

MERIA

GOLDSTONE'S GAZA REPORT: PART ONE: A FAILURE OF INTELLIGENCE

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The first part of this two-part article explores the pervasive flaws that mar the UNHRC's "Gaza Fact-Finding Mission Report." It focuses on an interlocking combination of problems: 1) its failure to investigate seriously the problem of Hamas embedding its war effort in the midst of civilians in order to draw Israeli fire and then accuse Israel of war crimes; 2) its astonishing credulity concerning all Palestinian claims, contrasted with a corresponding skepticism of all Israeli claims; 3) its harsh judgments on Israelis for war crimes (i.e., deliberate targeting of civilians), contrasted with its resolute agnosticism concerning Hamas intentions. The result is that Goldstone actually participates in Hamas' strategy and encourages the sacrificing of their own civilians.

INTRODUCTION¹

In response to the Israeli attack on Gaza, Operation Cast Lead (December 27-January 18, 2009), several major NGOs and public figures called for an investigation. On April 3, 2009, the UN Human Rights Council (UNHRC) appointed a "Fact-Finding Mission." The mission was made up of four members, including Hina Jilani, Desmond Travers, Christine Chinkin, and at its head, Richard Goldstone, former member of the South African Supreme Court and distinguished international jurist. On the basis of the animus of the founding organization (UNHRC) and the pervasive bias of the members of the team, Israel refused to cooperate with what some observers called "a kangaroo court."² In May 2009, the mission met in Geneva. It later made two visits to Gaza (from June 1-5, 2009 and June 26-July 1, 2009), held further hearings in Geneva (in early July 2009), and eventually presented its findings to the UNHRC (first draft, 575 pages, September 15, 2009; final draft, 430 pages, September 25, 2009).

The report found both Israel and unspecified "Palestinian armed forces" guilty of "war crimes" and "possibly crimes against humanity." It focused primarily on Israel, concluding that Israel had deliberately targeted civilians and sought to destroy the viable

infrastructure of Gazan life, providing numerous detailed and specific cases of these crimes. The Goldstone Report constitutes the most high-level, extensive international indictment of Israel to date, and may play a significant role in the attempt to pursue Israel before various international judicial venues such as the International Criminal Court in the Hague.

The report met with instantaneous hostility from Israeli sources--even those normally quite critical of the Israel Defense Forces' (IDF) behavior³--and with almost instantaneous approval from Palestinian sources, including Hamas.⁴ It then became the focus of both UN and diplomatic struggles that involved the larger dynamics of peacemaking in the Middle East.⁵ Goldstone has given numerous media interviews (Amanpour, Zakaria, al-Jazeera, Tikkun, and Moyers),⁶ engaged in one quasi-debate (with Dore Gold at Brandeis University),⁷ and visibly ducked another (with Alan Dershowitz at Fordham University, where Goldstone is a visiting professor).⁸ On the one hand, critics have laid to bare the extensive flaws and emphasized the unintended negative consequences,⁹ while on the other, supporters have hailed it as a major victory in the campaign to delegitimize the State of Israel in the world of public opinion and as a major source of diplomatic leverage.¹⁰ "The Goldstone Report," noted one

pro-Palestinian writer, “represents the highest and most prestigious leverage of the Palestinian initiative throughout their 60 years of oppression...”¹¹

There is perhaps no subject that embodies and sheds light on so many of the issues that torment the early twenty-first century, more than the Goldstone Report and its controversies. The report’s many and complex facets detail the dysfunctions of global public discourse, from the themes it explicitly addresses (universal human rights, international law of war, terrorism, asymmetrical warfare, the Arab-Israeli conflict), to its framework (politics of the UN Human Rights Council, reporting of the mainstream news media, the role of NGO research), to the dynamics of its reception in public discourse (critique, Israeli and Palestinian ambivalences, Western and UN politics, and Goldstone’s public appearances). Indeed, a close analysis of the report’s method and conclusions raises some of the fundamental cognitive issues of our time: religious and cultural discontinuities, scapegoating, cognitive egocentrism, post-modern epistemology, jihadi mentalities, antisemitism, and Jewish self-criticism. Anyone who understands the Goldstone report and its devastating ironies of content and impact gains a basic insight into how and why the very nations that have inaugurated modernity and globalization are losing a cognitive war with pre-modern forces.

FLAWED REPORT THROUGHOUT

It is difficult to specify what is wrong with the Goldstone Report since its failures are so pervasive. This article will highlight four fundamental errors of this report, all of which compounded each other and literally inverted the understanding of its readers as to what happened during Operation Cast Lead.¹² These include:

- 1) Failure to investigate Hamas’s use of civilian shields
- 2) Credulity of Palestinian sources
- 3) Systematic attribution of malevolent intention to Israeli forces and

- studied agnosticism about
Palestinian intentions
- 4) Exceptionally judgmental
conclusions for admittedly
inadequate evidence.

After going over each of these items, the article reviews some of the reasons for these pervasive failures, both in terms of the previous research on what happened during Operation Cast Lead (journalism, NGO reports) and in terms of the cognitive failures that underlie this style of reporting.

This essay is not intended to question the fact that Gazans suffered from the war. What this essay does challenge is the Goldstone Report’s presentation of the cause of that suffering and the diagnosis for dealing with it.

Failure to Investigate Hamas (Civilian Shields, Suppression of Dissent, Provocation)

The first and most critical failure of the Goldstone Report comes from what it did not do: investigate Hamas. Despite Goldstone’s insistence that he investigated both sides, where Hamas is concerned, he focused on two fairly obvious issues and ignored the most problematic and consequential. On the one hand, the report looks into the rocketing of Israeli civilians and calls that a war crime, possibly a crime against humanity, and it looks at Hamas treatment of Fatah during the conflict, which it condemns for its brutality. Yet the commission falls silent on the subject of how armed factions (including Hamas) treated their own civilians.

The significance of such an approach will become apparent throughout the discussion of the mission’s procedures and rulings. Yet the failure itself deserves attention. The Israelis contended that Hamas deliberately provoked Israeli retaliation from the midst of civilian populations and that these civilians were the unfortunate hostages of a ruthless organization bent on destroying Israel at any cost, even the victimization of its own people. Lorenzo Cremonesi, the first journalist to make it independently into Gaza quotes 42-year-old Abu Issa and his cousin Um Abdallah, age 48,

residents of the Tel Awa neighborhood: "The Hamas militants looked for good places to provoke the Israelis. They were usually youths, 16 or 17 years old, armed with submachine guns. They couldn't do anything against a tank or jet. They knew they were much weaker. *But they wanted the [Israelis] to shoot at the [the civilians'] houses so they could accuse them of more war crimes* [emphasis added]."¹³

More recently, Bassam Zakarneh, head of the Palestinian Authority (PA) Workers' Union made some remarks on PA TV suggesting that knowledge of Hamas' behavior is widespread in Palestinian circles: "...Hamas leaders... used these [1,400] martyrs as sandbags, while they hid in tunnels. They would place a missile, cover it with a tent, amid buildings with 200 children and old people, and they would launch the missile and hide."¹⁴

The Israeli government published a paper enumerating with multiple notes and links the extensive ways that Hamas embedded itself in the population, used civilian sites to launch military operations, disguised themselves as civilians, used ambulances and schools, and exploited children for war purposes.¹⁵

In other words, if Hamas used human shields as a central strategy, then by ignoring this aspect of the conflict, Goldstone's mission played directly into the hands of a militia that actually targeted their own civilians.¹⁶ Far from protecting innocent Palestinian civilians then, the mission may have confirmed the tactics of those who deliberately sacrificed them for the sake of a public relations victory against their enemy, a PR victory that the mission then inscribed in law.¹⁷

Although the mission members ran across repeated hints that such activity went on,¹⁸ they did not investigate it directly and in more than a dozen passages, pointedly insisted that they found "no evidence" of such activity:¹⁹

¶35. The Mission *found no evidence* [emphasis added], however, to suggest that Palestinian armed groups either directed civilians to areas where attacks were being

launched or that they forced civilians to remain within the vicinity of the attacks.

¶36. The Mission *did not find any evidence* [emphasis added] to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities or that ambulances were used to transport combatants or for other military purposes.

The use of the expressions "no evidence" and "not any evidence" are curious here. As will be shown, there is extensive evidence for such actions, which even the report itself offers the attentive reader. What the report really means here is that they did not *hear any testimony* to the effect that Hamas acted in this fashion. Of course, as any lawyer could explain, there are two possible reasons for a lack of testimony: 1) there is nothing to talk about and 2) the witnesses are intimidated.

Notes Cremonesi significantly: "It was difficult to get these testimonials. In general, fear of Hamas prevails and ideological taboos, fed by this century of wars with the "Zionist enemy," reign. Anyone who tells a different version than the story imposed by the *Muhamawa* (resistance), is automatically an *Amil* (collaborator), and risks his life."²⁰

The mission itself acknowledged this problem (see below), but it repeatedly ignored its significance. Just before concluding that there was no evidence that Hamas behaved in the fashion described above (¶35), the mission noted: "The Mission was faced with a certain reluctance by the persons it interviewed in Gaza to discuss the activities of the armed groups." Such an observation, however, had no impact on their analysis or their concluding denial on the subject of evidence.

On the contrary, the mission seemed to go out of its way to avoid considering evidence, most egregiously in two particular cases--the one, of Hamas' Fathi Hamad extolling Palestinian uses of human shields, and the other, of Richard Kemp extolling Israel's concerns for protecting Palestinian civilians despite Hamas' embedding themselves among them.

One of the videos that several memoranda cited, and the mission apparently did not feel it could ignore, concerned a startling speech by Hamas MP Fathi Hamad broadcast on al-Aqsa TV:

[The enemies of Allah] do not know that the Palestinian people have developed its [methods] of death and death-seeking.... For the Palestinian people, death has become an industry, at which women excel, and so do all the people living on this land. The elderly excel at this, and so do the *mujahidin* and the children. This is why they have formed human shields of the women, the children, the elderly, and the *mujahidin*, in order to challenge the Zionist bombing machine. It is as if they were saying to the Zionist enemy: "We desire death like you desire life."²¹

The report, however, after expressing disapproval of these "repugnant" sentiments, dismissed the speech as evidence because it occurred (shortly) *before* Operation Cast Lead, and therefore it did not consider it to "constitute evidence that Hamas forced Palestinian civilians to shield military objectives against attack (¶478)." Strictly speaking, this is true, but certainly there is enough evidence of a deliberate *public* attitude--this Hamas official is bragging about turning children into human shields--to indicate the value of a serious investigation of the issue. An article in *Palestine Today*, the Islamic Jihad's publication, boasted about the use of civilians as shields and the fact that high civilian deaths reduced the number of soldiers killed:

There is no visibility of the men of the resistance in the streets of the [Gaza] strip. No one sees their known means of transportation, and even light weapons can no longer be seen with people publicly in the Gaza Strip. The resistance is totally even as its actions are felt. Anti-aircraft artillery fires on the aircraft without them knowing the location. The whereabouts of rockets launched from the heart of the strip

cannot be seen or known until they're shot.... The residents of the Gaza Strip were surprised with the rockets of the resistance being fired from the heart of the cities of the Gaza Strip, without seeing how the launchers were put up, or their place, in order for deception to prevent exposure to the Israeli intelligence planes of the place of the firing of the rockets.... According to medical sources, the number of martyrs and wounded of the warriors of the Palestinian resistance are few in comparison to the number of civilian martyrs who were killed since the start of the Israeli war on Gaza, except for the large number of Palestinian policemen who were martyred on the first day....²²

The significance of the mission's avoidance of this issue, of course, becomes particularly acute when it is a question of judging whether or not Israel targeted civilians. If Hamas fired from their midst, if they tried to draw Israeli fire to kill their own civilians in order to accuse them of war crimes, then the mission is in a double bind: 1) How can they judge Israeli actions without knowing what IDF soldiers were aiming at when they fired their weapons, and 2) how can they avoid becoming the dupes of this strategy of waging war intended to maximize one's civilian casualties for the public relations victory?

According to one military observer, a British colonel with extensive command experience in Iraq and Afghanistan, this picture of Israelis targeting civilians actually inverted the empirical situation. Comparing Israel to all other militaries including that of his own country, Richard Kemp stated:

The truth is that the IDF took extraordinary measures to give Gaza civilians notice of targeted areas, dropping over 2 million leaflets, and making over 100,000 phone calls. Many missions that could have taken out Hamas military capability were aborted to prevent civilian casualties. During the conflict, the IDF allowed huge amounts of humanitarian aid into Gaza. To deliver aid virtually into your enemy's hands is, to the

military tactician, normally quite unthinkable. But the IDF took on those risks.²³

One might expect an even-handed mission to hear out Colonel Kemp's reasoning and explore with him the data based upon which he made these remarks, especially for the sake of gaining some comparative perspective on other armies that attempt to fight by the laws of war established by the Geneva Conventions. Yet the mission turned down Colonel Kemp's offer to testify before it, and Goldstone explained:

[T]here was no reliance on Col. Kemp mainly because the Report did not deal with the issues he raised regarding the problems of conducting military operations in civilian areas and second-guessing decisions made by soldiers and their commanding officers in the fog of war. The Mission avoided having to do so in the incidents it decided to investigate.²⁴

Indeed, the mission did not consult any military experts on these issues.²⁵ One begins to understand why the mission found "no evidence."

The problematic significance of the Goldstone mission's non-treatment of Palestinian combatants using human shields becomes even greater in the failure of the mission to investigate or even inform itself on the topic of Palestinian incitement to hatred and violence. From the point of view of basic progressive principles of "human rights" and respect for human life, the values that specifically drive both the NGOs and Goldstone and his mission, nothing offers more damning evidence of Hamas' culpability in this conflict than the steady stream of genocidal hate-mongering that issues daily from Palestinian, and more specifically, Hamas sources.²⁶ Indeed, the unrelenting virulence of this discourse goes far to explain the death cult of which Fathi Hamad and so many other officials and *imams* (clerics) speak--the combination of constant violence against Israel and the eagerness to sacrifice

Palestinian lives in the service of the cause. Moreover, the mission was warned about this issue repeatedly in memoranda emphasizing and documenting the phenomenon.²⁷

As a motor to violence, this kind of discourse represents *prima facie* evidence of incitement to war crimes, and given Goldstone's previous experience with real genocide in Rwanda and Bosnia, ignoring such evidence seems inexplicable.²⁸ Indeed, this constitutes brainwashing a captive audience of children through television shows, radio, schools, posters, and sermons toward the commission of violence and murder. However, not only did the Goldstone Report not investigate the issue, they never even addressed the phenomenon, and as will be shown below, allowed a Palestinian psychologist to project the crime onto the Israelis.

Credulity of Palestinian Sources

Defenders of the report would dismiss these critical observations by claiming that they simply tried to change the subject from the substance of the report, which--in Goldstone's own words--focused on 36 incidents chosen "...because they seemed to be, to represent the most serious, the highest death toll, the highest injury toll. And they appear to represent situations where there was little or no military justification for what happened."²⁹

Aside from the fact that these 36 incidents do not represent even a remotely balanced investigation of Israeli and Hamas "war crimes," they also constitute a case of prejudice that reinforces the problems raised above in terms of the mission ignoring Hamas' behavior.³⁰ The whole idea that an incident shows "little or no military justification" for an Israeli attack depends in large part on an assumption that in these cases Hamas is not embedded in a civilian population that has been hit. Notably, the mission members did not even ask witnesses if Hamas members were present, which in a number of cases was verifiable from external sources.³¹

However, even if one were to focus only on the 36 incidents, the mission's approach to acquiring testimony about them undermines the core of its credibility. If indeed, as the mission documented in the case of Hamas' treatment of Fatah, Hamas used ruthless and brutal means of intimidation including ready recourse to beatings, knee-capping, and summary execution--in some cases, thrown hands tied behind their back from roof-tops--then the question of whether the public had been intimidated becomes central. It is one thing for Hamas to announce to the press that Palestinians love death and support their glorious leaders no matter what the personal cost; it is quite another to believe such claims are true without checking to see whether they are slogans reinforced with repression. Hamas may claim that Gaza's wounded "rejected an Egyptian offer to receive medical treatment in Cairo in protest against Cairo's 'support' for the IDF operation," but it is not clear that wounded Gazans felt the same way.³² Yet Goldstone did not investigate the incident.

What should be clear to any astute observer, and certainly to someone who himself has investigated the workings of systematic intimidation by ruthless rulers,³³ is the difficulty for "ordinary Gazans" to voice any criticism of Hamas, indeed even to voice their fear of Hamas. One would expect a fact-finding mission to explore with subtlety this issue and seek ways to encourage "frank" testimony. Moreover, the Goldstone Report itself alludes to some problems in this sense: "The Mission was faced with a certain reluctance by the persons it interviewed in Gaza to discuss the activities of the armed groups...."³⁴

One would therefore expect Goldstone's mission to keep Hamas at arm's length, especially when hearing testimony. In an interview with the Palestinian Ma'an news agency, Goldstone firmly rejected the implication that Hamas had intimidated his witnesses:

You know, this allegation keeps being made... It is absolutely without any truth at all... Hamas didn't follow us at all, [much

less] at every stage [of the visit]. They were nowhere near any of the interviews we held, and there was just no question; there was no issue... Had they attempted in any way to do that, I would have found that objectionable and I would not have accepted it--but it just didn't happen.

Yet what makes Goldstone think that he knew who among those in attendance were Hamas or Hamas informers; what makes him think that his witnesses were as unfamiliar with the people in his courtroom as he? Indeed, the report noted that some tried to warn them about just this: "The contents seemed to imply that the originators of these anonymous calls and messages regarded those who cooperated with the Mission as potentially associated with armed groups (§146 [sic, actually §148])." This means that people were warning the mission members that the people who were working with them came from Hamas and the other martyrdom-cult militias.

Yet even if one were to grant the highly unlikely prospect that Hamas was not present, Goldstone video-broadcast the testimony,³⁵ essentially giving Hamas full access. Any witness foolish enough to testify against them would know the risks involved. This would explain the furtive, anonymous phone calls the mission received from people fearing retribution for even contacting them.³⁶ It is thus surprising that the mission heard any criticism at all.

Yet there is a second and even more sinister element to this problem that relates directly to the issue of demonization raised above. Both in terms of what it permits and what it considers believable, the official culture in the Palestinian territories (and beyond, in the Arab and Muslim world) affirms *any* vicious narrative about Israel as true. This is an old and long, repeatedly documentable, story and should have raised concerns among the "fact-finders" about the credibility of Palestinian witnesses. In cases where these witnesses described particularly heinous and gratuitous Israeli assaults on Palestinian civilians, such as the case of Abd

Rabbo's daughters, these concerns should be paramount: Did Hamas use the family farm to fire rockets at Israel? Were the children killed in an air strike as originally reported, or in cold blood, as later claimed? In other words, were these children victims of Hamas deliberately drawing fire against its own people or victims of Israeli malevolence? These are legitimate questions, and considerable evidence supports the former narrative.³⁷

This tradition of lethal narratives (inflating Israel's evil deeds for the sake of arousing hatred) constitutes a major trope in Palestinian discourse. In 1998, the British Broadcasting Corporation (BBC) documented the case of Arab leaders claiming rapes at Deir Yassin³⁸ as part of a media war against Israel when those Arabs who were there made no such claims.³⁹ With increasing success from 1982 onward, Palestinian leaders systematically engaged in campaigns of disinformation about Israel that had the double role of inciting violent hatred of Israel among their own people, and moral indignation among Westerners.⁴⁰ By the time of the first intifada, the techniques evolved into actual staging of fictional events for the cameras, designed to depict the Palestinian David bravely standing up to the Israeli Goliath. Behind the scenes, Palestinians killed almost as many of their own as did the Israeli enemy.⁴¹ By the second intifada, the techniques had developed into a movie industry, referred to as "Pallywood," with identifiable sets, directors, and primitive screen-plays.⁴²

This has become so much a part of Palestinian identity--the victims who have a right to their hatreds--and by far their most successful arena in their conflict with Israel that reporting lethal narratives about Israel is something of a political industry, and the heroes, sometimes tragically chosen by Palestinian "work accidents," like Houda Ghalia, become brief celebrities.⁴³ One of many anecdotes from Operation Cast Lead illustrates the manner in which this operates on a daily basis:

The family suddenly notices the cameras, and immediately, the expression on their faces changes. "We have no food," they say in Arabic, as one of the youngsters suggests we interview him in English about their plight... [IDF Officer] Perry points to a stack of canned goods, water bottles and other provisions. "We provided some of that and they cook and eat quite well," he said. The Palestinians seem to understand him and one of them smiles. It's a war--they had to try.⁴⁴

Imagine if when hearing the testimony about the soldiers killing his daughters in cold blood, Abd Rabbo had been confronted with the reports that they were killed by Israeli shells in response to Hamas fire from his compound? Would he too have backed off his story? Instead, Goldstone and his Mission colleagues "rarely if ever wonder[ed] whether Gazans regarded representations to the mission as acts of resistance."⁴⁵

The default mode of Palestinian witnesses is complaint against Israel--violent, malevolent, demonic, Israel. For anyone familiar with the evidence, there is only a tenuous relationship between this Palestinian victim narrative and the actual behavior of Israelis; and achieving a more accurate sense of the reliability of statements made by Palestinians about Israelis represents one of the major steps needed to find out what is really happening.

In order to assess the reliability of Palestinian narratives, one has to begin with what pressures operate in the sphere of public discourse. If, in Palestinian circles, telling lethal narratives about Israel--regardless of whether they happened that way or even occurred --gains the favor of the public, especially Hamas, whereas telling the truth about Hamas runs severe risks, then any astute observer should anticipate data skewed heavily toward the former. In taking this data as a roughly accurate representation of what happened, Goldstone and his colleagues affirmed the forces at work. Therefore, rather than offer Gazans an opportunity to speak freely, the mission reinforced the classic

scapegoating bind with which Hamas holds Gazans in its talons: They dare not criticize their own powerful elites who victimize them, but can, with the hearty approval of those elites, accuse another party.

This, of course, does not mean that the Israelis did not cause damage, even extensive damage to Gaza, and kill hundreds of civilians, including women and children. It does, however, mean that the evidence collected under these circumstances offers little to no real insight into how or why this happened; indeed this testimony may well be misleading precisely on key issues concerning context and motivation. In particular, it means that each of the major incidents--Abd Rabbo, Samouni Street, al-Fakhoura UN School, and al-Maqadmah Mosque--are all, at best, dubious as told.⁴⁶

Yet repeatedly and indeed without exception, the Goldstone Report finds Palestinian testimony credible. One of the standard tropes of the report states: "The Mission found [x, y, z] to be credible and reliable witnesses. It has no reason to doubt the veracity of the main elements of their testimony."

In no instance does the report even question, much less reject Palestinian testimony. "Credible" and "credibility" appear over 50 times in the document, consistently in favor of Palestinian testimony and in disfavor of Israeli.⁴⁷ In the some cases, as with the Maqadmah Mosque, the report dismisses Israeli evidence outright: "...taking into account the credible and reliable accounts the Mission heard from multiple [Palestinian] witnesses... strengthened in the face of the unsatisfactory and demonstrably false position of the Israeli Government."⁴⁸

Note that this comment does not come after a serious discussion of the Israeli response in terms of reconstructing what had happened.⁴⁹ More broadly, the mission found--as with so many other cases they "investigated" of Hamas using civilians as shields--that there was "no evidence." In a later interview, Colonel Travers revealed the politically correct cognitive egocentrism that lay behind such a finding: "Those charges reflect Western

perceptions in some quarters that Islam is a violent religion... If I were a Hamas operative the last place I'd store munitions would be in a mosque."⁵⁰

Indeed, the mission not only gave them the benefit of every doubt, but they eagerly adopted their most improbable exaggerations as "facts." For example, Amr Hamad gave testimony before the mission as follows: "The industrial sector that was destroyed, for example, the 324 factories that were destroyed, that we[re] destroyed used to employ four-hundred thous-, uh, 40,000 workers. And these have lost their uh, jobs, uh, forever."⁵¹

The report upon which this testimony was based (both of which the mission found "reliable and credible"), reads: "The 324 factories surveyed employed about 4000 workers just before the war."⁵² The Goldstone Report's careful findings state: "[1009: Mr. Amr Hamad indicated that 324 factories had been destroyed during the Israeli military operations at a cost of 40,000 jobs." This incident embodies the sloppiness of the mission's research, despite its claims to the contrary,⁵³ and its willingness to believe all Palestinian witness reports.

From the perspective of someone reading a "draft of history," this "privileged" attitude towards Palestinian testimony--by default true--constitutes an unacceptable level of credulity. The reports epistemological pattern comes down to: "Palestinians don't lie; Israelis often do, except for those testifying against the IDF."⁵⁴ In a strikingly revealing remark, one of the mission members, Hina Jilani, apparently without any sense that such an attitude called her professional credentials as a judge into question, explained the underlying approach that produced this remarkable pattern of credulity: "I think it'd be very cruel to not give credence to their voices."⁵⁵ No wonder no one on the mission expressed any skepticism: who wants to be considered "very cruel"?

This 'merciful credulity' seems to constitute a kind of "therapeutic" approach to the hearings--their mission was to give victims the opportunity to "bear witness" to their

suffering. This may also explain why, even though it defeated the purposes of obtaining frank testimony, Goldstone chose to have the hearings broadcast. The report itself explains the public airing in its proceedings as an effort “to speak directly to as many people as possible in the region as well as in the international community (§166).” Were the organizers, especially Goldstone, thinking more in terms of “truth and reconciliation” hearings rather than fact-finding?⁵⁶ The mission’s faith in this “therapeutic” model--show mercy and let the healing begin--trumps any concern they may have had about Hamas intimidating its witnesses.⁵⁷

Such an approach means, *a priori* that that the side defined by the observer as “the victim” is by definition telling the truth. It excludes the possibility that in accusing the Israelis unjustly, Palestinian witnesses compounded the crime committed against themselves by their own people, that in accusing the Israelis for their suffering, they reinforced Hamas control over them. The members of the mission apparently never imagined that, in at least some of the cases they considered, by being merciful to cruel accusers, they might be cruel to merciful soldiers.⁵⁸

Patterns of Judgment

As might be expected from this attitude toward the testimony they heard, the report ruled consistently against the Israeli army. While this may not be surprising in the context of its political agenda, it is surprising from the point of view of its mission: fact-finding. As Alan Dershowitz pointed out, had the report restricted itself to collecting testimony and asking questions for further investigation, it could have made a valuable contribution.⁵⁹ Indeed, Goldstone admitted on a number of occasions that the evidence they compiled would not stand up in court, that the mission was not “judicial, not even quasi judicial.”⁶⁰

Still, under the category “legal findings” (which follow on from the “factual findings” in which testimony deemed credible established the “facts”), the report repeatedly

resorts to judgments not only about what happened, but more significantly, in matters of war crimes, about the intention of the actors. Where facts are concerned, intention is irrelevant (except insofar as one has to gauge the motivations of witness); where judgments of criminality are concerned, intention plays an indispensable role. The most striking feature of the report’s speculation about intention is the ready, even eager willingness of the mission members to attribute malevolent intention to Israelis and their exceptional reluctance to speculate when it comes to the intentions of Hamas, especially in matters of human shields. Indeed, the overall pattern reveals a pervasive eagerness to accuse Israel and exculpate Hamas.

The harshness with which the mission judged Israel comes across clearly in their discussion of Israel’s efforts to warn Gazan civilians of impending strikes. Here, the IDF expended enormous human and electronic resources to making thousands of cell phone calls and dropping millions of leaflets to warn civilians (and even Hamas operatives) of coming strikes. This represents an unprecedented effort in the history of warfare: No army has done more than Israel’s to warn civilians of impending attacks, often at serious cost to its war effort, as Colonel Kemp noted.⁶¹ Yet the report treats these efforts as if they were standard operating procedure and then goes on to criticize them for not being sufficiently informative. They note, for example, on the phone calls:

531. As regards the generic nature of some pre-recorded phone messages, the Mission finds that these lacked credibility and clarity, and generated fear and uncertainty. In substance, there is little difference between telephone messages and leaflets that are not specific. The Mission takes the view that pre-recorded messages with generic information may not be considered generally effective.

This severity in judging Israel’s efforts to minimize civilian casualties produce a hair-trigger willingness to accuse them of

deliberately targeting civilians. In dealing with the bombing of the al-Maqadmah mosque, for example, a case in which the evidence and testimony are at best dubious, the report concludes decisively:

838. In the absence of any explanation as to the circumstances that led to the missile strike on al-Maqadmah mosque and taking into account the credible and reliable accounts the Mission heard from multiple witnesses, as well as the matters it could review for itself by visiting the site, the Mission concludes that the mosque was intentionally targeted by the Israeli armed forces.

None of the evidence they present offers any proof of Israeli knowledge that the mosque was filled with people, that they fired with the intention of hitting the worshipers, or even that they deliberately targeted the mosque.⁶²

This repeated pattern of willingness to attribute criminal intent to Israelis is balanced by a marked reluctance to do so with Hamas, here on the subject of their use of human shields:

¶452. In those instances in which Palestinian armed groups did indeed fire rockets or mortars from urban areas the question remains whether this was done with the specific intent of shielding the combatants from counter-attack. The Mission has not been able to obtain any direct evidence on this question; nor do reports from other observers provide a clear answer.

¶481. On the basis of the information it gathered, the Mission is *unable to form an opinion on the exact nature or the intensity* [emphasis added] of their combat activities in urban residential areas that would have placed the civilian population and civilian objects at risk of attack. While reports reviewed by the Mission credibly indicate that members of Palestinian armed groups were not always dressed in a way that distinguished them from civilians, the Mission *found no evidence that Palestinian*

combatants mingled with the civilian population with the intention of shielding themselves from attack [emphasis added].⁶³

Compare this with the testimony of Talal Abu Rahmah on January 2, 2009 to CNN: “Now Hamas, they are under cover, all of them they are civilians now, you don’t see any militants around you, even the cars... I don’t know if the car in front of me or in the back of me, if it’s a target or not.”⁶⁴ Did the mission explore the news reports that even the police were ordered by Hamas to remove their uniforms, or the admission by Hamas fighters that they had circulated in civilian clothing as a matter of policy, or the footage from Arab news stations of men dressed in civilian clothing firing Qassam rockets at Israel from a tree-lined street in Jabalya?⁶⁵

This pattern of passing judgment, which closely follows that of the mission’s treatment of evidence, again reconfirms the essential--and least reliable--dimensions of Palestinian claims to the Western news media, whose basic purpose is a) to blame Israel for all damage suffered by Palestinians, and b) wherever possible, to attribute to them malevolent intent. For Goldstone, these lethal narratives are evidence of criminal behavior; for the Palestinians, Arabs, and Muslims (who assume these accusations are true), it mobilizes violent hatred. Indeed, one can argue that the mission’s systematic credulity toward Palestinian testimony actually reinforced the dynamics of hatred and violence. It assumed and purveyed the view that if the Palestinians hate the Israelis, it is not from a culture of hate-mongering, it is from all they have suffered at Israeli hands.

In a particularly revealing exchange,⁶⁶ the mission empowered Palestinians in projecting the most hostile dimensions of their own culture on the Israelis and then excusing their own hostility on just such “reactive” grounds. Colonel Travers asked a Palestinian psychiatrist, Eyal al-Sarraj, about the atrocious behavior of the Israelis (which he believes entirely), behavior in fact characteristic of Palestinian terrorists:

Travers: I would like to put a question to, it may not be entirely within your field, but nevertheless it's a question that continuously comes around in my mind. We have heard testimony of great, uh, violence, seemingly un-militarily, unnecessary violence inflicted particularly on children. There have been instances of the shooting of children in front of their parents [i.e., Abd Rabbo]. As an ex-soldier I find that kind of action to be very, very strange and very unique. I would like to ask you if you have any professional insights as to what mindset or what conditioning or what training could bring around a state of behavior that would cause a soldier, a fellow human being to shoot children in front of their parents. Do you have any professional insights into that kind of behavior?

Sarraj: There is a psychological process, a long-term psychological process based in the situation of dehumanization of the enemy. The Palestinian in the eyes of the Israeli soldier is not an equal human being. Sometimes this Palestinian even becomes a demon in their eyes. Therefore it is a state of demonization... This culture of demonization and dehumanization in addition to what was mentioned by, uh, my colleague, paranoia. Paranoia has two sides, the side of victimization, I am a victim of this world, the whole world is against me and on the other side, I am superior to this world and I can oppress it. This leads to what is called, uh, the, uh, arrogance of power. It is very serious is [sic] that a victim who is not treated and then is given a dangerous weapon... There we see the arrogance of power and he uses it without thinking of humanity at all.

Had the mission members read the memoranda from Ostroff and Richter carefully, they might have challenged al-Sarraj about Palestinian demonization of Israelis, a pervasive phenomenon in Palestinian culture with absolutely no parallel in Israeli society. Instead Goldstone asked him if there were not

a parallel [sic] phenomenon in the Arab world, to which al-Sarraj responded first by admitting it, but only as a "reaction," then by claiming that Palestinians are better able to view Israelis as human beings, and finally by accusing the Israelis of identifying with the Nazis. No one challenged this systematic projection of Palestinian traits onto the Israelis; indeed the report highlighted in bold al-Sarraj's remarks in their conclusion.⁶⁷

In adopting both Palestinian claims and judgments--it would be "cruel" not to--not only did the report exceed its mandate, but it systematically misquoted and misapplied international law concerning both war and human rights.⁶⁸ It repeatedly accepted evidence of the lowest quality and then made the most stringent judgments when it came to Israel; and applied the most stringent standards to evidence and showed the greatest reluctance in judging the Palestinians. Most egregious was its deliberate confusion of disproportionate and indiscriminate response whereby the mission took "a standard military doctrine, the use of disproportionate force, and claimed, without analysis or foundation, that it is illegal."⁶⁹

Beyond the accusation of war crimes, the report emits the possibility that Israel (and unnamed "Palestinian militant groups") may be guilty of "crimes against humanity." Given Goldstone's intimacy with the details of Rwanda and Bosnia as well as the contemporary slaughter of millions in Sudan and Congo, such a statement thoroughly degrades the meaning of so important a term. "Crimes against humanity" takes the accusations to new levels, opening up additional venues for legal measures against Israel.

The pattern evident here explains why Goldstone, for all his bravado about "absolutely" investigating Hamas,⁷⁰ never found any evidence of their embedding themselves among civilians. To say Hamas fired rockets at Israeli civilians merely justifies Israeli *ius ad bellum*, right to go to war. Yet as Goldstone never ceases to remind interviewers, their concern was Israel's conduct of the war, *ius in bello*. In the former,

you can have multiple sources of guilt; in the latter, there is a zero-sum relationship between Israel's guilt and Hamas'.

The laws of war are clear, that it is legal to attack military targets even if it is absolutely certain that innocent civilians will be killed as collateral damage. Under the rule of proportionality, such collateral damage only becomes illegal if the harm to civilians is "clearly excessive in relation to the concrete and direct overall military advantage anticipated."⁷¹ Consequently, whenever a group like Hamas embeds itself within a civilian population, it both: (a) violates the laws of war by using civilians as shields, and (b) increases the number of civilians that can legally be killed as collateral damage. Thus, *up to the limits of proportionality*, every civilian that died in Israeli operations was the result of a Hamas war crime of civilian shielding, and, at the same time, a person whose death did not involve any wrongdoing by Israel.⁷² The failure to explore this aspect, to question the credibility of Palestinian reports, and the eagerness to judge Israel harshly while steering clear from any judgment on Palestinian use of human shields all suggest that whatever the final mandate, Goldstone and his colleagues stayed faithful to the first, vindictive one.

All of these criticisms, obvious to anyone who reads the report carefully, with attention to the problems of credibility, have justifiably produced accusations of systemic bias.⁷³ Indeed, the report's reception reflects the bias: those who criticize it have done so with close attention to detail; those who support it have done so largely on the basis of its conclusions, with no attention to its logic or proceedings.⁷⁴ Indeed, as of yet there is no serious defense of the report from anyone. This does not, however, prevent the report's authors from claiming that "no one has laid a glove on" it.⁷⁵

The disparity between public posturing and concrete action reveals just how little confidence Goldstone has in his own report. In response to U.S. government criticism of his report, he "lashed out" his critics:

But I have yet to hear from the Obama administration what the flaws in the report that they have identified are. I mean, I would be happy to respond to them, if and when I know what they are... I've no doubt, many of the critics--I would say the overwhelming majority of the critics--haven't read the report. And, you know, what proves that, I think, is the level of criticism doesn't go to the substance of the report. There still haven't been responses to the really serious allegations that are made.⁷⁶

Yet Goldstone has ignored the many substantive criticisms from people who have read his report carefully. Indeed, the disparity between public posturing and concrete action reveals just how little confidence Goldstone has in his own report. Challenged to a public debate by Alan Dershowitz on his own campus, Goldstone, the man who complained that Israel didn't face his investigation, declined: "Professor Dershowitz has conducted a very personal, demeaning and tendentious attack on me in recent months. On no account am I prepared to have a public debate with him."⁷⁷

The "non-"debate with Dore Gold at Brandeis seems to have marked a turning point for Goldstone. Presented in public with a powerful indictment of his report's handling of the evidence, and a presentation of the material available to anyone who cared to seek it out, he responded weakly, "The sort of information shown to us by Ambassador Gold should have been shown to us during the [UN] investigation."⁷⁸ Indeed, this material and far more was presented to them, to no effect.⁷⁹

After the revelations of the debate, one of the most careful and informed readers of his report, Ricki Hollander from the Committee for Accuracy in Middle East Reporting in America (CAMERA), sent him an open letter, pushing hard the multiple inconsistencies of his report and his remarks. His response was as follows: "Dear Ms. Hollander, I confirm receipt of your letter. I have no intention of responding to your open letter."⁸⁰ Like so many of those whose discourse inverts reality

in the service of narrative, Goldstone flees a serious challenge even as he claims to meet any that are presented.

Whence these systematic flaws and pervasive denial? How could highly intelligent, well-trained legal professionals produce something so intellectually incompetent, so obviously and pervasively flawed? Moreover, how can alleged experts go over the objections and dismiss them one by one, and with what consequences?⁸¹

The answer can best be understood from an understanding of the report not as an independent piece of research, but the third draft--really third iteration--of a story begun by the journalists during the war and reiterated by the "human rights" NGOs. Not only does such an approach permit one to see the direct links between each stage of the process, but it permits one to analyze the same dynamic that drives all three groups--the intimate and profoundly dysfunctional relationship of advocacy to intimidation that results in the betrayal of the very Palestinian civilians it claims to protect and the moral corruption of the global human rights community in whose voice they claim to speak.

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NOTES

¹ Much of the material cited in this paper is available at the Understanding the Goldstone Report (UtGR) website, <http://www.goldstone.org>. Many thanks to all the participants at that site (<http://www.goldstonereport.org/about-us>) for their help, inspiration, and hard work on this massive project. It is not sufficient to read the report carefully, but also to know the history of coverage of the incidents it depicts. The members of the site are rare cases of such thorough knowledge. As a methodological point, it should be noted at the start of this essay that the works of such watchdog groups as NGO Monitor and CAMERA are cited. Their work is often dismissed in some circles as "partisan." This author's experience with their work is that they are careful both to reason and cite sources scrupulously. For those readers who might be tempted to dismiss not only their work, but this author's as well, they are urged to read these references carefully and check their sources, rather than rely on a dismissal that is at least as partisan as that with which it charges others. When compared to many of the reports Goldstone uses (e.g., below, n. 42), this author would argue that these sources are significantly more accurate.

² Irwin Cotler, "The Goldstone Mission: Tainted to the Core," Part I, <http://www.jpost.com/servlet/Satellite?cid=1249418620191&pageName=JPArticle%2FShowFull>,

and Part II, <http://www.jpost.com/servlet/Satellite?cid=1249418640232&pageName=JPArticle%2FShowFull>;

Alan Dershowitz, "Double Standard Watch: The UN Kangaroo 'Investigation' of Israeli 'War Crimes'," *Jerusalem Post*, July 2, 2009, http://cgis.jpost.com/Blogs/dershowitz/entry/the_un_kangaroo_investigation_of.

³ Most notably both David Landau (*Haaretz*), http://www.nytimes.com/2009/09/20/opinion/20landau.html?_r=1&emc=tnt&tntemail1=y, and Jessica Montell (B'tselem), <http://www.jpost.com/servlet/Satellite?cid=12>

[54163545977&pagename=JPost/JPArticle/ShowFull.](http://www.earthtimes.org/articles/show/290546,hamas-welcomes-vote-in-favor-of-goldstone-report.html)

⁴ Hamas initially rejected the report's criticism of its own actions, but rapidly changed its tune. "Hamas Welcomes Vote in Favor of Goldstone Report," *Earth Times*, October 16, 2009,

[www.earthtimes.org/articles/show/290546,hamas-welcomes-vote-in-favor-of-goldstone-report.html.](http://www.earthtimes.org/articles/show/290546,hamas-welcomes-vote-in-favor-of-goldstone-report.html)

⁵ See "UN Politics," UtGR, [http://www.goldstonereport.org/un-politics.](http://www.goldstonereport.org/un-politics)

⁶ See "Interviews," UtGR, [http://www.goldstonereport.org/interviews.](http://www.goldstonereport.org/interviews)

⁷ Richard Goldstone Dore Gold "Debate," [http://www.goldstonereport.org/goldstone-debates/388-richard-goldstone-dore-gold-brandeis-qdebateq.](http://www.goldstonereport.org/goldstone-debates/388-richard-goldstone-dore-gold-brandeis-qdebateq)

⁸ "Alan Dershowitz Challenging the Goldstone Report," [http://israelactivism.com/video/.](http://israelactivism.com/video/)

⁹ "Critics," UtGR, [http://www.goldstonereport.org/pro-and-con/critics.](http://www.goldstonereport.org/pro-and-con/critics)

¹⁰ "Defenders," UtGR, [http://www.goldstonereport.org/pro-and-con/defenders.](http://www.goldstonereport.org/pro-and-con/defenders)

¹¹ Daniel Corder, "The Sun-Tzu of Palestinian Resistance," *Salem News*, November 20, 2009, [http://www.salem-news.com/articles/november202009/israel_dc.php.](http://www.salem-news.com/articles/november202009/israel_dc.php)

¹² See Moshe Halbertal, "The Goldstone Illusion," *New Republic*, November 6, 2009, [http://www.tnr.com/article/world/the-goldstone-illusion.](http://www.tnr.com/article/world/the-goldstone-illusion)

¹³ Lorenzo Cremonesi, "Così i ragazzini di Hamas ci hanno utilizzato come bersagli," *Il Corriere della Sera*, January 21, 2009, http://www.corriere.it/esteri/09_gennaio_21/d-enuncia_hamas_cremonesi_ac41c6f4-e802-11dd-833f-00144f02aabc.shtml, translation by Noa Landes, [http://www.theaugeanstables.com/2009/01/28/cremonesi-article-in-english/.](http://www.theaugeanstables.com/2009/01/28/cremonesi-article-in-english/)

¹⁴ Middle East Media Research Institute (MEMRI) Clip 228, November 9, 2009, [http://www.memritv.org/clip_transcript/en/2288.htm.](http://www.memritv.org/clip_transcript/en/2288.htm)

¹⁵ *The Operation in Gaza - Factual and Legal Aspects*, July 29, 2009, [http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Operation_in_Gaza-Factual_and_Legal_Aspects.htm.](http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Operation_in_Gaza-Factual_and_Legal_Aspects.htm)

¹⁶ For a good summary of both the video evidence for Hamas' use of human shields and the Goldstone Report's systematic denial on the subject, see Carl in Jerusalem, "The Goldstone Commission on Human Shields," *Israel Matsav*, September 15, 2009, [http://israelmatzav.blogspot.com/2009/09/goldstone-commission-on-human-shields.html.](http://israelmatzav.blogspot.com/2009/09/goldstone-commission-on-human-shields.html)

¹⁷ For the most recent example of such a case, see the case of Hamas repressing warnings about swine flu in order to assure maximum turnout at a planned rally, <http://www.palpress.ps/arabic/index.php?maa=ReadStory&ChannelID=66409>; comment with translation at Elder of Zion, [http://elderofzion.blogspot.com/2009/12/hamas-trying-to-silence-swine-flu.html.](http://elderofzion.blogspot.com/2009/12/hamas-trying-to-silence-swine-flu.html) For an excellent analysis of this strategy from a military perspective, see Michael D. Snyder, "Information Strategies against a Hybrid Threat: What the Recent Experience of Israel versus Hezbollah/Hamas Tell the U.S. Army," in Lieutenant Colonel Scott C. Farquhar (ed.), *Back to Basics: A Study of the Second Lebanon War and Operation CAST LEAD* (Fort Leavenworth, Kansas: Combat Studies Institute Press, U.S. Army Combined Arms Center, 2009), <http://carl.army.mil/download/csipubs/farquhar.pdf>, pp. 103-146.

¹⁸ ¶452. "In view of the information communicated to it and the material it was able to review, the Mission believes that there are indications that Palestinian armed groups launched rockets from urban areas."

¹⁹ The term "no evidence" (and alternatives such as "did not find any evidence") appears 15 times in the report. In 13 cases, it refers to no evidence supporting accusations against Hamas (¶32, 35, 36, 449, 465, 469, 475, 480, 483, 487, 494, 495, 1953) and twice in the matter of evidence of Hamas investigating its own infractions of humanitarian law (¶1183,

1841). As a historian, this author notes that the expression "no evidence" is generally viewed by historians as a piece of dismissive rhetorical excess used to avoid mentioning evidence. There is almost never "no evidence" for most significant phenomena.

²⁰ Cremonesi, "Così i ragazzini di Hamas."

²¹ View video at: <http://www.youtube.com/watch?v=g0wJXf2nt4Y>.

²² "'Camouflage Hat' Tactics of Resistance to Gaza to Mislead the Occupation Army and Its Collaborators on the Ground," *Palestine Today*,

<http://www.paltoday.com/arabic/News-33008.html&tbb=1&usg=ALkJrhikBicq9NmZArZHAdpIJEQDd3u11A>, translation by Shammai Fishman. The title's reference to the "camouflage hat" is a strategy to mislead both the Israelis and their Palestinian collaborators; hence they endanger their people to fool those who might inform the Israelis of their location.

²³ View video at: <http://www.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKISNqEmG&b=1313923&ct=7536409>.

²⁴ Personal email from Richard Goldstone to Maurice Ostroff, posted with permission of author, <http://maurice-ostroff.tripod.com/id233.html>.

²⁵ See discussion in David Matas, "The Goldstone Report: Stone or Gold?," <http://www.goldstonereport.org/pro-and-con/critics/495-david-matas-the-goldstone-report-stone-or-gold>, #9.

²⁶ Palestinian Media Watch, <http://www.palwatch.org/main.aspx?fi=113> and Middle East Media Research Institute (MEMRI), <http://www.memri.org/subject/en/51.htm>.

²⁷ Richter and Ostroff memoranda, <http://www.goldstonereport.org/procedural-flaws/concealed-evidence>.

²⁸ On Goldstone's previous experience with the role of incitement to genocide, see Madeline H. Morris, "The Case of Rwanda," http://www.unc.edu/depts/diplomat/AD_Issue/s/amdipl_6/morris.html#context and Elihu

Richter, "Goldstone, Rwanda, Hamas, Iran and Incitement to Genocide," *Jerusalem Post*, September 29, 2009, http://cgis.jpost.com/Blogs/guest/entry/right_of_reply_goldstone_rwanda.

²⁹ Interview with Bill Moyers, October 23, 2009 [transcript], http://www.kibush.co.il/show_file.asp?num=36316; view interview at: <http://www.goldstonereport.org/interviews/397-bill-moyers-interviews-goldstone-october-25-2009>.

³⁰ The Chatham House Report, http://www.chathamhouse.org.uk/files/15572_i1271109summary.pdf, had "no problem" with the choice of incidents since the mission "presumably selected those incidents which were the most well-documented, where it would not have to rely on witnesses who would be unwilling to speak freely (p. 11)."

³¹ Jonathan Dahoah Halevi, "Blocking the Truth in Gaza," Jerusalem Center for Public Affairs (JCPA), September 18, 2009, <http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DBID=1&LANGID=1&TMID=111&FID=253&PID=0&IID=3086>.

³² Richard Landes, "Revealing Silence at the Egyptian Border," *PajamasMedia*, January 3, 2009,

<http://pajamasmedia.com/blog/revealing-silence-at-the-gaza-egypt-border/> (for the same article with embedded videos, see <http://www.theaugeanstables.com/2009/01/03/revealing-silence-at-the-egyptian-border-why-does-hamas-victimize-its-own/>). For a more recent case, Hamas has blocked dozens of Gazans from coming to Israel for treatment, <http://translate.google.com/translate?hl=en&ie=windows-1256&langpair=auto%7Cen&u=http://www.palpress.ps/arabic/index.php%3Fmaa%3DReadStory%26ChannelID%3D66408&tbb=1&rurl=translate.google.com&twu=1>.

³³ Richard Goldstone, *For Humanity: Reflections of a War Crimes Investigator* (New Haven, CT: Yale University Press, 2000), chapter 3.

³⁴ The Goldstone Report, ¶35. See also ¶148.

³⁵ The testimony is available for viewing at the UNHRC site, <http://www.un.org/webcast/unhrc/archive.asp?go=041>.

³⁶ ¶148. “The Mission is also concerned about anonymous calls and messages received on private phone numbers and e-mail addresses by some of those who provided information to it or assisted in its work in the Gaza Strip. The contents seemed to imply that the originators of these anonymous calls and messages regarded those who cooperated with the Mission as potentially associated with armed groups. One of the recipients conveyed to the Mission apprehensions about personal safety and a feeling of intimidation. The Mission also wishes to record that there are others who have declined to appear before it or to provide information or, having cooperated with the Mission, have asked that their names should not be disclosed, for fear of reprisal.”

³⁷ See UtGR, “Abd Rabbo,” <http://www.goldstonereport.org/case-study/abd-rabbo>.

³⁸ Deir Yassin was the most controversial encounter in the 1948 War of Independence/Nakba, often cited by opponents of Zionism as a terrible massacre, in which Israeli irregular troops (Etzel and Lehi) took a small village on the Western edge of Jerusalem (today Har Nof), and killed some 125 people including civilians. See Benny Morris, *1948* (New Haven: Yale University Press, 2008), pp. 125-28.

³⁹ “Israel and the Arabs: The 50 Year Conflict,” BBC, 1998 (key clip, <http://www.youtube.com/watch?v=72Ata-hY9WQ>). In this case, the attempt at cognitive warfare failed: It triggered mass flights of frightened Arabs.

⁴⁰ See, for example, the case of the “poisoning” of Jenin schoolgirls in 1983, Raphael Israeli, *Poison: Modern Manifestions of a Blood Libel* (Lanham, MA: Lexington Books, 2002). For an important analysis of the role of deception in Islamic warfare, see Raymond Ibrahim, “How Taqiyya Alters Islam's Rules of War,” *Middle East Quarterly* (Winter 2010),

<http://www.meforum.org/2538/taqiyya-islam-rules-of-war>.

⁴¹ Palestinian Human Rights Monitor (PHRMG), ““Collaborators’: New Impetus for an Old Witch Hunt,” *The Palestinian Human Rights Monitor*, Vol. 5, No. 3 (July 2001), <http://www.phrmg.org/monitor2002/feb2002-9.htm>.

⁴² Second Draft has both unedited raw footage from Palestinian cameramen working for major Western news agencies, http://www.seconddraft.org/index.php?option=com_content&view=article&id=58&Itemid=248, (including the raw footage of Talal Abu Rahmah, http://www.seconddraft.org/index.php?option=com_content&view=article&id=452&Itemid=251) and a selection of edited material highlighting the evidence for pervasive staging, http://www.seconddraft.org/index.php?option=com_content&view=category&layout=blog&id=55&Itemid=189.

⁴³ On the Gaza Beach tragedy, in which most of the Ghalia family was killed by an explosive, but the immediate accusation that it was an Israeli shell does not hold up, see the Second Draft Investigation, http://www.seconddraft.org/index.php?option=com_content&view=article&id=421&Itemid=174, and the most recent revelations that the father was handling ordnance that blew up in his face, Amir Oren, “Not Really a War,” *Haaretz*, May 5, 2009, <http://www.haaretz.com/hasen/spages/1052622.html>.

⁴⁴ Ron Ben-Yishai, “A Day with Our Troops in Gaza,” *Ynet*, January 9, 2009, <http://www.ynetnews.com/articles/0,7340,L-3653238,00.html>.

⁴⁵ Peter Berkowitz, “Goldstone's Failure to Give Due Attention to Military Necessity,” *Jerusalem Post*, January 10, 2010, <http://cgis.jpost.com/Blogs/rosner/entry/goldstone-s-failure-to-give>.

⁴⁶ See each of these incidents discussed with further literature at “Case Studies,” UtGR, <http://www.goldstonereport.org/case-study>.

⁴⁷ ¶467, 503, 551, 622, 645, 683, 723, 741, 752, 762, 768, 777, 798, 838, 922, 925, 1011, 1032, 1090, 1164, 1234, 1354, 1366, 1378.

⁴⁸ ¶838f; see also: 595, 675, 831, 866.

⁴⁹ This is the Maqadmah Mosque case (<http://www.goldstonereport.org/case-study/al-maqadmah-mosque>), which Goldstone gave such prominence to in his presentation at Brandeis. For an excellent example of the kinds of questions left unanswered by the mission on this topic, see the section in Ricki Hollander's (unanswered) "Open Letter to Goldstone," <http://www.goldstonereport.org/case-study/al-maqadmah-mosque/444-excerpt-from-open-letter-to-justice-goldstone-from-camera-on-al-maqadmah-mosque>.

⁵⁰ Ken Silverstein, "Six Questions for Desmond Travers," *Harpers*, October 29, 2009, <http://harpers.org/archive/2009/10/hbc-90006003>. Hamas considered the mosque a "factory educating Jihad fighters." See Hamas: Itamar Marcus and Barbara Crook, "The Mosque Is a 'Factory Educating Jihad Fighters'--Even the Muslim Fetus Seeks Jihad," May 5, 2009, http://www.pmw.org.il/Bulletins_May2009.htm#b050509. On cognitive egocentrism and its contribution to misunderstanding the conflict, see Richard Landes, "Cognitive Egocentrism," Augean Stables, <http://www.theaugeanstable.com/reflections-from-second-draft/cognitive-egocentrism/>.

⁵¹ "Public hearings: Gaza City, Morning Session of 28 June 2009," <http://3.ly/OcZ>. See also Martin Kramer's analysis, "Between Goldstone and Gaza, What's One More Zero," December 10, 2009, http://sandbox.blog-city.com/between_goldstone_and_gaza_whats_one_more_zero.htm.

⁵² "The Need for a Post-War Development Strategy in the Gaza Strip," *Palestinian Federation of Industries*, March 2009, <http://www.psc.ps/down/Gaza%20Industry%20Reconstruction%20and%20Development%20Report.pdf>, p. 13.

⁵³ Cf. ¶24: 24. The Mission's final conclusions on the reliability of the information received were based on...

verifying the sources and the methodology used in the reports and documents produced by others, cross-referencing the relevant material..."

⁵⁴ See the extensive discussion of this problem in the Israeli Government's Response to the Report, <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Initial-response-goldstone-report-24-Sep-2009.htm>, Section 19.

⁵⁵ Haroon Siddiqi, "Looking for Accountability in the Gaza War," *The Star*, October 15, 2009, <http://www.thestar.com/comment/article/710335>.

⁵⁶ In an interview with Christiane Amanpour, Goldstone dismisses Israeli investigations because they are closed: "that's hardly the sort of inquiry that's going to satisfy victims." See <http://www.goldstonereport.org/video/265-amanpourgoldstone>.

⁵⁷ The "experts" at Chatham House did not deny the negative effects such a "spin-off" might have on hearing reliable testimony; instead they dismissed the importance of the testimony, since "most of the evidence heard in the hearings was irrelevant to its [the mission's] mandate and its conclusions (p. 7)."

⁵⁸ For an example of how far Israeli soldiers will go to spare civilian lives, see the highly controversial case of an Israeli intelligence officer who refused to communicate coordinates to the Air Force because, in his judgment, too many Palestinian civilians might be killed, and many of his colleagues rallied to his defense. See <http://www.ynet.co.il/articles/0,7340,L-2462293,00.html> and <http://www.ynet.co.il/articles/0,7340,L-2462293,00.html>.

⁵⁹ See Dershowitz's remarks at <http://israelactivism.com/video/>.

⁶⁰ Gal Beckerman, "Goldstone: 'If This Was a Court of Law, There Would Have Been Nothing Proven'," *The Forward*, October 7, 2009; interview with Christiane Amanpour.

⁶¹ See Richard Kemp, "International Law and Military Operations in Practice," JCPA, June

18, 2009.
<http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DBID=1&LNGID=1&TMID=111&FID=378&PID=0&IID=3026>.

⁶² See the evidence at “al-Maqadmah Mosque,” UtGR,
<http://www.goldstonereport.org/case-study/al-maqadmah-mosque>.

⁶³ Notes Moshe Halbertal (“The Goldstone Illusion”), not an author known for his sarcasm, “The reader of such a sentence might well wonder what its author means. Did Hamas militants not wear their uniforms because they were inconveniently at the laundry? What other reasons for wearing civilian clothes could they have had, if not for deliberately sheltering themselves among the civilians?”

⁶⁴ CNN, January 2, 2009:
<http://www.youtube.com/watch?v=6ab1hCeJ2wc>; comment at Augean Stables, “Goldstone vs. Talal Abu Rahmah on Human Shields: Whom to Believe,”
<http://www.theaugeanstables.com/2010/01/04/goldstone-vs-talal-abu-rahmah-on-hamas-human-shields-whom-to-believe/>.

⁶⁵ See the various articles listed in “The Goldstone Report, A Study in Duplicity,” CAMERA, November 3, 2009,
http://www.camera.org/index.asp?x_context=2&x_outlet=118&x_article=1736 (under “Falsehood: No Civilian Clothes.”).

⁶⁶ Gilead Ini, “Goldstone Commissioner Suggests Israelis Conditioned to Kill Children,” Committee for Accuracy in Middle East Reporting in America (CAMERA), September 21, 2009,
http://www.camera.org/index.asp?x_context=2&x_outlet=118&x_article=1733.

⁶⁷ Goldstone asked al-Sarraj if Palestinians did anything similar (not questioning whether Israelis did do what he claims) and allowed Sarraj to write of Arab demonization of Israel as a “reaction” and then launch into a long explanation of how Israelis identify with the Nazis. The report’s concluding segment reproduces much of this exchange in its own section entitled: *The Impact of Dehumanization* (§¶1905-10).

⁶⁸ See “Legal Reasoning,” UtGR,
<http://www.goldstonereport.org/procedural-flaws/legal-reasoning>.

⁶⁹ Matas, “The Goldstone Report,” #7; see the extensive discussion in Laurie Blank and Gregory Gordon, “Goldstone, Gaza and (Dis)Proportionality: Three Strikes,” *Jurist: Legal News and Research*, December 23, 2009,
<http://jurist.law.pitt.edu/forumy/2009/11/goldstone-gaza-and-disproportionality.php>.

⁷⁰ See his interview with Christiane Amanpour,
<http://www.goldstonereport.org/interviews/494?task=view>.

⁷¹ See the Rome Statute, Article 8.2.b.iv.
http://untreaty.un.org/cod/icc/statute/99_corr/cstatute.htm.

⁷² My thanks to Avi Bell and Anne Herzberg for explaining the subtleties of this legal issue.

⁷³ See the articles in “Critics,” UtGR,
<http://www.goldstonereport.org/pro-and-con/critics>.

⁷⁴ Ibid, Defenders,
<http://www.goldstonereport.org/pro-and-con/defenders>.

⁷⁵ Silverstein, “Six Questions.”

⁷⁶ Interview with al-Jazeera, October 22, 2009,
<http://www.goldstonereport.org/interviews/348-goldstone-interviewed-on-al-jazeera-october-22-2009>, cited by Sharon Otterman, “Gaza Report Author Asks US to Clarify Concerns,” *New York Times*, October 22, 2009.

⁷⁷ Email to the organizers of the Fordham event.

⁷⁸ Goldstone-Gold Debate, Part IV,
<http://www.goldstonereport.org/goldstone-debates/388-richard-goldstone-dore-gold-brandeis-qdebateq>.

⁷⁹ As revealed by a documentary on the Goldstone Report by Israeli Channel 1, *Mabat Sheni*, December 23, 2009, Daniel Reisner, former Head of the International Law Branch, the IDF Legal Division, served as an unofficial representative of the Israeli point of view and spoke for hours with the mission members. Goldstone’s use of that testimony is restricted to a single mention (§¶1183-84),

without any consequences for his report's conclusions. See also the extensive dossier published by the Israeli government while the mission was preparing its report: *The Operation in Gaza - Factual and Legal Aspects*, July 29, 2009.

⁸⁰ Ricki Hollander, "An Open Letter to Judge Goldstone," CAMERA, November 17, 2009, response, December 7, 2009, http://www.camera.org/index.asp?x_context=7&x_issue=76&x_article=1764.

⁸¹ See, for example, the Chatham House Report's analysis, <http://www.chathamhouse.org.uk/publications/papers/view/-/id/817/>.