

OPINION: Richard Goldstone's change of mind underlines the need for adequate investigation, writes HIKMAT AJJURI

RICHARD GOLDSTONE led the fact-finding mission appointed by the United Nations Human Rights Council (UNHRC) to investigate the events surrounding Operation Cast Lead, Israel's military assault on Gaza that took place between December 27th, 2008, and January 18th, 2009. The mission's report, generally referred to as the Goldstone report, was published in September 2009.

Three other eminent figures served on the mission with Goldstone, a retired justice of the constitutional court of South Africa: Christine Chinkin, professor of international law at the London School of Economics and Political Science; Hina Jilani, advocate of the supreme court of Pakistan; and Col Desmond Travers, a former officer in the Irish Army.

In an opinion article, *With hindsight, my Gaza report needs revising*, (The Irish Times, April 9th), Goldstone wrote: If I had known then what I know now, the Goldstone report would have been a different document. I am still not sure whether this statement is a U-turn by him in response to the Israeli threats and defamation by the South African Zionist federation.

Goldstone cites only one incident, the killing of 29 members of the al-Samouni family in their home by Israeli shelling, as being incorrectly characterised in his original report. This was one of 11 incidents about which the fact-finding mission concluded Israeli forces had deliberately killed civilians.

Goldstone has revised his opinion of this incident on the basis of information derived from an as yet incomplete Israeli investigation. He wrote: The shelling of the home was apparently the consequence of an Israeli commander's erroneous interpretation of a drone image, and not a deliberate killing of civilians, as stated in his report.

The fact-finding mission reported many other serious violations by Israeli forces, including war crimes during the conflict, as did investigations such as those by Human Rights Watch, Amnesty International and an independent committee set up by the Arab League.

These include indiscriminate attacks using heavy artillery and white phosphorus in densely populated areas; deliberate destruction of civilian buildings; attacks on UN facilities, medical facilities and personnel; and the use of Palestinian civilians as human shields.

There can therefore be no question of the report being withdrawn by the UNHRC, as the Israeli government is demanding, particularly since Goldstone's qualification of the report doesn't appear to have the support of the other members of the mission. A council spokesman said that it will not revoke a report on the basis of an article in a newspaper and a move to change or withdraw the report would require a formal complaint from Goldstone, backed unanimously by his fellow authors.

In an interview on April 5th, Goldstone said he did not plan to seek nullification of his report. However, he said: Further information as a result of domestic investigations could lead to further

reconsideration, but as presently advised I have no reason to believe any part of the report needs to be reconsidered at this time.

The Goldstone report called upon the Israeli and Palestinian authorities to conduct credible, independent investigations into alleged war crimes and possible crimes against humanity within six months or face referral to the International Criminal Court (ICC) by the UN Security Council.

More than two years after its assault on Gaza, Israel has failed to conduct credible, independent investigations into its actions. This doesn't come as a surprise to us, the Palestinians: we have long experience of Israel's failure to investigate the brutal actions of its armed forces against us. Ever since the creation of the state of Israel, the tens of thousands of Palestinians killed by Israel were either terrorists or killed by mistake. If there are to be credible, independent investigations, they will have to be carried out by the ICC.

In January 2009, the Palestinian Authority notified the court that it accepted its jurisdiction, saying the government of Palestine hereby recognises the jurisdiction of the court for the purposes of identifying, prosecuting and judging the authors and accomplices of acts committed in the territory of Palestine since July 1st, 2002, when the ICC commenced operation. The court has yet to decide whether an investigation could be launched on the basis of this declaration.

If the court decides it cannot, since Israel is not a party to the court, the security council is the only body that can submit these matters to the court. A first step on this road was taken on March 25th, when the UNHRC referred the Goldstone report to the UN General Assembly with the request that it be referred to the security council, and that the council submit the matter to the ICC.

Only the ICC can secure credible, independent investigations of the events surrounding Operation Cast Lead and prepare indictments where the evidence warrants. The Goldstone report is one of many documents the ICC may take into account as part of its investigations. Because the victims in Gaza will only be victimised yet again by being denied access to justice.

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