

April 27, 2010

Re: Conference: The UN's Goldstone Report: Lawfare & The Threat to Israeli and American National Security in the Age of Terrorism

Dear Conference Organizers and Guests,

The undersigned institutions, organizations, and individuals would like to bring to your attention their shared concern regarding the purpose of today's conference, "The UN's Goldstone Report: Lawfare & The Threat to Israeli and American National Security in the Age of Terrorism". Given the title, agenda, and scheduled speakers, the undersigned believe that the conference organizers are ignoring the rights of civilians living under military occupation in their determination to label the Report of the United Nations Human Rights Council's fact-finding mission on the Gaza conflict ["U.N. Report"] as "lawfare".

The announcement for this conference states that it is being held in view of "attacks on the legitimacy of actions taken in self-defense." The undersigned question the legitimacy of the self-defense claim for the following reasons: The Israeli Ministry of Foreign Affairs' web site released an article, "One Month of Calm along the Israel-Gaza Border," that supports the view that Israel's attack on Gaza was not actually needed as self-defense against rocket fire. In essence, both Israel and Hamas entered into an Egyptian brokered cease-fire in June of 2008. The Israeli government's web site lauded Hamas not only for stopping its own rocket fire but for arresting members of other groups who sought to launch rockets. Despite Hamas' compliance with the cease-fire agreement, on November 4, 2008, Israeli forces violated the successful cease-fire by launching a surprise aerial and ground attack on Gaza, killing six Hamas members. Hamas launched a barrage of rockets, in response to Israel's attack. Israel ordered ground and air forces into Gaza eight times in the eight weeks that followed, before launching its massive aerial attacks on December 27, 2008. Given the series of events described above, it follows that the undersigned find the self-defense argument to be flawed, and urge conference guests to conduct their own research and raise questions about the plausibility of the self-defense claim.

In addition, the U.N. Mission, headed by respected South African Justice Richard Goldstone, prepared its U.N. Report based on months of investigation of events which preceded, and took place during, Israel's Operation Cast Lead, spanning from December 27, 2008 to January 18, 2009. In over 500 pages, the U.N. Report presents the findings of the investigation, as well as recommendations. The recommendations include a call for independent and impartial investigations to be conducted by both the Israeli government and Hamas into the prima facie war crimes and potential crimes against humanity found by the U.N. Mission. In particular, the facts presented in the U.N. Report show that Israeli political and military leaders intentionally targeted civilians and civilian infrastructure, or at times used clearly disproportionate force or deployed weapons in a manner that failed to meet the test of distinction such that avoidable civilian deaths and injuries were caused on many occasions, failed to care for the wounded, interfered with Palestinian human rights workers, and used Palestinian civilians as human shields, all in violation of the requirements of the Fourth Geneva Convention. These reported findings cry out for investigation by a competent, independent, and unbiased Israeli judicial body, and the Israeli government has not yet launched such an investigation. The undersigned would ask conference guests to endorse this recommendation.

The undersigned are concerned that this conference is being used to distort international law by rejecting requirements of distinction and proportionality that are meant to protect civilians from the use of military force. The attack on such provisions, if successful, will protect political and military officials from being charged with war crimes and crimes against humanity, and

consequently, degrade international law. Degrading international law exposes the Israeli government and its supporters not only to severe criticism but also undermines any future desire by Israel to rely on international law for its own protection. The undersigned urge conference guests to condemn any efforts to justify unlawful attacks on civilians and civilian objects, as no government has a free pass to attack civilians.

None of what Israel is accused of can conceivably be defended on the basis of fighting the war on terror, just as indiscriminate attacks on Israeli civilians by Palestinians cannot be defended on the basis of their struggle for self-determination, nor will accountability for these acts and omissions on either side make civilians any less safe from individual or state acts of terrorism in the future – the contrary is much more likely: the rule of law is far more likely to lead to a regional breakthrough than continued lawlessness.

The undersigned support the freedom of academic expression and encourage conference organizers and guests to scrutinize, question, and discuss the facts, conclusions, and recommendations presented in the U.N. Report.

The undersigned call on conference participants to condemn the unfair criticism that has diverted attention from the contents of the U.N. Report and that has included personal attacks on Justice Richard Goldstone.

The Israeli and Palestinian peoples are affected daily by political maneuvers that aim to conceal the truth and delay justice, accountability, and peace. The undersigned ask conference organizers and guests to maintain productive legal dialogue throughout the day in an effort to not further derail the movement for an impartial investigation and accountability for such serious charges as the war crimes and crimes against humanity described in the U.N. Report.

Thank you for considering this matter.

Sincerely,

National Lawyers Guild, Fordham Law School Chapter
National Lawyers Guild
Richard Falk, United Nations Special Rapporteur on the situation of human rights in the
Palestinian territories occupied since 1967
& the below listed signatories

ⁱ See Israel Ministry of Foreign Affairs, One month of calm along the Israel-Gaza border (July 27, 2008), <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/One+month+of+calm+in+Gaza+28-Jul-2008.htm> (last visited Apr. 26, 2010); see also James Marc Leas, *Israeli Government Contradicts its Own 'Self-Defense' Argument*, CENTRE FOR RESEARCH ON GLOBALIZATION, Oct. 14, 2009, <http://www.globalresearch.ca/index.php?context=va&aid=15647> (last visited Apr. 26, 2010) (refuting the claim that Israel launched Operation Cast Lead in an act of self-defense).