

## FAQs on the Goldstone Commission Report

### **Q: Did Congress rush to pass the resolution opposing the Goldstone report?**

**A:** The reason this issue had to come up as quickly as it did was because the U.N. General Assembly was scheduled to vote on the matter on Wednesday, Nov. 4. The goal of the resolution was to send a message to the world that the House of Representatives opposed further consideration of the report at the U.N. or other international fora. Passing this resolution—which was modified and worked on for several weeks by Foreign Affairs Committee Chairman Howard Berman (D-CA) and Ranking Member Ileana Ros-Lehtinen (R-FL)—after a vote at the U.N. would have undermined the power of its intent. Congress routinely considers and votes on bills that have not had hearings, some of them far more significant than a non-binding sense of Congress resolution.

There was no rush to judgment on the report, as several Members and other critics have suggested. The report was first published on Sept. 15, some seven weeks before the House vote. In fact, the administration rejected the report immediately upon its publication. The administration realized right away how "deeply flawed" the report is and that it should be seen as part of a larger effort to demonize Israel at the U.N. This debunks the notion that the House rushed a vote on something that required more review.

### **Q: Wasn't Judge Goldstone successful in changing the original mandate given to his commission in order to produce a more balanced report?**

**A:** The mandate given to the Commission was to investigate Israel's "aggression" and Israel's "massive violations" of human rights. Because it was so outrageously unfair and politically motivated, the government of Israel refused to cooperate. While Judge Richard Goldstone sought from the president of the Human Rights Council a broadened mandate to investigate Hamas' actions as well, the Human Rights Council never authorized any change in the mandate.

Additionally, a member of the Commission, London School of Economics Professor Christine Chinkin, decided before being selected to serve on the panel that Israel had committed war crimes. Chinkin signed a joint statement that appeared in the Jan. 11, 2009, Sunday Times of London. The statement declared Israel to be the aggressor and a perpetrator of war crimes, and began by "categorically rejecting" Israel's right to self-defense. Although the statement made a reference to the crimes committed by Hamas, the notion that someone had already concluded what had happened before conducting the investigation raises serious questions about the objectivity and honesty of the report.

The Obama administration has expressed deep concerns about the original mandate of the Goldstone Commission. U.S. Ambassador to the U.N. Susan Rice said the United States has "long expressed our very serious concern with the mandate that was given by the Human Rights Council prior to our joining the council, which we viewed as unbalanced, one-sided and basically unacceptable."

The creation of the Commission was supported by some of the most egregious human rights violators, including China, Egypt, Russia, Saudi Arabia and Cuba. No European Union members voted for the creation of the Commission, which was formed in January before the United States became a member of the Human Rights Council.

**Q: Why is this particular report so important? We've all known for years already that the United Nations is biased against Israel?**

**A:** While it would be easy to simply dismiss the Goldstone report as yet another example of the U.N.'s animus against Israel, the report raises key issues of universal jurisdiction and international law that could have long-term implications for Israel's autonomy and ability to defend itself against terrorism. The report recommends U.N. Security Council action under Chapter VII, binding international law that could lead to sanctions and prosecutions of Israeli officials and soldiers.

Similarly, the Commission's report puts into question the ability of democratic countries to investigate their own abuses and correct them independently. In the wake of the war, Israel established its own commission of inquiry to investigate charges of abuse. Under the report's recommendations, instead, non-democratic states who are the principal abusers of human rights would sit in judgment of democratic nation defending itself from years of terrorism. This is just the latest step in efforts to deligitimize Israel and its right to self-defense.

If Israelis are prosecuted for exercising the right of self-defense when attacked, then all democratic countries will be open to similar charges.

As Israeli Ambassador to the United States Michael Oren said, "I think this report creates a problem not just for Israel, but for all free democracies in the world. It's a victory for terror. It is a major setback for any ... democratic country that is having to face war against an un-uniformed terrorist organization in a densely populated civilian area. I don't think the United States would like to see a similar report mounted against its conduct of its operations in Afghanistan."

**Q: The report identified some important things, including possible war crimes committed by both sides. Why should we just reject the report in its entirety rather than letting the review process continue?**

**A:** Such reports coming out of the U.N. must be met with an extremely skeptical eye with the well-documented history of anti-Israel actions and statements that have come out of the world body, which is dominated by Arab and Islamic countries opposed to Israel. The Goldstone process was never about getting to the truth about the conflict in Gaza, but rather designed to pin the blame on Israel. Once the U.N. Human Rights Council, which has consistently focused on the alleged "crimes" of Israel since being formed in 2006, decided to investigate the Gaza conflict there was little question that the report would be credible regardless of the stature of the lead investigator. The whole process has been tainted by the Human Rights Council's blatant and virulent bias against Israel.

**Q: Isn't the Commission's report balanced because it criticizes Hamas?**

**A:** No. The bulk and the thrust of the report focuses on alleged Israeli violations, with far less space and attention paid to Hamas. While the Goldstone report criticizes Hamas' repeated rocket attacks against Israeli civilians, it directly equates the terrorist group's actions with Israel's acts of self-defense, making a mockery of international law and calling into question the right of any nation to defend itself from terror. In this respect, the report constitutes not "balance," but moral equivocation.

Indeed, the Commission's report wrongly accuses Israel of *deliberately* launching attacks on civilians for political purposes, failing to recognize Israel's actions in Gaza were part of a legitimate response to ongoing rocket and terrorist attacks by Hamas and other terrorist groups. Article 51 of the United Nations Charter clearly establishes the right of every nation to act in self-defense against those who willfully attack innocent civilians.

The report also ignores overwhelming evidence of Hamas' deliberate and callous use of civilian infrastructure to hide its terrorist activity. Assistant Secretary of State for Democracy, Human Rights and Labor Michael Posner slammed the Goldstone report for "its failure to deal adequately with the asymmetrical nature of [the Gaza] conflict or assign appropriate responsibility to Hamas for its decision to base itself and its military operations in heavily civilian-populated urban areas."

The fact that the Commission glancingly criticized some of Hamas' activities hardly confers legitimacy on a fundamentally distorted process.

**Q: Are the conclusions of the Goldstone report based on solid evidence?**

**A:** Top Obama administration officials have repeatedly expressed concerns about the sweeping nature of the report's conclusions. Assistant Secretary of State for International Organizations Ester Brimmer criticized the report's "unbalanced focus on Israel, its sweeping factual and legal conclusions, and many of its recommendations."

Assistant Secretary of State for Democracy, Human Rights and Labor Michael Posner said the report's conclusions are based on a lack of hard evidence. "The report makes extraordinarily negative inferences about the intentions of Israeli military commanders, senior political leaders, and the entire Israeli criminal justice system on the basis of a limited factual record and from those inferences draws condemnatory conclusions of law, treating accusations and inferences as fact," Posner said.

State Department spokesman Ian Kelly said that while the "report makes overly sweeping conclusions of fact and law with respect to Israel, its conclusions regarding Hamas' deplorable conduct and its failure to comply with international humanitarian law during the conflict are more general and tentative."

**Q: Why didn't Israel cooperate with the Commission?**

**A:** After considering the one-sided nature of the commission's mandate and the history of anti-Israel bias in the Human Rights Council, Israel decided not to cooperate with the Goldstone Commission. Israel already had cooperated with dozens of international investigations into the conflict in Gaza, including by the U.N. Board of Inquiry, the U.N. Environment Program (UNEP), the International Committee of the Red Cross and the Special Representative of the U.N. Secretary General on Children in Armed Conflicts.

Even if the UNHRC were less biased, there would be no need to mount an external investigation of this sort. The IDF conducted five major investigations into the army's conduct during the war, including the examination of allegations that U.N. facilities were targeted and an investigation into incidents in which large numbers of civilians were killed in the course of an operation. The findings of these investigations are currently being reviewed by the Military Advocate General in order to determine whether their findings should pave the way for the opening of criminal investigations. More than two dozen incidents have been found to warrant criminal investigation, an additional 27 incidents are still being examined while investigations into 45 incidents have been completed, with the determination that further action is not required. Many of the incidents highlighted in the Goldstone report have already been investigated under these Israeli legal mechanisms. All the findings of Israel's inquiries, including the decision not to open a criminal investigation, are subject to the judicial review of the Israel's Supreme Court.

Israel is a country ruled by law. Israel's robust Supreme Court has often ruled against government decisions, including several cases where it has required the IDF to move the route of the Israel's security barrier to lessen the impact on Palestinians in the West Bank. The

establishment of the Goldstone Commission represents the rejection of the very notion of Israel as a democratic nation with an independent judicial system capable of investigating the actions of its own citizens.

**Q: Was Hamas able to shape the work of the commission's investigation in Gaza?**

Israel's decision not to cooperate was vindicated by the unprecedented manner in which the "investigation" was conducted, including taking testimony of Palestinians in public under the watchful eye of Hamas officials. The Goldstone report itself says that witnesses may have feared retribution if they reported on Hamas' activities, yet the report does not discount their testimony. The report allowed witnesses to tell their version of events without following such testimony with probing or challenging questions.

**Q: Did Israel use excessive force during the Gaza war?**

**A:** More than 12,000 rockets and mortars were launched against Israel from Gaza between 2001 and 2009. Even after Israel evacuated all of Gaza, the rockets and mortars continued—6,000 were launched between September 2005 and January 2009. Despite the outcry from Israel's citizens for its government to defend them, Israel acted with great restraint. Only after 300 rockets and mortars were launched in a matter of days in December 2008 did Israel reluctantly decide to carry out a defensive operation to degrade Hamas' ability to attack Israel with impunity. Israel, like many democratic nations, faced the dilemma of taking actions to defend its citizens from rocket attacks and suicide bombers against terrorists who hide themselves behind civilians, a violation of international law.

Under international law, any state must attempt to minimize the number of casualties of its opponent as it seeks to achieve its military objective. Accordingly, Israel's actions focused on Hamas command centers, security installations, rocket launching sites, weapons stockpiles and weapons-smuggling tunnels. Israel also dropped leaflets and made hundreds of thousands of phone calls to targeted areas to warn citizens of impending action, giving up the element of surprise and putting the lives of its soldiers at risk. To reduce damage to civilian areas, Israel's army used the highest proportion of precision guided weapons in history to specifically target Hamas terrorists and their infrastructure.

While it is unfortunate that civilians died and were injured, the responsibility for the deaths and suffering clearly lies with Hamas. Hamas deliberately and cynically operated from within civilian areas, storing weapons in houses, schools and mosques and firing rockets from populated neighborhoods to make it more difficult for Israel to target terrorists and to increase the likelihood of civilian casualties when Israel takes action.

The responsibility for civilian casualties when civilians are used as human shields lies with the party that deliberately places them at risk, namely Hamas.

**Q: Now that the United States has rejoined the U.N. Human Rights Council and is more actively pursuing multilateral solutions to pressing global problems, how can we maintain our credibility if we try to block the recommendations of these type of "independent" investigations? Doesn't this send the opposite message to the Muslim world than the one that President Obama delivered in his Cairo speech?**

**A:** The United States' membership in the Council does not mean that it has abdicated its duty to speak out when bias and unfair attacks are leveled. The United States should use its position on the Council to effectuate change, stand up for its principles and fairness, and resist the continuing attacks on law-abiding, democratic states from those who are the real abusers of human rights. The United States should never abandon our core beliefs to placate those who refuse to expose the true injustices in the world.

In Cairo, the president reached out to the Muslim world in an act of good faith to work together to resolve differences. He did not offer to abandon key principles to curry favor.