

## Moshe Halbertal and the Goldstone Report: Part I & II

By Jerome Slater, ZMag, Jan. 03-05, 2010

As an academic of nearly fifty years, I take seriously that the core principle and highest calling of our profession is to seek and tell the truth, as best as one can. For those who know the full historical facts about the Israeli-Palestinian conflict, one of the most shocking and depressing phenomena is the extent to which many leading Israeli and American Jewish intellectuals and academicians ignore, conceal, or willfully deny them.

I am not speaking here of ordinary citizens, who might simply be unaware that many of the most cherished Israeli mythologies are historically unsustainable; rather I refer only to the media commentators, political scientists, historians, and even moral philosophers who regularly write about the conflict and whose distortions or outright falsifications cannot be explained away by ignorance.

What, then, does explain this situation? For some, their ideology is simply so impenetrable that the facts can't get through. For others, I assume that they knowingly, or at least semi-knowingly, conceal the truth because they fear that revealing it will harm Israel. If so, they are also wrong about the consequences -- over sixty years of Israeli repression of the Palestinians has done incalculable harm to Israel's own best interests. In any case, no matter what their motives, the academics who seek to defend Israel against the most reasonable criticisms betray their calling.

I intend to often write about such academicians. I begin here with Moshe Halbertal's attack on the Goldstone Commission ("The Goldstone Illusion") in the November 6th issue of *New Republic*. Halbertal is a Harvard PhD, a professor of Jewish thought and philosophy at Hebrew University, the author of a number of books on those subjects, and a former visiting professor at Harvard Law School. In light of those impressive credentials, together with the surface appearance of moderation and sophistication in Halbertal's argument, his attack has received wide and generally respectful attention.

Halbertal has four main arguments against the Goldstone Commission. First, he charges that in several ways it was biased against Israel. Second, he strongly suggests that by ignoring the allegedly new threat of "asymmetrical warfare," the Commission undercut Israel's right of self-defense. Third, he claims that Israel is a victim of double-standards, on the grounds that the allegedly unintended civilian casualties in Gaza were far less than those caused by U.S. actions in Afghanistan as well as by the US/Nato bombing of Serbia in the 1990s, neither of which have led to international condemnation. Finally, in the article's longest section Halbertal charges that the Commission's discussion of Israeli violations of human rights and war crimes are "false," "slanderous," and "the weakest, the most biased, and the most outrageous" part of its report.

Today I will examine Halbertal's first three arguments. Tomorrow, Part II, examines the question of whether Israel deliberately attacked civilians in Gaza. In addition, Part II argues that the Goldstone Commission, far from engaging in an unfair attack, in several ways actually understated the case against Israel, especially by accepting the premise that Israel, however unjust its methods, was acting in self-defense when it attacked Gaza.

**Was the Goldstone Commission Biased Against Israel?**

## The Mandate Issue

The Goldstone Commission was "biased" against Israel in a number of ways, Halbertal contends. He begins by arguing that the Commission exceeded its mandate, which in Halbertal's view was to focus "only on the Gaza operation." It had no right, he argues, (1) to consider "the context of the history that led to the war," or (2) to make "an assessment of Israel's strategic goals," or (3) to include "long sections on Israel's occupation of the West Bank."

In what he appears to think is a damning rhetorical question, Halbertal asks: "Why should a committee with a mandate to inquire into the operation in Gaza deal with the Israeli-Palestinian conflict at large?" His answer: "The honest reader of these sections cannot avoid the impression that their objective is to prepare a general indictment of Israel as a predatory state that is geared toward violating human rights all the time."

One might think that a moral philosopher would be interested in whether the Commission's conclusions were in fact accurate, even if they weren't within its "mandate." That aside, it is demonstrably false that the Commission exceeded its mandate. Although Halbertal claims that "unlike many who responded to the report, in praise or blame, I gave this immensely long document a careful reading," he evidently missed its very first paragraph, which stated the mandate: "to investigate 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 and 18 January 2009, **whether before, during or after.**" (emphasis added).[1]

Several paragraphs later, the Commission elaborated: "The Mission is of the view that the events that it was mandated to investigate should not be considered in isolation. They are part of a broader context, and are deeply rooted in the many years of Israeli occupation of the Palestinian Territory..." How could one argue with that? Indeed, if anything the Commission may have interpreted its mandate too **narrowly**, for it limited its historical review to the 2002-2008 period. To be sure, it did allude to the earlier history, drily noting that "Due to obvious space limitations, the historical context does not make reference to the numerous important events that took place during this period (such as the 1973 War, the Camp David Accords, the peace treaty with Jordan, the 2006 Lebanon War and many others)."

Perhaps space considerations were not the only factor -- the Commission might well have decided that a fuller review of the historical context would have made its report still more politically explosive, for it would surely demonstrate that while Israel doesn't violate human rights "all the time," it has been violating Palestinian human rights throughout the history of the Israeli-Palestinian conflict. Not being bound by political considerations, in Part II I will provide a brief overview of that history, particularly of Israeli attacks on civilians.

## The Commission's Methodology

As part of his overall argument that the Goldstone Commission stacked the deck against Israel, Halbertal asserts that the Commission's methodology precluded a fair analysis, for it did not interview Israelis but only Gazans, who were under the "watchful eye of Hamas authorities... rendering them vulnerable and partial." To be sure, he admits that it was the Israeli government that refused to cooperate with the Commission which, as its report stated, was even "prevented from travelling to Israel" or "meeting Israeli government officials." Halbertal concedes this was an Israeli "mistake;" nonetheless, he argues, it resulted in "a grave limitation... and methodological and empirical shortcoming" in the Commission's report.

It takes considerable chutzpah to make such an argument. By Halbertal's reasoning, any investigation designed to discover the facts about possible crimes would be illegitimate if the target of the investigation refused to cooperate. In any case, as Jeremiah Haber has pointed out, Halbertal's accusation that the Israeli version of events is not examined is "simply false....the Israeli version of events is on every page, culled from official reports, news reports, and websites...What Halbertal and most Israelis find galling about the report is that...[the Israeli version] is consistently rejected as less credible than the Palestinian testimonies. There are reasons for all this." [2]

The Commission devotes seven pages of its report to describing and defending its methodology, in light of Israel's refusal to cooperate. In ascertaining the crucial facts, the Commission states, it relied on hundreds of interviews, many public hearings, dozens of site visits, a wide variety of expert testimony and reports, and extensive reports by newspapers, international organizations, and human rights organizations, including those of Israel. As the Commission summed up, its "final conclusions on the reliability of the information received were made taking into consideration the Mission's assessment of the credibility and reliability of the witnesses it met, verifying sources and methodology used in reports and documents produced by others, cross-referencing the relevant material and information, and assessing whether, in all the circumstances, there was sufficient information of a credible and reliable nature for the Mission to make a finding in fact."

***None of the Commission's major factual findings have been refuted.***

## Hamas's Ideology

Another way in which the Commission was biased, Halbertal charges, is that it ignored Hamas' ideology: "there is no mention of Hamas's role and its ideology.... which calls for the destruction of Israel and the genocidal killing of Jews."

It is true that the Goldstone report does not discuss the legitimate issue of Hamas's religious fundamentalism and vehement anti-Semitism, especially as it is unmistakably revealed in the Hamas founding Charter. However, though the report could and probably should have made it explicit, its obvious reasoning was that it is Israeli and Hamas behavior and actions that matter, not their explanations, which in any case are disputable. Halbertal fails to notice that the Commission also didn't discuss Israeli ideology -- namely the religious and nationalist insistence that the occupied territories, known to the world as Jerusalem, the West Bank, and Gaza, but to many Israelis as "Judea and Samaria," belong only to Israel.

In any case, it is far from clear that Hamas's behavior is primarily driven by its ideology, as opposed to its determination to resist the Israeli occupation and repression of the Palestinian people. Moreover, there is increasing evidence that Hamas's ideology is less and less relevant to understanding its behavior, as I shall shortly argue. Finally, whatever the explanation of either Israeli or Hamas behavior, it is quite irrelevant to the question of whether Israel committed war crimes in Gaza: again, I can't improve on Jeremiah Haber: "Suppose the historical context had included...[the Hamas] anti-Semitic charter, its history of suicide bombings (briefly mentioned), its refusal to recognize Israel's right to exist? Of what significance would that be to Israel's conduct of the war and considerations of *jus in bello*?"

### **Did the Goldstone Commission Deny Israel Its Right of Self-Defense?**

It is striking that while strongly critical of the Israeli methods of war, in effect the Goldstone Commission accepted the premise that Israel did have a just cause, the right to defend itself against Palestinian rocket attacks. In Part II of this analysis, I will argue that this argument is unpersuasive, and the Commission may have committed a serious error in accepting it.

Despite the Goldstone Commission's acceptance of the self-defense argument, Halbertal argues that the report's criticisms of the Israeli methods had the effect of denying that right in practice. The Commission, he argues, failed to understand "asymmetrical warfare." He explains: "What was mainly a clash between a state and armies has turned into a clash between a state and paramilitary organizations." As a result, he strongly implies, even the possible Israeli excesses are primarily the fault of Hamas, which refuses to wear uniforms, disguises its militants as civilians, and mingles with the population in order to employ them as "human shields" against legitimate methods of self-defense. "When faced with such an enemy," Halbertal asks rhetorically, "what should Israel do?"

"Asymmetrical warfare" is hardly new, for it is merely the current jargon for guerrilla warfare, in which poorly-armed insurgents rise up against much more powerful state armies, necessitating that they don't make themselves easy targets. Of course there's a reason that Halbertal prefers the term "asymmetrical" to "guerrilla" warfare, for it implies that the asymmetries somehow give Hamas an unfair advantage. Although it is true that in guerrilla warfare it is more difficult to distinguish combatants from noncombatants, just war morality requires that every effort be made to do so -- as opposed to making the complexities an excuse for indiscriminate warfare, if not worse.

Two of Israel's leading political philosophers have provided appropriate responses

to Halbertal's logic and his complaint that the Goldstone Commission "does not state what the alternative should be." Jeremiah Haber writes that the Commission should not have been expected to counsel Israel on the appropriate military strategy to fight Hamas, and adds that "the report also doesn't counsel Hamas how to proceed with its war against Israel. (Putting on uniforms and sleeping in army camps? Not a great idea)."[3] Similarly, Zeev Sternhell asks, "What is it that Israel wants? Permission to fearlessly attack defenseless population centers with planes, tanks and artillery?"[4]

The obvious "alternative" to present Israeli policy is for it to end its occupation and repression of the Palestinians and allow the creation of a genuinely independent and viable state in the 23% of historical Palestine that remained after the end of the 1948 Arab-Israeli war. However, Halbertal considers that to be "an extreme position," held in Israel only by "the radical left."

### **Was the Israeli Attack Justified by the Principle of Last Resort?**

Just War theory includes the principle of "last resort," which requires that even in wars of self defense, every effort must first be made to resolve conflicts by peaceful means. As part of his argument that the Goldstone Commission effectively denied Israel its right of self-defense, Halbertal in effect claims that Israel met the last resort requirement by unilaterally withdrawing from Gaza in 2005, only to be met with Hamas's "unrelenting shelling of Israeli cities and villages," which "torpedoed" Israel's efforts to promote a peace settlement.

The facts are otherwise. To begin, there is a wealth of evidence that the main purpose of Ariel Sharon's withdrawal of Israeli settlements from Gaza was not to take a first step towards ending the overall Israeli occupation of the Palestinians, but on the contrary to gain U.S. consent to a consolidation of Israel's occupation of the much more important West Bank and East Jerusalem, as well as to ease the overall burden of the occupation not on the Palestinians but on Israel.

Dov Weisglass, a member of the Israeli government at the time as well as Sharon's closest personal friend and political advisor, described to *Haaretz* his "negotiations" with the Bush administration: "What I effectively agreed to with the Americans was that part of the settlements [i.e., the major settlement blocs in the West Bank] would not be dealt with at all, and the rest will not be dealt with until the Palestinians turn into Finns.... The significance [of the agreement with the United States] is the freezing of the political process. And when you freeze that process you prevent the establishment of a Palestinian state and you prevent a discussion about the refugees, the borders and Jerusalem. Effectively, this whole package that is called the Palestinian state, with all that it entails, has been removed from our agenda indefinitely." [5]

In any case, there was no true end to the Israeli occupation of Gaza, for Israeli forces retained control over its borders, coastline, and airspace; refused to allow Gaza a functioning airport or seaport; continued to control Gaza's electricity, water and telecommunications networks; and reserved the "right" to launch military incursions at will -- which it has repeatedly done since its "withdrawal." Consequently, as the Goldstone Commission concluded, "the international community continues to regard [Israel] as the occupying Power [which] has without doubt at all times relevant to the mandate of the Mission exercised effective control over the Gaza Strip." [6]

Finally, even if Israel had genuinely withdrawn from Gaza and ended all its other means of repression of its people, that hardly would have met the need and the right of the Palestinians as a whole for a viable independent state of their own. The Palestinians living in Gaza are not a separate nation from those living in the West Bank and East Jerusalem; to believe otherwise is the equivalent of believing that if in the 1770s the

British had withdrawn from New Jersey but continued to occupy New York, the residents of New Jersey would no longer have the right to take up arms in support of American independence.

### **Who "Torpedoed" the Chances for a Nonviolent Settlement?**

It was Israel rather than Hamas that was primarily responsible for the continuing cycle of violence. Prior to the Israeli attack there were a number of indications that Hamas was becoming increasingly amenable to, at a minimum, a prolonged ceasefire and perhaps even to a genuine political settlement. The Goldstone Commission pointed to some, but not even all of those indications.

#### Ceasefires

- According to ex-Mossad Chief Ephraim Halevy, in 1997 King Hussein of Jordan conveyed to Israel an offer from Khaled Meshal, the chief Hamas leader, to reach an understanding on a ceasefire to last 30 years. Israel not only ignored the offer, but a few days later, Israeli operatives tried to assassinate Meshal in Jordan.
- According to Matti Steinberg, former head advisor on Palestinian affairs to the Shin Bet, Hamas refrained from attacking civilians inside Israel until the Israeli fanatic Baruch Goldstein's February ~~2004~~ 1994 [typo corrected 1/6/2010] murder of twenty-nine Palestinians in a Hebron mosque. When Israeli prime minister Yitzhak Rabin refused to withdraw the settlers from Hebron in the aftermath of the massacre, Hamas then retaliated with suicide bombings of its own.
- Sporadic terrorist attacks on Israel in the ensuing years typically followed Israeli undercover operations that killed Hamas or other militants, and often civilian bystanders as well. Beginning in February 2005, Hamas unilaterally declared a ceasefire; while Israel then temporarily suspended its assassinations in Gaza it continued to target Islamic Jihad activists inside the West Bank. That led the Gazan wing of Islamic Jihad to declare it would not abandon its people in the West Bank and would retaliate, which it did with several rocket attacks inside Israel. Israel then responded by resuming its assassinations in Gaza.
- It was Israel rather than Hamas or even Islamic Jihad that violated the de facto truce that followed in the first months after the Israeli withdrawal of its Gaza settlements in August-September 2005, for Israel continued its extensive assassination operations in the West Bank.
- It is now known that soon after the January 2006 election of Hamas in Gaza, Ismail Haniyeh, the new Gazan prime minister, sent a written message to George Bush in which he offered Israel a truce for many years in exchange for a compromise political settlement; the Bush administration did not reply to this and additional overtures.[7] At about the same time, Hamas secretly conveyed a message to the Israeli government that it "would pledge not to carry out any violent actions against Israel and would even prevent other Palestinian organizations from doing so," provided Israel stopped its assassinations and military attacks in Gaza and the West Bank.[8]

- Israel continued its assassinations and other attacks on Hamas or Islamic Jihad leaders. According to the Israeli human rights organizations B'tselem and Physicians for Human Rights, throughout 2006 Israeli raids killed 660 Palestinians, most of them unarmed noncombatants and up to a third of them minors. Hamas did not retaliate and continued to press for a long-term truce - even Islamic Jihad stated that it would refrain from suicide or rocket attacks if Israel ended its attacks. Consequently, for the first ten months of 2006 there were no Hamas rocket attacks and very few from Islamic Jihad, which was prevented from retaliating against the Israeli attacks by stringent Hamas restrictions.
- In November 2006, following an Israeli artillery attack in which a shell struck several homes, killing 19 people, most of them women and children, Hamas retaliated with an attempted suicide bombing in Israel, its first such attack in nearly two years. Following that, however; in the next year there were few attacks inside Israel, whether by Hamas or Islamic Jihad. Consequently, even according to official Israeli records only seven Israeli civilians were killed in 2007.
- Nonetheless, throughout 2007-08 Israel stepped up its assassination and other attacks on militants in Gaza as well as the West Bank, using indiscriminate methods that resulted (according to an independent *Haaretz* investigation) in the killing of 816 Palestinians in Gaza alone, 360 of whom were civilians and 152 of them minors.
- In January 2008 Israel closed the border crossing points, drastically reducing supplies of fuel, electricity, and other crucial goods into Gaza. Hamas then briefly resumed firing rockets into Israel (few Israelis were killed), but in April the Hamas leader Khalid Meshal stated that Hamas was ready to stop attacking civilians if Israel did the same. As a result, in early June a negotiated six-month Israeli-Palestinian truce went into effect. According to Hamas, the ceasefire included an understanding that Israel would open the border crossing points and ease its economic sanctions and blockade. For awhile, Israel did allow a minor increase of goods into Gaza, but far less than Hamas had expected -- or, more to point, far from sufficient to truly lift the economic siege.
- In September and October of 2008 there were two Islamic Jihad rocket attacks but none from Hamas. Nonetheless, Israel then greatly tightened its siege of Gaza, especially over food supplies, medicines, fuel, and repair parts for water and sewage systems -- and six Hamas men were killed in a November 5th Israeli raid on a Gazan tunnel. Following that attack, Hamas fired rockets into southern Israel and announced it would no longer abide by the latest ceasefire agreement when it expired in December -- even so, it stated, it would be prepared to negotiate a new truce if Israel agreed to ease its siege.
- The Hamas offer was effectively confirmed by Israeli intelligence, for according to Israeli newspapers, just before the Israeli attack Shin Bet head Yuval Diskin told the Israeli cabinet that Hamas wanted to continue the truce if Israel accepted a ceasefire and ended its blockade. Israel refused these terms; even so, no Israelis were killed until after the full-scale Israeli attack on Gaza that began on December 27, 2008.[9]

Reflecting on this history, the Israeli columnist Yitzhak Laor wrote: "Who still recalls that before the war Israel rejected attempts to renew the tahadiyeh [truce]? Who still remembers that the months before the war were relatively quiet, despite the siege on Gaza? Who still recalls that the siege itself was a blatant violation of the tahadiyeh agreement, which Israel signed?"

In short, the chronology establishes that Israel has had many opportunities to bring about a negotiated end to missile or other terrorist attacks from Gaza, if that it had been its true goal. However, because its underlying purpose is to destroy all resistance to its continued occupation of the West Bank and external control over Gaza, using both economic siege and military force as its weapons, Israel has repeatedly provoked Palestinian violence.

### Political Settlement

Aside from its willingness to negotiate ceasefires or truces with Israel, there have also been a number of indications that Hamas may be in the process of moving towards accepting a two-state settlement rather than seeking to destroy Israel and regain all of Palestine. If so, Hamas would be following in the footsteps of Arafat's PLO, as well as of many other radical movements that became much more moderate when they had countries to run. Granted, there are no guarantees that Hamas will duplicate the evolution of the PLO, for it has remained committed -- at least verbally -- to its anti-Semitic founding ideology and 1988 charter, which explicitly states that it is a religious obligation to eliminate Israel and the Jews from the Islamic holy land.

It is clear that there are internal divisions within Hamas -- particularly between the relatively more moderate Hamas officials in Gaza, led by Ismail Haniyeh, and Hamas officials in exile, led by Khaled Meshal -- over the extent to which this ideology must give way to practical realities. Even so, by 2006 there were a number of signs of emerging Hamas flexibility, even among the hardliners.

- In January 2006 Hamas published its official platform for the upcoming Palestinian elections; it included no language calling for the destruction of Israel and the creation of an Islamic state in all of Palestine. To be sure, the apparent change in Hamas's position was ambiguous, for it continued to proclaim that it did not reject any means, "including armed resistance," in order to "end the occupation... and establish a state whose capital is Jerusalem."

As Israeli analysts noted, the Hamas platform did not specify whether such a state would be limited to the West Bank and Gaza and did not clarify whether "the occupation" to be ended referred only to the post-1967 Israeli expansion or to the entire Jewish state.[10] Even so, the very ambiguity greatly differed from earlier Hamas extremism and even suggested that despite its ideology, the operational goals of Hamas now might not substantially differ from those of Abbas and other Palestinian moderates.

- Soon after its election, Hamas began to go public with its new position. For example, in May 2006 Haniyeh told *Haaretz* that the Hamas government would agree to a long-term truce with Israel if it withdrew to the 1967 lines, and a few months later he told an American scholar that "We have no problem with a sovereign Palestinian state over all of our lands **within the 1967 borders**, living in calm." [11] (emphasis added)

- Perhaps even more important was the May 2006 joint statement of senior Hamas and Fatah members who were imprisoned in Israel. The prestigious "Prisoner's Declaration" went much further than the earlier Hamas overtures: abandoning the previous ambiguities, it called for the establishment of a Palestinian state "in all the lands occupied **in 1967**," and reserved the use of armed resistance **only in those territories**.<sup>[12]</sup> (emphases added)

Israel and its U.S. ally ignored all these overtures or contemptuously termed them "tricks"; indeed, it is now known that in the months after the 2006 Hamas electoral victory in Gaza, the Bush administration sought to foment a Fatah coup against Hamas.<sup>[13]</sup> The coup attempt not only failed, but was undoubtedly instrumental in the Hamas decision to seize total control of Gaza in June 2007. Nonetheless, throughout 2008 Hamas's political position continued to evolve, including that of its hardliners: by early 2007 there were indications of a shift in Khaled Meshal's position, and in April 2008 he publicly announced his support of a ten-year truce if Israel withdrew to the 1967 borders.<sup>[14]</sup>

It is undeniable that the Hamas position still contains many ambiguities and inconsistencies. First, it calls only for a truce rather than a permanent settlement -- but at various times Hamas officials have suggested that the truce "will be renewed automatically" and extended indefinitely.<sup>[15]</sup> Second, sometimes Hamas officials say that they accept Israel as a "fact" but will "never recognize its legitimacy," but on other occasions they strongly imply that their formal position has no practical importance and could eventually change.<sup>[16]</sup> One day a Hamas official sounds particularly conciliatory and the next day other officials back away. Sometimes Hamas stresses its commitment to the return of all Palestinian refugees to Israel, perhaps the most difficult obstacle to a permanent settlement, but at other times it downplays the issue. And so on.

Yet, the general direction is clear and in historic terms the evolution has been rapid, as has even been acknowledged by some former high-level Israeli government officials. For example, in late 2006 Yossi Alpher, a former deputy head of the Mossad and a pillar of the Israeli establishment, wrote: "Hamas' conditions for a long-term hudna or ceasefire...are almost too good to be true. Refugees and right of return and Jerusalem can wait for some other process; Hamas will suffice with the 1967 borders, more or less, and in return will guarantee peace and quiet for ten, 25 or 30 years of good neighborly relations and confidence-building."<sup>[17]</sup> Going even further, Ephraim Halevy, the former head of Mossad, does not even qualify his observations as "almost too good to be true," for he states that Hamas militants "have recognized...[their] ideological goal is not attainable and will not be in the foreseeable future." Instead, "they are ready and willing to see the establishment of a Palestinian state in the temporary borders of 1967." Halevy concludes, dryly, that "Israel, for reasons of its own, did not want to turn the ceasefire into the start of a diplomatic process with Hamas."<sup>[18]</sup>

As well, many other Israeli analysts today (including Ami Ayalon, past head of the Shin Bet) now argue that the Hamas evolution is meaningful and that the organization is not al-Qaeda but is becoming a movement fighting for limited national goals rather than uncompromising religious ones. Some have even gone so far as to suggest that Hamas's anti-Semitism just might have something to do with the decades of Israeli occupation and repression rather than being simply an *a priori* and immutable product of religious fanaticism.

In the final analysis, the key point is that the only way to resolve the ambiguities is through negotiations in which Hamas's true intentions would be tested. Since no serious peace proposal requires Israel to withdraw from the occupied territories until a reasonable and enforceable political settlement is reached, the Israeli government's

refusal to talk to Hamas decisively demonstrates that it is Israel at least as much as Hamas that is unwilling to accept a genuine two-state solution.

### **Was Israel a Victim of Double Standards?**

Halbertal's third argument, like those of many other defenders of Israeli policy, in effect is that Israel is a victim of a moral double standard. The US/NATO bombing of Serbia in the 1990s and the military actions of the U.S. and its allies in Afghanistan today have killed far more civilians, he argues; yet it is only Israel, seeking merely to defend itself against a "terror organization," that faces serious charges of war crimes.

It is not a convincing argument. To begin with, it is a moral nonsequitur: even assuming that Halbertal is right about the facts concerning civilian casualties in Afghanistan or elsewhere, the behavior of other states is irrelevant to the question of whether Israel committed war crimes in Gaza. At most, it might justify a rather pathetic complaint that the war crimes of others are worse than those of Israel. However, even that argument is not available to Halbertal, for he denies that Israel (possibly excepting some individuals) committed war crimes. Consequently, the structure of his argument comes close to this: We didn't do it, and besides others were worse.

Second, unlike Israel's behavior towards the Palestinians, the allies didn't occupy and repress the people of Serbia and Afghanistan and they had just causes for going to war: humanitarian intervention in the case of Serbia, self-defense (and, for that matter, humanitarian arguments as well) in the case of Afghanistan following 9/11. These are not arguments available to Israel -- not even self-defense, as I shall argue in Part II.

Third, in the case of Afghanistan -- as well as in Iraq, not discussed by Halbertal but often cited by other critics of the Goldstone Report -- there is no reason to suspect the allies of deliberately indiscriminate attacks, since the killing of civilians clearly undermines the war effort, as openly acknowledged by top U.S. leaders. For that reason, the argument is persuasive that civilian destruction in Afghanistan and Iraq genuinely is unintended and unwanted collateral damage. Of course, that doesn't preclude the conclusion that greater efforts should be made to minimize civilian casualties, for both moral and strategic reasons. In fact, that is the conclusion of the U.S. military, which has greatly cut down on inherently indiscriminate attacks in Iraq, and is reportedly now doing the same in Afghanistan. On the other hand, the Israeli military has concluded that in the next war it must take "much harsher action." [19]

We can have a pretty good idea of the kind of "much harsher action" that Israel has in mind, for its entire history demonstrates that it has been consistently indifferent -- at a minimum -- to the moral consequences of its repeatedly indiscriminate methods of warfare. Worse, the evidence is very strong that it has sometimes deliberately targeted civilians and/or their crucial infrastructures -- both in the past and in Gaza since its 2002 "withdrawal." I will have much more to say about this in Part II.

Finally, there is a much more persuasive case that Israel historically has been the *beneficiary* rather than the victim of double moral standards. For reasons of both Holocaust guilt and the widespread Gentile acceptance of our own Jewish self-image -- a particularly civilized and moral people, a "light unto the Nations" -- it has been far more typical for Westerners of good will to disregard the evidence and minimize rather than exaggerate the extent of Israeli criminality towards the Palestinians.

In a way, the true moral double standard is really a high compliment to the Jewish people, for the Western world hasn't been able to quite believe the extent to which Israel is making a mockery of Jewish and Western moral values. [20] However,

this innocence born of good will is coming to an end, and a good thing too: a withdrawal of the West's moral free pass for Israel might be the best hope that it can be saved from itself.

### Endnotes

1. Goldstone told Bill Moyers that he wrote the mandate himself, precisely because he thought the original one from the UN Human Rights Council was one-sided, in that it focused only on Israel. ("Bill Moyers Journal," PBS, Interview with Richard Goldstone, October 25, 2009.)
2. [The Magnes Zionist](#), November 9, 2009.
3. [The Magnes Zionist](#), November 8, 2009. Subsequent to the Report, in his interview with Bill Moyers Goldstone did comment that a morally appropriate military strategy would have been commando operations.
4. "With a Conscience That Is Always Clear," *Haaretz*, October 30, 2009.
5. Cited, among others, by Henry Siegman, " Hamas Is Not the Real Problem," *Haaretz*, October 23, 2009.
6. And not just the international community. As early as March 2005, B'tselem, the leading Israeli human rights organization, released a report -- entitled "One Big Prison" -- on the continuation of Israeli repression in Gaza after the withdrawal of the settlements.
7. Barak Ravid, "In 2006 Letter to Bush, Haniyeh Offered Compromise With Israel," *Haaretz*, November 10, 2008.
8. Schiff, " Hamas Says Ready for Two-State Solution," *Haaretz*, April 7, 2006.
9. "The National Choir," *Haaretz*, Sept 21, 2009.
10. Arnon Regular, " Hamas Platform Mentions Armed Struggle, But Not Israel's Destruction," *Haaretz*, January 11, 2006.
11. Scott Atran, "Is Hamas Ready to Deal?" *New York Times*, August 17, 2006.
12. Arnon Regular, " Hamas, Fatah Prisoners Agree to Two-State Solution in Joint Draft," *Haaretz*, May 11, 2006.
13. Fatah is the largest group within the PLO confederation. The investigative journalist David Rose obtained the confidential documents describing the plot, later corroborated by U.S. sources; see David Rose, "The Gaza Bombshell," *Vanity Fair*, April 2008.
14. Zvi Barel, "Meshal Declaration a Basic Shift in Hamas Position," *Haaretz*, January 11, 2007; Avi Issacharoff, "Meshal: Hamas Backs Palestinian State In '67 Borders," *Haaretz*, April 2, 2008; Barak Ravid, "Meshal Offers 10-Year Truce for Palestinian State On '67 Borders," *Haaretz*, April 21, 2008.
15. Danny Rubinstein, " Hamas PM Haniyeh: Retreat To 1967 Borders Will Bring Peace," *Haaretz*, May 23, 2006. A major story in the British news magazine, *Economist*, reported that "depending on circumstances on whom in Hamas you talk to" the truce "could be 18 months, ten years, or even 50." ("Will the relationship change? Yes it can," February 12, 2009.)
16. The *Economist* assessment put it this way: "Some of the religious zealots may well believe in the obnoxious charter. Others, including Meshal and Haniyeh, try to brush it off and then, if pressed, dangle it as an item for negotiation, much as Fatah used the

dropping of the PLO's charter, which equally rejected Israel's existence, as a bargaining tool."

17. Yossi Alpher, "Problematic option," [bitterlemons](#), November 20, 2006.

18. Quoted in Johann Hari, "The True Story Behind This War Is Not the One Israel is Telling," *The Independent*(of London), December 29, 2008.

19. There have been a number of such stories in *Haaretz*. Even the *New York Times*, normally reticent about such matters, has taken note: "Tough Military Stance Stirs Little Debate in Israel," Isabel Kershner, December 25, 2009.

20. In a recent joint statement -- tellingly entitled "Failing Gaza" -- Amnesty International UK, Oxfam, and fourteen other European human rights, church or medical groups charge that by largely ignoring Israel's continuing repression, the governments of Western Europe are failing their moral responsibilities to the Gazan people.

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<http://www.zmag.org/znet/viewArticle/23551>

## PART 2

### Just War Theory and the Goldstone Report

The Commission's analysis was clearly guided by just war moral philosophy as well as by the international laws of war that embody its principles. The three most important principles governing methods of warfare are those of proportionality, discrimination, and noncombatant immunity. Noncombatant immunity is easily understood: deliberate attacks on innocent civilians are categorically prohibited. However, the other two principles are more complex.

The proportionality principle, or constraint, requires that even in a just war, the military measures that are employed must in some sense be proportional to what is at stake. The application of this criterion in many cases is difficult, ambiguous, and a matter of judgment over which reasonable people may disagree, since it requires weighing incommensurate values, such as the relative values of destroying important military targets in wars of self-defense versus the value of human lives, on both sides.

However, the Israeli attack on Gaza is not one of the difficult cases. Even those who have accepted the idea that Israel has a legitimate right to defend itself against Hamas attacks have widely criticized the Israeli methods as disproportional. The sheer scale of the Israeli attacks on Gaza makes that an easy judgment to reach.

From 2005 until the eve of the Israeli attack on Gaza, over 1200 Palestinians were killed by Israeli forces. During this same period Israeli civilian casualties from Palestinian attacks dropped dramatically: from 2001 through 2005, about 680 were killed in terrorist attacks; in 2006 seventeen were killed; and in 2007, just seven.[1] In the course of the attack itself, Israel killed approximately 1400 Palestinians and inflicted vast economic and property damage. The Israelis suffered almost no property damage and lost three civilians and thirteen soldiers (several of them by "friendly fire").

The principle of discrimination requires that all parties to a war must make every

effort to discriminate (or distinguish) between military and civilian targets. According to this principle, even those fighting for a just cause are both morally and legally prohibited from attacking military targets if the foreseeable consequences to nearby civilians are unacceptably high. While in theory an indiscriminate attack on legitimate military targets is not the same as a deliberate attack on civilians, in some cases the differences between them become legally as well as morally inconsequential -- such as when an apartment house thought to contain enemy leaders is bombed, killing dozens of innocent people.

In certain circumstances some level of collateral damage may be morally defensible, but only if three conditions are met: the military value of the target must be high, the harm to civilians and their infrastructures must be relatively low, and the attacking military forces must be willing to accept casualties of their own in order to keep that collateral damage as low as possible -- for example, when enemy combatants are located within densely populated areas, they may justly be attacked only by direct engagement, not by long-range and inherently indiscriminate weaponry, such as artillery, offshore shelling, or air bombardment.

To make the obvious explicit, the three moral principles governing how force may be used in warfare become relevant only in wars fought for just causes, like self-defense. Absent a just cause, **no** force can be used, period -- including discriminate weapons against legitimate military targets.

#### The Commission's Findings

In considering whether Israel had deliberately attacked civilians in Gaza, the Commission examined a number of matters: Israel's economic blockade or siege, a number of explicit Israeli statements before the attack, the use of indiscriminate weapons during the attack, the deliberate bombing of economic and other civilian infrastructure targets, and eleven "incidents" in which the evidence was compelling that Israeli soldiers directly and intentionally killed civilians.

- **The economic blockade.** Even prior to the Israeli attack at the end of 2008, the Commission observed,

"the Gaza Strip had been for almost three years under a severe regime of closures and restrictions on the movement of people, goods and services. This included basic life necessities such as food and medical supplies, and products required for the ordinary conduct of daily life such as fuel, electricity, school items, and repair and construction material. Adding hardship to the already difficult situation in the Gaza Strip, the effects of the prolonged blockade did not spare any aspect of the life of Gazans.... Prior to the military operation the Gaza economy had been depleted, the health sector beleaguered, [and] the population had been made dependent on humanitarian assistance for survival and the conduct of daily life."

This economic siege, the Commission concluded, "amounted to collective punishment intentionally inflicted by Israel on the people of Gaza...in furtherance of an overall policy aimed at punishing the Gaza population for its resilience and for its apparent support for Hamas, and possibly with the intent of forcing a change in such support."

Since the end of the twenty-two day attack, the situation in Gaza has continued and may have in some respects even worsened. In a recent report,

entitled "Failing Gaza," Amnesty International UK, Oxfam, and fourteen European church and medical organizations provide the most complete, impressively detailed, and damning analysis of Israel's "policy of collective punishment," which in no way ended after Israel concluded its direct military attacks a year ago.[2] The economic blockade or siege, the report shows, has prevented the reconstruction or rehabilitation of the destroyed homes, businesses, farms and orchards, electrical power systems, water networks, sanitation systems, schools, and public health institutions. The ongoing consequences have been devastating for the economic, educational, physical, and psychological health, welfare, and human rights of the Gazan people.

- **Israeli policy statements.** The Goldstone Commission discussed "the development of strategic objectives in Israeli military thinking" in the 2002-08 period, and reviewed a number of "official Israeli statements on the objectives of the military operations in Gaza... to the effect that the use of disproportionate force, attacks on civilian population and destruction of civilian property are legitimate means to achieve Israel's military and political objectives."

The Commission quoted from several Israeli military writings outlining the supposedly new strategy -- actually, as I shall shortly argue, not new at all. It also quoted statements by Israeli cabinet members, including Foreign Minister Tzipi Livni: "We have proven to Hamas that we have changed the equation. Israel is not a country upon which you fire missiles and it does not respond. It is a country that when you fire on its citizens it responds by going wild -- and this is a good thing." Just how wild was implied in another high-level statement that didn't even make it into the Goldstone Report: Deputy Defense Minister Matan Vilnai warned that Gazans were "bringing upon themselves a greater Shoah, because we will use all our strength in every way we deem appropriate." [3]

Some military spokesman and high-level officers openly admitted -- even bragged -- that they paid no intention to the principles of proportionality and discrimination. For example, several months before the war a leading Israeli general told the *Haaretz* military correspondent that in the next war the army was *planning* to violate both the proportionality and distinction rules: "We will wield disproportionate power against every village from which shots are fired on Israel, and cause immense damage and destruction....Efforts to hurt [rocket] launch capabilities are secondary."

And that is indeed how Israel fought the war. Said one officer: "We are very violent. We are not shying away from *any method* of preventing casualties among our troops." (emphasis added) An Israeli general confirmed this, telling Israeli journalists that the military strategy was to utilize tremendous firepower in order to protect the ground forces during the fighting in built-up areas and acknowledging that this was causing a great deal of damage to civilians and their infrastructure.[4]

### Indiscriminate Attacks

The Goldstone Commission accepted the general assessment of various Israeli and international human rights groups that at least half of the 1400 Palestinians killed in the course of the attack were civilians, up to 40% of whom were women and children.

These civilian casualties, the Commission found, occurred because of Israeli bombing, missile attacks, tank fire, and the employment of **white phosphorous** and other indiscriminate weapons in populated areas. On several occasions, Israel bombed or shelled civilian apartment buildings, alleging they were harboring "terrorists" or their weapons -- as if that would legitimate such attacks. In one such attack, Israeli forces shelled a civilian residence containing 110 people, 30 of whom were killed;[5] the Goldstone Commission subsequently found that 22 members of a single extended family were among them.

True (as Halbertal emphasizes), on some occasions efforts were made to warn civilians to leave targeted areas, but for the most part Israel engaged in air, artillery, and tank attacks on homes, buildings, and entire areas known to contain far more civilians than combatants, and therefore certain to result in massive "collateral damage" to civilians. Put differently, it's not just that the Israeli forces could have tried harder to avoid this result -- as Halbertal concedes -- but rather that in most cases it didn't try at all.

Perhaps it didn't try because it was indifferent to civilian casualties, but it is also possible that it didn't try because it believed that civilian suffering added to Israel's "deterrence," a euphemism for intimidating Palestinian resistance. In a remarkably blunt statement that didn't even make it into the Goldstone Commission's report, the *Haaretz* military analyst Reuven Pedatzur concluded: "It appears the senior command decided to shock the Palestinians by killing as many people connected to Hamas as possible. The assumption was, apparently, that killing several hundred people would make the Hamas leaders surrender or plead for a cease-fire. This is one of the reasons the air attack was carried out as a surprise. The IDF, which planned to attack buildings and sites populated by hundreds of people, did not warn them in advance to leave, *but intended to kill a great many of them*, and succeeded." [6] (emphasis added)

In short, the evidence fully justifies the Commission's conclusion that it was Israeli **policy** (the word appears repeatedly throughout the Commission report) to launch indiscriminate, "deliberately disproportionate," and "systematically reckless" attacks on densely populated areas of Gaza, in order to "punish, humiliate and terrorize a civilian population."

- **Attacks on civilian infrastructure.** The Commission found that Israel had intentionally targeted -- that is, not "collaterally damaged" -- the Gazan economy and the civilian infrastructure and institutions. In a number of attacks since 2006 (that is, not just in the 2008-09 attack), the Commission elaborated, Israel has "deliberately and systematically" engaged in extensive and "wanton" attacks on private homes, schools, government institutions and police stations, hospitals and ambulances, factories and industrial facilities, fuel depots, electrical generation plants, power lines, water wells and storage tanks, sewage disposal plants, and various food production systems, including orchards, greenhouses, and fishing boats -- all "for the specific purpose of denying them for their sustenance to the population of Gaza." [7]
- **Deliberate killings.** The Commission investigated and provided detailed evidence of at least eleven "incidents," as it carefully put it, in which Israeli forces intentionally and directly killed a number of civilians.

Taking all of these actions into consideration, the Commission concluded that Israel had committed a variety of war crimes, some of which "could lead a competent court to find that...a crime against humanity has been committed."

### **The Halbertal Defense**

Halbertal does not wish to defend all of Israel's behavior, although he pointedly notes that many of the testimonies in the Goldstone Report "are Palestinian testimonies...collected in Gaza, where the watchful eye of Hamas authorities always looms, rendering them vulnerable and partial." Even so, he concedes that "Israel's siege of Gaza, and its harsh effect upon general civilian life, is morally problematic and strategically counterproductive"; that during the attack "it might well be that Israel should have done more than it did to minimize collateral deaths"; that "on some occasions" Israel appears to have forced Gazan civilians to serve as "human shields," a tactic that is illegal under Israel's own laws as well as the IDF code; that the allegations that Israel destroyed civilian "property" are "disturbing" and need to be investigated; and that perhaps there were "a few individual incidents... of cold-blooded murders" which call for "criminal investigations of particular soldiers."

None of these concessions prevent Halbertal from concluding that the Goldstone Report is "as a whole...is a terrible document"; what he finds particularly "outrageous," "false," and "slandorous" is the Commission's finding that "Israel intentionally targeted civilians as a policy of war." His attempt at rebuttal primarily rests on the following arguments:

- **The IDF Code Prohibits Attacks on Civilians.** A substantial part of the Halbertal article is devoted to quoting and explicating the Israeli military's formal code: "the IDF code states that soldiers have to do their utmost to avoid the harming of civilians." In addition, he quotes military leaders as saying that they take extraordinary measures to avoid civilian casualties.[8]

Such an argument, which essentially (there are a few qualifications) heavily relies on formal codes and official statements as decisive evidence of actual Israeli behavior, is all but self-refuting. It not only flies in the face of -- nor, for that matter, even addresses -- the detailed findings of the Goldstone Commission, but also of the widespread contemporary reports of what was happening in Gaza by leading U.S., European, and Israeli newspapers and journalists, as well as subsequent investigations and reports by international and Israeli human rights organizations. Among the international organization reports or statements are those of the Red Cross, CARE, Oxfam, Physicians for Human Rights, Amnesty International, Human Rights Watch and a number of U. N. agencies; the Israeli human rights organizations include B'tselem, Israeli Physicians for Human Rights, and Breaking the Silence. The latter report includes accounts by some 30 Israeli soldiers who participated in the attack and provide further confirmation and details of Israeli war crimes.

- **The Casualty Ratio.** Halbertal writes that according to some studies of civilian casualties in Gaza, for every militant that was killed, two or three noncombatants (depending on how noncombatants were defined) were killed: a ratio of 1:3, or perhaps 2:3. "There are 1.5 million people in Gaza and around 10,000 Hamas militants, so the ratio of militants to civilians is 1:150," Halbertal writes, triumphantly concluding that "If Israel targeted civilians intentionally, how on earth did it reduce such a ratio to 1:3 or 2:3?"

The argument is a non-sequitur, for the Commission did not accuse Israel of intending to kill as many Palestinians as it could (that is, mass murder, or even genocide) -- merely of war crimes, an accusation which cannot be refuted by arguing that it could have killed a lot more.[9]

- **Attacks on property are not the same as attacks on people.** Finally, Halbertal wishes to make a sharp distinction between the "intentional destruction of property and attacks against civilians," which the Commission, he charges, "lumped together." To be sure, Halbertal's defense of Israeli behavior here is not unqualified, for he concedes that some of the Israeli destruction of civilian property, especially in the last days of the attack, may have constituted "immoral deterrence" by the possibly "reckless use of firepower." He lists his concerns about attacks on "property," starting with "one of the most disturbing," the bulldozing of a chicken farm that killed 31,000 chickens. Second, he is concerned about reports of Israeli bombing of civilian homes. Third, in his final "order of severity," Halbertal criticizes the bombing of "civilian infrastructure," although he refers only to attacks against a flour mill, water wells, and sewage pipes.

Leaving aside Halbertal's rather odd order of prioritizing his moral concerns, the consequences of attacks on "property" or civilian infrastructure are often not meaningfully distinguishable from direct attacks on people. While claiming he opposes the Israeli blockade as well as direct attacks on non-military economic targets, Halbertal consistently understates the nature and the consequences of those Israeli policies and behavior, for direct Israeli attacks on the Gazan civilian infrastructure (as discussed above) have hardly been limited to the three instances he cites.

Consequently, there is little basis on which to challenge the Commission's conclusion that the three weeks of intensive Israeli attacks that began in December 2008 were "designed to punish, humiliate and terrorize a civilian population, radically diminish its economic capacity to work and to provide for itself, and force upon it an ever increasing sense of dependency and vulnerability."

The consequences are obvious and because of the continuing Israeli blockade are ongoing. Both the Goldstone Commission and a number of recent international studies have reported that unemployment is at least 50%, that 80% are estimated to live below international poverty lines, that 75% suffer from malnutrition, that children have been especially hard-hit, and so on. Put differently, whatever the number of Gazan civilians killed during the war, the cumulative effect of the Israeli blockade and military attacks on crucial economic and societal institutions will surely lead tens if not hundreds of thousands more to suffer and die, even if somewhat more indirectly and slowly than from direct attacks on people.

### **Israeli Policy and Noncombatant Immunity**

That the Israeli military attacks on Gaza have massively violated the just war principles of proportionality and discrimination is beyond serious dispute. Moreover, it could well be argued that the Israeli attacks were so indiscriminate as to erase any meaningful distinction between indiscriminate and deliberate attacks on civilians.

Still, let us for the moment maintain the distinction: so far as I am aware there is no current proof that intentionally killing civilians as a matter of state policy was part of Israel's strategy in its attack in 2008-09.

That said, the previous history of Israel's attacks not only on crucial civilian infrastructures but on civilians directly at least justifies the suspicion that it did the same in Gaza. While space considerations preclude such an in-depth review,[10] here is a brief summary of the most important events:

- During the 1930s, in **their** struggle for independence, Zionist organizations like the Irgun and the Stern Gang, led by future Israeli premiers Menachem Begin and Yitzhak Shamir, sought to terrorize the Palestinians by planting bombs in buses, market places, movie theaters, and other public places as well as by several wholesale massacres in Palestinian villages. As several Israeli "new historians" have observed, such Zionist terrorism preceded and may have provided the model for the subsequent Palestinian terrorism.
- As the work of Israeli, Palestinian, and other historians has conclusively proven, during the 1947-48 period Israeli forces often deliberately attacked civilians in order to drive many if not most Arabs out of the areas claimed by Israel. That is what created the refugee issue that still plagues the conflict: most of the estimated 700,000 Palestinians who fled into neighboring Arab countries did not do so "voluntarily," (as the Israeli mythology has it), but either because they were driven out or fled in understandable fear that they would be killed if they didn't.
- The expulsion of the Palestinians in 1947-48 led to the creation of the Palestinian guerrilla movement, which for a number of years operated out of bases in Egypt, Syria, Jordan, and Lebanon. Guerrilla attacks inside Israel were met with an Israeli policy of massive retaliation -- not merely an eye for an eye, but ten eyes for an eye. In the early 1950s, Moshe Dayan created a special secret unit of the Israeli army, headed by the young Ariel Sharon, in order to carry out retaliation raids. As an Israeli centrist historian wrote, Sharon was directed to carry out raids "against Jordan Legion soldiers and Palestinian civilians in the Jordanian-held West Bank. The purpose of these raids was to create the greatest confusion and terror in the area in order to persuade the Jordanian authorities and the Palestinian population that it was not in their interest to participate in, or offer support for, raids on the Israeli communities across the border." [11]
- In 1953 Dayan ordered Sharon's unit to attack the Jordanian village of Qibyah, in "reprisal" for the failure of ordinary villagers to prevent Palestinian raids from being launched against Israel. After three Israelis were killed in one such raid, Sharon's forces attacked civilian homes, killing sixty-nine Palestinian villagers, at least half of them women and children. These and other actions horrified Foreign Minister Moshe Sharett, who charged in a cabinet meeting that Israel had been "exposed...in front of the whole world as a gang of blood-suckers, capable of mass (sic) massacres." [12]
- During the 1956 Israeli-Egyptian war, it has recently been revealed, on at least two occasions Israeli forces systematically massacred hundreds of Palestinian refugees in the Gaza Strip. [13]

- In 1968 Moshe Dayan warned that Israel might attack Egyptian cities in order to "strike terror into the hearts of the Arabs of the cities....[and] break the Arab will to fight." [14] And it did so during the 1970-73 Suez Canal War of Attrition between Egypt and Israel, when Israel responded to Egyptian attacks against its armed forces along the Canal with massive artillery shelling and bombing of Egyptian towns and cities along the western banks of the Canal, deliberately intended to make life unlivable for the Egyptian population and so increase pressure against Nasser and later Sadat. David Shipler, at the time the *New York Times* correspondent in Israel, later wrote that that Israeli bombardments of Egyptian villages "forced the evacuation of 750,000 civilians, destroyed 55,000 homes, and killed and wounded an untold number....It was a pressure tactic on the Egyptian authorities." [15]

- Leading Israeli officials have sometimes acknowledged that Israel has used such "pressure tactics" -- otherwise known as "terrorism" -- as an instrument of policy. In 1978, for example, following the first of major Israeli attacks on Lebanese population centers, General Mordechai Gur, then Chief of Staff of the Israeli Defense Forces and later a leading Labor Party politician, responded to criticism of Israeli tactics in Lebanon in this way: "I've been in the army thirty years. Do you think I don't know what we've been doing all those years? What did we do the entire length of the Suez Canal? A million and a half refugees!.....Since when has the population of South Lebanon been so sacred? They know very well what the terrorists were doing.....I had four villages in South Lebanon bombarded...[as, he says, was done in Jordan]....the whole Jordan Valley was evacuated during the War of Attrition."

The Israeli interviewer then comments: "You maintain that the civilian population should be punished?" Gur responds: "And how....I have never doubted it, not for one moment....For thirty years from the War of Independence to this day we have been fighting against a population that lives in villages and towns..." [16] As Ze'ev Schiff, a leading Israeli military journalist commented at the time: "In South Lebanon we struck the civilian population consciously, because they deserved it....The importance of Gur's remarks is the admission that the Israeli Army has **always struck civilian populations, purposely and consciously**...even when Israeli settlements had not been struck." [17] (emphasis added)

- Since 1978 there have been four major (and many more smaller) Israeli air and ground force attacks against Lebanon in 1978, 1982, 1996, and 2006. While PLO or Hezbollah forces based in Lebanon were the main target of the Israeli attack, there is no serious doubt that Israel deliberately visited widespread destruction on ordinary Lebanese civilians. In the course of the 1982 attack, at least 10,000 civilians were killed, not even counting the approximately 1000 Palestinian refugees murdered by Israel's Lebanese allies at Sabra and Shatilla, a massacre in which the Israeli forces, led by Sharon, were clearly complicit. In one case, as reported by Thomas Friedman (!), then the *New York Times* correspondent in Lebanon, Israeli planes "blew apart a single six-story apartment bloc in the heart of the city...[killing] scores of civilians." It was "strongly rumored," Friedman observed, "that some P.L.O. officials might have been using the apartment bloc as a type of auxiliary office. It was...nowhere near the front." [18]

- In July 2006, after Hezbollah seized two Israeli soldiers, there were several open threats by Israeli generals of what would be done to Lebanese civilians; for example, "Senior officers in the IDF say that...if the kidnapped soldiers are not returned alive and well, the Lebanese civilian infrastructures will regress 20, or even 50 years." [19] During the ensuing Israeli attack, an estimated 1200 Lebanese civilians were killed, almost a third of them children, 4000 were wounded, one million displaced, 130,000 houses were destroyed, and the country's electricity network, thousands of small businesses, hundreds of roads, 300 factories, 80 bridges, and dozens of schools and hospitals were destroyed or damaged. [20]

In sum, throughout its history -- even before its attacks on Gaza -- Israel has repeatedly and deliberately attacked Palestinian and, indeed, other Arab civilians, either directly or by destroying their homes, businesses, fields and orchards, electric systems, and transportation systems. The purpose of these attacks has been to intimidate the civilian population, or to punish them for their supposed or actual support of Israel's enemies, and especially to induce them to turn against their own governments or internal militant organizations

#### The Attacks on Gaza

That brings us to Gaza. As has already been described, even before the recent attacks, Israel was following a policy of collective punishment of the Gazan people. Jessica Montell, the head of B'tselem, Israel's most important and prestigious human rights organization, wrote that "the suffering of the [Palestinian] population is not merely a byproduct of Israel's attacks on militants. It is an intentional part of Israeli policy. The clear intention of the practice is to pressure the Palestinian Authority and the armed Palestinian organizations by harming the entire civilian population." [21]

It is not just Israeli human rights activists, "leftists," or known critics of overall Israeli policy who have charged that for a number of years Israel has been deliberately attacking civilians and their infrastructure in Gaza, as well as in Lebanon earlier. In July 2006, Yossi Alpher, a former high Israeli intelligence official and centrist member of the Israeli security establishment, wrote that "Some of the humanitarian suffering in Gaza and Lebanon is a deliberate act on Israel's part....It is intended to generate mass public pressure on the respective governments to force the Islamic militants to release three IDF soldiers snatched from Israeli territory and end rocket attacks." [22] After the invasion, Alpher again denounced "the folly of collectively punishing 1.5 million Gazans for the sins of Hamas...starving masses of Palestinians is a counter-productive strategy." [23]

Even more remarkably, ten months before the attack, Moshe Arens -- a high Likud official and well-known hardline rightist, a former ambassador to the United States in the Menachem Begin government, the foreign minister in the Yitzhak Shamir government, and a three-time defense minister in Likud governments since the 1980s -- wrote the following: "The 'leverage theory' -- which holds that the destruction of enemy infrastructure and attacks on the enemy's civilian population will produce pressure on decision makers to cease their attacks against Israeli civilians -- did not work in Lebanon, and it certainly does not work in Gaza. Quite the contrary, it only increases the support that the terrorists receive from the civilian population....[Such measures are] counterproductive [and]....impermissible by our moral standards." [24]

In fact, the blistering comments by Alpher and Arens -- even before the far worse recent Israeli attack -- understate the issue. Israeli attacks on civilians are not merely "counterproductive," or even morally "impermissible," they are war crimes -- just as the

Goldstone Commission as well as many other international and even Israeli human rights organizations have concluded.

### **The Commission's Omissions, Errors, and Understatements**

Far from unfairly attacking Israel, in several respects the Goldstone Commission evaded or understated highly important legitimate criticisms of its behavior. First (as I have argued), the Commission did not examine the full historical record of the Israeli occupation and repression of the Palestinians, as well as attacks on neighboring Arab states. Whether out of space or political considerations, the Commission thus understated the evidence of Israeli attacks on civilians.

Second, because terrorism is always illegal and morally wrong, the Commission certainly had to consider and condemn Hamas terrorism; even so, it might have discussed the important -- and mitigating -- moral differences between the state terrorism of militarily strong occupiers and repressors and that of its stateless and militarily insignificant victims. To be sure, the Commission did allude to those differences, though only in passing and in rather torturous language, when it stated that its report "in no way implies equating the position of Israel as the Occupying Power with that of the occupied Palestinian population or entities representing it. The differences with regard to the power and capacity to inflict harm or protect, including by securing justice when violations occur, are obvious and a comparison is neither possible nor necessary."

That is not sufficient. In the past, in unguarded moments several Israeli military and political leaders -- including David Ben-Gurion, Moshe Dayan, Ehud Barak, and others -- have implied or even directly said that if they were Palestinians, they would be doing the same thing. Consider also the comment of retired General Shmuel Zakai, a former commander of the Israeli forces in Gaza, who in a recent interview accused the Israeli government of having failed "to take advantage of the calm [during the six-month truce prior to the Israeli attack] to improve, rather than markedly worsen, the economic plight of the Palestinians....You cannot just land blows, leave the Palestinians in Gaza in the economic distress they're in, and expect that Hamas will just sit around and do nothing." [25]

The third and most important error of the Commission was its rather strange acceptance of the argument that Israeli attack had a just cause, that of "self-defense," even though its methods were unjust. Perhaps this was not so much an error as a policy decision, adopted in the hope that it would somewhat diminish the firestorm that would follow the publication of its report. That would certainly be understandable; nonetheless, the Goldstone report obscures the fact that Israel's obvious alternative to **any** use of force was to end its occupation and repression of the Palestinians. In that light, Israel has no "right" to claim self-defense, for the true purpose of its siege and military attacks is to crush resistance to the occupation -- or, as Henry Siegman has put it, "to protect [Israel's] right to continue the strangulation of Gaza's population." Put differently, the Israeli attack on Gaza was a war crime in and of itself -- the crime of aggression -- even if its methods of warfare had not also been war crimes.

It is the continued Israeli occupation and repression of the Palestinians that accounts for most, if not all, of the attacks on Israel. The slight qualification here is intended to cover the possibility that extremist Palestinian groups might continue to attack Israel, even after it withdrew and allowed the creation of a genuinely independent and viable Palestinian state. In that event, Palestinian attacks could **truly** have no other purpose than to destroy the existence of Israel. However, such a worst-case scenario would be highly unlikely: the obvious consequences for the new Palestinian state and its

people would be overwhelming, thus giving the government and its military forces every incentive to prevent it.

Should such a scenario nonetheless occur, the Israelis would have the **genuine** right of self-defense -- although even then not the moral or legal right to attack civilians -- and it would receive overwhelming international support.

In sum, while the Commission did not say enough about Israeli illegality and immorality, what it **did** say is beyond serious reproach, despite the many attacks on it, including Moshe Habertal's **New Republic** article, essentially a piece of propaganda, particularly egregious when it comes from a political philosopher and specialist in Jewish thought and values.

The credibility of the Goldstone report is a function of a number of factors, including the impeccable standing of its Chairman, of its highly specific and detailed discussions, of the previous record of Israeli behavior as well as contemporary high-level Israeli threats and statements of how it intended to attack Gaza, of the consistency of the report with many other reports and investigations (including those by Israeli journalists and human rights organizations) and, above all, of the inability of critics to refute or even seriously address its factual findings.

I have argued that the Palestinian attacks on Israeli civilians are primarily, even if not exclusively, the consequence of over forty years of continued Israeli occupation, repression, assassinations and other killings; of the destruction of governmental, economic, public health, educational, and other societal institutions and infrastructures; and of the deliberate impoverishment and humiliation of the Palestinian people. Consequently, Israel is not engaged in "self defense" when it uses force to crush resistance to its repression -- **and that holds true even when the form of resistance -- terrorist attacks intended to kill civilians -- is itself morally wrong.**

Moreover, before its military attack Israel tightened its siege of Gaza, broke a series of ceasefires with Hamas, and refused even to explore Hamas' offers for a long-term de facto if not formal settlement. Worse, its destruction of Palestinian civilians and institutions was not merely disproportionate or indiscriminate, for the weight of the historical and contemporary evidence strongly suggests (even if it doesn't prove) that its policies and behavior in Gaza constitute an intentional violation of the most important and widely accepted moral principle that seeks to minimize the destructiveness of warfare: that innocent civilians may never be the intended object of military attack. When they are, we call it terrorism.

In both international law and in terms of just war morality Israel is doubly guilty. That its methods (*jus in bello*) constitute war crimes is obvious. What appears to be less obvious, but shouldn't be, is that the underlying purpose of the Israeli attack -- to crush resistance to its continued occupation or control of the Palestinian people -- also violated the principle of just cause (*jus ad bellum*) and therefore constituted the crime of aggression.

The moral issues aside, Israeli behavior may turn out to be strategically disastrous to its own interests. While constantly proclaiming that every act of armed resistance to Israeli occupation and repression threatens "the existence" of Israel or "new Holocaust," it is Israeli policies that truly jeopardize its existence, and could even end in what might truly be called a nuclear Holocaust.

## Endnotes

1. Avi Issacharoff, "B'Tselem's End-Of-Year Report: Number of Palestinians Killed By IDF Dropped Sharply in '07," *Haaretz*, December 31, 2007.
2. [December, 2009](#).
3. "MKs Call for Gaza Invasion in Wake of Escalation," *Haaretz*, February 29, 2008.
4. For a full discussion, and source citations, see [my article](#) "A Perfect Moral Catastrophe: Just War Philosophy and the Israeli Attack on Gaza," *Tikkun*, March 2009.
5. *Haaretz*, January 9, 2009.
6. Reuven Pedatzur, "The Mistakes of Cast Lead," *Haaretz*, January 8, 2009.
7. In his interview with Bill Moyers, Goldstone elaborated: "We've found that the only logical reasons [for the Israeli bombing of Gazan infrastructure] is collective punishment against the people of Gaza for voting into power Hamas, and a form of reprisal for the rocket attacks and mortar attacks on southern Israel. I think they were telling the people of Gaza that if you support Hamas, this is what we're going to do to you."
8. In 2000, Halbertal participated in the drafting of Israeli armed forces ethical code, "The Spirit of the IDF." However, Avi Sagi, another Israeli academic author of the code, criticizes the Goldstone report but also harshly criticized the IDF's refusal to allow an independent investigation as something that "cries out to the heavens....a moral eclipse...has struck both the IDF and the civil government...[and] threatens our ability to be a just and moral society." (*Haaretz*, December 14, 2009)
9. Jeremiah Haber makes essentially the same comments about the ratio argument, in Part II of his critique of Halbertal. (*The Magnes Zionist*, November 9, 2009)
10. Such a detailed review will be part of a long journal article I am currently working on.
11. Avner Yaniv, *Dilemmas of Security* (New York: Oxford University. Press), p. 94.
12. Quoted from Sharett's Personal Diary, in Livia Rokach, *Israel's Sacred Terrorism* (Belmont, MA: Association of Arab-American University Graduates, 1980), p. 16.
13. As discussed in a new book by Joe Sacco, *Footnotes in Gaza* (Henry Holt, 2009), reviewed by Patrick Cockburn the *New York Times Book Review*, December 27, 2009.
14. Quoted by Yaacov Bar-Siman-Tov, *The Israeli-Egyptian War of Attrition* (New York: Columbia University Press, 1980), p. 122.
15. David K. Shipler, *Arab and Jew: Wounded Spirits in a Promised Land* (Penguin Press, 1986), p. 45.
16. The interview, in the 10 May 1978 edition of the Israeli newspaper *Al Hamishar*, is quoted by David Hirst, *The Gun and the Olive Branch* (New York: Nation Books, 1977) p. 567-68. As Hirst notes, Gur was a pillar of the "moderate" Labor establishment, suggesting that what Sharon did in Lebanon four years later was different only in degree -- if that.
17. *Haaretz*, 15 May 1978.
18. "A Reporter's Notebook: Weeks of Siege," *New York Times*, Aug. 20, 1982.

19. Amos Harel, "Israel Prepares for Widespread Escalation," *Haaretz*, July 12, 2006.
20. Ze'ev Schiff, Israel's leading military journalist for most of its history, objected to Israel's strategy of punishing the Lebanese population and "encouraging" them to flee from South Lebanon as "a strategic mistake."(*Haaretz*, July 20, 2006.)
21. "A Form of Collective Punishment," *bitterlemons*, July 17, 2006.
22. *bitterlemons*, July 17, 2006.
23. *bitterlemons*, January 26, 2009.
24. Arens, "Too Much To Expect," *Haaretz*, March 5, 2008.
25. Quoted by Henry Siegman, *Haaretz*, November 11, 2009.

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