

THE GAZA WAR, CONGRESS AND INTERNATIONAL HUMANITARIAN LAW

Stephen Zunes

Dr. Zunes is a professor of politics and international studies and chair of the Middle Eastern Studies Program at the University of San Francisco.

The large-scale killing of civilians during Israel's three-week assault on the Gaza Strip in 2008-09 received widespread condemnation from human-rights advocates and international legal scholars the world over. In both Europe and North America, public reaction to the grossly disproportionate Israeli response to Hamas rocket attacks was the most negative ever expressed against an Israeli military action. In Israel itself, soldiers who had witnessed some of the atrocities joined Israeli peace activists in exposing war crimes committed by the Israel Defense Forces (IDF). However, the U.S. Congress, under the leadership of the Democratic Party, overwhelmingly defended the Israeli offensive, even to the point of attacking leading defenders of international humanitarian law.

Support for the impending war began months earlier, in June 2008, when 77 senators — including future Secretary of State Hillary Clinton — signed a letter put together by Senators Susan Collins (R-ME) and Mary Landrieu (D-LA) to President George W. Bush defending Israeli air strikes on the heavily populated Gaza Strip. The letter also urged the Bush administration to block any UN Security Council resolution critical of Israel, claim-

ing that UN opposition to Israeli attacks against crowded urban areas constituted a refusal to “acknowledge Israel’s right to self-defense.” An almost identical letter in the House, drafted by House Majority Leader Steny Hoyer (D-MD), House Foreign Relations Committee Chairman Howard Berman (D-CA), House Minority Leader Roy Blunt (R-MO) and Representative Ilana Ros-Lehtinen (R-FL) received 268 signatures. Americans for Peace Now (APN), a liberal Zionist group, warned that these letters were designed to build “a defense, in advance, for a large Israeli military offensive in Gaza.”¹ APN, among others, also noted that such an Israeli offensive against the Gaza Strip would likely result in large-scale civilian casualties. In apparent anticipation of such a scenario, the House of Representatives had passed a resolution that March, during an upsurge of fighting between Hamas militiamen and Israeli forces, which claimed, “Those responsible for launching rocket attacks against Israel routinely embed their production facilities and launch sites amongst the Palestinian civilian population, utilizing them as human shields.” The resolution goes on to specifically condemn “the use of innocent Palestinian civilians as human shields by those who carry out

rocket and other attacks” and yet again makes note of Palestinians who “continue to be utilized as human shields by terrorist organizations.”² However, human-rights groups monitoring the situation at that time noted that, while Hamas had failed to take all feasible precautions to protect civilians in the densely populated Gaza Strip, they found no instances of the use of human shields by Hamas.³

Amnesty International condemned Israel’s “reckless disregard for civilian life” in its bombing and shelling of civilian population centers that spring. Its report also noted that the attacks by Palestinians against civilian-populated areas in Israel, which the report also roundly condemned, “[do] not make it legitimate for the Israeli authorities to launch reckless air and artillery strikes which wreak such death and destruction among Palestinian civilians.”⁴ The goal of the supporters of the House resolution, which gave unqualified support for the Israeli government’s bombing and shelling of the territory, apparently was to convince their constituents that Palestinians themselves — not the Israelis who were attacking them — were responsible for civilian casualties and would be responsible for the far greater number of civilians who would inevitably die as a result of the Israeli invasion that was planned for later that year. There were 265 sponsors of the resolution, which passed by a 404-1 vote (with four voting “present.”) This sent a clear signal to the Israeli government that there would be no opposition in Congress for an even larger military assault against the Palestinian population of the enclave. Congressional support for the upcoming Israeli war against the Gaza Strip went beyond such nonbinding resolutions, however. In apparent anticipation of the long-planned Israeli invasion that was

to begin just three months later, Congress voted in September to send 1,000 of the highly sophisticated GBU-39 air-to-ground missiles to Israel, which were heavily utilized in the assault in Gaza.

On November 6, Israel tightened its siege of the Gaza Strip, prompting Human Rights Watch to note, “Israel’s severe limitations on the movement of non-military goods and people into and out of Gaza, including fuel and medical supplies, constitutes collective punishment, also in violation of the laws of war.”⁵ Despite this, congressional leaders of both parties continued to defend the sanctions. Hamas appeared willing to renew its ceasefire, scheduled to expire the following month, in return for Israel’s lifting of the blockade and ending its periodic raids into Gaza and assassinations of Hamas officials. The Israeli government categorically rejected the idea. Despite the congressional leadership’s support for Israel’s rejection of such efforts to salvage the ceasefire, which could have prevented further rocket attacks into Israel, they subsequently would claim that Israel had “no choice” but to launch its massive assault on the Gaza Strip in retaliation.

DEFENDING THE WAR

On December 27, following an increase in Hamas rocket attacks into populated areas inside Israel, the IDF launched its war on the Gaza Strip. Six days into Israel’s bloody assault, Amnesty International USA sent a letter to Secretary of State Condoleezza Rice noting its dismay “at the lopsided response by the U.S. government to the recent violence and its lackadaisical efforts to ameliorate the humanitarian crisis in Gaza.” The Nobel Peace Prize-winning organization went on to note, “Without diminishing the responsibility of

Hamas and other Palestinian armed groups for indiscriminate and deliberate attacks on Israeli civilians, the U.S. government must not ignore Israel's disproportionate response and the longstanding policies which have brought the Gaza Strip to the brink of humanitarian disaster."⁶

Democratic congressional leaders joined their Republican counterparts in rushing to the defense of the Bush administration, however. As reports continued to pour in, describing widespread civilian casualties among Palestinians in the Gaza Strip from the Israeli attacks, Speaker of the House Nancy Pelosi (D-CA) insisted, "When Israel is attacked, the United States must continue to stand strongly with its friend and democratic ally." Senate Majority Leader Harry Reid (D-NV) stated, "I strongly support Israel's right to defend its citizens against rocket and mortar attacks from Hamas-controlled Gaza." House Majority Leader Hoyer claimed, "Israel is acting in clear self-defense in response to heinous rocket attacks from Hamas-controlled Gaza," and that Israel has "an unequivocal right" to engage in such military operations. House Foreign Affairs Committee Chair Berman declared, "Israel has a right, indeed a duty, to defend itself in response to the hundreds of rockets and mortars fired from Gaza over the past week."⁷

Such unequivocal support came amid reports of growing civilian casualties from Israeli air strikes taking place nowhere near any legitimate military targets. Still, congressional leaders of both parties insisted that these were all acts of self-defense. These included the missile that struck a group of students leaving the UN-sponsored Gaza Training College in downtown Gaza, the bombing of a mosque during evening prayers, other missile attacks centered in civilian neighborhoods

in the crowded refugee camps of Jabalya and Rafah, as well as a series of attacks against the territory's one university. Scores of other Palestinians who worked in government offices under the Hamas administration but had nothing to do with the firing of rockets into Israel — or any other military function of the Islamist party — had been killed as well.

Yet some members of Congress went so far as to simply deny that large-scale attacks against civilian targets were taking place. For example, Rep. Brad Sherman (D-CA), a member of the Foreign Relations Committee and its Middle East subcommittee, insisted that, contrary to reports from reputable human-rights groups, international journalists and other eyewitnesses, "The Israeli response has been a series of targeted strikes against Hamas militants, aimed directly at those who are launching the attacks on Israeli civilian population centers" and that "the Israeli military is taking extreme caution to limit civilian casualties."⁸

As the international outcry over the civilian death toll from Israel's assault grew during the second week of fighting, Congress formally went on record in support of President Bush's position that the Israeli armed forces bore no responsibility for the large and growing numbers of civilian casualties. Shattering hopes that an expanded Democratic congressional majority might lead to a more moderate foreign policy, the resolutions put forward an extreme reinterpretation of international humanitarian law, apparently designed to exonerate nations with superior firepower from any liability for inflicting large-scale civilian casualties.

The Senate resolution,⁹ primarily written and sponsored by Senate Majority Leader Reid, passed by unanimous consent on a voice vote. Among the 33 cospon-

sors was 2004 presidential nominee and newly-named chair of the Senate Foreign Relations Committee John Kerry (D-MA), who was joined by such otherwise liberal senators as Barbara Boxer (D-CA), Richard Durbin (D-IL), Carl Levin (D-MI), Sherrod Brown (D-OH) and Barbara Mikulski (D-MD). An even stronger House resolution,¹⁰ sponsored by House Speaker Nancy Pelosi (D-CA), passed the House by a lopsided 390-5 roll-call vote (with 22 members voting “present”). Both resolutions placed the blame for the death and destruction exclusively on the Palestinian side and were widely interpreted as rebukes to the international human-rights community and the United Nations, which cited evidence that both Hamas *and* the Israeli government were engaged in war crimes.

The resolutions favorably quoted Secretary of State Condoleezza Rice extensively, as well as Israeli Prime Minister Ehud Olmert, regarding responsibility for civilian deaths and the causes of the ongoing battle, indicative of how even in a Democratic-sponsored initiative, these right-wing political leaders were seen as the most authoritative sources of such information on the conflict. Although some analysts referred to the U.S.-backed Gaza war as “a final and eloquent testimony to the complete failure of the neoconservative movement in United States foreign policy,”¹¹ Pelosi, Reid and virtually the entire Democratic membership of Congress decided to ally themselves with this failed ideology of the outgoing Bush administration rather than blaze a new trail of moderation and common sense in anticipation of new leadership in the White House. President-elect Barack Obama had privately expressed his opposition to the war and successfully demanded that Israel end the fighting and withdraw from the Gaza

Strip prior to his January 20 inauguration. Pelosi and Reid’s strategy in pushing through these resolutions, therefore, may have been part of an attempt to box in the incoming administration into continuing Bush’s hard-right foreign policy of rejecting fundamental principles of international law in the name of “the war on terror.”

Some of the language in the resolution put forward by Pelosi, Reid and their colleagues even placed the Democratic Party to the right of the Bush administration. For example, while the January 8 UN Security Council resolution, which received the endorsement of Secretary of State Rice and other administration officials, condemned “*all* acts of violence and terror directed against civilians”¹² [emphasis added], the congressional resolution only condemned the violence and terror of Hamas. Indeed, just as the Security Council unanimously passed its resolution stressing the urgency of establishing “an immediate, durable and fully respected cease-fire, leading to the full withdrawal of Israeli forces from Gaza,” Congress immediately weighed in with language apparently designed to prevent one. The Senate and House resolutions called for a ceasefire only on the condition that it would prevent Hamas “from retaining or rebuilding the capability to launch rockets and mortars against Israel.” Given that most of the rockets and mortars used by Hamas were of a rudimentary design made in local machine shops from scrap metal and other easily obtainable materials, and are therefore a capability that cannot be completely eliminated, it appears that this clause was included to make the establishment of a ceasefire more difficult. Emboldened by this strong bipartisan support from the legislative branch of its most important ally, Israel rejected UN terms for a ceasefire and continued the onslaught.

Also on January 8, Israeli forces killed two UN humanitarian aid workers as they were attempting to provide relief supplies, prompting the International Red Cross to release a strongly worded statement noting that the Israeli military had “failed to meet its obligation under international humanitarian law to care for and evacuate the wounded.”¹³ The Nobel Peace Prize-winning Doctors Without Borders noted that “Palestinian humanitarian aid and health workers have been killed, and hospitals and ambulances have been bombed.”¹⁴ In its subsequent resolutions, however, Congress went on record praising Israel for having “facilitated humanitarian aid to Gaza.”

Both resolutions held Hamas solely “responsible for breaking the cease-fire,” despite the scores of minor violations during the months of the ceasefire by both sides. In addition, Israel had launched a major incursion into the Gaza Strip in November, assassinating several Hamas leaders. This led some in the Israeli press to speculate that this was designed to provoke Hamas into not renewing the ceasefire when it expired the following month. While these Israeli provocations could not justify Hamas’ failure to renew the ceasefire and certainly not Hamas’ decision to once again begin firing rockets into civilian-populated areas of Israel — which is universally recognized as a war crime — the language of the resolutions distorts the events leading up to the war. Ironically, despite blaming Hamas exclusively for not renewing the cease-fire, the congressional resolutions also claimed that returning to the terms of that cease-fire agreement “is unacceptable.”

Yet these were by no means the most egregious misrepresentations of the human-rights situation in these Democratic-led congressional initiatives. As with the resolution from the previous summer, the reso-

lutions accused Hamas of “using innocent civilians as human shields.” Subsequent human-rights reports noted that Hamas was guilty of less-severe violations of international humanitarian law, such as not taking all necessary steps it should to prevent civilian casualties by positioning fighters and armaments too close to concentrations of civilians. As human rights investigators acknowledged, however, the nature of urban warfare, particularly in a territory as densely populated as the Gaza Strip, makes the proximity of retreating fighters and their equipment to civilians unavoidable in many cases. This is not the same thing as using human shields, which is defined as deliberately holding civilians against their will as a deterrent from enemy attacks. None of the resolutions’ cosponsors I contacted replied to inquiries as to where and when Hamas ever used human shields by this internationally recognized definition, nor were the subsequent investigations by reputable human-rights organizations able to find any such cases.

As a result, the Democratic sponsors of the House resolution, in order to justify widespread Israeli violations of international humanitarian law, attempted to redefine just what constitutes human shields. The resolution called “on all nations ... to condemn Hamas for deliberately embedding its fighters, leaders and weapons in private homes, schools, mosques, hospitals and otherwise using Palestinian civilians as human shields.” However, the fact that a Hamas leader lives in his own private home, attends a neighborhood mosque and seeks admittance to a local hospital does not constitute the use of human shields. Indeed, the vast majority of leaders of most governments and political parties live in private homes in civilian neighborhoods, go to local houses of worship and check

into hospitals when sick or injured, along with ordinary civilians. Furthermore, given that the armed wing of Hamas is a militia rather than a standing army, virtually all of its fighters live in private homes and go to neighborhood mosques and local hospitals as well. By effectively declaring every civilian in the territory a human shield, Pelosi and other congressional leaders appear to have advanced a radical and dangerous re-interpretation of international humanitarian law that would allow virtually any government or armed force resisting a foreign invader to be held responsible for the deaths of its own citizens, while the advancing armed force, with its superior air power or long-range artillery, could be held blameless for its large-scale killing of civilians.

It is also important to note that, even if Hamas had used human shields in the legal definition of the term, it still does not absolve Israel from its obligation to avoid civilian casualties. The Geneva Conventions make it clear that, even if one side is shielding itself behind civilians, such a violation “shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians.”¹⁵ Similarly, as Human Rights Watch noted, even the presence of armed personnel and weapons near civilian areas “does not release Israel from its obligations to take all feasible precautions to minimize harm to civilians and civilian property during military operations.”¹⁶ Despite claims by some members of Congress to the contrary, Israel’s January 6 attack on the UN school in Gaza, which killed more than 40 civilians, was still a war crime, even if – as the Israelis claim – IDF forces were being fired upon from the vicinity. (Defending this atrocity is comparable to claiming that it would be legitimate for a SWAT team, in order to kill some bank

robbers shooting at them, to also kill bank employees and customers being held hostage since the robbers were using them as “human shields.”)

Pelosi’s resolution not only appeared designed to undermine international humanitarian law, it sought to resurrect a fallacy that has long been rejected by Western legal thought. In an effort to absolve Israel for the hundreds of civilian casualties it was inflicting with U.S.-supplied weaponry, the House resolution called on all nations “to lay blame both for the breaking of the calm and for subsequent civilian casualties in Gaza precisely where blame belongs, that is, on Hamas” [emphasis added]. In reality, however wrong — morally, legally and politically — Hamas’ decision not to renew the ceasefire, it simply does not absolve Israel of its responsibility under international humanitarian law for the far greater civilian deaths its armed forces inflicted upon the Palestinians in Gaza. Indeed, it has long been a principle of Western jurisprudence that someone who is the proximate cause of a crime cannot claim innocence simply because of the influence of another party. If one person starts a bar fight, it does not give the other person a legal right to kill him and his buddies. By refuting this centuries-old legal principle, it was, literally, a reactionary piece of legislation.

In support of the Israeli invasion of the Gaza Strip, the House went on record claiming that it constituted Israel’s “right to act in self-defense to protect its citizens against Hamas’ unceasing aggression, as enshrined in the United Nations Charter.” In reality, the UN Charter explicitly prohibits nations going to war unless they “first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means

of their own choice.”¹⁷ Israel, with strong bipartisan U.S. support, had long refused even to meet with Hamas or use any other peaceful means to extend the cease-fire, despite Hamas’s apparently willingness to negotiate to bring that about. Furthermore, while Article 51 does allow countries to resist an armed attack, it does not grant any nation the right to engage in such massive and disproportionate warfare against densely populated cities and refugee camps.

Unlike some similar measures in recent years, these two resolutions passed during the fighting in January defending Israel’s war on Gaza were not drafted by the American Israel Public Affairs Committee (AIPAC), the influential “pro-Israel” lobby. Nor were they the initiative of right-wing Republican House leaders like John Boehner (R-OH) or his predecessor Tom DeLay (R-TX), as were some previous resolutions supporting Israeli military operations, such as the 2006 resolution defending Israel’s war on Lebanon. The lack of Democratic input on such resolutions when the Republicans were in the majority was sometimes used by Democratic staff members on Capitol Hill to excuse liberal House members for voting in favor of such initiatives. The claim was that, while these Democrats felt obliged to support the resolutions in order to “show support for Israel,” they did not necessarily approve of the hyperbolic wording. These erstwhile liberal Democrats had no such excuses this time, however, since the drafting of these resolutions came out of the offices of Pelosi, Reid and Berman.

ATTACKING GOLDSTONE

In subsequent months, there were a series of detailed investigations of violations of the laws of war by both Israel and Hamas that directly contradicted assertions

made by Congress in these resolutions. Among these were reports by Amnesty International,¹⁸ Human Rights Watch,¹⁹ the National Lawyers Guild²⁰ and the Israeli group B’Tselem.²¹ Of greatest concern for the U.S. Congress, however, was the mission organized by the United Nations Human Rights Council (UNHRC), headed by the distinguished South African jurist Richard Goldstone. The Goldstone Commission report cited a series of war crimes by both Hamas militia and Israeli forces, called on both Hamas and the Israeli government to bring to justice those responsible, and recommended that, in the absence of credible investigations by their respective governments, the case be referred to the International Criminal Court (ICC) for possible prosecution.²² Both Hamas and the Israeli government rejected the commission’s findings, each side denying it ever targeted civilian populations and both claiming their actions were in self-defense.

Because the report cited evidence that Israel, the principal U.S. Middle Eastern ally, was also guilty of war crimes, Congress immediately jumped in to discredit the report. Thirty-two senators signed a letter written by Senators Kirsten Gillibrand (D-NY) and Johnny Isakson (R-GA) to Secretary of State Clinton attacking what they insisted was a “biased report.” Senator Gillibrand praised the State Department’s efforts to quash the report’s recommendations, claiming that “legitimizing the report sends a dangerous message to countries defending themselves against terrorism.” The letter insisted that any legal action regarding Israeli human-rights abuses must not be taken up in any international forum. These senators instead insisted that, despite the Israeli government’s long history of covering up war crimes by its armed forces, the Israeli justice sys-

tem should handle the matter internally. The signatories praised what they called “the extraordinary measures taken by the Israel Defense Forces to minimize civilian casualties” and called upon the Obama administration to “denounce the unbalanced nature of this investigation.”²³ Among the 32 senators signing the letter were such leading Democratic liberals as Carl Levin (D-MI), Barbara Boxer (D-CA), Barbara Mikulski (D-MD), Ron Wyden (D-OR) and Russ Feingold (D-WI).

That the report examined violations of international humanitarian law by both sides did not alter these senators’ insistence of bias since, according to the letter, “the vast majority of the report focuses on Israel’s conduct, rather than that of Hamas.” The senators failed to note, however, that the ratio of civilian casualties inflicted by the Israelis relative to those inflicted by Hamas was more than 250:1. This would seem to indicate a legitimate reason to focus primarily on Israel. Furthermore, these senators ignored the likelihood that the report’s criticism of Hamas would have likely been longer and harsher had the Israeli government agreed to meet with the commission and allow its members to visit Israel.

These Senate critics insisted that the Goldstone Commission Report ignored how the Israelis supposedly went to great lengths to avoid civilian casualties by dropping leaflets and sending robo-calls to Palestinian homes warning them of impending attacks. In reality, the report examined these claims in detail but concluded that many of the calls and leaflets were sent out too late or were too vague to enable civilians to reach safety. Furthermore, Israeli calls for civilians to flee to down-town Gaza City led those who heeded such advice right into the line of Israeli fire, as when the Israelis attacked with mortars and

phosphorous bombs the UN compound and school where hundreds of fleeing residents had sought refuge. The Goldstone Commission report confirmed the conclusions of previous investigations that there were no legitimate military targets in the area. In the House of Representatives, Elliot Engel (D-NY) and Shelley Berkley (D-NV), senior members of the Middle East subcommittee, issued a joint statement claiming the Goldstone Commission report was “biased against Israel.” Even more critical of the report was Gary Ackerman (D-NY), whom the Democrats had recently selected to chair the Mideast subcommittee and to serve as vice-chair of the Foreign Affairs Committee. According to Ackerman, “In the self-righteous fantasyland inhabited by the authors, there’s no such thing as terrorism, there’s no such thing as Hamas, [and] there’s no such thing as legitimate self-defense.” In reality, the report refers to “terrorism” (or “terror” or “terrorists”) more than 100 times, mentions Hamas more than 400 times, and fails to even challenge the dubious claim that Israel launched its war on Gaza in self-defense, much less questions the right of self-defense in general. Ackerman even went so far as to claim that the commission believed that “war is like a sporting event or a debate, rather than the most ghastly, destructive, chaotic phenomenon we human beings are capable of creating.”²⁴ In truth, the report goes into graphic detail on the violence, destruction and terror the conflict inflicted on both sides.

When, despite U.S. efforts to block it, the UNHRC voted to forward its recommendations to the UN Security Council, the House of Representatives passed a resolution condemning Goldstone’s report as “irredeemably biased.”²⁵ The resolution was sponsored by right-wing Congresswoman Ilana Ros-Lehtinen (R-FL), but included

202 cosponsors, some of them powerful Democrats: House Foreign Relations Committee chairman Berman, Middle East subcommittee chairman Ackerman, and majority leader Hoyer. The resolution passed by a 344-36 margin, with 22 voting “present.”

Ironically, Justice Goldstone, the report’s principal author and defender, is Jewish, a longtime supporter of Israel, chair of Friends of Hebrew University, president emeritus of the World ORT Jewish school system and the father of an Israeli citizen. Goldstone was also a leading opponent of apartheid in his native South Africa and served as Nelson Mandela’s first appointee to the country’s post-apartheid Supreme Court. He was a principal prosecutor in the war-crimes tribunals on Rwanda and the former Yugoslavia, took a leading role in investigations into corruption in the UN “Oil for Food” program in Iraq, and was also part of investigations into Argentina’s complicity in providing sanctuary for Nazi war criminals. No one in Congress has ever cited a single occasion in any of these cases where they believed Justice Goldstone ever allowed any personal prejudice to interfere with his investigation. He is only accused of bias when his investigation reveals evidence of war crimes by a U.S. ally. For not only does Goldstone not have any bias against Israel, he is arguably the world’s foremost authority on international humanitarian law. For 80 percent of the U.S. Congress to go on record charging that the investigatory and analytical approach of someone with his pedigree is “irredeemably biased” raises two questions: Does Congress believe anybody can be trusted to investigate war crimes? Would Congress ever be willing to acknowledge that violations of international humanitarian law have taken place, at least when committed by a U.S. ally?

Despite the report’s extensive documentation of Hamas assaults on Israeli towns — which it determined constituted war crimes and possible “crimes against humanity” — the original draft resolution insisted that the fact-finding mission “makes no mention of the relentless rocket and mortar attacks.” At the last minute, the language was altered to state that the UNHRC’s mandate for the fact-finding mission made no mention of Hamas provocations, one of a series of clauses criticizing this original mandate, which called for an investigation of possible Israeli war crimes only. This objection raised in the House resolution was completely moot, however, since Goldstone and his colleagues refused to accept the offer to serve on the commission unless they were allowed to investigate possible war crimes by *both* sides in the conflict. The House resolution doesn’t mention this, however, and instead implies that the original mandate remained the basis of the report. In reality, even though the report contained over 70 pages detailing a series of violations of the laws of war by Hamas — including rocket attacks into civilian-populated areas of Israel, torture of Palestinian opponents, and the continued holding of kidnapped Israeli soldier Gilad Shalit — there was no acknowledgement whatsoever in the 1600-word resolution that the initial one-sided mandate had been superseded or that the report criticized the conduct of both sides.

The resolution was unwavering in its attack against Goldstone and his mission. The mission’s report — totaling 575 pages — contains detailed accounts of deadly Israeli attacks against mosques, private homes and businesses nowhere near legitimate military targets, which they described as “a deliberately disproportionate attack

designed to punish, humiliate and terrorize a civilian population.” In particular, the report cites 11 incidents in which the IDF engaged in direct attacks against civilians, including cases where people were shot “while they were trying to leave their homes to walk to a safer place, waving white flags.” The House resolution, however, claims that such charges of deliberate Israeli attacks against civilian areas were “sweeping and unsubstantiated.”

Since both the report’s conclusions and most of the particular incidents cited were independently documented in detailed empirical investigations released in previous months by Amnesty International, Human Rights Watch and B’Tselem, this congressional resolution has been widely interpreted as an attack against the integrity of these reputable human-rights groups as well. In an apparent effort to further discredit the human-rights community, the resolution goes on to claim that the report denies Israel’s right to self-defense, even though there was absolutely nothing in the mission’s findings that in any way questioned Israel’s right to use military force. It simply insisted that neither Israelis nor Palestinians have the right to attack civilians.

There are other clauses in the resolution that take quotes out of context and misrepresent the report to try to make Goldstone and his colleagues appear “irredeemably biased.” For example, one clause in the resolution attacks the credibility of mission member Christine Chinkin, an internationally respected British scholar of international law, feminist jurisprudence, alternative-dispute resolution and human rights. The resolution questions her objectivity by claiming that “before joining the mission, [she] had already declared Israel guilty of committing atrocities in Operation Cast Lead by signing a public letter on

January 11, 2009, published in the *Sunday Times*, that called Israel’s actions ‘war crimes.’” In reality, the open letter did not accuse Israel of “atrocities,” but simply noted that Israel’s attacks against the civilian infrastructure of the Gaza Strip were “not commensurate to the deaths caused by Hamas rocket fire.” The letter also noted that “the blockade of humanitarian relief, the destruction of civilian infrastructure, and preventing access to basic necessities such as food and fuel, are *prima facie* war crimes.”²⁶ Given that the commonly used legal term *prima facie* means “on its first appearance,” this open letter was simply a preliminary assessment rather than a case of having “already declared Israel guilty,” as the resolution states. Furthermore, at the time of the letter — written a full two weeks into the fighting — there had already been a series of preliminary reports from Amnesty International, Human Rights Watch and the International Committee of the Red Cross documenting probable war crimes by Israeli armed forces, so virtually no one knowledgeable of international humanitarian law could have come to any other conclusion. As a result, Chinkin’s signing of the letter could hardly be considered the kind of ideologically motivated bias that should preclude her participation on an investigative body, particularly since that same letter unequivocally condemned Hamas rocket attacks as well.

The resolution also faults the report for having “repeatedly downplayed or cast doubt upon” claims that Hamas used “human shields” as an attempted deterrence to Israeli attacks. The reason the report challenged those assertions, however, was that — despite following up on a number of Israeli accusations to this effect — they were unable to find any solid evidence to support such claims. Detailed investiga-

tions by Amnesty International and Human Rights Watch of such accusations during and subsequent to the fighting came to the same conclusion. As with these previous investigations, the Goldstone report determined that there were occasions when Hamas hadn't taken all necessary precautions to avoid placing civilians in harm's way, but they found no evidence whatsoever that Hamas had consciously used civilians as shields at any point during the three-week conflict. Despite this, the House resolution makes reference to a supposed "great body of evidence" that Hamas did use human shields. The resolution fails to provide a single example to support this claim, however, other than an alleged statement by one Hamas official, which the mission investigated and eventually concluded was without merit. It appears, then, that the sponsors of the resolution simply fabricated this charge in order to protect Israel from any moral or legal responsibilities for the more than 700 civilian deaths. Interestingly, the report did find extensive evidence, as did Amnesty International, that Israeli forces used Palestinians as human shields during their offensive. Israeli soldiers testifying at hearings held by a private group of Israeli soldiers and veterans confirmed a number of such episodes as well.²⁷ This fact was conveniently left out of the resolution.

In another example of misleading content, the resolution quotes Goldstone as saying, in relation to the mission's investigation, "If this was a court of law, there would have been nothing proven." However, no such investigation carried out on behalf of the UNHRC has ever claimed to have obtained evidence beyond a reasonable doubt, the normal criterion for proof in a court of law. This does not, however, buttress the House resolution's insistence

that the report was therefore "unworthy of further consideration or legitimacy." What the fact-finding mission did find was probable cause for criminal investigations into possible war crimes by both Hamas and the Israeli government, which is exactly what Congress was determined to suppress.

Another spurious claim of bias is the resolution's assertion that "the report usually considered public statements made by Israeli officials not to be credible, while frequently giving uncritical credence to statements taken from what it called the 'Gaza authorities', i.e. the Gaza leadership of Hamas." In reality, the report shows that the mission did investigate such statements by Israeli officials and evaluated them based upon the evidence. The resolution also fails to mention that, while Hamas officials were willing to meet with the mission, Israeli officials refused, even denying them entrance into Israel. The mission had to fly Israeli victims of Hamas attacks to Geneva at UN expense to interview them. The mission found these Israelis' testimony credible, took them quite seriously and incorporated them into their findings, which accused Hamas of committing war crimes. Any serious reading of their mission's report also reveals that they in no way gave "uncritical credence" to statements by Hamas leaders, toward whom the mission was quite critical.

The House resolution goes on to claim that the report's observation that the Israeli government has "contributed significantly to a political climate in which dissent with the government and its actions . . . is not tolerated" was erroneous. In reality, it has been well-documented — and has been subjected to extensive debate within Israel — that the right-wing government of Prime Minister Binyamin Netanyahu has interrogated and harassed political

activists and suppressed criticism and sources of potential criticism of actions by the Israeli military. Particular targets have been Israeli nongovernmental organizations such as the dissident soldiers' group *Breaking the Silence*.²⁸

The House resolution is particularly vehement in its opposition to the report's recommendation that, should Hamas and Israeli authorities fail to engage in credible investigations and bring those responsible for war crimes to justice, the matter should be referred to the International Criminal Court for possible prosecution. The resolution insists this is unnecessary since Israel "has already launched numerous investigations." However, Israeli human-rights groups have repeatedly criticized their government's failure to launch any independent investigations. They have also documented the Israeli government's refusal to investigate testimony by soldiers of war crimes.²⁹ (At the time of this writing, more than a year after the war, the only indictments for misconduct by Israeli forces during the conflict have been against two soldiers who stole credit cards from a Palestinian home.)

On the one hand, Congress insisted that the issue stay confined to the UN Human Rights Council. On the other hand, Congress has repeatedly attacked that body as being "anti-Israel." There is a reason for this apparent contradiction: If the matter were taken to the UN Security Council, as the Goldstone Commission recommended, it would place debate on violations of international humanitarian law by a key U.S. ally before a body that, unlike the UNHRC, has an enforcement mechanism. It would also allow far greater media exposure of Israeli war crimes, the bulk of which were implemented using U.S. weap-

ons systems and ordnance. And, since neither Israel nor Hamas is a party to the ICC convention, Israelis and Palestinians suspected of war crimes could not face justice at the ICC unless it was authorized by the Security Council. The apparent intent, then, was to allow such war criminals to escape prosecution. When Goldstone presented his report before the UNHRC, he noted, "A culture of impunity in the region has existed for too long. The lack of accountability for war crimes and possible crimes against humanity has reached a crisis point."³⁰ In passing this resolution, the U.S. Congress demonstrated its role in making this culture of impunity and lack of accountability possible.

Indeed, the resolution calls on the Obama administration not only "to oppose unequivocally any endorsement" of the report, but even to oppose unequivocally any "further consideration" of the report in international forums. Instead of debating its merits, therefore, Congress decided to prejudge its contents and disregard the actual evidence put forward. The resolution even goes so far as to claim that Goldstone's report is part of an effort "to delegitimize the democratic State of Israel and deny it the right to defend its citizens, and that its existence can be used to delegitimize other democracies and deny them the same right." This sort of demagoguery is based on the premise that documenting a given country's war crimes is tantamount to denying that country's right to self-defense and its right to exist, and therefore appears to be aimed at silencing defenders of international humanitarian law anywhere. The fact that such an overwhelming majority of the House voted in favor of this resolution strongly suggests that both political parties now effectively embrace

the neoconservative agenda to delegitimize any serious discussion of international humanitarian law in relation to conduct by the United States and its allies.

Indeed, having 80 percent of the U.S. House of Representatives go on record attacking the integrity of one of the world's most respected and principled defenders of human rights is indicative of just how far to the right the U.S. Congress has now moved, even under Democratic leadership. Congress has served notice to the human-rights community that they won't consider *any* human-rights defenders credible if they dare raise questions about the conduct of a U.S. ally. This may actually be the underlying purpose of the resolution: to jettison any consideration of international humanitarian law from policy debates in Washington. The cost, however, will likely be to further isolate the United States from the rest of the world, just as Obama was beginning to rebuild the trust of other nations.

MOTIVATION AND CONSEQUENCES

Even putting aside moral and legal concerns, one might think that, following the congressionally authorized and funded debacle in Iraq, Congress would think twice before giving such a wholehearted endorsement to a similarly misguided policy. As Americans know all too well from the Iraq experience, placing an Arab land under debilitating sanctions that punish the population as a whole, bombarding heavily populated civilian areas resulting in widespread casualties among innocent people, and invading and occupying territories with a long history of resistance to outsiders does not lead to greater moderation from those afflicted. Furthermore, one might think that those sincerely concerned with Israel's legitimate security interests would recognize that Israel's war against

Hamas would not likely induce more rational or compromising policies from the Palestinian side, just as the firing of rockets by Hamas into Israel has certainly not made the Israelis more accommodating.

Indeed, there appears to be little popular support within the United States for such an unqualified endorsement of Israeli war-making, particularly when it results in such high civilian casualties. Public opinion toward the massive Israeli assault on Gaza was particularly negative among Democrats, who have generally been supportive of international humanitarian law, even when violated by U.S. allies. Within the American Jewish community itself, there has never been so much dissent over Washington's support for Israel's militaristic and self-defeating policies toward the Palestinians. Despite the myth that it is somehow "political suicide" to oppose such resolutions, all the Democrats who failed to vote for the July 2006 House resolution supporting Israel's attacks on Lebanon and the Gaza Strip were re-elected that November by a bigger margin than they had been two years earlier. Furthermore, virtually all of the principal authors and sponsors of these 2009 resolutions come from safe districts.

While the role of AIPAC and other right-wing Zionist groups was certainly a factor, the primary motivation for the resolution appears to have been to prevent the precedent of an impartial investigation into violations of international humanitarian law resulting in the prosecution of war criminals before the International Criminal Court. Since the ICC has never indicted anyone from a country with a record of fair and comprehensive internal investigations of war crimes and prosecution of those believed responsible, the goal of Congress appears to be to protect war criminals

from prosecution. U.S. support for human rights and international law has always been uneven, but never has Congress gone on record by such an overwhelming margin to discredit these universal principles so categorically. Indeed, it may be a means of preventing the kind of precedent that could serve as a deterrent to subsequent violations of international humanitarian law by the United States in its “global war on

terrorism.” By essentially going on record that mass killing of civilians is legitimate as long as you are fighting “terrorists,” this provides a blank check for U.S. forces to commit future atrocities. This is George W. Bush’s foreign-policy legacy. And through these resolutions, it appears that most members of the Democratic Party, no less than their Republican counterparts, have now embraced this dangerous world view.

¹ Landrieu-Collins/Hoyer-Blunt-Berman-Ros-Lehtinen Letters,” APN Legislative Round-Up, Americans for Peace Now, June 6, 2008.

² House Resolution 951, 110th Congress, 2nd session, March 5, 2008.

³ Interview, Joe Stork, Middle East division, Human Rights Watch, June 18, 2008.

⁴ “Children and Civilian Bystanders in Gaza Death Toll,” Amnesty International, March 3, 2008.

⁵ “Israel/Gaza: Civilians Must Not Be Targets,” Human Rights Watch, December 30, 2008.

⁶ Letter, Curt Goering, Senior Deputy Executive Director, Amnesty International, to Secretary of State Condoleezza Rice, January 2, 2009.

⁷ Memo, “America Supports Israel’s Defensive Actions,” American Israel Public Affairs Committee, Dec. 29, 2008.

⁸ Alert, “American Leaders Speak Out in Support of Israel’s Right to Self-Defense,” AIPAC, Jan. 22, 2009.

⁹ Senate Resolution 10, 111th Congress, 1st session, January 8, 2009.

¹⁰ House Resolution 34, 111th Congress, 1st session, January 9, 2009.

¹¹ Juan Cole, “Neoconservatism Dies in Gaza,” Salon, January 8, 2009.

¹² United Nations Security Council 1860 (2009), January 8, 2009.

¹³ News Release, “Gaza: ICRC Demands Urgent Access to Wounded As Israeli Army Fails to Assist Wounded Palestinians,” International Committee of the Red Cross, January 8, 2009.

¹⁴ Press Release, “Temporary Halt to Gaza Bombing a Paltry Response as Extreme Violence Victimized Civilians,” Doctors Without Borders, January 7, 2009.

¹⁵ Protocol I, Geneva Conventions, Part IV, Section 1, Chapter 1, Article 51.

¹⁶ “Lebanon/Israel: Israel Must Allow Civilians Safe Passage,” Human Rights Watch, July 20, 2006.

¹⁷ Charter of the United Nations, Chapter VI, Article 33.

¹⁸ “Operation ‘Cast Lead’: 22 Days of Death and Destruction,” Amnesty International, July 2, 2009.

¹⁹ See, for example, “Rain of Fire: Israel’s Unlawful Use of White Phosphorus in Gaza,” Human Rights Watch, March 25, 2009.

²⁰ “Onslaught: Israel’s Attack on Gaza and the Rule of Law,” National Lawyers Guild, February 2009.

²¹ “B’Tselem’s Investigation of Fatalities in Operation Cast Lead,” B’Tselem, September 9, 2009.

²² “Human Rights in Palestine and the Other Occupied Arab Territories,” Report of the United Nations Fact Finding Mission on the Gaza Conflict, United Nations Human Rights Council, 15 September 2009.

²³ Press Release, Office of Senator Kirsten Gillibrand, “Gillibrand, Senate Colleagues Urge U.S. to Block Inflammatory Anti-Israel Report from Reaching U.N. Security Council,” September 29, 2009.

²⁴ Press Release, “Legislators Reject Biased U.N. Report on Israel,” Sept. 18, 2009.

²⁵ House Resolution 867, 111th Congress, 1st session, Nov. 3, 2009.

²⁶ “Israel’s Bombardment of Gaza Is Not Self-Defence,” *The Sunday Times*, January 11, 2009.

²⁷ Breaking the Silence, “Soldiers Testimonies from Operation Cast Lead, Gaza 2009,” pp. 6-8.

²⁸ Press Release, “Don’t Silence ‘Breaking the Silence,’” B’Tselem, August 2, 2009.

²⁹ See, for example, B’Tselem, “Israeli Human Rights Organizations Call on the Attorney General: ‘Stop Whitewashing Suspected Crimes in Gaza,’” March 19, 2009.

³⁰ United Nations, “Gaza Report Presented to Human Rights Council,” September 29, 2009.