

# Israel's crisis deepens over Gaza war crimes report

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6 February 2010

United Nations General Secretary Ban Ki-moon threw a lifeline to Israel yesterday, stating that there was not yet enough evidence to say whether Israel or the Palestinians are complying with UN demands to investigate allegations of war crimes during the 22-day Israeli assault on Gaza.

Submissions by Israel and the Fatah-led Palestinian Authority remained incomplete, he said, on the day both were due to respond to last year's Goldstone report accusing Israel and Hamas of war crimes. Following Goldstone's report, the UN General Assembly has demanded that both Israel and Hamas launch independent investigations into their conduct during Operation Cast Lead in 2008-2009.

Though both parties were cited in the report by Richard Goldstone, a South African judge, Israel faces far more serious charges. It is accused of deliberately targeting civilians and civilian infrastructure in a conflict that saw over 1,400 Palestinians killed—compared with 13 Israelis killed—and the full or partial destruction of more than 21,000 buildings and apartments, including more than 200 major factories.

Ban Ki-Moon could have urged the convening of a special tribunal at The Hague. His statement is a de facto rejection of the dossier Israel produced claiming to account for its war crimes, but he still chose to praise Israel for having supposedly diligently investigated the allegations made against it. This statement is extraordinary, given the fact that the release of Israel's dossier contained an admission that at least one war crime Israel had repeatedly denied had in fact occurred and that evidence confirming another was uncovered just days after its release.

Israel released its dossier late on Friday, January 20, claiming that all charges against it had either been investigated or were under investigation. The dossier is part of its ongoing offensive against the Goldstone report. It insisted that the Israeli military conducted probes of 150 incidents during the conflict and that its use of white phosphorus bombs "was consistent with Israel's obligation under international law."

However, the report announced that two senior officers

had been disciplined for authorising an artillery attack using phosphorus bombs that set light to a United Nations compound in Gaza City. The two officers—Brigadier General Eyal Eisenberg and Colonel Ilan Malka—were not named in the report. They have both retained their rank and pay and will not face prosecution.

The acknowledgement of the incident was only referenced in paragraph 108 of the 48-page dossier. It is just one of many instances in which Israel used incendiary phosphorus-loaded bombs against civilian areas in breach of the Geneva Conventions. The incident cited took place on January 15, 2009. The report acknowledges that its forces "fired several artillery shells in violation of the rules of engagement prohibiting use of such artillery near populated areas," but claimed that the two officers had exceeded their authority.

A report last year admitted that the Israeli Defence Forces had fired shells containing white phosphorus, but claimed that the weapon was not misused. This is the only incident involving phosphorus weapons addressed in the latest dossier. Its claim that this was an error on the part of the two named officers is patently false, particularly given that Eisenberg is and was the commander of the Israeli Defence Forces Gaza Division.

Another incident cited by Goldstone and addressed by the dossier was the shelling of the El Badr flour mill, which the UN report said was "intentional and precise" and "was carried out for the purpose of denying sustenance to the civilian population" in violation of the Geneva Conventions. The Israeli dossier stated that the military's Advocate General had found that the mill did come under ground attack, but that there was no evidence of an attack from "the air using precise munitions." He "found no reason" to order a criminal investigation.

On Sunday, January 31, however, Britain's *Independent* newspaper reported that a UN technical source and one of the mill's owners had confirmed that an international mines action team went to the flour mill on 11 February 2009 to take the fuse out of the unexploded front half of a bomb commonly carried by Israeli Air Force F16 aircraft. On

February 1, the UN mine action team handling ordnance disposal in Gaza told the *Guardian* that the remains of a 500-pound Mk82 aircraft-dropped bomb had been found in the ruins of the mill last January.

The *Guardian* reported, “The UN mine action team said it identified an aircraft-dropped bomb at the mill on 25 January last year and removed it on 11 February. ‘Item located was the front half of a Mk82 aircraft bomb with 273M fuse,’ according to the team.” It was given two dated photographs of the front half of the bomb by the UN.

That Israel’s dossier fell so quickly under criticism is major setback for the Likud-led coalition government of Prime Minister Binyamin Netanyahu. It prompted some within ruling circles to argue that any hope of combating what Netanyahu has referred to as “the Goldstone effect” depends upon the convening of a judicial investigation.

Israel’s retiring attorney general, Menachem Mazuz, told *Ha’aretz* that the Goldstone report was “taking away Israel’s legitimacy” and that “Israel has a clear interest in conducting a serious, expert examination that will deal with the report and produce an opposing report.”

Colonel Pnina Sharvit-Baruch, who was head of the Israeli military advocate general’s international law department, argued, “We are now in a situation in which we need to give our friends—who don’t want to see lawsuits filed against us in their own courts—the tools to do away with such claims, along with other charges against us. If they need a commission of inquiry then that’s what we’ll give them.”

Such comments are in recognition of the fact that Israeli officials face a real danger of prosecution for war crimes if they travel abroad. On December 13 last year, a British judge withdrew an arrest warrant for war crimes issued against the former Israeli foreign minister and current leader of the opposition, Tzipi Livni, regarding her role as a member of the war cabinet during Operation Cast Lead. Livni was tipped off about the secret warrant and stayed away from Britain.

In September last year, the Westminster Court was also asked to issue an arrest warrant for Ehud Barak, Israel’s defence minister, under the 1988 Criminal Justice Act, for his involvement in the Gaza War. The Foreign Office successfully argued that he was a serving minister who would be meeting his British counterparts and therefore enjoyed immunity under the State Immunity Act of 1978.

Prime Minister Gordon Brown and several cabinet members responded by apologising to Livni and promising swift changes to the law to remove the possibility of prosecution for war crimes under the principle of “universal jurisdiction.”

Universal Jurisdiction is a central principle of international law and embodies the injunction contained in the Geneva

Conventions that signatory nations “shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed” war crimes “and shall bring such persons, regardless of their nationality, before its own courts.”

The pledge by the Brown government to eliminate its provisions demonstrates that the criminal actions of all the major powers have become incompatible with previously established legal norms. But efforts to amend the law, as part of the Crime and Security Bill due to be put to Parliament on February 23, have reportedly run into difficulties at the committee stage.

Any delay could lead to a serious diplomatic incident. This week, Livni told the *Jewish Chronicle* that she would return to the UK in order to challenge the UK process of arrest warrants and prove that it is “the right of every Israeli to travel freely.” She set February 23 as the date after which she would consider a number of invitations.

Livni’s threats are of a piece with the generally hard-line stance taken towards Goldstone. Defence Minister Ehud Barak said February 1 that the Goldstone Report was “biased, one-sided and deceptive.” He opposed the establishment of a commission of inquiry into Operation Cast Lead, urging instead the assembling of a “panel of jurists” to determine how “we can carry out the operation better the next time.”

IDF Chief of General Staff Lt.-Gen. Gabi Ashkenazi said, “We need to deal with the challenges the Goldstone Report creates for us but not with the establishment of an inquiry commission.”

His deputy chief of staff, Major-General Benny Gantz, said that the Goldstone report was “a Trojan horse taking advantage of a legal speculum that will eventually harm us. Israel must make it clear that while we share a number of values with the West, there is a basic difference. We live with our values in a war zone. This fusillade does not allow us to respond any other way. We must remove this threat.”



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