

The Crisis in Gaza: An RtoP situation? (December 2008-January 2009)

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I. Crisis in Gaza (27 December 2008 to 18 January 2009) A breakdown of the cease-fire and a military offensive between Israel and Hamas sparked a crisis in which both sides were accused of violating human rights law and international humanitarian law. Once more, civilians were the vast majority of casualties and

[according to the UN](#)

the crisis claimed over 1,300 lives, 412 of them children, and wounded more than 5,450 people, 1,855 of them children, as well as causing widespread destruction and suffering. According to Human Rights Watch report, “

[Deprived and Endangered: Humanitarian Crisis in the Gaza Strip](#)

,” Gaza civilians faced dire shortages of food, water, cooking gas, fuel and medical care; electricity, water and sewage infrastructure. Amnesty International researchers in Gaza reported many

[cases](#)

of “unwarranted attacks on defenseless civilians, many of them children.” Months after the end of the military offensive, the humanitarian situation continued to be worrying.

[According to Secretary-General Ban Ki-Moon](#)

, nearly 5 months after the end of the conflict, nothing beyond basic needs such as food and medicine was allowed into Gaza. Essential recovery efforts and long-term development initiatives are impossible in these conditions.

II. The Crisis in Gaza: RtoP applicable?

The escalation of violence in Gaza has raised serious questions about using the Responsibility to Protect to urge international action to protect civilians in the conflict. RtoP has been referred to, notably by

[Richard Falk](#)

, UN Special Rapporteur on the Occupied Palestinian Territories, but also by others who claim that crimes committed in Gaza have reached the threshold of RtoP crimes. Indiscriminate killings of civilians and the use of civilians as human shields have led several governments and civil society organizations to accuse both Israel and Hamas of committing war crimes. There remain questions as to the extent to which these crimes were widespread and systematic, arguably a determining factor for whether the RtoP threshold for an international response was met. In addition, questions remained as to whether invoking RtoP would have brought the desired changes to protect civilians in this deeply politicized situation.

As Paragraphs 138-139 of the World Summit Outcome Document outline, States have the responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Israel, as an occupying power, does carry this responsibility to protect. Most important, however, is to note that both parties have clear obligations to protect civilians under international humanitarian law, notably the Geneva Conventions, which prohibit many acts currently being committed. Israel, as an occupying power, has additional obligations to protect its populations under Geneva Convention IV.

For more analysis of articles, statements and reports from civil society on the crisis in Gaza and RtoP, please see our

[16 January News Update](#)

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III. Inquiries into alleged international humanitarian law violations in Gaza

The humanitarian crisis prompted various independent investigative committees. The Independent Fact Finding Committee on Gaza was established in February 2009 and presented its report to the Arab League of States on 30 April 2009. The report entitled “

[On Gaza: No Safe Place](#)

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” found that “members of the IDF committed war crimes, crimes against humanity and, possibly, genocide in the course of operation Cast Lead.” It also asserted that, “ Hamas may be held responsible for violations of international humanitarian law attributed to it.” Among a myriad of other recommendations involving Organs of the UN, the ICC, the League of Arab States, etc, the committee recommended that “the League of Arab States should request the Security Council, failing which, the General Assembly, to exercise its Responsibility to Protect, affirmed in the Summit Outcome Document of 2005 in respect of Gaza.”

In addition, a four-member UN Board of Inquiry, led by Ian Martin, a human rights activist who had previously held multiple positions in the UN, examined incidents involving death and damage at the United Nation’s premises in Gaza during Israel’s military operation. The

[summary](#)

of the UN report, commissioned by the UN secretary general, Ban Ki-moon, “censured the Israeli government for causing death, injuries and damage to UN property in seven incidents involving action by the Israeli Defence Force (IDF)”; it emphasized that “UN premises are inviolable, and that inviolability cannot be set aside by the demands of military expediency”. However, Ban decided against further investigation despite the report’s call for a full impartial

inquiry.

On 22 January 2009, Dr. Khashan, Minister of Justice of the Palestinian National Authority briefed Prosecutor Luis Moreno-Ocampo on the situation in Gaza and lodged a referral, with the Registrar of the Court, for the situation in Gaza. Prosecutor Luis Moreno-Ocampo [disclosed](#) that he has been “examining the case for Palestinian jurisdiction over alleged crimes committed in Gaza.”

IV. 'Goldstone Report'

On 15 September 2009, the UN Fact Finding Mission on the Gaza Conflict released its [report](#)

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on the investigation of crimes committed in Gaza from 27 December 2008 to 18 January 2009. The mission, mandated by the President of the Human Rights Council in April 2009 and headed by Justice Richard Goldstone, found evidence of serious violations of international human rights and humanitarian law committed by Israel during the Gaza conflict, which amounted to war crimes, and possibly crimes against humanity. The fact-finding mission also found evidence that Palestinian armed groups committed war crimes, as well as possibly crimes against humanity, in their repeated launching of rockets and mortars into Southern Israel.

Justice Goldstone presented the report to the UN's Human Rights Council in Geneva on 29 September 2009. The report recommended that the UN Security Council pass a resolution requiring Israel and Hamas to launch domestic investigations into these crimes and report on both the findings of these investigations and the prosecutions of the perpetrators. The report also recommended that if investigations are not underway in either Israel or Hamas six months after the passage of the recommended resolution, the Security Council should refer the situation to the International Criminal Court (ICC).

The Human Rights Council held a meeting on 15-16 October and the report received support from the UN's top human rights official, Navanethem Pillay. In its [final resolution](#), the Council endorsed the recommendations contained in the report and advised the General Assembly to consider the report during its 64th session.

On November 5 2009, the General Assembly endorsed the Goldstone Report with a recorded vote of 114 in favor to 18 against, with 44 abstentions. [Resolution A/RES/64/10](#) called upon the Government of Israel and the Palestinians to undertake investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission. The resolution requested that the Secretary-General transmit the report to the UN Security Council and report back to the General Assembly.

On 1 April 2011, Justice Richard Goldstone released an

[opinion piece](#)

in The Washington Post in which he stated that he regretted aspects of the 2009 report in light of information gathered following Israeli investigations into alleged crimes committed during the conflict. Goldstone stated that, although the validity of some incidents was confirmed, investigations published by the Israeli military

“also indicate that civilians were not intentionally targeted as a matter of policy”.

His statement, in which he casts doubt on the validity of the report as a whole, was met with a strong response by Hina Jilani, Christine Chinkin and Desmond Travers, the other authors of the report, in a

[statement](#)

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issued in The Guardian. Jilani, Chinkin and Travers, although never identifying Goldstone by name, declared that comments questioning the report have

“misrepresented facts in an attempt to delegitimize the findings of the report and to cast doubts on its credibility.”

The piece states that no evidence had yet to be presented that would change the context or findings of the report, and that calls to reconsider the document

“disregard the right of victims, Palestinian and Israeli, to truth and justice.”

The Human Rights Council made clear that the Goldstone Report can only be

[withdrawn](#)

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if the four authors unanimously presented a written formal complaint or if the General Assembly of Human Rights Council voted for its retraction.

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