

# Why Is Congress Demonizing an Investigation of Israel's War Crimes in Gaza?

By Bill Moyers, Bill Moyers Journal

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**Editor's Note:** The following is a transcript of Bill Moyers' [must-read interview with Richard Goldstone](#), who accused both the Israel Defense Forces and Hamas of war crimes and possibly crimes against humanity during Israel's invasion of Gaza in the winter of 2008-2009 in his report submitted to the UN's Human Rights Council. The Council officially endorsed the findings of the report. Early this November the House of Representatives voted 344 to 36, to condemn Goldstone's report. As [Human Rights Watch researcher Fred Abrahams](#) writes, "The 179 Democrats and 165 Republicans who voted yea are helping to shield those responsible on both sides."

**Bill Moyers:** There could not have been a more thankless job in the world this year than investigating allegations of war crimes between Israelis and Palestinians. You're about to meet the man who shouldered that task after others had turned it down. And sure enough, he is at the center now of a raging controversy.

Judge Richard Goldstone was born and raised in South Africa, where he came to prominence investigating the vicious behavior of white security forces during apartheid.

In 1994, the UN named him to lead its investigation of war crimes in what was once Yugoslavia, including ethnic cleansing, the deadliest violence in Europe since the Second World War. That same year he was asked to prosecute genocide in Rwanda, where almost a million people were slaughtered. Goldstone went on to uncover Nazi war criminals hiding in Argentina, and to lead an independent inquiry into war crimes in Kosovo.

Time and again he has placed himself in harm's way and smack in the middle of controversy, but a few months ago he took on what was to become the greatest challenge of his legal career. It came after years of Hamas militants firing their missiles from the Gaza strip into southern Israel. Israel retaliated last December with Operation Cast Lead: 22 days of military action targeting Gaza, those 139 square miles between Israel and Egypt that are recognized as Palestinian territory. More than twelve hundred Palestinians died. Three Israeli civilians were killed and 10 soldiers, four of them the result of friendly fire. When Israeli forces withdrew, Gaza was left devastated and reeling. Not only had military targets been destroyed but thousands of homes as well as hospitals, schools and mosques. The United Nations Human Rights Council called for an investigation. And Goldstone agreed to lead it, but only after expanding the fact-finding mission's mandate to include charges against Hamas as well as Israel.

Over the next several months, Judge Goldstone and his team would thread their way through a minefield of accusation and denial.

In September, he submitted their report, 574 pages, scorching in their detail. The report accused both the Israel Defense Forces and Hamas of war crimes and possibly crimes against humanity. While condemning Palestinian rocket attacks, the report's harshest language was reserved for Israel's treatment of civilians in Gaza.

**Richard Goldstone:** These attacks amounted to reprisals and collective punishment, and constitute war crimes. The government of Israel obviously has a duty to protect its own citizens. That in no way justifies a policy of collective punishment of a people under effective occupation, destroying their means to live a dignified life and the trauma caused by the kind of military intervention the Israeli government called Operation Cast Lead.

The report and the angry debate surrounding it have exposed Goldstone to strident and bitter criticism. Nonetheless, late last week, the UN's Human Rights Council officially endorsed his findings. Richard Goldstone joins me now. Currently a visiting professor at Fordham Law School in New York, last spring he received the prestigious MacArthur Foundation Award for International Justice. His books include "For Humanity: Reflections of a War Crimes Investigator."

Judge Richard Goldstone, welcome to the Journal.

**Goldstone:** Thank you very much.

**Moyers:** Let me put down a few basics first. Personally, do you have any doubt about Israel's right to self-defense?

**Goldstone:** Absolutely not. And our approach to our mission and in our report the right of Israel to defend its citizens is taken as a given.

**Moyers:** So the report in no way challenges Israel's right to self-defense-

**Goldstone:** Not at all. What we look at is how that right was used. We don't question the right.

**Moyers:** Do you consider Hamas an enemy of Israel?

**Goldstone:** Well, anybody who's firing many thousands of rockets and mortars into a country is, I think, in anybody's book, an enemy.

**Moyers:** Were those rocket attacks on Israel a threat to the civilians of Israel, to the population of Israel?

**Goldstone:** Absolutely. The people within the range of those rockets and mortars in southern Israel and Sderot and Ashkelon have been living under circumstances of tremendous terror. Schoolchildren in particular, people, women and men, have less than 45 seconds to seek shelter when the Israelis know that rockets are coming. And often, they don't. And the fact that the death toll in southern Israel wasn't higher, is really happenstance. It's remarkable that none of those rockets caused a great deal more death and injury than they did.

**Moyers:** And Israel, in your judgment, was justified in trying to put an end to those rocket attacks-

**Goldstone:** Absolutely. No country can be expected to accept that with equanimity.

**Moyers:** You're Jewish, and a Zionist as well. When you say, "I'm a Zionist," in your case, what does that mean?

**Goldstone:** Well, what it means, that I fully support Israel's right to exist. That's for the Jewish people to have their own national homeland, in Israel.

**Moyers:** So why, as a Jew and a Zionist, concerned for Israel's survival, did you agree to stand in judgment on Israel's action in Gaza?

**Goldstone:** Well now, it was a question of conscience really. I've been involved in investigating very serious violations in my own country, South Africa, and I was castigated by many in the white community for doing that. I investigated serious war crimes in the Balkans and the Serbs hated me, hated me for that. And I was under serious death threat, both in South Africa and in respect of the Balkans. And then I

went onto Rwanda, and many people hated me for doing that. I've been a co-chair of the International Bar Association's Human Rights Institute, and for the last five years, I've been sending letters of protest weekly to countries like China and Syria and you name it, Bangladesh, Sri Lanka, complaining about violations of human rights. So I've been involved in this business for the last fifteen years or so, and it seemed to me that being Jewish was no reason to treat Israel exceptionally, and to say because I'm Jewish, it's all right for me to investigate everybody else, but not Israel.

**Moyers:** But you, you know, you have so many ties to Israel. You were on the board, I understand, of Hebrew University-

**Goldstone:** I still am. That's correct.

**Moyers:** -and that's not, you still are then. I mean, you had to know you were going to antagonize a lot of your friends.

**Goldstone:** That's correct, but I've also got the support of many of my friends. You know, it's something that goes both ways, but antagonizing friends was inevitable. Not only in respect of this investigation but in respect of previous investigations.

**Moyers:** Your report, as you know, basically accuses Israel of waging war on the entire population of Gaza.

**Goldstone:** That's correct.

**Moyers:** I mean, there are allegations in here, some very tough allegations of Israeli soldiers shooting unarmed civilians who pose no threat, of shooting people whose hands were shackled behind them, of shooting two teenagers who'd been ordered off a tractor that they were driving, apparently carrying wounded civilians to a hospital, of homes, hundreds, maybe thousands of homes destroyed, left in rubble, of hospitals bombed. I mean there are some questions about one or two of your examples here, but it's a damning indictment of Israel's conduct in Gaza, right?

**Goldstone:** Well, it is outrageous, and there should have been an outrage. You know, the response has not been to deal with the substance of those allegations. I've really seen or read no detailed response in respect of the incidents on which we report.

**Moyers:** Why is that?

**Goldstone:** Well, you know, I don't know. I suppose people hate being attacked. There's a knee-jerk reaction to attack the messenger rather than the message. And I think this is typical of that. And of course, a lot of the allegations, I certainly don't claim anything like infallibility. But I would like to see a response to the substance, particularly the attack on the infrastructure of Gaza, which seems to me to be absolutely unjustifiable.

**Moyers:** What did you see with your own eyes when you went there?

**Goldstone:** Well, I saw the destruction of the only flour-producing factory in Gaza. I saw fields plowed up by Israeli tank bulldozers. I saw chicken farms, for egg production, completely destroyed. Tens of thousands of chickens killed. I met with families who lost their loved ones in homes in which they were seeking shelter from the Israeli ground forces. I had to have the very emotional and difficult interviews with fathers whose little daughters were killed, whose family were killed. One family, over 21 members, killed by Israeli mortars. So, it was a very difficult investigation, which will give me nightmares for the rest of my life.

**Moyers:** Those particular incidents, what makes actions like that a crime in war? I mean, war is such a horrendous mess-

**Goldstone:** Absolutely.

**Moyers:** What makes those acts war crimes, as you say?

**Goldstone:** Well, humanitarian law, really fundamentally is what's known as the "principle of distinction." It requires all people involved, commanders, troops, all people involved in making war, it requires them to distinguish between civilians and combatants. And then there's a question-

**Moyers:** Combatants, right?

**Goldstone:** -and combatants. And then there's a question of proportionality. One can, in war, target a military target. And there can be what's euphemistically referred to as 'collateral damage,' but the 'collateral damage' must be proportionate to the military aim. If you can take out a munitions factory in an urban area with a loss of 100 lives, or you can use a bomb twice as large and take out the same factory and kill 2000 people, the latter would be a war crime, the former wouldn't.

**Moyers:** Who is to say that? Who is to make that distinction?

**Goldstone:** Well, that distinction must be made after the event. I think the military must be given a fairly wide margin of appreciation, in the sense that there must be room for mistakes, and ultimately, it's a question of looking at the intent, at the care, at any question of negligence on the people who take the decision.

**Moyers:** You wrote, quote, the military operation, this military operation in Gaza, was a result of the disrespect for the fundamental principle of 'distinction' in international humanitarian law. So in layman's language, the distinction between what and what?

**Goldstone:** Between combatants and innocent civilians.

**Moyers:** And you're saying Israel did not do that, in many of these incidents.

**Goldstone:** That's correct.

**Moyers:** Did you find evidence that that is deliberate on their part?

**Goldstone:** Well, we did. We found evidence in statements made by present and former political and military leaders, who said, quite openly, that there's going to be a disproportionate attack. They said that if rockets are going to continue, we're going to hit back disproportionately. We're going to punish you for doing it. And that's not countenanced by the law of war.

**Moyers:** So they were doing, on the ground, what they had said earlier they intended to do.

**Goldstone:** That's correct.

**Moyers:** -so there was intention.

**Goldstone:** Well, certainly. You know, one thing one can't say about the Israel Defense Forces is that they make too many mistakes. They're very, a sophisticated army. And if they attack a mosque or attack a factory, and over 200 factories were bombed, there's just no basis to ascribe that to error. That must be intentional.

**Moyers:** The Israelis admit that they bombed some of what you call civilian targets in your report, but they argue that because Hamas is the elected leadership in Gaza, some of those facilities are, in fact, part and parcel of the Hamas infrastructure.

**Goldstone:** Right. Well, there's certainly room for difference of opinion in respect of some of them. We had a look, for example, at the legislative assembly. Now the legislative assembly consists of members of Hamas in the majority, but also opposition parties. And certainly, as we understand international law, international humanitarian law, that to bomb the legislative assembly is unlawful. It's not a military target, it's a civilian target. I mean, to give an example closer to home, if the United States is at war it would be legitimate to bomb the Pentagon; I would suggest it would be illegitimate to bomb the Congress.

**Moyers:** But we did bomb the Bundestag in Germany, during World War II. The Allies did.

**Goldstone:** Well, I think the standards of World War II are a little outdated. I think the, we've had since then, the 1949 Geneva Conventions, the 1977 additional optional protocols to the Geneva Conventions, so the law has moved considerably. And I don't believe one can judge a war in 2008 and 2009 by the standards of the 1940s.

**Moyers:** But what about, for example, as you talk, you make me think of Hiroshima and Nagasaki, where the United States deliberately incinerated two cities, with atomic bombs, knowing that tens of thousands of civilians, including women and children, would perish-

**Goldstone:** Well, times have changed, the law has changed. And I have little doubt that if a similar situation arose today, it's highly unlikely that there would be the use of nuclear power in respect of cities and having a civilian toll that one had in Hiroshima and Nagasaki.

**Moyers:** What's the heart of the Geneva Convention and those protocols, as you see them, as an international lawyer?

**Goldstone:** Right. Well again, it's to give heightened protection to civilians, and not only in international armed conflict, but also in non-international armed conflict. So the whole topic has expanded considerably, really under the guidance and the guardianship of the International Committee of the Red Cross. And I think it's important to bear in mind that the 1949 Geneva Conventions is the first international instrument that's been ratified by every single member of the United Nations, so that's the law. It's not only treaty law, but it's become customary international law.

**Moyers:** Does it apply to a situation like Gaza?

**Goldstone:** Absolutely. And it applies, as we held in our report, it applies clearly to Israel as a state party to the Geneva Conventions, and it applies also to Hamas as a non-state party, under customary international law.

**Moyers:** Did you find war crimes by Hamas?

**Goldstone:** Oh, indeed.

**Moyers:** What were they?

**Goldstone:** We found that the firing of many thousands of rockets and mortars at a civilian population to constitute a very serious war crime. And we said possibly crimes against humanity.

**Moyers:** But Hamas is not a party to the Geneva Convention, right? I mean, they are not law-

**Goldstone:** Well it can't be, because it's not a state party.

**Moyers:** It's not-

**Goldstone:** But it's bound by customary international law and by international human rights law, and that makes it equally a war crime to do what it's been doing.

**Moyers:** Yet critics say that by focusing more on the actions of the Israelis and, then on the Palestinians, you are, in essence making it clear whom you think is the more responsible party here.

**Goldstone:** I suppose that's fair comment, Bill. I think it's difficult to deal equally with a state party, with a sophisticated army, with the sort of army Israel has, with an air force and a navy, and the most sophisticated weapons that are not only in the arsenal of Israel, but manufactured and exported by Israel, on the one hand, with Hamas using really improvised, imprecise armaments. So it's difficult to equate their power. But that having been said, one has to look at the actions of each. And one has to judge the criminality, or the alleged criminality, of each. And it's really, that the reason that we've, our main recommendation is to urge both sides to look at themselves, to have their own internal investigations to judge what each did. To have a criminal investigation and to prosecute and punish the people responsible.

**Moyers:** Was it possible, among the casualties in Gaza, to distinguish between militants and civilians?

**Goldstone:** Now, I can't believe that the Israel intelligence doesn't enable them to do it to, certainly to a higher degree. I'm not suggesting that there can be any infallibility. But, I'll give you an example. We spoke to the owner of a home in Gaza City. He said he looked out of his window and he saw some militants, whether Hamas or other Palestinian groups, setting up their mortar launchers in his yard. He ran out and said, "Get out of here. I don't want you doing this here. You're going to endanger my family, because they going to bomb. Get out." And in fact, they left. Whether that was typical or atypical, I don't know, we didn't, obviously, cover the field. But assuming they had disobeyed them, assuming they had launched the rockets from over the objections of the household owner, and his family, they launched the rockets and disappeared. It would be a war crime, as I understand it, for Israel to have bombed the home of that innocent household, who didn't want this to happen.

**Moyers:** But the Israelis would respond, I think, based on the evidence I've looked at, the record I've read of their response to your report, they would say that that was probably an exception, or could have been an exception, that many of those militants in Gaza were embedded in homes, embedded in hospitals, embedded in schools and the like.

**Goldstone:** Well, you know, the investigations, and we didn't, as I said, we couldn't cover the field. There were really hundreds of incidents.

**Moyers:** You chose about 36 representative-

**Goldstone:** We chose 36. And it could have been 3,600.

**Moyers:** Why those 36?

**Goldstone:** We chose those 36 because they seemed to be, to represent the most serious, the highest death toll, the highest injury toll. And they appear to represent situations where there was little or no military justification for what happened. We didn't want to investigate situations where we would be called upon to second-guess decisions made by Israeli Defense Force leaders or soldiers, in what's called

the afog of battle'. It's really unfair to do that, especially without hearing the other side. So we tried to concentrate on issues which seem to be less likely to be justifiable by applying those standards.

**Moyers:** Did you find evidence that Israel tried to avoid targeting civilians?

**Goldstone:** In some cases, yes. I, you know, we gave Israel full credit for some of the leaflets that were dropped in the Rafah area, where they were specific. They said "During such-and-such a period, we're going to be bombing between X street and Y street, and A street and B street. Get out, for your own safety." And that saved a lot of innocent lives. But many hundreds of thousands of other leaflets were really unhelpful-

**Moyers:** Why?

**Goldstone:** -dropped in many parts of Gaza, saying, warning, "We are going to be bombing. Get out of your homes." Didn't say when. Didn't say where. And also, it didn't, where could people go? It's such an overcrowded civilian area, one and a half million, in a tiny area, and with closed borders. There was little action families could take to react to that sort of warning.

**Moyers:** I didn't know until I read your report that the Israelis had actually called, 100,000 calls to telephones in Gaza and said, in effect, "Get out," right? They were intending to target, and they were giving the occupants a chance to move.

**Goldstone:** Well, first, move to where? And secondly, in consequence of the overwhelming majority of those warnings, there was no attack. So it was, it caused confusion and terror rather than saving lives.

**Moyers:** But confusion and terror are part of war, right?

**Goldstone:** Well no, there shouldn't be confusion and terror applied to a civilian population. If you're going to give warnings, they should be specific.

**Moyers:** But when the terrorists, the militants, whatever one wants to call them, are known to be embedded in, as you say, those tight, complex, concentrated areas, what's the other army to do?

**Goldstone:** It's for example, to launch commando actions, to get at the militants and not the innocent civilians. And there's an element of punishment, if one looks at the attacks on the infrastructure, on the food infrastructure, one sees a pattern of attacking all of the people of Gaza, not simply the militants.

**Moyers:** Why do you think they bombed the infrastructure so thoroughly?

**Goldstone:** Well, we've found that the only logical reason 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.

**Moyers:** So that would be the explanation for why, if they were interested only in stopping the bombing, they didn't have to destroy the land.

**Goldstone:** No, this was a political this was a political decision, I think, and not a military one. I think they were telling the people of Gaza that if you support Hamas, this is what we're going to do to you.

**Moyers:** Talk a little more about that. Give me some more examples of what you see as a pattern in the destruction of the infrastructure.

**Goldstone:** Right. Well, I'd start with the bulldozing of agricultural fields, apparently pretty random. It

wasn't as though these farms were owned by Hamas militants. That's, I haven't seen that allegation made. The bombing of some 200 industrial factories. As I mentioned, the only flour-producing factory, the water supply facilities of Gaza, the sanitation facilities, which caused an overflow of filth and muck into well over a square kilometer of land.

**Moyers:** Do you know if these were targeted, or were they the consequence of actions aimed at militants?

**Goldstone:** Well clearly, there can be no question of militants running 200 factories. There can be no, we know, from our investigation, that the owner of the flour factory, in fact, had one of the rare documents the Israelis give which allowed the owner to go into Israel, he dealt with Israeli counterparts. He received, and it's an interesting case, he received a warning to evacuate. He evacuated his staff. Nothing happened. They went back, and he made inquiries through a friend in Israel, who contacted the Israel Defense Force and said, "Don't worry. They're not going to bomb your factory." They went back. A few days later, he gets another telephone call saying, "Evacuate." Doesn't come to him, it comes to their switchboard. He again makes inquiries. "Don't worry. We're not going to bomb." So they go back. Nothing happens. Third warning to evacuate. They evacuate and they bomb the factory. Now if there was any militants involved, firstly, the Israelis know who they're dealing with, they'd given him a document allowing him to go into Israel. It's that sort of conduct which indicates to us an intent to punish civilians in Gaza for what their leaders were complicit in doing.

**Moyers:** It's difficult for us, in this country, to understand this intimacy of self-destruction, you know, that you just described. A Gazan factory owner calls a friend in Israel, who calls the military, and then he calls back to the factory. I mean, that, just right across an invisible border, right?

**Goldstone:** It's the sort of evidence which has some credibility to it. It's not the sort of evidence that this man is going to concoct.

**Moyers:** What were your standards of evidence, as you conducted these discussions, investigations and hearings in Gaza?

**Goldstone:** Well, we spoke to well over 100 witnesses. We didn't, obviously, take at face value everything we were told.

**Moyers:** Yeah, one criticism was that those witnesses were supplied by Hamas militants.

**Goldstone:** Well, in fact, that's not correct. We made our own inquiries, and we decided who we would see. We weren't given a list by Hamas or anybody else. We chose incidents, 36 out of as I say, could have been hundreds. But we chose the people we wanted to see, and certainly, there was no Hamas presence anywhere near the vicinity of where we saw people. There were malicious statements to the effect that they were, but I can give you every assurance that it didn't happen. And I can assure you that if it did happen, I wouldn't have been prepared to continue to operate under those situations. I would have insisted that they leave. And if I couldn't achieve that, I would have abandoned the investigation.

**Moyers:** Was there a moment when you thought, why am I doing this?

**Goldstone:** Oh, there've been frequent moments-

**Moyers:** No, I mean, during the time you were conducting the investigation. I know since then, you might have had second thoughts.

**Goldstone:** But even then, it was a very difficult, you know, I was, quite frankly, nervous going into Gaza. I had nightmares about being kidnapped. You know, it was very difficult, especially for a Jew, to go

into an area controlled by Hamas. So I did. It was, you know, I went in with a certain amount of fear and trepidation.

**Moyers:** And were there moments when you were apprehensive, when you thought, perhaps-

**Goldstone:** No, no. On the contrary, I was struck by the warmth of the people, that we met and who we dealt with in Gaza. You know, my fears were put aside. When I went back for the second visit to Gaza, I went with a much more equanimity and level of acceptance.

**Moyers:** But since they knew you were coming to try to prove that Israel had committed war crimes, you would have expected some hospitality, right?

**Goldstone:** No, no. No, but there was criticism when my appointment was announced, there were some Hamas statements, objecting to a Jew being appointed and expecting a Jew to be even-handed. I was certainly very conscious of being Jewish, offering me no excuse to refuse to do it. You know, anymore than it would have- I could have lived with myself being a white South African looking into terrible violations committed by white South African.

**Moyers:** Were you frightened then?

**Goldstone:** Yes, I was. Absolutely.

**Moyers:** Your life was in danger then-

**Goldstone:** It was. Very much so.

**Moyers:** You had to have-

**Goldstone:** I had security.

**Moyers:** Yeah. And what about Rwanda, and the Balkans? Were you ever fearful in those other situations? You seem to keep walking into the heart of darkness, if I may say.

**Goldstone:** You know, I went through some pretty difficult situations, especially flying into Sarajevo during the war, in helicopters, having flak jackets, flying into an airport that was under heavy attack by the Bosnian Serb forces. That was a hair-raising, probably one of the most nervous situations I've ever been in.

**Moyers:** Why do you do these things?

**Goldstone:** Well, you know, I think one accepts these duties and obligations, not knowing where they're going to lead. And then one has to do one's duty.

**Moyers:** Yeah, but why do you have to do your duty? I mean, what made a Richard Goldstone?

**Goldstone:** Well, I think it's one's experience. I've felt as I certainly I got involved in the anti-apartheid movement in South Africa because of my anger and frustration at the unfairness of racial oppression. And I was privileged to be able to get involved and make a difference. And then I found myself really, as a result, solely of pressure from Nelson Mandela, getting involved in the war crimes tribunal in the Yugoslavia. I didn't want to do it. But he twisted my arm, and he's a very good arm-twister, and I found myself in Bosnia. Then the Security Council asked me to do Rwanda. The Swedish Prime Minister asked me to do Kosovo. Kofi Annan asked me to do Oil-for-Food. These are all, I mean, difficult, difficult inquiries. I think, I must confess, I've got a tremendous amount of satisfaction from doing that, which

has put me into a position of working with absolutely outstanding people. So, really one thing leads to the other.

**Moyers:** But this is an occasion in which being a Jew, some right-wing Jews in Israel have accused you of betraying your people. This has never happened before, has it? Maybe the white South Africans accused you of betraying white South Africa, but this is different, isn't it?

**Goldstone:** Well, it's different, but it's symptomatic of the same disease.

**Moyers:** Which is?

**Goldstone:** Which is a form of racism. Why should my being Jewish stop me from investigating Israel? I just don't see it. I think a friend should be open to criticism from friends. I think it's more important. I think true friends criticize their friends when they do wrong things.

**Moyers:** Let me come back to some of that criticism, because I've tried to read as much as I can of the response to your report, as well as reading the report, which is compelling and terrifying, actually, but Israelis claim that if you hold them to this standard that you'd just described, that law prescribes for conflict, any democracy that's fighting terrorism is likely to find itself dragged into an international court of justice. I mean, do you consider that a valid concern?

**Goldstone:** No. Absolutely not. Take the United States fighting wars in Kosovo and Iraq and Afghanistan. They have certainly at a high level, gone to extremes to protect innocent civilians. Where they've made mistakes, and mistakes have been made, in Kosovo, in Iraq, in Afghanistan, apologies have followed. The United States, in general, has accepted and tried its best, with the assistance of military lawyers, has tried its best to avoid violating international humanitarian law. So, it seems to me this is a smokescreen. I've got no doubt that the laws of war are sufficient to cover the situation of fighting what is now termed asymmetric war. It's not easy; I concede that. But there's a line over which you just don't transgress, without clearly violating the law.

**Moyers:** Many Israelis said that if they took your findings to heart, they would not be able to root out the terrorists that surround them, and Israel does live in a sea of animosity.

**Goldstone:** Well, you know, I just don't accept that. I don't accept that the destruction of the food infrastructure is necessary to fight terrorism from Gaza.

**Moyers:** Let me show you a clip from the speech made at the United Nations by the Israeli Prime Minister Benjamin Netanyahu.

BENJAMIN NETANYAHU: A democracy legitimately defending itself against terror is morally hanged, drawn and quartered, and given an unfair trial to boot. By these twisted standards, the UN Human Rights Council would have dragged Roosevelt and Churchill to the dock as war criminals. What a perversion of truth. What a perversion of justice... The same UN that cheered Israel as it left Gaza, the same UN that promised to back our right of self-defense now accuses us - my people, my country - of being war criminals? And for what? For acting responsibly in self-defense. For acting in a way that any country would act. With a restraint unmatched by many. What a travesty. Ladies and gentlemen, Israel justly defended itself against terror. This biased and unjust report provides a clear-cut test for all governments. Will you stand with Israel or will you stand with the terrorists?

**Moyers:** What were you thinking as you just listened to that?

**Goldstone:** When I was thinking it's a complete misunderstanding, and lack of appreciation of what of what humanitarian law is all about. And again, it's no answer to say that there's a right of self-defense.

As I say, I accept the right of Israel, absolutely, to defend itself. But let me give you an example. Assuming the United States fighting Taliban, started bombing the whole food infrastructure of the people in the area where Taliban are- plowing up fields, bombing food factories, I don't believe that this would be accepted as legitimate by the people of the United States.

**Moyers:** Do we need to change the rules of war in fighting terrorism?

**Goldstone:** Not at all, and you know, it struck me when I heard that Prime Minister Netanyahu suggested that the law of war needs to be changed. It seems to me to contain an implicit acceptance that they broke the law that now is, and that's why it needs to be changed.

**Moyers:** From the get-go, Israel refused to cooperate with you. Israel would not even let you in the country to conduct investigations. How could you expect to do a good job, then, with only one side of the story?

**Goldstone:** Well, you know I, naively, I must confess, with hindsight, believed that Israel would cooperate. I thought that I'd obtained an even-handed mandate, really for the first time, from the Human Rights Council. I really expected the Israeli government to seize this opportunity of using an even-handed mission to its advantage. And I pleaded with the Israeli government in one letter directly to Prime Minister Netanyahu, I said, "Please, meet with me. Tell me how you want us to implement the mandate. Tell- give us advice as to how we should go about it." I assume they'd do that.

**Moyers:** Did you hear from him?

**Goldstone:** The final refusal came some two and a half months later, after we were busy involved. We were committed. It was really- it seems to me too late to withdraw at that stage.

**Moyers:** What is your judgment as to why Israel refused to cooperate?

**Goldstone:** Well, you know, I don't know. I understand the objection to the Human Rights Council. I've been an outspoken critic of the Human Rights Council, acting exceptionally against Israel and giving it the overemphasis of the Middle East, and condemnation of Israel, on the agendas of the Human Rights Council.

**Moyers:** That's been a pattern, hasn't it? That the United Nations has focused far more on Israel as a target of challenges on human rights than anybody else.

**Goldstone:** Absolutely, and this is why I thought this was a new departure, which should be taken advantage of and used as a lever to stop this partiality in the future. And even though it wasn't accepted by Israel, certainly, I believe I hope not immodestly, that I'm now in a position to criticize the Human Rights Council if it continues to act in that unfair way.

**Moyers:** So you took this on, knowing the record of bias on the part of UN, the United Nations toward Israel, and-

**Goldstone:** Absolutely.

**Moyers:** Because you hope to change that?

**Goldstone:** Because I hope to change it, and I thought it was in the interest of Israel for me to do it.

**Moyers:** And you insisted, as I understand it, that the mandate be changed. I mean, let me read you from the original mandate from the United Nations Human Rights Commission. Quote, "...investigate all

violations of international human rights law and international humanitarian law by the occupying power, Israel, against the Palestinian people, throughout the occupied Palestinian territory, particularly in the occupied Gaza Strip." Now that's pretty charged language, Judge. Not a single mention of Hamas or the other militants, who were firing thousands of rockets into Israel. Did that language set off an alarm for you?

**Goldstone:** No, it led to me refusing the invitation. I was invited on the basis of that, and I refused it. And I thought, that's the end of it.

**Moyers:** Because the language was charged.

**Goldstone:** Because it was stacked against Israel, and would have been a one-sided investigation, and I wasn't prepared, let alone as a Jew, but as a human being, to get involved in investigating under a one-sided mandate. And I refused. And I was then invited by the president of the Human Rights Council to visit with him. And he asked me what I thought would be an even-handed mandate, and I told him, and he said, "Write it out for me." And I wrote it out. And he said, "Well, that's the mandate that I'm giving you, if you're prepared to take it." Well, it was very difficult to refuse, in that situation, to get a mandate that I'd written for myself.

**Moyers:** What did you want it to say?

**Goldstone:** That the mandate should cover all crimes committed by both sides, within the context of Operation Cast Lead, whether committed before, during or after the military operations.

**Moyers:** You wanted it directed not just at Israel, but at-

**Goldstone:** Absolutely.

**Moyers:** -the militants.

**Goldstone:** Correct. And it was impossible to do a full job without that, because clearly, the Israeli operations were directly linked to the rocket fire. I still, frankly, feared that the Human Rights Council might use our report as an a la carte menu, and use those parts against Israel and reject those parts against Hamas. But it didn't do that, at the meeting of the Human Rights Council last week. It adopted the whole report, which is the clearest ex post facto approval of the even-handed mandate we got. And then, even then, I complained when I was in Bern, Switzerland, last week, that the first draft resolution left Hamas out of the picture, because our report was buried in a whole lot of resolutions and paragraphs condemning Israel, and as a result of my complaint, not only, but certainly, I think it played an important role, a paragraph was added, condemning all targeting of civilians. And calling for accountability on all sides.

**Moyers:** Your report recommends that both Israel and Hamas conduct their own investigations, and that if there are war crimes alleged and proven, that those participants, those perpetrators, Israelis or Hamas, be taken to the International Criminal Court.

**Goldstone:** No, that they should be punished in their own countries. Only if there are no investigations - the International Criminal Court is a court of last resort. If nations investigate their own war crimes in good faith, then the International Court has no jurisdiction. And that's the out Israel and Hamas have - if they have good faith investigations, that's the end of criminal investigations at the international level.

**Moyers:** So what are they afraid of, as you read Israel?

**Goldstone:** Well, I can only assume they're afraid of an even-handed, good faith investigation, proving

that serious war crimes were committed. And that they don't want.

**Moyers:** Do you think Hamas will likely call- do an investigation itself?

**Goldstone:** Well, I think there'd be tremendous pressure on them to do that, if Israel did.

**Moyers:** You said recently that to understand international justice, you have to understand the politics of international justice. What do you mean by that?

**Goldstone:** Well, you know, without the political will, we wouldn't have had an international war crimes tribunal for the former Yugoslavia. That was a huge departure. If you think what's happened since 1993 and 2009, there's been a rapid development. Nobody anticipated a permanent international criminal court, now with 110 nations actively involved in it, every member of the European Union. Japan. One wouldn't have expected that. But none of that would have happened without the political will, and particularly, the political will of the United States. It was the Clinton administration, and particularly Madeleine Albright, who drove that whole policy. Without Madeleine Albright, I believe that there wouldn't have been a Yugoslavia tribunal, there wouldn't have been a Rwanda tribunal, and Kofi Annan wouldn't have been encouraged to call a diplomatic conference to set up an International Criminal Court. So it was political will on the part of the United States, perhaps ironically, in hindsight. But without that, these things wouldn't have happened.

**Moyers:** Why does the world need an International Court of Justice?

**Goldstone:** It really is a question of principle. Until 1993, war criminals had literally impunity. They didn't have to fear justice at home, because at home, they were usually war heroes and not war criminals. And there wasn't a single international court with jurisdiction over them. There were no individual nations that were prepared to use universal jurisdiction against war criminals. That's changed. War criminals have trouble traveling around many countries of the world. One of the things worrying the Israeli government, that if they don't have their own investigation, they're going to face investigations in some of the European countries and some of the African countries, including my own country, South Africa. So there's a lot of political reasons that indicate that it's in their interest, and really, on what basis should they refuse, to have their own domestic investigation?

**Moyers:** Not everyone has been critical of your report, in fact, just this week, the "Financial Times," very respected British-based newspaper ran an editorial saying that: "Goldstone's Gaza report is balanced. Israel is not alone in the dock," it said, "it simply looms larger." So it's hard to understand why Israel is so vociferously opposed to what you say is a necessary act of justice.

**Goldstone:** The only reason they've given has come, I really think from Defense Minister Barak, who says that an independent investigation will in some way downgrade the military investigating themselves. Well, that would be a good thing. I think one of the things that disturbs me about the internal military investigation- it's now, what, seven months since the end of the war. There's only been one successful prosecution against a soldier, who stole a credit card, which is really almost fodder for cartoonists, in the plethora of alleged war crimes. But what concerns me is, in those military investigations, as far as I've read, in only one cases have the military even approached the victims in Gaza. And obviously, to have a full investigation, one needs, as you say, to hear both sides.

**Moyers:** The Israelis say that there's no government better at investigating their own actions of the military, whether it's the two wars in Lebanon, or Bus 300, all of these incidents, Israel says, "We go out and hold our military accountable."

**Goldstone:** Well, to do it in secrecy? And, you know, I always quote Justice Brandeis, who said, "The best disinfectant is sunlight." And this is happening in the dark. And even with the best good faith in the

world on the part of the military investigators, the victims are not going to accept decisions that are taken in the dark, and don't involve them.

**Moyers:** But if you were an Israeli, would you not be fearful of a United Nations that historically has been biased against the country?

**Goldstone:** Yes, but I would go out of my way to meet that head on. And not to simply put one's head in the sand and say, "Well, the United Nations is biased; I'm going to ignore it." That's not the way one succeeds in the modern world.

**Moyers:** The "Financial Times" says it is your reputation, Judge Richard Goldstone's reputation, the Israeli government fears and not your methods. What do they have to be afraid of?

**Goldstone:** The only thing they can be afraid of is the truth. And I think this is why they're attacking the messenger and not the message.

**Moyers:** What do you hope happens now?

**Goldstone:** Well, I certainly hope that there'll be sufficient drive within Israel, within the government and in the general public to force the Israeli government to set up an independent, open inquiry. And it can do it. It's got a wonderful legal system, its got a great judicial system, its got retired judges who certainly, in my book, would earn the respect of the overwhelming number of people around the world, including the Arab world, who, if they held open, good faith inquiries, would put an end to this.

**Moyers:** But just this week, the Israeli defense minister said, we don't want any investigations. He says, "There's no need for a committee of inquiry. The Israeli military knows how to examine itself better than anyone else." And he blocked a meeting this week that was going to discuss whether or not Israel should launch an investigation.

**Goldstone:** Well the question is whether he's going to succeed. You know, Ariel Sharon, when he was defense minister, did exactly the same blocking, unsuccessfully, in respect of Sabra and Shatila, and a very appropriate independent investigation was set up under judges and the then attorney general. And of course, they found Sharon guilty, and forced his dismissal as defense minister. So there's precedent both for the minister blocking it, and for his losing, and I hope that will happen here.

**Moyers:** The Israeli Cabinet this week set up a special cabinet lobbying group to urge the United States to use its veto power in the Security Council to prevent any legal action against the Israelis. What do you make of that?

**Goldstone:** Well, you know, that's the sort of politics you and I were talking about, not too many minutes ago. That's using the political route rather than the legal route.

**Moyers:** Our state department has come right out and said, your findings are unfair toward Israel.

**Goldstone:** Well, you know, those are statements it's impossible to respond to, because there's no detail. They haven't said why it's unbalanced. They've said there are flaws in the report. And I really do hope and invite the administration to indicate where the report is flawed or unbalanced. And I certainly would welcome learning where we went wrong, and if and I'm easily- I would be easily convinced. And if we if we made mistakes in those are pointed out, I would be the first person to admit it.

**Moyers:** So you have Israel saying that your report is an impediment to peace, and you say that it is essential to peace. Why do you think a report like this is essential to the peace process?

**Goldstone:** Well, because certainly, it's been my experience in the countries in which I've been involved and many in which I haven't been involved, that in the aftermath of serious human rights violations, you cannot get enduring peace if you leave rancor and calls for revenge in the victim population. What victims need is acknowledgement. They need official acknowledgement of their victimization. And whether that's done by Truth and Reconciliation Commissions, as we did in South Africa, or through domestic prosecutions or international prosecutions, that official truth-telling is an essential building brick to lasting peace.

*Bill Moyers is the host of [Bill Moyers Journal on PBS](#).*

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