

Goldstone's rethink: The cleansing of Israel's war crimes

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Israeli leaders have barely hidden their jubilation at an opinion article in last Friday's Washington Post by the South African jurist Richard Goldstone reconsidering the findings of his United Nations-appointed inquiry into Israel's attack on Gaza in winter 2008.

For the past 18 months the Goldstone Report had forced Israel on to the defensive by suggesting its army – as well as Hamas, the ruling faction in Gaza – had committed war crimes and crimes against humanity during Israel's three-week Operation Cast Lead. Some 1,400 Palestinians were killed, including hundreds of women and children.

Goldstone's report, Israeli officials worried, might eventually pave the way to war crimes trials against Israeli soldiers at the International Criminal Court in the Hague.

In what appeared to be a partial retraction of some of his findings against Israel, Goldstone argued that he would have written the report differently had Israel cooperated at the time of his inquiry.

Benjamin Netanyahu, the Israeli prime minister, immediately called on the United Nations to shelve the Goldstone Report; Ehud Barak, the defence minister, demanded an apology; and Avigdor Lieberman, the foreign minister, said Israel's actions in Gaza had been "vindicated".

Israel would certainly like observers to interpret Goldstone's latest comments as an exoneration. In reality, however, he offered far less consolation to Israel than its supporters claim.

The report's original accusation that Israeli soldiers committed war crimes still stands, as does criticism of Israel's use of unconventional weapons such as white phosphorus, the destruction of property on a massive scale, and the taking of civilians as human shields.

Instead Goldstone restated his position in two ways that Israel will seek to exploit to the full.

The first was an observation that since his report's publication in September 2009 "Israel has dedicated significant resources to investigate over 400 allegations of operational misconduct".

In the past Goldstone has made much of the need for Israel and Hamas to investigate incidents where civilians were targeted, saying that otherwise his report should be transferred to the ICC. In his article he favourably compared Israel's investigations to the failure by Hamas to carry out any probes.

The significance of Goldstone's reassessment from Israel's point of view was underlined this week by comments to the Jerusalem Post newspaper from a senior unnamed legal official in the Israeli military. He said Goldstone's professed confidence in Israel's investigatory system would help to forestall future war crimes probes by the UN.

That will be cause for Palestinian concern at a time when, in response to renewed hostilities between Israel and Hamas, some Israeli government ministers have called for a Cast Lead 2.

Another unnamed commander told the popular Israeli news website Ynet yesterday that Goldstone's change of tack might lift the threat of arrest on war crimes charges from Israeli soldiers travelling abroad.

However, according to both Israeli human rights groups and a committee of independent legal experts appointed by the UN to monitor implementation of the report, Goldstone's applause for Israel's investigations is unwarranted.

Sarit Michaeli, a spokeswoman for B'Tselem, an Israeli organisation monitoring human rights in the occupied territories, said Israel had failed to conduct a prompt, independent or transparent inquiry.

"The materials on which Israel has relied have not been made available to us, so we are not in a position to judge the quality of the investigations or the credibility of the findings."

Likewise, the UN committee of experts, led by a New York judge, Mary McGowan-Davis, has complained that the Israeli army is probing itself and questioned the effectiveness of the investigations following "unnecessary delays" in which evidence may have been "lost or compromised".

Human rights groups have pointed out that, despite the large number of deaths in Gaza, only three of the 400 investigations cited by Goldstone have so far led to indictments.

One of those cases involved the theft of a credit card. Another, in which two soldiers used a nine-year-old boy as a human shield, led to their being punished with three-month suspended sentences and demotion.

The second, more significant reassessment by Goldstone is that he was wrong to conclude in his report that Israel intentionally targeted civilians "as a matter of policy".

Despite Goldstone's misleading wording in the article, he is referring not to an Israeli order to intentionally murder civilians but a policy in which indiscriminate attacks were undertaken with a disregard to likely casualties among civilians.

Strangely, he appears to base his revised opinion on Israel's own military investigations, even though no evidence from them has yet been made public.

Rina Rosenberg, the international advocacy director of the Adalah legal centre in Israel, which has been monitoring Israel's investigations on behalf of Palestinian legal groups, said Goldstone had given Israel a "gift" with this observation.

“Israel has tried to focus the debate entirely on whether it intended to kill civilians, as though a war crime depends only on intentionality. Israel knows that intention – outside a policy like targeted assassinations – is very difficult to prove.”

She pointed out that there were other important standards in international law for assessing war crimes, including negligence, disregard for the safety of civilians, and indiscriminate use of force.

Also, observers have wondered what new information has emerged since Goldstone published his report to justify a rethink on whether Israeli policy left civilians in the line of fire.

His original conclusion drew in part on public statements by Israeli military commanders that in Gaza they had applied the Dahiya doctrine – an Israeli military strategy named after a suburb of Beirut that Israel levelled during its 2006 attack on Lebanon. In his article, Goldstone cast no fresh doubt on his earlier premise that such a strategy would by definition endanger civilians.

In addition, Israeli group Breaking the Silence has collected many testimonies from soldiers before and since publication of the Goldstone Report indicating that they received orders to carry out operations with little or no regard for the safety of civilians. Some described the army as pursuing a policy of “zero-risk” to soldiers, even if that meant putting civilians in danger.

Similarly, leaflets produced by the military rabbinate – apparently with the knowledge of the army top brass – urged Israeli ground troops in Gaza to protect their own lives at all costs and show no mercy to Palestinians.

The timing of Goldstone’s article has raised additional concern among Israeli and Palestinian human rights groups that he may have succumbed to political pressure.

Late last month the UN’s Human Rights Council, which set up the fact-finding mission, recommended that the General Assembly refer the Goldstone Report to the Security Council – the decisive stage in moving it to the International Criminal Court.

It is expected that the US, which has consistently opposed such a referral, will block the report’s progress to the ICC – further embarrassing Washington after its recent veto at the UN of a Palestinian resolution against Israeli settlements.

Shawan Jabareen, director of the Palestinian legal rights group al-Haq, said Goldstone’s article had provided Israel and the US with a “new weapon” to discredit the report even before it reached the Security Council.

Jonathan Cook is a writer and journalist based in Nazareth, Israel. His latest books are “Israel and the Clash of Civilisations: Iraq, Iran and the Plan to Remake the Middle East” (Pluto Press) and “Disappearing Palestine: Israel’s Experiments in Human Despair” (Zed Books). His website is www.jkcook.net.

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