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Justice in Gaza

RICHARD GOLDSTONE, September 17 2009

I ACCEPTED with hesitation my United Nations mandate to investigate alleged violations of the laws of war and international human rights during Israel's three-week war in Gaza last winter. The issue is deeply charged and politically loaded. I accepted because the mandate of the mission was to look at all parties: Israel; Hamas, which controls Gaza; and other armed Palestinian groups. I accepted because my fellow commissioners are professionals committed to an objective, fact-based investigation.

But above all, I accepted because I believe deeply in the rule of law and the laws of war, and the principle that in armed conflict civilians should to the greatest extent possible be protected from harm.

In the fighting in Gaza, all sides flouted that fundamental principle. Many civilians unnecessarily died and even more were seriously hurt. In Israel, three civilians were killed and hundreds wounded by rockets from Gaza fired by Hamas and other groups. Two Palestinian girls also lost their lives when these rockets misfired.

In Gaza, hundreds of civilians died. They died from disproportionate attacks on legitimate military targets and from attacks on hospitals and other civilian structures. They died from precision weapons like missiles from aerial drones as well as from heavy artillery. Repeatedly, the Israel Defense Forces failed to adequately distinguish between combatants and civilians, as the laws of war strictly require.

Israel is correct that identifying combatants in a heavily populated area is difficult, and that Hamas fighters at times mixed and mingled with civilians. But that reality did not lift Israel's obligation to take all feasible measures to minimize harm to civilians.

Our fact-finding team found that in many cases Israel could have done much more to spare civilians without sacrificing its stated and legitimate military aims. It should have refrained from attacking clearly civilian buildings, and from actions that might have resulted in a military advantage but at the cost of too many civilian lives. In these cases, Israel must investigate, and Hamas is obliged to do the same. They must examine what happened and appropriately punish any soldier or commander found to have violated the law.

Unfortunately, both Israel and Hamas have dismal records of investigating their own forces. I am unaware of any case where a Hamas fighter was punished for deliberately shooting a rocket into a civilian area in Israel — on the contrary, Hamas leaders repeatedly praise such acts. While Israel has begun investigations into alleged violations by its forces in the Gaza conflict, they are unlikely to be serious and objective.

Absent credible local investigations, the international community has a role to play. If justice for civilian victims cannot be obtained through local authorities, then foreign governments must act. There are various mechanisms through which to pursue international justice. The International Criminal Court and the exercise of universal

jurisdiction by other countries against violators of the Geneva Conventions are among them. But they all share one overarching aim: to hold accountable those who violate the laws of war. They are built on the premise that abusive fighters and their commanders can face justice, even if their government or ruling authority is not willing to take that step.

Pursuing justice in this case is essential because no state or armed group should be above the law. Western governments in particular face a challenge because they have pushed for accountability in places like Darfur, but now must do the same with Israel, an ally and a democratic state.

Failing to pursue justice for serious violations during the fighting will have a deeply corrosive effect on international justice, and reveal an unacceptable hypocrisy. As a service to the hundreds of civilians who needlessly died and for the equal application of international justice, the perpetrators of serious violations must be held to account.

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