[2] “Report of the United Nations Fact-Finding Mission on the Gaza Conflict,” UN Human Rights Council, Sept. 25, 2009. Note: The Goldstone Report is a report of approximately 500 pages summarizing the findings of a commission mandated by the UN Human Rights Council to examine the conduct of warring parties during the conflict in Gaza between Dec. 27, 2008, and Jan. 17, 2009. The report can be found in its entirety on the [UNHRC website](#).

[3] UN Human Rights Council, “Report of the United Nations Fact-Finding Mission on the Gaza Conflict,” A/HRC/12/48, Sept. 25, 2009, p. 406.

[4] Ibid., p. 404.

[5] Ibid., p. 18.

[6] Ibid., p. 113.

[7] See the interview given by Justice Goldstone to Shihab Rattansi from Al-Jazeera on Oct. 22, 2009: [Part 1](#) and [Part 2](#).

[8] UN Human Rights Council, “Report of the United Nations Fact-Finding Mission on the Gaza Conflict,” A/HRC/12/48, Sept. 25, 2009, p. 423.

[9] Ibid., p. 32.

[10] See the presentation of the Goldstone commission’s report to the Human Rights Council in UN Human Rights Council, “United Nations Fact Finding Mission on the Gaza Conflict,” Sept. 29, 2009, [here](#).

[11] UN Human Rights Council, “Report of the United Nations Fact-Finding Mission on the Gaza Conflict,” A/HRC/12/48, Sept. 25, 2009, p. 14.

[12] Ibid., p. 15.

[13] Ibid., p. 16.

[14] See UN Human Rights Council, “9th special session of the Human Rights Council: “The Grave Violations of Human Rights in the Occupied Palestinian Territory including the recent aggression in the occupied Gaza Strip,” January 9, 2009, [here](#).

[15] UN Human Rights Council, “Report of the United Nations Fact-Finding Mission on the Gaza Conflict,” A/HRC/12/48, Sept. 25, 2009, p. 407.

[16] See the Charter of the United Nations by clicking [here](#).

[17] UN Human Rights Council, “Report of the United Nations Fact-Finding Mission on the

Gaza Conflict,"A/HRC/12/48, Sept. 25, 2009, p. 407.

[18] Ibid., p. 21.

[19] See CJPME Factsheet "Legal violations during Israel's war on Gaza," No. 52, February 2009, [here](#).

[20] See the "Convention (IV) relative to the Protection of Civilian Persons in Time of War," Geneva, August 12, 1949, on the ICRC website [here](#).

[21] UN Human Rights Council, "Report of the United Nations Fact-Finding Mission on the Gaza Conflict,"A/HRC/12/48, Sept. 25, 2009, p. 123. Note: the reference to the Additional Protocol I is however incorrect; we should be referred to Article 51 (7) instead of 57 (1).

[22] Idem.

[23] Ibid., p. 22.

[24] Ibid., p. 18.

[25] Ibid., p. 393.

[26] Ibid., p. 394.

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Canadians for Justice and Peace in the Middle East (CJPME) is a non-profit and secular organization bringing together men and women of all backgrounds who labour to see justice and peace take root again in the Middle East. Its mission is to empower decision-makers to view all sides with fairness and to promote the equitable and sustainable development of the region.

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