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**Recanting the Goldstone Report? On the Contrary:
The UN Human Rights Council Initiates Act 2**

On April 1, 2011 the Washington Post printed an article by Judge Richard Goldstone in which he declared that he had reached the conclusion that in its Gaza operation of 2008/09, Israel did not intentionally, as a matter of general policy, kill Palestinian civilians. This has led to discussion on whether the UN should withdraw the Goldstone Report, which did accuse Israel of having adopted a military policy that violates principles of international law.

Withdrawal of the Goldstone Report is not likely to happen. On the contrary, on March 25, 2011, just one week before Judge Goldstone's partial recantation, the UN Human Rights Council adopted a "Follow-up" resolution to the Goldstone Report. Once again the Human Rights Council urged that the Goldstone Report be referred for consideration by the prosecutor of the International Criminal Court.

To fully understand the intent of the Human Rights Council's March 25 action, it is useful to review the "legislative history" of the Goldstone Report.

The Initiation of the Goldstone Report by the UN Human Rights Council

Following a series of rocket attack from the Gaza area, Israel, exercising its right to self-defense, as guaranteed by the UN Charter, Article 51, responded on December 27, 2008 militarily to those attacks. The military operation, designed to reduce the danger of rocket attacks from Gaza, ended on January 18, 2009.

The UN Human Rights Council, which stands by idly as many conflicts, involving serious human rights violations, take place on the world scene, went promptly into Special Session. On January 12, 2009, the Council adopted a resolution sponsored by the Arab and African Groups, the Organization of the Islamic Conference *and Cuba*. The resolution found Israel guilty of "grave violations of the human rights of the Palestinian civilians [in the Gaza Strip]." Having found Israel guilty, the Council called for the appointment of "an urgent, independent international fact-finding mission ... to investigate all violations of international human rights law by the occupying Power, Israel, against the Palestinian people ... particularly in the Gaza Strip, due to the current aggression...." The resolution was adopted by a vote of 33 to 1, with 13 abstentions. Voting "no" was Canada. Abstaining were the 10 European members plus Cameroon, Japan, and South Korea.

The "international fact-finding mission" called for by the Human Rights Council was appointed on April 3, 2009. It consisted of four persons, headed by Richard Goldstone, a retired South African judge. In due course, on September 15, 2009, the mission submitted its report,

confirming the finding, made eight months earlier by the appointing authority, the UN Human Rights Council, that Israel had been guilty of grave violations of the human rights of Palestinian civilians in the Gaza Strip.

The document issued by the Mission, which has come to be known as the “Goldstone Report,” recommended that in light of its findings of Israel’s guilt, the Security Council (a) call upon the Government of Israel to investigate within three months the violations of international human rights law cited in the Report, (b) establish an independent committee to monitor the Israeli investigation, and (c) in the absence of a good faith Israeli investigation, “refer the situation in Gaza to the Prosecutor of the International Criminal Court.”

The Mission recommended to the UN General Assembly that it (a) request the Security Council to report on the measures it has taken to ensure “accountability for serious violations of human rights law ... in the context of the military operations in Gaza,” (b) “establish an escrow fund to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to the State of Israel during the December-January military operations ... and that the Government of Israel pay the required amounts into such fund,” and (c) ask the Government of Switzerland to convene a conference of the High Contracting Parties to the Fourth Geneva Convention of 1949 on measures to enforce the Convention in the OPT [Occupied Palestinian Territories].”

On October 16, 2009 the UN Human Rights Council endorsed the recommendations of the Goldstone Report and called “upon all concerned parties including United Nations bodies, to ensure their implementation.”

Action and Non-Action on the Goldstone Report in 2009 and 2010

On November 5, 2009, the General Assembly adopted Res. 64/10 endorsed the Goldstone Report and asked the Secretary-General to send the Report to the Security Council, asked the Swiss Government to convene a Conference of the High Contracting Parties to the Fourth Geneva Convention, and asked the Secretary-General to report back to the Assembly within three months. The vote was 114 for, 18 against, with 44 abstentions. In voting “against,” the United States was joined by Australia, Canada, Israel, Panama, 4 Pacific Island states, and 9 European States. Abstaining were 26 European states, 8 African states, 4 Pacific Island states, 3 Latin American states, Japan, New Zealand, and South Korea.

In accordance with the provisions of Res. 64/10, the Secretary General reported to the General Assembly on February 4, 2010 that he had received an update from the Government of Israel of its investigation of the Gaza operation. He also reported that he had received a response from the Government of Switzerland on the steps it has taken to follow up on the Goldstone Report. He did not mention any action by the UN Security Council.

There followed an extensive effort by the West European States to negotiate a compromise follow-up text with the Arab League. Such a text was adopted on February 23, 2010, Res. 64/254. It reiterated the call for a further investigation by the Government of Israel. Its principal operative provision was the repetition of the recommendation that the Government of

Switzerland “reconvene as soon as possible a Conference of the High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territories.” **It omitted any reference for a call on the Security Council to refer the case to the Prosecutor of the ICC.**

There was a heavy snow on the day of the vote, causing 56 absences. Those present voted on this compromise text 98 for, 7 against, with 31 abstentions. The U.S. was joined by Canada, Israel, Macedonia, Micronesia, Nauru, and Panama. Abstaining were 16 East European states, 4 African states, 3 Latin American states, Australia, Papua New Guinea, Samoa, South Korea, and 4 states that broke away from the West European group: Germany, Italy, San Marino, and the Netherlands.

It was understood that the Swiss Government would be expected to take action to reconvene the Fourth Geneva Convention Conference within five months, thus by July 2010. When that time came, Switzerland reported to the UN Secretary-General “that there was not a dominant trend in favor of holding such a conference.”

As to the recommendation that the Goldstone Report be referred to the Prosecutor of the International Criminal, the Secretary-General reported to the General Assembly on March 19, 2010 that the Security Council had not taken any action on the recommendations in the Goldstone Report, including the recommendation that the Report be referred to the Prosecutor of the International Criminal Court. That failure to take action was not due to a veto by a permanent member of the Council. The Goldstone recommendation had not been voted on because no member of the Council had asked for a vote. There is good reason to assume that the reason why no vote was requested was that the proponents of a referral to the Prosecutor of the ICC did not have the nine votes which were needed to make it necessary for the United States to exercise its veto power.

Thus, as the year 2010 drew to an end, the two major operative recommendations in Goldstone Report, the referral of the Report to the Prosecutor of the International Criminal Court and the Reconvening of the Conference of the High Contracting Parties to the Fourth Geneva Convention had not been adopted.

The Effort to Resuscitate the Goldstone Report in 2011

The fact that neither a Swiss-led conference on the Gaza operation nor a referral of the Goldstone Report to the ICC Prosecutor took place in 2010 does not mean that those who consider the Goldstone Report a useful tool in the continuing effort to demonize Israel have given up. A Working Group on the Conference of the High Contracting Parties to the Fourth Geneva Convention was convened by the Swiss Government, causing the United States Government to issue the following most emphatic statement:

“The United States strongly opposes the possible convocation of the High Contracting Parties to the Fourth Geneva Convention to single out one country, Israel.

The Geneva Conventions are universally respected and are indispensable to the rule of law in armed conflict. By singling out one country, such a conference risks undermining the integrity of the Geneva Conventions and the neutrality of their application. It is of the utmost importance that they not be politicized. A conference of High Contracting Parties focused on Israel would be politicized and harmful to Arab-Israeli peace efforts and to stability in the region at this critical point.

Ultimately, the best way to address the humanitarian situation in Gaza lies in the vigorous and ongoing efforts to bring about a comprehensive peace in the region through negotiation between the parties, with the goal of two states, Israel and Palestine, living side by side in peace and security.

The United States has conveyed our deep concern directly to the Swiss government. Those who are concerned about the situation in Israel and the Palestinian territories, as well as the region as a whole, should focus on ways to support and advance ongoing peace efforts and to support the Palestinian Authority politically and financially. A conference of the High Contracting Parties will only undermine efforts to achieve peace and stability in the region.

Last summer, Switzerland reported to the UN Secretary-General that there was not a dominant trend in favor of holding a conference, so this working group meeting does not represent a consensus way forward. We hope that states will join us in opposing movement towards what will be a politicized and unproductive conference, and instead work on fostering an atmosphere conducive to peace in the Middle East.”

The meeting of the Working Group was not the only effort to bring the Goldstone Report back to life. When the 16th Session of the UN Human Rights Council convened, the Report was back on the agenda and on March 25, 2011, the Council adopted a “Follow-up” resolution on the Goldstone Report which once again called for (a) the convening of a Geneva Convention conference on the Occupied Palestinian Territories prior to September 2011, (b) the establishment of the escrow fund to compensate Palestinians for losses sustained as a result of Gaza operation, and (c) General Assembly action to resubmit the Goldstone Report to the UN Security Council for referral to the Prosecutor of the International Criminal Court.

Conclusion

Thus, whatever Judge Goldstone may think of the contents of the document that bears his name, the Goldstone Report remains on the agenda of the Government of Switzerland and of the UN Human Rights Council, and can be expected to be on the agenda of the UN General Assembly when it meets in September. Once again the challenge will be to prevent unfair and inappropriate action by the UN Security Council.

