

# The Goldstone Illusion

*What the U.N. report gets wrong about Gaza—and war.*

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I. IN 2000, I WAS ASKED by the Israel Defense Forces to join a group of philosophers, lawyers, and generals for the purpose of drafting the army's ethics code. Since then, I have been deeply involved in the analysis of the moral issues that Israel faces in its war on terrorism. I have spent many hours in discussions with soldiers and officers in order to better grasp the dilemmas that they tackle in the field, and in an attempt to help facilitate the internalization of the code of ethics in war. It was no wonder that, when the Goldstone Report on the Gaza war was published, I was keen to read it, with some hope of getting a perspective on Israeli successes or failures in this effort to comprehend war, and to fight it, morally. Unlike many who responded to the report, in praise or in blame, I gave this immensely long document a careful reading.

Let us begin with a sense of the moral stakes. Since the early 1990s, the nature of the military conflict facing Israel has been dramatically shifting. What was mainly a clash between states and armies has turned into a clash between a state and paramilitary terror organizations, Hamas in the south and Hezbollah in the north. This new form of struggle is now called "asymmetrical war." It is defined by an attempt on the part of those groups to erase two basic features of war: the front and the uniform. Hamas militants fight without military uniforms, in ordinary and undistinguishing civilian garb, taking shelter among their own civilian population; and they attack Israeli civilians wherever they are, intentionally and indiscriminately. During the Gaza operation, for example, some Hamas militants embedded in the civilian population did not carry weapons while moving from one position to another. Arms and ammunition had been pre-positioned for them and stored in different houses.

In addressing this vexing issue, the Goldstone Report uses a rather strange formulation: "While reports reviewed by the Mission credibly indicate that members of the Palestinian armed groups were not always dressed in a way that distinguished them from the civilians, the Mission found no evidence that Palestinian combatants mingled with the civilian population with the intention of shielding themselves from the attack." The reader of such a sentence might well wonder what its author means. Did Hamas militants not wear their uniforms because they were inconveniently at the laundry? What other reasons for wearing civilian clothes could they have had, if not for deliberately sheltering themselves among the civilians?

As for the new "front" in asymmetrical warfare, we read in another passage, which is typical of the report's overall biased tone, that "On the basis of the information it gathered, the Mission finds that there are indications that Palestinian armed groups launched rockets from urban areas. The Mission has not been able to obtain any direct evidence that this was done with the specific intent of shielding the rocket launchers from counterstrikes by the Israeli armed forces." What reason could there possibly be for launching rockets from urban centers, if not shielding those rockets from counterattack? And what is the moral distinction that is purportedly being established here?

By disguising themselves as civilians and by attacking civilians with no uniforms and with no front, these paramilitary terrorist organizations attempt nothing less than to erase the distinction between combatants and noncombatants on both sides of the struggle. Suicide bombers exploded themselves on buses and in restaurants in Tel Aviv, Jerusalem, Haifa, Dimona, Eilat, and many other places. Kasam rockets and Katyushas were fired randomly at various Israeli civilian centers, as far as their range allowed. So the war had no defined place and was waged by unidentified murderers. It justifiably felt like a change in the very nature of warfare. The goal of this momentous transformation was to create a war of all against all and everywhere. It aimed at shifting the Israeli population from a healthy sense of cautious fear attached to a particular place—a border, a security zone—to a generalized panic that has no location. Everywhere and everyone is now regarded as dangerous. This is not paranoia. It has a basis in a new reality, and is the outcome of a new strategic paradigm.

Faced with this unprecedented and deeply perplexing situation, two extreme positions have emerged in Israel. The radical left claims that, since such a struggle necessarily involves the killing of innocent civilians, there is no justifiable way of fighting it. Soldiers ought to refuse to engage in such a war, and the government has only one option, which is to end the occupation. This view is wrong, since Israel has the right and the obligation to protect its citizens, and without providing real security it will fail also to achieve peace and to put an end to the occupation. The radical right claims that, since Hamas and Hezbollah initiated the targeting of Israeli civilians, and since they take refuge among their own civilians, the responsibility for harming Palestinian civilians during Israel's attempt to defend itself falls upon the Palestinians exclusively. This approach is also wrong. The killing of our civilians does not justify the killing of their civilians. Civilians do not lose their right to life when they are used as shields by Hamas and Hezbollah. In fighting the militants, Israel must do as much as it possibly can do to avoid and minimize harm to civilian life and property.

The aim of the IDF ethics code is to strike a coherent and morally plausible position that provides Israel with the effective tools to protect its citizens and win the war while also setting the proper moral limits that have to be met while legitimately securing its citizens. In debating the code, I heard many times that it imposes constraints upon Israeli action that would limit the capacity of the army to win the battle and to provide security. In fact, the moral constraints and the strategic goals are mutually reinforcing. Radical groups such as Hamas start their struggle with little support from their population, which tends to be more moderate. They increase their base of support cynically, by murdering Israeli civilians and thereby goading Israel into an overreaction (this is not to deny, of course, that Israel can choose not to overreact) in a way that ends up causing suffering to the Palestinian civilians among whom the militants take shelter. The death and the suffering of the civilian Palestinian population, in the short run, is a part of the Hamas

strategy, since it increases the sympathy of the population with the movement's aims. An Israeli overreaction also leads to the shattering of Israel's moral legitimacy in its own struggle. In a democratic society with a citizen's army, any erosion of the ethical foundation of its soldiers and its citizens is of immense political and strategic consequence.

And so, Israel's goal in its struggle with Hamas and Hezbollah is to reverse their attempt to strengthen themselves politically by means of their morally bankrupt strategy. Rather than being drawn into a war of all against all and everywhere, Israel has sought to isolate the militants from their environment: to mark them and "clothe" them with a uniform, and to force them to a definite front. The moral restraints in this case are of great strategic value. I am convinced, for this reason, that targeted killing, especially of the militants' leadership, is an effective and legitimate endeavor. It is for this same reason that I believe that Israel's siege of Gaza, and its harsh effect upon general civilian life is morally problematic and strategically counterproductive.

## II.

**I**N ACCORDANCE WITH the just war tradition in Western history and philosophy, three principles are articulated in the IDF code concerning moral behavior in war. The first is the principle of necessity. It requires that force be used solely for the purposes of accomplishing the mission. If, for example, a soldier has to break down the door of a home in order to search for a suspected terrorist, he has no right to smash the TV set on his way in: Such gratuitous use of force has no relation to the mission. This is a straightforward principle, professionally and morally, though its implementation might be complicated if the mission is not well-articulated or if there are serious arguments about what kind of force is necessary to accomplish a given mission. In ordinary war, the collapse of the enemy's army is a more or less clear event; but in an asymmetrical war, victory is never final—the mission seems not so much to end as to shift; and so it may be difficult to apply the necessity principle.

The second principle articulated in the code is the principle of distinction. It is an absolute prohibition on the intentional targeting of noncombatants. The intentional killing of innocent civilians is prohibited even in cases where such a policy might be effective in stopping terrorism. At the height of the violence in 2002, some suggested that the only de-

terrence against suicide bombers who wish to die anyway is the killing of their families. But such a policy is blatantly murderous, and it is prohibited. An Israeli soldier is prohibited from intentionally targeting noncombatants, and, in the event that he is given such an order, he must refuse it. He is obligated to engage in fighting only those who threaten his fellow soldiers and civilians.

The implementation of the principle of distinction is also very difficult in an asymmetrical war. Since the enemy does not appear in uniform and there is no specified zone that can be described as the battlefield, the question of who is a combatant becomes crucial. In the process of identifying combatants, a whole causal chain must be established and marked as a legitimate target. This "food chain" of terrorism is made up of people whose intentional actions, one after the other, will end up threatening Israeli civilians or soldiers. This chain includes the one who plans the attack, the one who recruits the bomber, the one who prepares the bomb, the driver of the car that transports the bomber to his or her target, and so on. It is clear that such an

it has clear proof that this was the case in Gaza. This is certainly something that Israel will have to clarify. But it is clear to me that Goldstone's accusation that targeting of the police forces automatically constitutes an attack on noncombatants represents a gross misunderstanding of the nature of such a conflict.

**T**HE THIRD PRINCIPLE, the most difficult of all, is the principle of proportionality, or the principle of avoidance. Its subject is the situation in which, while targeting combatants, it is foreseeable that noncombatants will be killed collaterally. In such a case, a proportionality test has to be enacted, according to which the foreseeable collateral death of civilians will be proportionate to the military advantage that will be achieved by eliminating the target. If an enemy sniper is situated on a roof, and 60 civilians live under the roof, and the only way to kill the sniper is to bomb the roof, which is to say, bomb the house, such bombing is prohibited. The military advantage in eliminating the sniper is disproportionate to the probable cost of civilian life.

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## Hamas has transformed warfare by erasing the distinction between combatants and noncombatants.

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attempt gives rise to difficult cases, and even the most scrupulous effort will leave some room for doubt. What about the financier of the bombing, for example?

It is also clear that applying the international law of war to this new battlefield is fraught with problems. Consider a painful issue that comes up in the Goldstone Report—the matter of the Gaza police force. In the first minutes of the war, Israel targeted Hamas police, killing dozens. There is no question that, in an ordinary war, a police force that is dedicated to keeping the civilian peace is not a military target. The report therefore blames Israel for an intentional targeting of noncombatants. But such a charge is only valid concerning a war against a state with a clear and defined military institution, one that therefore practices a clear division of labor between the police and the army. What happens in semi-states that do not have an institutionalized army, whose armed forces are a militia loyal to the movement or party that seized power? In such situations, the police force might be just a way of putting combatants on the payroll of the state, while basically assigning them clear military roles. Israeli intelligence claims that

In discussing the proportionality constraint, there emerges a natural pressure to provide an exact criterion for measuring the proper ratio between collateral deaths and military advantage. I must admit that I do not know the formula for such a precise calculation, and I do not believe that a clear-cut numerical rule can be established. Different people have different intuitions about strategic value and moral cost. And yet the Israeli army has traditions and precedents that can be relied upon. In 2002, for example, Israel bombed the Gazan home of Salah Shehadeh, who was one of the main Hamas operatives responsible for the deaths of many Israeli civilians. Fourteen innocent people were killed along with Shehadeh. The Israeli chief of staff, Moshe Yaalon, claimed that the collateral deaths were not only unintentional, they were not even foreseeable. The innocent people who were killed lived in shacks in the backyard of the building, which, in aerial photographs, looked like an empty house. Yaalon claimed that, had Israel known about this collateral harm, it would not have bombed Shehadeh's hiding place. It had already aborted such an operation a few times because of concern with

foreseeable civilian death. I believe that such care is right. It is better to err on the side of over-cautiousness concerning collateral damage.

Besides the difficulties that are raised by the proportionality test, there is a far greater and more momentous issue at stake in the principle of avoidance. The IDF code states that soldiers have to do their utmost to avoid the harming of civilians. This principle states that it is not enough not to intend to kill civilians while attacking legitimate targets. A deliberate effort has to be made not to harm them. If such active, positive effort to avoid civilian harm is not taken, in what serious way can the claim be made that the foreseeable death was unintended? After all, the death occurred, and could have been expected to occur. So the proper ammunition has to be chosen to minimize innocent deaths; and, if another opportunity is expected to arise for eliminating the target, the operation must be aborted or delayed. Civilians have to be warned ahead of time to move from the area of operation if this is possible, and units have to be well aware that they must operate with caution, even after warning has been given, since not all civilians are quick to move. A leaflet dropped from the sky warning of an attack does not matter to the people—the sick, the old, the poor—who are not immediately mobile.

In line with such principles, the Israeli Air Force developed the following tactic. Since Hamas hides its headquarters and ammunition storage facilities inside civilian residential areas, the Israeli army calls the residents' telephones or cell phones, asking them to move immediately out of the house because an attack is imminent. But Hamas, in reaction to such calls, brings the innocent residents up to the roof, so as to protect the target from an attack, knowing that, as a rule, the Israeli army films the target with an unmanned drone and will avoid attacking the civilians on the roof. In response to this tactic, Israel developed a missile that hits the roof without causing any actual harm in order to show the seriousness of its intention. The procedure, called a "roof-knocking," causes the civilians to move away before the deadly attack.

It is rather a strange point in the Goldstone Report that this practice, which goes a long way to protect civilians, is actually criticized. Concerning such a practice, the report states that, "if this was meant as a warning shot, it has to be deemed reckless in the extreme." The truth is that this is an admirable and costly effort to avoid civilian collateral harm.

As is true with many of its criticisms, the report does not state what the alternative should be. What should Israel do in such a case? Attack the house without calling on its residents to move, or attack it while they are gathered on the roof? Or maybe avoid attacks altogether, allowing the enemy to take effective shelter among civilians?

**I**N THE DELIBERATIONS about the Israeli army's code of military conduct, a crucial question emerged in connection with the requirement that efforts be made to avoid harming civilians. For such efforts surely must include the expectation that soldiers assume some risk to their own lives in order to avoid causing the deaths of civilians. As far as I know, such an expectation is not demanded in international law—but it is demanded in Israel's military code, and this has always been its tradition. In Operation Defensive Shield in 2002, for example, Israeli army units faced a tough battle in the Jenin refugee camp. The army refused to opt for the easy military solution—aerial bombardment of the camp—because it would have resulted in many civilian deaths, and it elected instead to engage in house-to-house combat, losing 23 soldiers in the battle. This norm of taking risks with soldiers' lives in order to avoid civilian deaths came under criticism in Israel, but I believe that it is right. Innocent civilian lives are important enough to obligate such risks. And, if commanders are told that they do not have to assume such risk, then they will shoot at any suspicious person, which will result in widespread killing.

Yet the application of such norms in battle raises difficult moral quandaries. One of them comes up in the Goldstone Report. When the operation started, Hamas militants mostly avoided face-to-face battles with Israeli soldiers. They withdrew into the civilian heartland and fired mortar rockets from within their own population, targeting Israeli units. Mortar locations can be detected by radar, but the crew can move the mortar to a new location in a few minutes, and then fire from there. It is therefore impossible to target these mortars and their crews with a helicopter or in any other way that would provide a direct visual of the target and would use accurate ammunition: Such means simply take too much time to deploy. The only option is to fire back with mortar that can be quickly and accurately directed at the coordinates of the mortar on the other side.

The problem with such a tactic is that such mortars are of 120 millimeter caliber



and the radius of their hit is 50 meters. This means that collateral damage to civilians might occur while hitting the legitimate target. Of course, the commanding officer can choose not to fire back and put his soldiers at risk from the next rounds of mortar shots. It is important also to note that, when returning fire, the commanding officer cannot know whether there are civilians in that radius and how many of them are there. In "fog of war" conditions, and under pressure to react, such information is not available.

The Goldstone Report claims that the shooting of mortars caused disproportionate collateral harm, which is, of course, an empirical matter; but it is important to understand that this can be known only after the fact. So what to do? My own view is that, if the fire that the unit is taking is not accurate, and if the commander can move his own unit to another location, he should do so rather than fire back and endanger civilians. But this is a very difficult choice, and sometimes this choice might not be available. It is wrong to give the commanding officer a blank check to shoot anytime his soldiers are at probable risk—but he must be given the means of protecting them as well. The Goldstone Report is very critical about the firing of the Israeli mortars, but it does not take seriously into account the problems that such a situation imposes.



It is my impression that the Israeli army in Gaza did not provide clear guidance on the matter of whether soldiers have to assume risk. Some units took risks in the Gaza in order to avoid the collateral killing of civilians, while some units accepted the policy of no risk to soldiers. This does not amount to a war crime, but it is a wrong policy. It also might be a cause of unnecessary civilian deaths: It could inspire a reason for a misguided order to shoot whoever crosses a certain line on the map in proximity to an Israeli unit. Given the fact that anyone in the battle zone could be a militant, and that warnings were given, such an order might make sense—and yet the order should refer to someone who seems to pose a threat rather than to anyone who crosses the line, since fear and confusion might cause innocent civilians to move too close to the line and even to cross it.

These are not simple issues. They are also not political issues. They are the occasions of deep moral struggle, because they are matters of life and death. If you are looking for an understanding of these issues, or for guidance about them, in the Goldstone Report, you will not find it.

### III.

**I**N DISCUSSING THE CODE of ethical conduct with Israeli officers, many times I encounter the following complaint: “Do you want to say that, before

I open fire, I have to go through all these moral dilemmas and calculations? It will be completely paralyzing. Nobody can fight a war in such a straitjacket!” My answer to them is that the whole point of training is about performing well under pressure without succumbing to paralysis. This is the case with battlefields that have nothing to do with moral concerns. Do I attack from the right or from the left? How do I respond to this new tactic, or to that? And so on. This is why moral considerations have to be an essential part of military training. If there is no time for moral reflection in battle, then moral reflection must be accomplished before battle, and drilled into the soldiers who will have to answer for their actions after battle.

Besides the great difficulty of adjusting the norms of warfare—the principles of necessity, distinction, proportionality, and avoidance—to an untraditional battlefield without uniforms and without a front, there is still another pedagogical challenge. In a traditional war, the difficult moral choices are made by the political elites and the high command, such as whether to bomb Dresden or to destroy Hiroshima. But in this new kind of micro-war, every soldier is a kind of commanding officer, a full moral and strategic agent. Every soldier must decide whether the individual standing before him in jeans and sneak-

ers is a combatant or not. What sorts of risks must a soldier assume in order to avoid killing civilians while targeting a seeming combatant? The challenge is to make these rules part of the inner world of each soldier, and this takes more than just formulating the norms and the rules properly. It is for this reason that I looked to the Goldstone Report to learn whether these norms were in fact applied, and in what way Israeli soldiers did or did not succeed in internalizing and acting upon them.

The commission that wrote the report could have performed a great service if it had concentrated on gathering the testimonies from Gaza and assessing them critically, while acknowledging (as it failed to do) that they are partial and incomplete. This would have forced Israel to investigate various matters, provide answers, and take appropriate measures. (I do not imagine Hamas engaging in such an investigation of its own crimes. This is yet another asymmetry.) But instead the commission opted to add to its findings three unnecessary elements: the context of the history that led to the war; its assessment of Israel’s strategic goals; and long sections on Israel’s occupation of the West Bank. Why should a committee with a mandate to inquire into the operation in Gaza deal with the Israeli-Palestinian conflict at large?

The honest reader of these sections cannot avoid the impression that their objective is to prepare a general indictment of Israel as a predatory state that is geared toward violating human rights all the time. It will naturally follow from such a premise that the Gaza operation was yet another instance of Israel's general wicked behavior. These long sections are the weakest, the most biased, and the most outrageous in this long document. They are nothing if not political. In Goldstone's account of the history that led to the war, for example, Hamas is basically described as a legitimate party that had the bad luck to clash with Israel. The bloody history of the movement—which, since the beginning of the Oslo accords, was determined to do everything in its power, including the massacre of civilians, to defeat the peace process—is not mentioned.

The Israeli reader who actually experienced the events at the time remembers vividly that Hamas terrorists murdered Israeli men, women, and children all over Israel while a peace process was underway. Hamas was doing all this in accordance with its religious ideology, which is committed to the destruction of Israel and is fueled by Iranian military and financial support. In the supposed context that the report analyzes, there is no mention of Hamas's role and its ideology as reflected in its extraordinary charter, which calls for the destruction of Israel and the genocidal killing of Jews. In its attempt to stop Hamas's vicious attacks on Israel's citizens, Israel built a long fence—an obstacle to prevent a suicide bomber in Kalkilya from rolling out of bed and driving to the heart of Kfar Saba and Netanya in five or ten minutes. (The distances between life and death are really that short.) The Goldstone Report mentions the fence, of course—but as a great violation of human rights, as motivated sheerly by predatory desires.

Hamas was responsible in many ways for torpedoing the next opportunity for ending Israel's occupation. After the collapse of the Oslo agreement, Ariel Sharon, then the prime minister, decided to withdraw unilaterally from Gaza, in the belief that there was no reliable partner on the Palestinian side and that Israel had to start putting an end to its control of the Palestinian population. Ehud Olmert, Sharon's successor, was elected on a platform that committed him to unilateral withdrawals from the West Bank. But the implementation of this policy of continued Israeli withdrawal was cut short by the unrelenting shelling of Israeli cities and villages from recently va-

cated Gaza. Such ongoing attacks made Israelis rightly concerned that an evacuation of the West Bank would expose Israel's population centers to such attacks, and the possibility of unilateral evacuation from the West Bank collapsed.

In the last ten years, Israel has withdrawn unilaterally from south Lebanon and Gaza. In both cases, the vacuum was filled by militant Islamic movements religiously committed to the destruction of Israel. Anyone who supports a peaceful two-state solution must ponder the role of Hamas in destroying such a prospect—and yet, quite astonishingly, nothing of this is mentioned in the Goldstone Report. It also avoids mentioning the legitimate concern of Israel about the ongoing rearmament of Hamas in Gaza, which supplies them with more lethal long-range missiles to wreak destruction on Israeli population centers. The commission should not have dealt with the context leading to the war; it should have concentrated on its mandate, which concerned only the Gaza operation. By setting its findings about the Gaza war in a greatly distorted description of the larger historical context, it makes it difficult for Israelis—even of the left, where I include myself—to take its findings seriously.

**T**HEN THERE IS the report's conclusion concerning Israel's larger aims in the Gaza war. It claims that Israel's objective in Gaza was a direct and intentional attack on civilian infrastructure and lives: "In reviewing the above incidents the mission found in every case that the Israeli armed forces had carried out direct intentional strikes against civilians." In another statement, intentional destruction of property and attacks against civilians are lumped together: "Statements by political and military leaders prior to and during the military operations in Gaza leave little doubt that disproportionate destruction and violence against civilians were part of a deliberate policy." Now, there is a huge moral difference between the accusation that Israel did not do enough to minimize collateral civilian death and the claim that Israel targeted civilians intentionally. It might well be that Israel should have done more than it did to minimize collateral deaths—it is a harsh enough claim, and it deserves a thorough examination. But the claim that Israel intentionally targeted of civilians as a policy of war is false and slanderous.

There are different accounts of the numbers of civilian deaths in Gaza, and of the ratio between civilian and militant deaths. B'tselem, the reliable Israeli

human rights organization, carefully examined names and lists of people who were killed, and came up with the following ratio: Out of the 1,387 people killed in Gaza, for every militant that was killed, three civilians were killed. This ratio—1:3—obtains if you include the police force among the civilians; but if you consider the police force as combatants, the ratio comes out to 2:3. There are 1.5 million people in Gaza, and around 10,000 Hamas militants, so the ratio of militants to civilians is 1:150. If Israel targeted civilians intentionally, how on earth did it reduce such a ratio to 1:3 or 2:3?

The commission never asks that question, or an even more obvious one. In operating under such conditions—Gaza is an extremely densely populated area—is such a ratio a sign of reckless shooting and targeting? One way to think about this is to compare it with what other civilized armies achieve in the same sort of warfare. I do not have the exact numbers of the ratio of civilian to militant deaths in NATO's war in Afghanistan, but

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## The Goldstone Report offers no help in clarifying how Israel can legitimately defend its citizens.

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I doubt that it has achieved such a ratio. Is it ten civilians to one combatant, or maybe 20 civilians to one combatant? From various accounts in the press, it certainly seems worse. The number of collateral deaths that are reported concerning the campaign to kill Baitullah Meshud, one of the main Pakistani militant operatives, are also alarming: In 16 missile strikes in the various failed attempts at killing him, and in the one that eventually killed him (at his father-in-law's house, in the company of his family), between 207 and 321 people were killed. If such were the numbers in Israel in a case of targeted killing, its press and even its public opinion would have been in an uproar.

Besides the 500 civilians who were killed in the bombing of Serbia, how many militants were killed? The inaccurate high-altitude bombings in Serbia, carried out in a manner so as to protect NATO pilots, caused mainly civilian deaths. What would have been the ratio of deaths if NATO forces were fighting not in faraway Afghanistan, but while protecting European citizens from ongoing shelling next to its borders? And there are still more chilling comparisons. If ac-

curate numbers were available from the wars by Russia in Chechnya, the ratio would have been far more devastating to the civilian population. Needless to say, the behavior of the Russian army in Chechnya should hardly serve as a standard for moral scrupulousness—but I cannot avoid adducing this example after reading that Russia voted in the United Nations for the adoption of the U.N. report on Gaza. (The other human rights luminaries who voted for the Goldstone Report included China and Pakistan.) So what would be a justified proportionality? The Goldstone Report never says. But we may safely conclude that, if the legal and moral standard is current European and American behavior in war, than Israel has done pretty well.

#### IV.

**S**O A GOOD DEAL of the outrage that has greeted the Goldstone Report is perfectly justified. And yet its sections devoted to the Gaza war do make claims and cite testimonies that no honest Israeli can ignore. They demand a thorough investigation, and I will enumerate them in their order of severity.

The worst testimonies are of civilian deaths, some of which sound like the cold-blooded murder of civilians. In the report, such cases amount to a few individual incidents, and they call for criminal investigation of particular soldiers. Was there indeed a killing at close range of a mother and her three daughters carrying white flags? Then there are a few cases of alleged civilian deaths that are the result of the reckless use of firepower. The most disturbing of them is the testimony about the Al Samouni neighborhood in Gaza City, in which 21 members of a family were killed in an attack on a house. The place and the names are given in the report, and Israel will have to provide answers. Was it a mistake? Were some of the family members Hamas fighters? Did someone shoot at the soldiers from the house? Or was this an act of unjustified homicide?

The testimonies in the Goldstone Report are Palestinian testimonies. They were collected in Gaza, where the watchful eye of Hamas authorities always looms, rendering them vulnerable and partial. Israel chose not to cooperate with the commission, and so the Israeli version of events is not here. It was a mistake on Israel's part not to participate in the inquiry—though, after reading the report, I am more sympathetic to Israel's reluctance. This commission that describes its mission as fact-finding treats the missing Israeli testimonies as if they

are Israel's problem, rather than a methodological and empirical shortcoming in the report itself. Whatever one thinks about Israel's refusal to cooperate, the Goldstone Report is still only 452 pages of mostly Palestinian testimony, and this grave limitation must be acknowledged.

Yet the allegations have now been made, and Israeli answers must be given. The next issue that Israel will have to deal with is the use of what the report calls "human shields," which seems to have been an Israeli practice on some occasions. In justifying such a practice, Israeli commanders claim that they forced Palestinian civilians to go to certain homes to warn other civilians before attacking the houses. This might be justified, but the testimonies sound different. They sound as if Israeli soldiers were using civilians to gather information. After attacking a certain building, a civilian was allegedly forced to go and check whether the Hamas militants were dead or not. This is a troubling testimony. Was this done, or not? If it was done, then it is in violation of Israel's own Supreme Court ruling on the matter of human shields.

Other testimonies pertain to the destruction of civilian property. One of the most disturbing is the report of the flattening with bulldozers of the chicken farm at Zeytoun, in which 31,000 chickens were killed. Such destruction, like other reported destructions of agricultural and industrial facilities, does not seem to serve any purpose. The accusation concerning the destruction of civilian property pertains as well to the large-scale destruction of homes. According to the commission, aerial photographs show that, of the total amount of homes that were destroyed, about half were destroyed in the last three days of the operation. If so, then such destruction cannot be justified as in the heat of the battle. It was done to leave a brutal scar as proof of the Israeli presence, as immoral and illegal instruments of deterrence. If this were the case, then reparations should be made to the families whose homes were destroyed.

Next in order of severity comes the bombing of civilian infrastructure. According to the report, the Israeli Air Force bombed the flour mill, the water wells, and the sewage pipes in Gaza. It is possible that the flour mill was strategically located and was used as a perch for snipers or as a launching facility for Kassam rockets fired in the war. This would be the only justification for such a bombing. Israel should now provide its version of these events. If indeed these facilities

were attacked as part of a premeditated policy, then this was wrong, and Israel should say so.

I do not see much substance in the complaint against Israel's bombing of the Hamas Parliament and other offices while they were empty. A persuasive case can be made that an organization such as Hamas does not have a division of labor between its military and civilian functions. The report's long section on the attack on the prison in Gaza also seems to me a mistaken accusation. The commission notes that only one guard was killed in the bombing, but it blames Israel for endangering the prisoners in attacking a target that has no military use. It did not occur to the commission that Israel attacked the prison to allow Fatah prisoners to escape harsh treatment at the hands of Hamas. (The commission is well-aware that this was the population of the prison.) Some of them did escape, and some were subsequently shot by Hamas militants.

The Goldstone Report as a whole is a terrible document. It is biased and unfair. It offers no help in sorting out the real issues. What methods can Israel—and other countries in similar situations—legitimately apply in the defense of their citizens? To create standards of morality in war that leave a state without the means of legitimate self-protection is politically foolish and morally problematic; but real answers to these real problems cannot be found in the Goldstone Report. What should Israel do when Hezbollah's more lethal and accurate missiles strike the center of Tel Aviv, causing hundreds of civilian deaths? It is a well-known fact that these missiles are in Hezbollah's possession, and, when they are fired it will be from populated villages in Lebanon.

It is important, for this reason, that Israel respond to the U.N. report by clarifying the principles that it operated upon in Gaza, thus exposing the limits and the prejudices of the report. A mere denunciation of the report will not suffice. Israel must establish an independent investigation into the concrete allegations that the report makes. By clearing up these issues, by refuting what can be refuted, and by admitting wrongs when wrongs were done, Israel can establish the legitimacy of its self-defense in the next round, as well as honestly deal with its own failures. ♦

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