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The Nation

Israel's Crimes, America's Silence

By *John Dugard*

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President Obama's recent speech to the Muslim World failed to address allegations that Israel committed war crimes in Gaza. Palestinians and people throughout the region were shocked at the firepower Israel brought to bear against Gaza's civilians and do not want Palestinians' ongoing misery to be further ignored. Many were surely waiting to hear from President Obama that the way to peace does not lie through the devastation of civilian life and infrastructure in Gaza.

To date, too little mention has been made of investigations that show there is sufficient evidence to bring charges of war crimes and crimes against humanity against Israel's political and military leadership for their actions in Gaza. Recently, two comprehensive independent reports have been published on Gaza, and earlier this month a mission mandated by the UN Human Rights Council, and chaired by South African Richard Goldstone, visited Gaza to conduct a further investigation into Israel's offensive.

On May 4 the United Nations published the findings of an [investigation into attacks carried out by the Israel Defense Forces](#) (IDF) on UN premises in Gaza. Led by Ian Martin, formerly head of Amnesty International, this investigation found Israel responsible for wrongfully killing and injuring Palestinians on UN premises and destroying property amounting to over \$10 million in value. Although this investigation did not address the question of individual criminal responsibility, it is clear that the identified wrongful acts by Israel constituted serious war crimes.

On May 7 the Arab League published the 254-page report of an [Independent Fact Finding Committee](#) (IFFC) it had established to examine the legal implications of Israel's Gaza offensive. This committee, comprising six experts in international law, criminal law and forensic medicine from non-Arab countries, visited Gaza in February. We concluded that the IDF had committed serious war crimes and crimes against humanity.

As the committee's chairman, I spent five days in Gaza along with the other experts. Our views were deeply influenced by interviews we conducted with victims and by the evidence

of destruction of property. We were particularly disturbed by the accounts of cold-blooded killings of civilians committed by some members of the IDF and the Israeli military's use of white phosphorus in densely populated areas. The devastation was appalling and raised profound doubts in my mind as to the veracity of Israeli officials who claimed this was not a war against the Palestinian people.

The IFFC found that the IDF, in killing some 1,400 Palestinians (at least 850 of whom were civilians), wounding over 5,000 and destroying over 3,000 homes and other buildings, had failed to discriminate between civilian and military targets, terrorized civilians, destroyed property in a wanton manner not justified by military necessity and attacked hospitals and ambulances. It also found that the systematic and widespread killing, injuring and terrorizing of the civilian population of Gaza constituted a crime against humanity.

The IFFC investigated the question whether the IDF was responsible for committing the 'crime of crimes'-- genocide. Here we concluded that although the evidence pointed in this direction, Israel lacked the intention to destroy the people of Gaza, which must be proved for the crime of genocide. Instead, the IFFC found that the purpose of the offensive was collective punishment aimed at reducing the population to a state of submission. However, the IFFC did not discount the possibility that individual soldiers had acted with the required genocidal intent.

Israel's argument that it acted in self-defense was rejected, *inter alia*, on the basis of evidence that Israel's action was premeditated and not an immediate response to rockets fired by militants and was, moreover, disproportionate. The IFFC found that the IDF's own internal investigation into allegations of irregularities, which exonerated the IDF, was unconvincing because it was not conducted by an independent body and failed to consider Palestinian evidence.

The IFFC also examined the actions of Palestinian militants who fired rockets indiscriminately into southern Israel. We concluded that these actions constituted war crimes and that those responsible committed the war crimes of indiscriminate attacks on civilians and the killing, wounding and terrorization of civilians.

The past twenty years have brought important developments in international law in respect to accountability for international crimes. Yet Israel has possibly secured impunity for itself by failing to become a party to the Rome Statute of the International Criminal Court. Nevertheless, its actions may still be judged by the court of public opinion.

A bold Obama speech on Gaza would have ensured that the public is on notice that it's not business as usual in Washington. Even American allies, such as Israel, should have to answer evidence of serious international crimes. In this way, some measure of accountability may be achieved. With an active American push, a new view of the United States may begin to take shape after eight years of disregard for international and domestic law.