https://acdn.net/spip/spip.php?article554

US Congress resolution versus UN fact-finding report (Oct 29, 2009)

- Homepage - News - External sources -

Publication date: Saturday 31 October 2009

Copyright © www.acdn.net - All rights reserved

Below are:

1) the US congressional non-binding resolution condemning the findings of U.N. investigator Richard Goldstone's report;

2) the reply of R. Goldstone where clause by clause he exposes the flaws in the House resolution.

111th CONGRESS

1st Session

H. RES. 867

Calling on the President and the Secretary of State to oppose unequivocally any endorsement or further consideration of the "Report of the United Nations Fact Finding Mission on the Gaza Conflict" in multilateral fora.

IN THE HOUSE OF REPRESENTATIVES

October 23, 2009

[-] Ms. ROS-LEHTINEN (for herself, Mr. BERMAN, Mr. BURTON of Indiana, and [-] Mr. ACKERMAN) submitted the following resolution; which was referred to the Committee on Foreign Affairs

RESOLUTION

Calling on the President and the Secretary of State to oppose unequivocally any endorsement or further consideration of the `Report of the United Nations Fact Finding Mission on the Gaza Conflict' in multilateral fora.

Whereas, on January 12, 2009, the United Nations Human Rights Council passed Resolution A/HRC/S-9/L.1, which authorized a `fact-finding mission' regarding Israel's conduct of Operation Cast Lead against violent militants in the Gaza Strip between December 27, 2008, and January 18, 2009;

Whereas the resolution pre-judged the outcome of its investigation, by one-sidedly mandating the `fact-finding mission' to `investigate all violations of international human rights law and International

Copyright © www.acdn.net

Humanitarian Law by . . . Israel, against the Palestinian people . . . particularly in the occupied Gaza Strip, due to the current aggression';

Whereas the mandate of the `fact-finding mission' makes no mention of the relentless rocket and mortar attacks, which numbered in the thousands and spanned a period of eight years, by Hamas and other violent militant groups in Gaza against civilian targets in Israel, that necessitated Israel's defensive measures;

Whereas the `fact-finding mission' included a member who, before joining the mission, had already declared Israel guilty of committing atrocities in Operation Cast Lead by signing a public letter on January 11, 2009, published in the Sunday Times, that called Israel's actions `war crimes';

Whereas the mission's flawed and biased mandate gave serious concern to many United Nations Human Rights Council Member States which refused to support it, including Bosnia and Herzegovina, Cameroon, Canada, France, Germany, Italy, Japan, the Netherlands, the Republic of Korea, Slovakia, Slovenia, Switzerland, Ukraine, and the United Kingdom of Great Britain and Northern Ireland;

Whereas the mission's flawed and biased mandate troubled many distinguished individuals who refused invitations to head the mission;

Whereas, on September 15, 2009, the `United Nations Fact Finding Mission on the Gaza Conflict' released its report;

Whereas the report repeatedly made sweeping and unsubstantiated determinations that the Israeli military had deliberately attacked civilians during Operation Cast Lead;

Whereas the authors of the report, in the body of the report itself, admit that `we did not deal with the issues . . . regarding the problems of conducting military operations in civilian areas and second-guessing decisions made by soldiers and their commanding officers `in the fog of war.';

Whereas in the October 16th edition of the Jewish Daily Forward, Richard Goldstone, the head of the `United Nations Fact Finding Mission on the Gaza Conflict', is quoted as saying, with respect to the mission's evidence-collection methods, `If this was a court of law, there would have been nothing proven.';

Whereas the report, in effect, denied the State of Israel the right to self-defense, and never noted the fact that Israel had the right to

Copyright © www.acdn.net

defend its citizens from the repeated violent attacks committed against civilian targets in southern Israel by Hamas and other Foreign Terrorist Organizations operating from Gaza;

Whereas the report largely ignored the culpability of the Government of Iran and the Government of Syria, both of whom sponsor Hamas and other Foreign Terrorist Organizations;

Whereas the report usually considered public statements made by Israeli officials not to be credible, while frequently giving uncritical credence to statements taken from what it called the `Gaza authorities', i.e. the Gaza leadership of Hamas;

Whereas, notwithstanding a great body of evidence that Hamas and other violent Islamist groups committed war crimes by using civilians and civilian institutions, such as mosques, schools, and hospitals, as shields, the report repeatedly downplayed or cast doubt upon that claim;

Whereas in one notable instance, the report stated that it did not consider the admission of a Hamas official that Hamas often `created a human shield of women, children, the elderly and the mujahideen, against [the Israeli military]' specifically to `constitute evidence that Hamas forced Palestinian civilians to shield military objectives against attack.';

Whereas Hamas was able to significantly shape the findings of the investigation mission's report by selecting and prescreening some of the witnesses and intimidating others, as the report acknowledges when it notes that `those interviewed in Gaza appeared reluctant to speak about the presence of or conduct of hostilities by the Palestinian armed groups . . . from a fear of reprisals';

Whereas even though Israel is a vibrant democracy with a vigorous and free press, the report of the `fact-finding mission' erroneously asserts that `actions of the Israeli government . . . have contributed significantly to a political climate in which dissent with the government and its actions . . . is not tolerated';

Whereas the report recommended that the United Nations Human Rights Council endorse its recommendations, implement them, review their implementation, and refer the report to the United Nations Security Council, the Prosecutor of the International Criminal Court, and the United Nations General Assembly for further action;

Whereas the report recommended that the United Nations Security Council-

(1) require the Government of Israel to launch further investigations

of its conduct during Operation Cast Lead and report back to the Security Council within six months;

(2) simultaneously appoint an `independent committee of experts' to monitor and report on any domestic legal or other proceedings undertaken by the Government of Israel within that six-month period; and

(3) refer the case to the Prosecutor of the International Criminal Court after that six-month period;

Whereas the report recommended that the United Nations General Assembly consider further action on the report and establish an escrow fund, to be funded entirely by the State of Israel, to `pay adequate compensation to Palestinians who have suffered loss and damage' during Operation Cast Lead;

Whereas the report ignored the issue of compensation to Israelis who have been killed or wounded, or suffered other loss and damage, as a result of years of past and continuing rocket and mortar attacks by Hamas and other violent militant groups in Gaza against civilian targets in southern Israel;

Whereas the report recommended `that States Parties to the Geneva Conventions of 1949 start criminal investigations [of Operation Cast Lead] in national courts, using universal jurisdiction' and that `following investigation, alleged perpetrators should be arrested and prosecuted';

Whereas the concept of `universal jurisdiction' has frequently been used in attempts to detain, charge, and prosecute Israeli and United States officials and former officials in connection with unfounded allegations of war crimes and has often unfairly impeded the travel of those individuals;

Whereas the State of Israel, like many other free democracies, has an independent judicial system with a robust investigatory capacity and has already launched numerous investigations, many of which remain ongoing, of Operation Cast Lead and individual incidents therein;

Whereas Libya and others have indicated that they intend to further pursue consideration of the report and implementation of its recommendations by the United Nations Security Council, the United Nations General Assembly, the United Nations Human Rights Council, and other multilateral fora;

Whereas the President instructed the United States Mission to the

Copyright © www.acdn.net

United Nations and other international organizations in Geneva to vote against resolution A-HRC-S-12-1, which endorsed the report and condemned Israel, at the special session of the Human Rights Council held on October 15-16, 2009;

Whereas, on September 30, 2009, Secretary of State Hillary Clinton described the mandate for the report as `one-sided';

Whereas, on September 17, 2009, Ambassador Susan Rice, United States Permanent Representative to the United Nations, expressed the United States' `very serious concern with the mandate' and noted that the United States views the mandate `as unbalanced, one-sided and basically unacceptable';

Whereas the `Report of the United Nations Fact Finding Mission on the Gaza Conflict' reflects the longstanding, historic bias at the United Nations against the democratic, Jewish State of Israel;

Whereas the `Report of the United Nations Fact Finding Mission on the Gaza Conflict' is being exploited by Israel's enemies to excuse the actions of violent militant groups and their state sponsors, and to justify isolation of and punitive measures against the democratic, Jewish State of Israel;

Whereas, on October 16, 2009, the United Nations Human Rights Council voted 25-6 (with 11 states abstaining and 5 not voting) to adopt resolution A-HRC-S-12-1, which endorsed the `Report of the United Nations Fact Finding Mission on the Gaza Conflict' and condemned Israel, without mentioning Hamas, other such violent militant groups, or their state sponsors; and

Whereas efforts to delegitimize the democratic State of Israel and deny it the right to defend its citizens and its existence can be used to delegitimize other democracies and deny them the same right: Now, therefore, be it

Resolved, That the House of Representatives-

(1) considers the `Report of the United Nations Fact Finding Mission on the Gaza Conflict' to be irredeemably biased and unworthy of further consideration or legitimacy;

(2) supports the Administration's efforts to combat anti-Israel bias at the United Nations, its characterization of the `Report of the United Nations Fact Finding Mission on the Gaza Conflict' as `unbalanced, one-sided and basically unacceptable', and its opposition to the resolution on the report;

Copyright © www.acdn.net

(3) calls on the President and the Secretary of State to continue to strongly and unequivocally oppose any endorsement of the `Report of the United Nations Fact Finding Mission on the Gaza Conflict' in multilateral fora;

(4) calls on the President and the Secretary of State to strongly and unequivocally oppose any further consideration of the `Report of the United Nations Fact Finding Mission on the Gaza Conflict' and any other measures stemming from this report in multilateral fora; and

(5) reaffirms its support for the democratic, Jewish State of Israel, for Israel's security and right to self-defense, and, specifically, for Israel's right to defend its citizens from violent militant groups and their state sponsors.

2) Letter of R. Goldstone

MEMORANDUM

[-] FROM: RICHARD GOLDSTONE
[-] TO: INTERESTED PERSONS
[-] RE: HR 867

Here are some comments on this resolution in an effort to correct factual errors:

1. Paragraph 3:

That is why I and others refused the original mandate - it only called for an investigation into violations committed by Israel. The mandate given to and accepted by me and under which we worked and reported reads as follows:

". . .to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 20089, whether before, during or after".

That mandate clearly included rocket and mortar attacks on Israel and as the report makes clear was so interpreted and implemented. It was the report with that mandate that was adopted by the Human Rights Council and that included the serious findings made against Hamas and other militant Palestinian groups.

2. Paragraph 4:

This is factually incorrect. Chapter XXIV of the Report considers in detail the relentless rocket attacks from Gaza on Israel and the terror it caused to the people living within their range. The finding is made that they constituted serious war crimes and possibly crimes against humanity.

3. Paragraph 5:

Copyright © www.acdn.net

The member concerned, Professor Christine Chinkin of the London School of Economics, in the same letter, together with other leading international lawyers, also condemned as war crimes the Hamas rockets fired into Israel.

4. Paragraph 6:

The mandate that was given to the Mission was certainly not opposed by all or even a majority of the States to which reference is made. That is factually incorrect. I am happy to provide further details if necessary.

5. Paragraph 7:

This too is factually incorrect. The mandate that had been rejected was the one I rejected. Mary Robinson, for example, has written in support of the mandate given to and accepted by me.

6. Paragraph 9:

The words quoted relate to the decision we made that it would have been unfair to investigate and make finding on situations where decisions had been made by Israeli soldiers "in the fog of battle". This was a decision made in favor and not against the interests of Israel.
I do not consider that it is fair or just to label the findings as "sweeping and unsubstantiated determinations".

7. Paragraph 11:

What I had explained to The Forward was that the Report itself would not constitute evidence admissible in court of law and that investigators would have to investigate which allegations they considered relevant. That, too, was why we recommended domestic investigations into the allegations. The remark as quoted is both inaccurate and taken completely out of context.

8. Paragraph 12:

It is again factually incorrect to state that the Report denied Israel the right of self-defense. The report examined how that right was implemented by the standards of international law. What is commonly called ius ad bellum, the right to use military force was not considered to fall within our mandate. Israel's right to use military force was not questioned.

9. Paragraph 13:

This is the first suggestion that I have come across to the effect that we should have investigated the provenance of the rockets. It was simply not on the agenda, and in any event, we would not have had the facilities or capability of investigating these allegations. If the Government of Israel has requested us to investigate that issue I have no doubt that we have done our best to do so.

10. Paragraph 14:

This is a sweeping and unfair characterization of the Report. I hope that the Report will be read by those tasked with considering the resolution.

Copyright © www.acdn.net

11.Paragraph 16:

Again, this is an unfair and selective quotation taken our of context.

12. Paragraph 17:

That Hamas was able to shape the findings or that it pre-screened the witnesses is devoid of truth and I challenge anyone to produce evidence in support of it.

Finally, I note that there is not a word to record that notwithstanding repeated pleas to the Government of Israel, it refused all cooperation with the Mission. Amongst others, I requested the views of Israel with regard to the implementation of the mandate and details of any issues that the Government of Israel might wish us to investigate.

Copyright © www.acdn.net