

IFI's UN in the Middle East Research Initiative

Follow up on IFI Panel on the "Goldstone Report" of June 2010

by Dr Karim Makdisi, Associate Director, Issam Fares Institute

Summary: Nearly a year after IFI hosted a panel discussion by two members of the UN fact-finding mission that issued the "Goldstone Report" following Israel's war on Gaza in December 2008-January 2009, a recent opinion piece in the Washington Post newspaper by Judge Richard Goldstone—the chair of UN mission—has created controversy as Goldstone appears to retract some of the panel's findings that accused Israel of "grave breaches" of international humanitarian law and clears Israel of wrong-doing. Amidst much heated debate among scholars and policy-makers, Israel has seized on Goldstones' apparent retraction by calling for the UN to retract the official Goldstone report itself. The UN has officially rejected this request. Meanwhile the other three members of the UN Mission have issued a statement clarifying that Judge Goldstone's opinion piece has no legal value and does not credibly challenge the validly or substantive claims of the report itself. They also regretted the "personal attacks and the extraordinary pressure" placed on all of the mission members, and concluded that this process should not be undone until "justice is done and respect for international human rights and humanitarian law by everyone is ensured."

On June 7, 2010, the Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut hosted a [panel and open discussion](#) with two out of the four members of the [United Nations Fact Finding Mission on the Gaza Conflict](#) of 2008-2009: Ms. Hina Jilani (Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary General on Human Rights Defenders) and Colonel Desmond Travers (a former officer in the Irish Armed Forces who served in UNIFIL in southern Lebanon, and member of the Board of Directors of the Institute for International Criminal Investigations). The UN Fact-Finding Mission, which also included Professor Christine Chinkin of the London School of Economics and the South African Judge Justice Richard Goldstone (who served as the Mission's chair) submitted its findings and recommendations (known as the "[Goldstone Report](#)") to the United Nations Human Rights Council in September 2009 to wide publicity as an important step in the implementation of international humanitarian law and ending criminal impunity in the region.

During the panel, Ms. Jilani and Col. Travers explained and clarified both the mission's process (which they described as objective) and its legal/political implications (potentially far-reaching in a bid to re-establish the primacy of international law and justice) of the Goldstone Report. The summary of this important IFI event, which drew a large crowd, can be found [here](#). The report itself had indicated that Israel had committed "grave breaches" of international humanitarian law in a war that resulted in the deaths of about 1,400 Palestinians, mostly civilians. The report recommended follow up by both the UN Security Council and the International Criminal Court for possible war crimes. The report further condemned the "prolonged situation of impunity" that has created a "justice crisis" in the occupied Palestinian territories, and dismissed "Israel's system of investigation and prosecution of serious violations of human rights and humanitarian law, in particular of suspected war crimes and crimes against humanity" as having "major structural flaws that make the system inconsistent with [international standards](#)."

The Goldstone report further recommended that Israel and the Palestinians conduct their own independent judicial review of their war conduct. In April 2010, the UN Human Rights Council established a [Committee of Independent Experts](#) in international humanitarian and human rights law "to monitor and assess any domestic, legal or other proceedings undertaken by both the Government

of Israel and the Palestinian side in the context of the follow-up” to the Goldstone Report. [The first report of the Committee](#), chaired by Mr. Christian Tomuschat of Germany was presented to the UN Human Rights Council in September 2010. A second follow up committee, this time headed by the US judge Justice Mary McGowan Davis, submitted its [report to the UN](#) in March 2011. While this report acknowledged that “Israel has dedicated significant resources to investigate over 400 allegations of operational misconduct in Gaza, it also “reiterates the conclusion of its previous report that there is no indication that Israel has opened investigations into the actions of those who designed, planned, ordered and oversaw Operation Cast Lead [emphasis added]” and expresses “concern” that length of duration of the Israeli investigations (over 2 years) “could seriously impair their effectiveness and, therefore, the prospects of ultimately achieving accountability and justice.” The report further expressed concern that the “de facto authorities [Hamas in Gaza] have not conducted any investigations” of their own pursuant to the Goldstone Report recommendations.

Shortly after this second report was published to relatively little media attention, controversy erupted following the publication of an opinion piece by Judge Goldstone in the Washington Post on April 1, 2011. Goldstone’s piece, entitled, “[Reconsidering the Goldstone Report on Israel and War Crimes](#),” questions whether Israel had indeed intentionally attacked civilians inside Gaza, an allegation made in the Goldstone Report itself, in light of recent ‘evidence’ and investigations being conducted by the Israeli military. He claims that while Israel has generally complied with the Goldstone report recommendation to investigate alleged war crimes, Hamas has not. Accordingly, Goldstone says, “If I had known then what I know now, the Goldstone Report would have been a different document.” Such a turn around by Goldstone has triggered a heated political debate about what happens next. Israeli [Prime Minister Benjamin Netanyahu](#) dismissed the original Goldstone Report as “libel,” and called for “the immediate cancellation of the Goldstone report” in light of Goldstone’s Washington Post article. [Hamas](#), for its part, described Goldstone’s “retreat” as “reprehensible” but that it did not change “the fact war crimes had been committed against 1.5 million people in Gaza.” The Palestinian Authority agreed with Hamas that Goldstone’s piece had not changed anything.

The UN responded that Goldstone’s opinion piece in the Washington Post indeed amounted to nothing in legal terms unless both he and the other three members of the original Goldstone panel submitted a petition in writing retracting their original findings. Accordingly, in a [joint statement on April 14, 2011](#), Ms. Hina Jilani, Col. Demond Travers and Prof. Christine Chinkin clearly underline the fact that “there is no justification for any demand or expectation for reconsideration of the report as nothing of substance has appeared that would in any way change the context, findings or conclusions of that report with respect to any of the parties to the Gaza conflict.” After regretting that neither Israel nor Hamas conducted serious investigations into alleged war crimes and other breaches of international humanitarian law, they added that “calls to reconsider or even retract the report, as well as attempts at misrepresenting its nature and purpose, disregard the right of victims, Palestinian and Israeli, to truth and justice.”

The tension, even struggle between the ideals of the international legal order and their translation, particularly in the Arab region, are central to IFI’s [UN in the Middle East Research Initiative \(UNMERI\)](#). Indeed, in a recent [IFI working paper](#), Noura Erakat demonstrated that Israel’s use of self-defense as a justification for its war in Gaza in 2008-9 was unfounded in international law, as was its attempts to sidestep the constraints of international humanitarian law by claiming that Gaza was somehow not under Israeli occupation, a claim which the Goldstone Report dismisses out of hand. (“Israel has without doubt at all times relevant to the mandate of the Mission exercised effective control over the



Gaza Strip. The Mission is of the view that the circumstances of this control establish that the Gaza Strip remains occupied by Israel. The provisions of the Fourth Geneva Convention therefore apply at all relevant times with regard to the obligations of Israel towards the population of the Gaza Strip.”)

The Issam Fares Institute will be hosting the Goldstone Panel members for the second time at the American University of Beirut.