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I. Background

Complex in nature and history, the Israel-Gaza, or the broader Israel-Palestine conflict, is a long-standing struggle between Israelis and Palestinians that emerged in the mid 20th century. Despite established peace agreements with neighboring Egypt and Jordan, the long-term peace process between Israel and Palestine has failed to produce a comprehensive agreement--therefore earning the moniker of the world's “

[most intractable conflict](#)

.” Numerous attempts have been made to try and develop a “two-state solution” that would involve the creation of an independent Palestinian state alongside Israel. However, key

[issues](#)

remaining include mutual recognition, border disputes, security, control of Jerusalem, Israeli

[settlements](#)

, Palestinian freedom of movement and Palestinian claims of a right of return for their refugees.

A defining aspect of this conflict has been the high level of violence, with frequent escalations resulting in wars with high death tolls, of which a large number of casualties are civilian. It is

[estimated](#)

that more than a combined 120,000 civilians and military personnel have died since 1948. Major recent flares of violence include the Second Intifada, or the second Palestinian uprising against Israeli occupation, which lasted from 2000 to 2005 and

[killed](#)

an estimated 3,200 Palestinians and 1,000 Israelis, as well as the Gaza War in 2008-09, in which an

[estimated](#)

1,400 Palestinians died and 13 Israelis. Until the 2014 conflict, the Gaza War was considered the deadliest single military operation in Gaza since the

[Six-Day War](#)

in 1967

The two parties involved in peace negotiations are the Israeli government, currently led by Prime Minister Benjamin Netanyahu, and the Palestinian Authority, currently led by Mahmoud Abbas, the chairman of the Palestine Liberation Organization (PLO). Since 2006, however, the Palestinian side has been divided between two factions: Fatah and Hamas. In 2007, Hamas

[gained](#)

ruling power over Gaza while Fatah continued to govern the West Bank. This division threatened any bipartisan Palestinian rule from effectively emerging until a Palestinian Unity Government was

[formed](#)

in 2014, composed of both Fatah and Hamas. Fatah and Hamas have fundamentally different opinions on various issues, most significantly regarding the status of Israel. While Fatah has been willing to negotiate with Israel, Hamas has

[vowed](#)

to destroy it. As a result, frequent attacks on Israel originating from Gaza have been recorded over the past years.

The Unity Government did not officially begin to govern as a result of the violence that ensued in the 2014 conflict, yet plans have since been made to

[reinstate](#)

a unified government.

II. Crisis in Gaza (27 December 2008 to 18 January 2009)

A breakdown of the cease-fire in late 2008 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 worrisome .

[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.

III. Summer 2014 Conflict

Following the [abduction](#) and murder of three Israeli teenagers in the West Bank on 12 June 2014 and the subsequent kidnapping and

[murder](#)

of a Palestinian teenager in early July, relations between Israeli and Palestinian communities and their leadership significantly deteriorated. The Israeli government, holding Hamas accountable, launched a massive push into the West Bank in pursuit of the three youths,

[detaining](#)

nearly 400 Palestinians. While low-level rocket-fire from Gaza into Israeli territory, orchestrated by Hamas, had been continuing at a regular rate, a marked

[increase](#)

in the frequency and range-capacity of the rockets was recorded following the mass arrests. On 7 July 2014, the Israeli Defense Forces (IDF)

[launched](#)

Operation Protective Edge, with the aim of

[restoring](#)

security to Israeli civilians living under Hamas rocket fire and dismantling the Hamas tunnel network used to infiltrate Israel. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the scale of destruction, devastation and displacement

[caused](#)

by the 50-day conflict reached levels unprecedented since the start of Israeli occupation in 1967. As a

[result](#)

of the violence, around 2,205 Palestinians were killed, including at least 1,483 civilians, of whom 521 were children and 283 were women.

Amnesty International created an online, interactive platform that

[maps](#)

how, when, and where these losses occurred.

The violence also caused 71 Israeli deaths, including 66 soldiers. OCHA

[reported](#)

over 500,000 Palestinians were displaced during the crisis, and that as of October 2014, 100,000 Palestinians were still displaced. The seven weeks of hostilities resulted in an unprecedented level of human suffering,

[aggravating](#)

an already fragile humanitarian situation that has resulted in around 4.5 million people in need of humanitarian aid. The scale of the attacks by both parties and their targeted nature caused the international community to identify them as war crimes, currently being further

[investigated](#)

by a UN sponsored Commission of Inquiry.

III. Violations of International Humanitarian Law

When reviewing violations of International Humanitarian Law, which potentially amount to war crimes, it is significant to emphasize that both parties to the 2008-2009 and Summer 2014 conflicts were found to have broken laws of war. In February 2009, the Independent Fact Finding Committee on Gaza was established and presented its report to the Arab League of States on 30 April 2009. The report entitled “

[On Gaza: No Safe Place](#)

’ 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.” 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.”

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

The conflict in Summer 2014 raised significant questions about proportionality of response under International Humanitarian law. A significantly higher death toll in Gaza compared to Israel wasn't indicative of Hamas' respect for international law; it rather was reflective of Israel's effective “ [Iron Dome](#) ” defense system. Armed groups in Gaza [launched](#) 1,700 mortar attacks and 4,800 indiscriminate rocket attacks, [fired](#) with the intention of killing or wounding civilians in residential areas. Four Israeli civilians were killed, one foreign national civilian and one security official. The other 66 Israeli casualties were soldiers. During the conflict, the UN Relief and Works Agency for Palestine Refugees (UNRWA)

[discovered](#) that Palestinian authorities had stored rockets in three vacant schools run by UNRWA, as well as further endangering civilians by launching attacks from populated areas. Moreover, on August 21-23, Palestinian armed groups, most likely acting with Hamas' approval, [executed](#) 25 men accused of working with Israel, taking at least 16 of them from Hamas-controlled prisons. Hamas did not proceed to prosecute those responsible.

In an in-depth [analysis](#) of three Israeli attacks that killed numerous civilians, Human Rights Watch (HRW) evaluated whether any of them, occurring on 24 July, 30 July, and 3 August 2014, had violated any laws of war. According to HRW Special Adviser Fred Abrahams, “the Israeli military [carried](#) out attacks on or near three well-marked schools where it knew hundreds of people were taking shelter, killing and wounding scores of civilians.” On 24 July 2014, apparent Israeli mortar shells struck a United Nations school in Beit Hanoun, killing 13 people, including six children, and wounding dozens of others. The Israeli military [claimed](#) that they were targeting Hamas fighters who were operating adjacent to the school, and that a “single errant mortar” hit the school. In another [att](#)

[ack](#) on 30 July 2014, at least 10 Israeli munitions hit in and around another UN school, sheltering more than 3,200 people, killing at least 20 people, including three children. The Israeli military stated that Palestinian fighters had fired from nearby, yet according to HRW failed to provide any information to support this assertion. Moreover, HRW [claims](#)

that the “use of high-explosive, heavy artillery shells so near a shelter filled with civilians constitutes an indiscriminate attack”. On August 3

rd

, an Israeli Spike guided missile

[hit](#)

outside a UN school in Rafah, which provided shelter to 3,000, killing 12, including 8 children and wounding at least 25. According to the Israeli military it was targeting three Islamic jihad members on motorcycles near the school. HRW

[questions](#)

in its report why the attack took place in front of a school sheltering thousands of displaced people rather than before or after they passed. Furthermore, they emphasize in their report that all parties of the conflict had to ensure that harm to the civilian population was minimized. Laws of war

[forbid](#)

attacks that target civilians or their property; that don't target a military facility or are otherwise indiscriminate; or cause civilian harm that is not proportionate to the expected military gain. Schools are civilian objects that are not to be targeted except if used as a military headquarters or weapons storage. There has been no evidence to suggest that the three schools attacked by Israel in HRW's investigation were being used for military purposes, questioning the legality of those attacks.

Amnesty International also investigated the conflict, [releasing](#) a report that Israeli air strikes on four multi-story buildings towards the end of the 50-day offensive amounted to war crimes. Amnesty International Director of the Middle East and North Africa Program Philip Luther [explains](#) that “all the evidence we have shows this large-scale destruction was carried out deliberately and with no military justification”. He continues to explain that facts and statements made by the Israeli military [ind](#)

[icate](#)

that “the attacks were a collective punishment against the people of Gaza and were designed to destroy their already precarious livelihoods.” Furthermore, Al-Haq, an independent Palestinian human rights organization,

[identified](#)

several targeted attacks against health facilities in the Gaza strip, which may amount to war crimes.

IV. Applicability of RtoP

— The most recent Gaza-Israel conflict has yet again called into question the applicability of the Responsibility to Protect (RtoP) in regard to this crisis. In 2005, Israel removed its civilian and military structures from Gaza and thereby arguably relinquished their control over the territory. Nevertheless, most governments, international organizations and human rights experts, including the UN Special Rapporteur on Occupied Palestinian Territory, continue to [consider](#) [Gaza](#) an occupied territory, primarily because Israel continues to retain authority over the borders, sea and airspace. The question whether Gaza is an Occupied Territory or an independent entity is a

decisive factor in determining whether RtoP is applicable, as RtoP only applies to atrocities committed within a state's borders and against its own populations, as [outlined](#) by paragraphs 138-139 of the World Summit Outcome.

While a definite answer cannot be provided, a referral to legal statutes can shed light on the matter. Article 42 of the Hague Regulations of 1907, which reflects international customary law, [states](#) that:

Art. 42. Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised .

Israel's 2008-09 and 2014 ground invasion into Gaza suggests that Israel can adopt control over the territory at will. Israel's [implementation](#) of a buffer zone in Gaza as well as its ability to close off Gaza's borders further illustrates the control Israel has over Gaza's land, airspace and territorial waters. Furthermore, as Al-Haq points out, Israel has [authority](#) over population registry, VAT rates, customs, currency and the general movement of goods and peoples. This indicates that Israel indeed continues to have *de facto* control over Gaza according to international customary law. At the very least it discredits any assertion that this conflict is fought between two fully independent states, thereby providing a greater degree of applicability to the Responsibility to Protect in this conflict.

To accept the status of Gaza as an occupied territory would [imply](#) that the Responsibility to Protect its population would fall between both the occupying power, Israel, and the *de facto* authority, Hamas. The degree of responsibility for each, as ICRtoP Senior Program Officer Megan Schmidt stated, would thus be [determined](#) by their 'effective control', namely the extent to which each party has the capacity to implement protection measures. Naturally, a shared Responsibility to Protect the population of Gaza, the epicenter of the conflict, between two opposing sides in a time of war forms a complex scenario.

The UN Special Adviser on the Prevention of Genocide, Adama Dieng, and the UN Special Adviser on RtoP, Jennifer Walsh, [released](#) a statement in the midst of the conflict, on 24 July 2014, expressing their serious concern for the escalation of violence and the targeting of civilians in the current crisis. Noting that both parties violated international humanitarian law and international human rights law, the Special Advisers observed that these acts could constitute atrocity crimes. In regards to the applicability of RtoP, they detailed that Israel, as the Occupying Power, the Palestinian Authority and Hamas have the Responsibility to Protect the population in Gaza, calling on the three actors to take immediate steps to safeguard the protection of the population.

Alex Bellamy, Director of the Asia Pacific Centre for the Responsibility to Protect, strongly [emphasized](#) that RtoP is relevant to the Gaza conflict and wholly dismissed any questions on the applicability of RtoP, reiterating that RtoP is not conditional to circumstance. He [states](#) that “the complex governance situation that Gaza finds itself in should not distract us from attributing legal and political responsibilities associated with RtoP to the parties concerned.” He shared the conviction that the primary Responsibility to Protect Palestinians in Gaza is divided between between Israel, the Palestinian Authority and Hamas. Bellamy argues that while Israel had the right and responsibility to protect its citizens from crimes against humanity (its justification for Operation Protect Edge) it also had the responsibility to do the same for Palestinians in Gaza. In turn, Hamas had a responsibility to protect those that live in areas under its control, yet instead intentionally exposed them to greater threat. Both parties manifestly failed in fulfilling their responsibility, as the high number of civilian deaths indicates. Bellamy points out that according to RtoP statutes, if a state, or in this case two parties sharing control of the state, fails to protect their population, it is the responsibility of the international community to assist the parties to fulfill their obligation. This includes encouraging states to uphold their responsibility, helping them build capacity to protect populations, and providing assistance to states in emergencies or anticipated emergencies.

If one does not accept that Gaza is an occupied territory, but rather under full governing control of the Palestinian Authority and Hamas, then the discussion must shift and the crisis would be evaluated as an armed conflict between two State entities, taking into greater account International Humanitarian Law (IHL) and the Law of War. While both governing bodies would still have had the Responsibility to Protect in terms of preventing the commission of atrocity crimes within their borders, RtoP would not be applicable for the protection of civilians across borders in the crisis. Instead, the International Humanitarian Law and the protection of civilians framework would be applicable in this context, legally obligating all parties to the conflict to ensure that civilians are not indiscriminately targeted or impacted. The overarching principles of IHL [specify](#) that all parties to a conflict must distinguish between civilians and combatants at all times, as well as between civilian objects and military objectives. Moreover, launching an attack that may cause incidental loss of civilian life, injury to civilians, or damage civilian objects are forbidden. Indiscriminate attacks, and attacks that are “excessive in relation to the concrete military advantage anticipated” are also prohibited. The high number of civilians killed in this conflict raised concerns’ in regards to Hamas’ and Israel’s adherence to international humanitarian law.

V. International Response & Call for Accountability

The crisis in Gaza has prompted multiple independent investigative committees. In 2009, a four-member UN Board of Inquiry, 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."

The Human Rights Council held a meeting on 15-16 October 2009 and the report received support from the UN's top human rights official, Navi 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.

On 31 July 2014, UN High Commissioner for Human Rights Navi Pillay [stated](#) that Israel was deliberately defying international law in its military offensive in Gaza and that world powers should hold it accountable for possible war crimes. According to Pillay, Israel attacked homes, schools, hospitals, Gaza's only power plant and UN facilities in clear violation of the Geneva Conventions. Additionally, the High Commissioner claimed that Hamas militants have also violated international humanitarian law by launching rockets indiscriminately into Israel. She [reemphasized](#) that the international community cannot allow impunity to continue and must ensure that both sides are held accountable for their transgression of international law.

UN Secretary-General Ban Ki-moon repeatedly [expressed](#) his profound dismay for the continued violence, underscoring that attacks on UNRWA shelters were gross violations of international humanitarian law. He called for breaches of international law to be investigated in order for those responsible to be held accountable,

[labeling](#) such transgressions as a "moral outrage and a criminal act". As mentioned above, UN Special Advisers on the Prevention of Genocide and the Responsibility to Protect issued a statement, which they [concluded](#) by making a call for accountability as "impunity for crimes committed in the past has had a lingering negative effect in this region". Civil society leaders ardently echoed the call for accountability. Amnesty International

insisted

that the Human Rights Council's commission "must, this time, lead to those responsible for crimes under international law (to be) brought to justice."

Ending the cycle of impunity in the Israel-Palestine conflict is an essential aspect of the international community's responsibility to protect, as it brings perpetrators of atrocity crimes to justice and ensures that such behavior does not pass by unnoticed. On 23 July 2014, the Human Rights Council adopted a resolution that established an independent, international commission of inquiry to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations that began on 13 June 2014. The mandate is focused on establishing the facts and circumstances of any violations or crimes perpetrated, and to identify those responsible in order to end impunity and ensure that those responsible are held accountable so that civilians are protected against any further assaults. The findings of this Commission of Inquiry are to be reported to the Human Rights Council in June 2015.

In January of 2015, UN Secretary-General Ban Ki-moon confirmed that Palestine will join the International Criminal Court on 1 April 2015, a development that allows the Palestinian Authority to file war-crime suits against Israel. Although Israel is not an ICC member, its citizens are subject to the court for crimes committed on a member's territory. However, as the ICC treaty urges nations to try their own citizens and only regards itself as a court of last resort, Israel is able to prevent ICC prosecution by conducting its own war-crime trials. Indeed, it has begun 13 trials of this nature after the conflict in Gaza in 2014. Nevertheless, the ICC prosecutor decided to open a preliminary examination into the "situation in Palestine", potentially a first step towards ending the cycle of impunity in the Israeli-Palestine conflict. During this preliminary examination phase, the ICC prosecutor will determine whether the criterion has been met to launch a formal investigation. It should be noted that the ICC prosecutor always opens preliminary examinations as a "matter of policy" when receiving declarations accepting the court's jurisdiction. Moreover, the examination of the "situation in Palestine" includes rockets launched from Gaza into civilian areas of Israel and thus could hold Palestinian officials liable for criminal investigation. However, the Israeli authorities have not cooperated with either investigation so far, refusing the UN Commission of Inquiry access to Gaza.

On 22 June 2015, the UN released a report finding that war crimes had been committed on both the Israeli and Palestinian side in the summer 2014 conflict. Israel preemptively disputed the UN's findings with their own report, released a week beforehand, which stated the actions of the IDF were in compliance with International Humanitarian Law. However, Palestine officially submitted a file to the ICC on 25 June 2015 so that war crimes investigations could begin.

All of these developments are a testament to renewed efforts to hold those accountable for war crimes to justice and ensure that the cycle of impunity, which has plagued this conflict and is allowing it to continue, comes to an end. Breaking this cycle is critical in regard to the international community's Responsibility to Protect, as accountability of previous crimes is integral to protecting civilians from future conflict.