



Press Conference

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PRESS CONFERENCE ON REPORT OF UNITED NATIONS FACT-FINDING MISSION ON GAZA CONFLICT

There was evidence indicating Israel had committed serious violations of international human rights and humanitarian law during the Gaza conflict and actions amounting to war crimes and possibly crimes against humanity, it was reported today by the United Nations fact-finding mission on the Gaza conflict, upon the release of the mission's official report and recommendations.

The [575-page report](#), which was forwarded to the Government of Israel and the Palestinian Authority this morning and posted on the website of the Human Rights Council, also concluded that evidence exists that Palestinian armed groups committed war crimes, as well as possibly crimes against humanity, in their repeated launching of rockets and mortars into southern Israel.

The mission, established in April by the Human Rights Council, recommended that the Security Council require Israel to report to it on domestic investigations and prosecutions into the incidents considered in the report, as well as any others that might emerge, said the mission head, Justice Richard Goldstone. For that purpose, the Security Council should set up an independent expert committee to monitor the progress made. That committee should also be requested to report on investigations and prosecutions by the relevant Palestinian authorities regarding crimes committed by Palestinian armed groups.

Absent good-faith investigations under way by the sides within six months [of the date of a Council resolution on the matter, under Article 40 of the United Nations Charter], the mission recommends that the Security Council refer either one or both situations, as appropriate, to the International Criminal Court.

Along with its recommendations for the Security Council, the mission, concerned with the use by Israel of white phosphorous and heavy metals, recommended that the General Assembly promote an urgent discussion on those weapons' use generally and anywhere in the world. With the extent of the environmental damage caused by those munitions in Gaza and southern Israel still unknown, it recommended that the United Nations should maintain a watch on what damage might emerge on the environment and among the victims.

"We chose to investigate incidents that appeared to the mission to be reckless, disproportionate or deliberate," said Justice Goldstone, stressing that, in its inquiry of 36 incidents, the mission had not second-guessed Israeli commanders or soldiers in the heat of battle. "What we are talking about is a much broader aspect of the deliberate policies that were adopted and the military actions that were taken not in urgent situations".

On the Palestinian side, he said, "there was no question that the firing of rockets by Palestinians also amounted to war crimes and also possible crimes against humanity".

The fact-finding mission, established in April by the Human Rights Council, had been charged with investigating "all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 to 18 January 2009, whether before, during or after". Its four members ultimately interviewed 188 individuals, reviewed more than 10,000 pages of documentation and 1,200 photos and 30 videos, and held two public meetings in Gaza and in Geneva.

In summarizing its findings, Mr. Goldstone stressed that the mission's proceedings had not been judicial or even quasi-judicial in nature. The facts on which it had based its findings and recommendations had not been established to any criminal standard of "beyond a reasonable doubt" or the equivalent civil standard. Rather, guided by the norms of relevant international law, the mission's members had attempted to reach factual conclusions only on the facts that they had found or seen with their own eyes.

To that end, each chapter of the report begins with the mission's findings from its own investigations. Other reports were used as supplementary information and for corroboration, but not as the basis of conclusions. The one exception to those working methods dealt with events in the West Bank and Israel, since the mission had not been allowed access there, but had met Israeli witnesses in Amman, Jordan and Geneva.

The mission concluded that, among other things, Israel had failed to take feasible precautions required by international law to avoid or minimize loss of civilian life, injury to civilians and damage to civilian objects. Specifically, the firing of white phosphorous shells on the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) compound, the intentional strike at the Al Quds hospital using high-explosive artillery shells and white phosphorous, and the attack against Al Wafa hospital, were all violations of international humanitarian law.

Elsewhere, he said, the mission had considered the mortar attack on Al-Maqadmah mosque in which at least 15 people were killed and 40 injured on 3 January 2009 during late afternoon services. The reasons given by the Israeli Government and Israel Defense Forces were twofold: that the mosque was used by military armed groups and that weapons were at times stored there. But the mission had found no evidence that the mosque had been used for weapons storage or any military activities by Palestinian armed groups, at that or any other time. But, assuming that militants had been gathered among hundreds of worshippers, there was nevertheless no justification in humanitarian law to mortar the mosque during services. Moreover, there was no evidence of the type of secondary explosions that would have ensued had there been a weapons cache. Nor was there any indication from any documentation received from Israel that the incident took place in error.

The mission had also scrutinized the statements by Israel's leadership saying they were to hit at "the Hamas infrastructure". In the mission's view, that might have been a political policy aimed at destroying support for Hamas among Gaza's population, but it was not a justification for military operations under international law. "If infrastructure is understood to include civilian targets, civilians themselves or civilian objects, that would completely subvert the whole purpose of humanitarian law that was built up over the last hundred years," he said. It would make civilians justifiable targets because there was a political, and not military, advantage to be gained.

The mission had also decided to investigate the conflict's effects on Gaza's economy and infrastructure, especially its food supply, none of which was addressed in Israel's own report on the conflict, he continued. In doing so, the mission had concluded that the sort of destruction created by the bombing of Gaza's only flower factory, a chicken farm and hundreds of factories, as well as the bulldozing of agricultural fields could not be justified by international law and "really had nothing to do with the reason Israel gave" for the conflict, namely the cessation of rocket fire into Israel. Details of those attacks were provided in an additional 34-page report by the United Nations Children's Fund (UNICEF), which also contained satellite imagery.

In evaluating the effects of Palestinian rocket attacks on the civilian population in southern Israel, the report details the effects on cities and populations that fell within the rockets' range, particularly the terror felt and the effects on schoolchildren. It was a matter of luck, as well as the preventive measures taken by the Israeli authorities, that the death toll had not been higher than it was. The report was critical, however, that those protections were apparently not extended to the Palestinian population in the same way.

He said the report also detailed the mission's investigation into the many human rights violations that had been perpetrated in Israel, the West Bank and Gaza. There, it dealt with the intra-Palestinian struggle among various factions, as well as political assassinations and torture against Hamas and Fatah supporters.

In reaching its conclusions and recommendations, the mission had focused on establishing an appropriate level of accountability, he said, adding that it had considered referring both the firing of rockets and mortars and the operations of the Israel Defense Forces to the International Criminal Court. In his estimation, he regarded Israel's efforts thus far to investigate allegations of war crimes had been "pusillanimous". On the Palestinian side, there had been a "complete absence" of any investigation aimed at stopping or deterring the unlawful rocket and mortar attacks on Israel.

In the end, the mission had decided to give full recognition to the concept of complementarity, he said. It had been recognized by the Rome Statute that the first choice in an incident was domestic investigation. It was only where such domestic activity was not possible that the International Criminal Court could accept jurisdiction. While the mission was critical of both sides for having done far too little in that regard, it had concluded that, although there might be unwillingness, there was ability. Israel was clearly able to hold open, transparent investigations. In Gaza, courts and lawyers were operating, and if there was a will, investigations could be held.

Asked to respond to arguments, particularly in the Arab world, that Israel's alleged war crimes were much bigger than those of militant groups firing rockets, he stressed that the mission had been fact-driven and law-driven. Israel's Government had been invited to put forward issues and incidents that should be investigated. The mission itself had not chosen to give more attention to one side over the other, but had dealt with the facts it had found on its visit to Gaza and those on which Israelis had provided information. Particularly significant in that work had been the information provided by civil society and non-governmental organizations in Israel.

He went on to explain that the concept of proportionality was not a comparison of one side's actions versus those of the other, but referred to action taken by one side to achieve a legitimate military purpose. It also related to the number of civilians killed and force used in achieving that objective. It was possible for the killing of one person to be disproportionate, and the killing of 1,000 to be proportionate.

Asked how quickly the Secretary-General should proceed to the Security Council with the report, as well as when the International Criminal Court Prosecutor should take action, he expressed hope it would be "as soon as possible". The possibility of accountability was new and should be prized. Moreover, it was important that justice be done where the victims were concerned as a matter of urgency. The establishment of truth by respected institutions, particularly domestic institutions, was essential.

Still, he said, the Security Council would need to trigger the six-month period under Chapter VII. The committee it established would then report back to the Council within six months, after which the Court might be involved.

He later added, in response to a question about the report's focus on ending impunity, that, as an optimist, he hoped that the Council would respond positively to the report. He would be disappointed if any permanent member objected to undertaking domestic investigations.

Responding to a question about Israeli investigations, and particularly his judgment that they had been "pusillanimous", he stressed that the real point was that the Israeli investigations to date had been conducted secretly by the military and had relied only on evidence provided by soldiers. Only now, seven months later, and only in a few cases, were they talking to anyone affected by those actions.

He said, when asked if he had any personal reflections as a Jew on Israel's conduct, that he had had an association with Israel his whole life. His mother had been an active Zionist before his birth. "As a Jew [...] it's obviously a great disappointment to me – putting it mildly – that Israelis have behaved in the manner described in the report".

Asked who had come to speak to the mission, he said the idea of public hearings had resulted from concerns that the mission was unable to visit southern Israel. Preference had been given to victims, including, among others, a woman doctor from Sderot who was a victim of a rocket attack.

Pressed on whether the General Assembly had the legal ability to ask for a war crimes tribunal separately from the Security Council, he clarified that the General Assembly should request the Security Council to report to it on the matter. While the Assembly could possibly ask for a war crimes tribunal on its own under "acting for peace", the mission had not asked for or recommended such a course of action.

Asked who specifically would be referred to the International Criminal Court since States as a whole were not generally referred, he said the Security Council had the power under Chapter VII of the United Nations Charter and article 13 of the Rome Statute to refer any situation to the Criminal Court. Its jurisdiction would in turn apply to those responsible for the war crimes. The mission had not named a single person as responsible parties for the crimes, but had simply evaluated if those crimes had been committed. Naming them was work for a prosecutor.

Asked about attempts to discredit the mission before its report was even released, he said that while it might have been inevitable, it was regrettable. However, it was grossly wrong to label a mission or a report as being “anti-Israel”. Indeed, it was in the interest of Israel – particularly the people of Israel – and the Palestinian authorities that allegations of such magnitude be investigated.

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