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## The Law of Armed Conflict in Asymmetric Urban Armed Conflict

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### *Introduction*

**A**t the conference from which this "Blue Book" is derived, I served as the moderator of a panel entitled "The Changing Character of Tactics: Lawfare in Asymmetrical Conflicts." This reflects an apparent assumption: that tangible changes have occurred in the tactics now being used by States in waging armed conflicts of an asymmetric nature.

In offering some thoughts of my own on this subject, I turn to the pivotal questions posed to the panel. "Is this a valid assumption? And, if so, have such changes in tactics occurred within the context of the historically accepted norms of the Law of Armed Conflict (LOAC), or do these tactical modifications represent a fundamental shift in the manner in which the customary and codified LOAC is now being both interpreted and applied to these conflicts by the international community?"

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*The Goldstone Report: Has There Occurred a Fundamental Interpretive Change in the Applicability of the Law of Armed Conflict to Asymmetric Urban Armed Conflict Scenarios?*

There currently exists a widespread assumption that a change has occurred in the tactics now being used by States to wage asymmetric conflicts. If this is true, do these tactics, nevertheless, continue to reflect a traditional application of the LOAC to such conflicts? Or, instead, are these tactical changes being driven, in fact, by a substantial shift in the manner in which the international community has chosen to interpret the application of fundamental LOAC principles to such scenarios?

The focus will be on a very specific type of asymmetric conflict—one involving a State on the one hand and a non-State entity on the other—and, even more specifically, asymmetric armed conflict between a State and a non-State entity in essentially, if not exclusively, an urban environment. Why is the question focused so narrowly, and why do I consider this subject to be one that has recently taken on increasing importance?

Certainly, it is true that, for almost a decade, US and coalition forces have been involved in ongoing and seemingly unending conflicts increasingly waged in densely populated urban areas. Both Iraq and Afghanistan have seen extensive fighting occur in urban settings as the US and its coalition partners have confronted both State and various non-State entities in the form of the Taliban and elements of al Qaeda in these theaters of operation. In this age of “persistent conflict,” the chances are great that the United States will continue to see its forces consistently having to deal with such fighting environments. In brief, asymmetric State/non-State urban conflicts—and, importantly, all of the LOAC issues associated with such conflicts—have been a part of the international landscape for an extended period of time.

Given this reality, then, why is it that I now believe it to be an imperative that the United States and other States that may well find themselves involved in these types of conflicts fully examine the matter of whether a fundamental shift has occurred in the manner in which some of the most well established principles of the LOAC will be applied to an armed force’s future use of force against a non-State entity in an urban setting? Again, why now?

The answer to this question resides in the form of something called the Goldstone Report.<sup>1</sup> Many are familiar with this report. It would appear, however, that little consideration has been given to its contents in the context of the matter at hand—its potentially adverse impact on the future applicability of the LOAC to the types of conflict in issue.

The Goldstone Report, issued in September 2009, is the product of the United Nations Fact-Finding Mission on the Gaza Conflict, established, interestingly enough, by the President of the UN Human Rights Council in April 2009. Its mandate was “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 [between] December 27, 2008 and January 18, 2009, whether before, during or after.”<sup>2</sup> The military operations being referenced were, of course, those of the Israeli Defence Force’s (IDF’s) Operation Cast Lead, taken primarily in response to mortar and rocket attacks launched against Israel by the Palestinian organization Hamas from within Gaza (some 12,000 attacks in the previous eight years).<sup>3</sup>

The four-member Goldstone mission was headed by Justice Richard Goldstone, a former judge of the Constitutional Court of South Africa and former president of the international criminal tribunals for the former Yugoslavia and Rwanda. The other three appointed members were a professor of international law at the London School of Economics and Political Science, an advocate of the Supreme Court of Pakistan, and a former officer in Ireland’s Defence Forces.<sup>4</sup>

From the very outset of its work, the mission stated that it would interpret its mandate as requiring that it place the civilian population of the region at the center of its concerns regarding violations of international law,<sup>5</sup> an interpretive decision that was to prove to be of no small consequence, particularly from the standpoint of the appropriate applicability of LOAC. Also key to the mission’s approach was its determination that, in keeping with its mandate, it was required to consider any action that might be deemed a violation of either international human rights law or international humanitarian law<sup>6</sup> (a popularized, but duplicative and misleading term said to incorporate both the customary and codified LOAC).

This latter determination is a matter of particular concern, as it serves to assert the historically controversial, and, I would submit, erroneous, contention that human rights law applies coequally with the LOAC during periods of armed conflict. That is, the assertion is that the LOAC is not *lex specialis*—that it is not that body of law that exclusively regulates the methods and means of conducting conflict. Indeed, a number of the mission’s allegations of offenses said to have been committed by the IDF are based exclusively on presumed violations of human rights law—not the LOAC.

If left unchallenged, this particular contention alone would represent a substantial shift in the potential legal obligations and responsibilities of combatants on any battlefield and in any form of conflict, and could portend, as well, a significant enhancement of the potential criminal liability of such individuals. They could now

be charged with largely undefined “human rights” violations, rather than violations of the well-established customary or codified LOAC.

Setting aside this particular issue, this attempt to conflate the LOAC with human rights law, let me turn, in more detail, to an examination of the manner in which the mission chose to apply some of the most basic provisions of the LOAC, itself. And, with an apology to those who are fully conversant with this body of law, in order to assess the mission’s “unique” application of this law to the conflict in Gaza, it is useful to review what have been long regarded as universally recognized LOAC principles/precepts binding on every State in the international community. These are:

1. “Military necessity (advantage).” This principle authorizes those use-of-force measures, not otherwise forbidden by the LOAC, required to accomplish a mission. The important caveat, here, of course, is that this principle must be applied in conjunction with the other customary LOAC principles, as well as with more specific constraints contained in the codified LOAC.
2. “Distinction/discrimination.” This principle requires that combatants be distinguished from non-combatants and that military objectives be distinguished from protected property and protected places—that is, civilian property and protected places such as cultural, medical and religious sites.
3. “Proportionality.” This principle serves as a balancing fulcrum, weighing the competing principles of “military necessity” and “distinction” when making a targeting decision. The proportionality test—“the anticipated loss of life and damage to property incidental to an attack must not be excessive in relation to the ‘concrete’ and ‘direct’ military advantage ‘expected’ to be gained”<sup>7</sup>—introduces the idea of a “reasonable commander” making proportionality determinations, and is akin to the “reasonable man” test. That is, would a “reasonable commander,” i.e., a commander of ordinary sense and understanding, given the facts known to him at the time, have been justified in taking the action in issue?
4. “Unnecessary suffering.” The last of the four basic customary LOAC principles requires an armed force to minimize “unnecessary suffering.” In essence, this applies to the legality of the types of weapon systems and ammunition used, as well as to the legality of the methods used to employ

such weapons and ammunition. Certain weapons/munitions are per se unlawful—projectiles filled with glass, lasers specifically designed to permanently blind unenhanced vision and hollow-point ammunition. For purposes of this discussion, it is also important to recall that, as noted, even lawful weapon systems can be used in an unlawful manner. That is, the use of a weapon must comport with the lawful “methods” of conducting conflict.<sup>8</sup>

One last point must be considered before moving to an examination of the manner in which these most fundamental principles of the LOAC were applied by the Goldstone mission to Operation Cast Lead. To what types of armed conflict does the LOAC apply? The answer to this question is found in Common Articles 2 and 3 of the 1949 Geneva Conventions.<sup>9</sup>

Article 2 defines international armed conflicts as “all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties [to this Convention], even if the state of war is not recognized by one of them”—that is, State-on-State conflict.

Article 3 applies the LOAC to conflicts not of an international character, defined as conflicts “not of an international character occurring in the territory of one of the High Contracting Parties [to this Convention].” That is, they are “internal conflicts”—revolutions, rebellions, insurrections—occurring within the territorial boundaries of a State, ones involving a non-State entity (insurgents) attempting to displace the constituted government of a State by force.

With this as background, let’s examine just several examples of the manner in which the Goldstone mission applied the LOAC to actions taken primarily by the IDF in Gaza. The purpose, here, will be to assess whether the mission’s determinations—and concomitant allegations of LOAC violations—do, in fact, evidence both a departure from the way in which the most basic principles of this law have historically been interpreted and a fundamental shift in the manner in which such principles will be applied in the future, particularly in the context of asymmetric State/non-State urban conflict. Also of importance is the consideration of whether these allegations represent, either implicitly or explicitly, a move toward potentially enhanced criminal liability for State participants in such conflicts and whether in turn this has effected—or is effecting—a change in the tactics used to wage these types of conflicts.

**IDF Attacks against Hamas “Government” Buildings and Gazan Authorities, Specifically the Gazan Police**

The government of Israel (GOI) has contended that the buildings targeted were an integral part of the Hamas “terrorist infrastructure” in that they housed those elements of Hamas engaged in directing the ongoing armed attacks against Israel and that the Gazan police were merely an arm of the Hamas military forces.<sup>10</sup> In contrast, the Goldstone mission determined that the buildings in issue were not used in a manner that made an “effective” contribution to military action and that, accordingly, IDF attacks on these buildings constituted a deliberate attack on civilian objects in violation of the customary rule of the LOAC that requires that attacks be limited strictly to military objectives. It further concluded that such attacks had resulted in a “grave breach”—the extensive destruction of civilian property not justified by military necessity carried out both unlawfully and wantonly—of the LOAC.<sup>11</sup>

With respect to the IDF attacks on Gazan police personnel, the Goldstone mission determined that, while there may have been certain elements of the Gazan police who were also members of Hamas armed groups and accordingly potential combatants, when attacked these police personnel were not taking a “direct part in hostilities” and thus had not lost their civilian immunity from direct attack. The mission further concluded that the IDF attacks on the police facilities failed to strike an acceptable balance between the direct military advantage expected to be gained, that is, the killing of those policemen who may, in fact, have been members of Hamas military groups; and the loss of civilian life, that is, those other policemen who may not have been members of such military groups, as well as members of the public who may simply have been in the vicinity of such attacks.<sup>12</sup>

Even a cursory assessment of the Goldstone mission’s stated reasoning regarding this matter reveals what appears to be both a misinterpretation and misapplication of the LOAC principles of military necessity, distinction and proportionality. The same can also be said of the manner in which the mission chose to apply the concept of “direct participation in hostilities” to Hamas police personnel who, by their status alone, could arguably have been targeted as combatants. Thus, to deem the IDF operational decisions in question as a “deliberate attack on civilian objects” and a “grave breach” of the LOAC reflects a deliberate intent on the part of the mission to proffer an interpretation of these LOAC concepts that departs significantly from their historical application. Left unchallenged, the mission’s findings would potentially constitute a fundamental shift in the way in which these most basic of LOAC principles will be applied in the future to all forms of conflict.

### **The Obligation of the IDF to Take Feasible Precautions to Protect Both the Civilian Population and Civilian Objects in Gaza**

In the context of this issue, the mission focused specifically on the obligation of the IDF to provide “effective” prior warnings of its attacks undertaken in Gaza. While the mission acknowledged that significant efforts had been made by the IDF to issue such warnings—radio broadcasts, the dropping of over 2,500,000 leaflets and the making of over 165,000 phone calls to specific buildings that were to be targeted<sup>13</sup>—it concluded that this was not enough. In the view of the mission, such warnings were simply not effective because some of both the prerecorded phone messages and leaflets lacked the required specificity<sup>14</sup> (absent a discussion of what such specificity might entail). And, in examining the IDF practice of firing warning shots from light weapons that hit the rooftops of designated targets in which civilians previously had been warned of an impending attack—as a final warning—it concluded that this, too, not only did not serve as an “effective” warning, but, instead, constituted an attack against civilians who chose to remain in the targeted buildings.<sup>15</sup>

Once again, the mission’s interpretation of the actions that must be taken to provide an “effective” warning to civilians of an impending attack flies in the face of the codified LOAC. Such warnings can be only general in nature. There is no requirement that they be specific as to the time and location of an attack.<sup>16</sup> The measures taken by the IDF in issuing warnings to the civilian population within Gaza went far beyond anything legally required. The mission’s reasoning on this matter reflects an ignorance—or intentional misstatement—of the applicable law.

### **Attacks by the IDF Resulting in Loss of Life and Injury to Civilians**

The mission examined multiple incidents involving IDF actions that resulted in civilian casualties and civilian property loss. It prefaced its legal conclusions with the recognition that, for all armies, decisions involving the concept of “proportionality”—weighing the military advantage to be gained against the risk of civilian casualties—would present genuine dilemmas. Having noted this, however, it concluded that, in applying these customary LOAC principles to every IDF action assessed, each IDF use of force, regardless of any mitigating circumstances or operational considerations that may have been involved, had been indiscriminate in nature and, in multiple cases, a deliberate, intentional attack on the civilian population and civilian infrastructure. As such, the mission contended, these attacks violated the LOAC; some were grave breaches of the Fourth Geneva Convention (the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War); and, in certain cases, they also constituted a violation of the right to life of the Palestinian civilians killed—that is, they were a violation of human rights law.<sup>17</sup>

The GOI has challenged these mission findings, setting forth, in detail, the operational considerations that were at play at the time of the incidents in issue, and assessing the actions of the IDF, in each instance, in the context of both codified and customary LOAC principles.<sup>18</sup>

A review of the information provided by the GOI would lead to the conclusion that, while individual IDF commanders might be second-guessed regarding certain targeting and weapon decisions made during the course of an ongoing operation—and some IDF mistakes were made, and acknowledged—an objective LOAC analysis of the events in issue would not result in a finding that the IDF engaged in deliberate and indiscriminate attacks against the civilian population of Gaza. In view of the information available to the Goldstone mission, its allegations of willful killings of protected persons by IDF personnel, giving rise to individual criminal responsibility, reflect a complete misinterpretation or intentional distortion of the applicable LOAC norms.

### **The IDF's Use of Certain Weapons**

The Goldstone mission, while noting that white phosphorus<sup>19</sup> is not proscribed under the LOAC, made the determination that the IDF was “systematically reckless” in using this substance in densely populated, built-up areas. Accordingly, it concluded that serious consideration should be given by the international community to banning its use in such settings.

The mission also focused on the IDF's use of *fléchettes*: thousands of very deadly darts generally contained in tank shells. When a shell is fired, and detonates, these darts are sprayed over a three-hundred-by-one-hundred-meter area. Given the nomenclature of this munition, the mission opined that *fléchettes* are an area weapon of an indiscriminate nature, and were, therefore, particularly unsuitable for use in urban locations where civilians are present.<sup>20</sup>

These mission statements are noted in order to alert those government representatives who deal with such matters of the fact that the mission has essentially declared the use of *fléchettes* in certain operational settings as illegal per se. The “appropriate” use of such munitions may thus well appear on a forthcoming agenda of the International Committee of the Red Cross.

In choosing to apply the LOAC, as well as human rights law, in the manner noted above, to IDF actions taken in Operation Cast Lead, the mission concluded that the IDF had committed over thirty violations of these legal regimes, to include grave breaches of the Geneva Conventions, and that, most significantly, in doing so, the IDF had intentionally targeted both the Gazan civilian population and infrastructure. Given its findings, the mission demanded that the GOI investigate, try and punish those individuals found to be responsible for the commission of the

offenses that it had documented. This is in keeping with the concept of “complementarity,” the right of a State to investigate and, if necessary, punish members of its armed forces who have engaged in violations of the LOAC. However, of particular importance, the mission further recommended that, should the GOI be unable or unwilling to take these actions, these offenses should then be referred to the International Criminal Court (ICC) and/or made subject to the exercise of universal jurisdiction.<sup>21</sup>

The mission then immediately proceeded to provide its own answer to the matter of whether the GOI was, in fact, willing or able to undertake the investigatory and potential prosecutorial actions the commission deemed necessary. It made the following determination:

International human rights law and humanitarian law require states to investigate and, if appropriate, prosecute allegations of serious violations by military personnel. International law has also established that such investigations should comply with standards of impartiality, independence, promptness, and effectiveness. The mission holds that the Israeli system of investigation does not comply with all of these principles.<sup>22</sup>

The mission also concluded that

there are serious doubts about the willingness of Israel to carry out a genuine investigation in an impartial, independent, prompt, and effective way. The mission is also of the view that the Israeli system overall presents inherently discriminatory features that make the pursuit of justice for Palestinian victims very difficult.<sup>23</sup>

In essence, then, the mission adjudged the GOI’s application of the concept of complementarity in this particular situation and found it lacking. Such a conclusion would appear to serve as a unilateral mission determination that it was a foregone conclusion that its allegations of GOI violations of both the LOAC and human rights law would be submitted to the ICC and the exercise of universal jurisdiction.

In making such a determination, the mission evidences either an apparent failure to understand fully the requirements of complementarity or a decision to apply these requirements in such a way that even the world’s most developed military investigatory and prosecutorial systems could not meet the standards imposed.<sup>24</sup> Regardless of its motives, the mission’s cursory dismissal of GOI efforts to investigate and prosecute alleged LOAC violations occurring in the context of Operation Cast Lead as inadequate does not serve as an authoritative interpretation of the complementarity concept.

Largely unnoticed, but of substantive importance to those States which consistently engage in the types of conflicts in issue, is the fact that, since the issuance of the Goldstone Report, its contents have been endorsed in both a February 2010 UN Human Rights Council report of a special rapporteur on the “human rights situation in Palestine and other occupied Arab territories”<sup>25</sup> and most recently on April 14 in a UN Human Rights Council resolution dealing specifically with the report. Very significantly, the resolution called upon the General Assembly “to promote an urgent discussion on the future legality of the uses of certain munitions as referred to in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, drawing, *inter alia*, upon the expertise of the International Committee of the Red Cross.”<sup>26</sup> These UN endorsements of such flawed legal analysis are indeed daunting.

### *Conclusion*

In closing, and in an attempt to formulate a basis for what I believe to be a necessary discussion concerning whether the Goldstone Report reflects a fundamental shift in the manner in which some of the most basic principles of the LOAC will be applied to future asymmetric State/non-State urban armed conflict, I pose the following questions:

1. Does the manner in which these types of conflicts are characterized dictate the extent to which the LOAC applies to such military operations? In the case of Operation Cast Lead, the conflict was unique in nature. It can be argued that it was neither a Common Article 2 nor a Common Article 3 conflict; that is, it was neither international nor internal in nature. Yet, clearly, it was the view of the Goldstone mission—as well as the international community as a whole—that certain aspects of the LOAC dictated the conduct of the parties involved. Are the findings of the mission, then, to be applied in the future to all forms of conflict in which operations are conducted in an urban environment, e.g., US assaults on Taliban urban strongholds in Afghanistan? If not, in what manner are the specific aspects of the LOAC—both codified and customary—to be applied to asymmetric State/non-State urban conflict?
2. Does the Goldstone Report reflect a consensus within the international community that the LOAC is no longer the exclusive legal regime that controls the means and methods of waging conflict—that is, that certain aspects of human rights law now play a coequal role?

3. In view of the Goldstone Report, has an identifiable shift occurred in the manner in which basic LOAC principles are now to be applied to targeting decisions made in the context of urban conflict? That is, when balanced on the fulcrum of “proportionality,” does the principle of “discrimination/distinction”—the protection of the civilian population and civilian property—now disproportionately outweigh the principle of “military advantage/necessity”?
4. Are there lawful weapon systems (white phosphorus, fléchettes and cluster bomb units) that are, nevertheless, so indiscriminate in nature that, for the protection of the civilian population and civilian property, they should be barred from use in urban conflict?
5. And, as an associated question: in view of a perhaps evolving perceived need to give added weight to the protection of the civilian populace and civilian property in urban conflict, should a State that possesses precision weapons and munitions be required to use such?
6. The issue of “dual targeting”; that is, to what extent might a State target non-State entity personnel and facilities used by such personnel when they may serve both civilian and military purposes? In Gaza, for example, this would include the Gazan police, their facilities and the facilities of the Hamas leadership.
7. This issue, in turn, raises the exceptionally controversial matter of the criteria to be used in determining whether an individual associated with a non-State entity is “directly” participating in hostilities—and thus subject to being targeted.
8. The extent to, and the manner in, which a State must issue a warning to an urban civilian population at large, or to individual civilians, of a pending attack on a general area or a specific facility?
9. What are the LOAC obligations of a non-State actor, if any? How might the international community hold a non-State actor responsible for both compliance with, and violations of, these obligations?
10. How does a State cope with the intentional use of the civilian population, civilian property and protected places by a non-State entity for the purpose of gaining a military advantage?

11. What is the status to be accorded non-State combatants seized in the course of a State/non-State conflict? For what offenses might they be tried and in what type of judicial forum? All of these issues are, of course, related to any form of conflict in which “unlawful combatants” might participate.
12. And, finally, the Goldstone mission concluded that the GOI had failed to meet the international law standards required for a lawful exercise of the principle of complementarity, that right of a State to try members of its military forces for alleged violations of the LOAC. How is an assessment as to whether a State has met the requirements of complementarity to be made? And what body—or bodies—are empowered to make such a judgment, and a concomitant decision/recommendation that the alleged LOAC violations in issue be referred to the ICC or subjected to the exercise of universal jurisdiction?

As noted, these questions go to the central issue of whether the Goldstone Report evidences a growing consensus within the international community that there has occurred a fundamental shift in the manner in which some of the most basic principles of the LOAC—and, the mission would contend, human rights law as well—should be applied to asymmetric State/non-State urban conflict. And, if applicable to this form of conflict, why not to every form of conflict waged in an urban environment? Moreover, if this is, in fact, the case, does this change portend an enhanced risk of potential criminal liability for the members of a State’s armed forces who are called upon to make critical decisions in the midst of battle?

Commentators may soon begin to contend that the Goldstone Report currently “occupies the field” with regard to these issues. For those who would differ with this assessment, I would submit that the time has come for an informed discussion and a clear statement of disagreement with the Goldstone mission’s interpretation of the LOAC principles applicable to State/non-State urban asymmetric conflict.

### *Notes*

1. U.N. Human Rights Council, *Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact Finding Mission on the Gaza Conflict*, U.N. Doc. A/HRC/12/48 (Sept. 29, 2009) (Richard Goldstone), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf> [hereinafter Goldstone Report].

2. *Id.* at 13.

3. Israel Ministry of Foreign Affairs, *The Operation in Gaza: Factual and Legal Aspects 5* (July 29, 2009), available at [http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Operation\\_in\\_Gaza-Factual\\_and\\_Legal\\_Aspects.htm](http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Operation_in_Gaza-Factual_and_Legal_Aspects.htm) [hereinafter GOI White Paper].

4. See Goldstone Report, *supra* note 1, at 13. The other three appointed members were Professor Christine Chinkin, Professor of International Law, London School of Economics and Political Science; Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan; and Colonel Desmond Travers, a former officer in the Irish Defence Forces.

5. *Id.*

6. See *id.* at 14.

7. DEPARTMENT OF THE ARMY, FM 27-10, THE LAW OF LAND WARFARE para. 41, change 1 (1956).

8. See INTERNATIONAL AND OPERATIONAL LAW DEPARTMENT, JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL, OPERATIONAL LAW HANDBOOK 10–13 (2010).

9. See, e.g., Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135, *reprinted in* DOCUMENTS ON THE LAWS OF WAR 244 (Adam Roberts & Richard Guelff eds., 3d ed. 2000).

10. See GOI White Paper, *supra* note 3, at 86–90.

11. See Goldstone Report, *supra* note 1, at 17.

12. *Id.* at 18.

13. See GOI White Paper, *supra* note 3, at 99–100.

14. See Goldstone Report, *supra* note 1, at 18.

15. *Id.* at 19.

16. Regulations Respecting the Laws and Customs of War on Land, annexed to Hague Convention No. IV Respecting the Laws and Customs of War on Land art. 26, Oct. 18, 1907, 36 Stat. 2227, *reprinted in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 9, at 69.

17. See Goldstone Report, *supra* note 1, at 20.

18. See GOI White Paper, *supra* note 3, at 117–50.

19. White phosphorus is a toxic chemical agent that burns violently when exposed to air. Incendiary munitions containing white phosphorus can be used for marking and range finding. Its use in non-incendiary munitions, however, is generally for the purpose of illuminating an area or producing a thick white smoke that can mask troop movements. The phosphorus powder continues to burn long after exposed to air and can ignite structures and cause serious chemical burns resulting in significant tissue damage when it comes into contact with human flesh.

20. See Goldstone Report, *supra* note 1, at 21.

21. *Id.* at 399, 422–24.

22. *Id.* at 34.

23. *Id.* at 35.

24. For a comparative discussion of the investigatory and prosecutorial systems of the militaries of the United Kingdom and the United States, see GOI White Paper, *supra* note 3, at 114–17.

25. U.N. Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, U.N. Doc. A/HRC/13/53/Rev.1 (June 7, 2010) (Richard Falk), *available at* [http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.13.53.Rev.1\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.13.53.Rev.1_en.pdf).

26. H.R.C. Res. 13/9, ¶ 13, U.N. Doc. A/HRC/RES/13/9 (Apr. 14, 2010), *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/128/38/PDF/G1012838.pdf?OpenElement>.