Q&A: THE RESPONSIBILITY TO PROTECT (RtoP) AND GAZA

Note: For more details on the crisis, as well as sources and links for all the information provided below, please visit our "Crisis in Gaza" page at www.responsibilitytoprotect.org.

Q: How did the conflict in Gaza begin & what happened in 2014?
A: Coined the "most intractable conflict", the long-standing Israel-Palestine conflict has yet to reach a peaceful political solution. Numerous attempts to try and develop a "two-state solution", which would involve the creation of an independent Palestinian state alongside Israel, have failed. The main issues of contention that remain 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 extraordinary level of violence, with frequent escalations resulting in wars with a high number of deaths, most of which are civilian in nature. Estimates suggest that up to 120,000 civilians and military personnel have died since 1948.

The most recent resurge of the conflict in July – August 2014 resulted in unprecedented levels of destruction, devastation and displacement in Gaza. Following mass arrests by Israeli forces in the West Bank, in an effort to find the three kidnapped and later murdered Israeli youth, rocket fire from Gaza significantly increased. The conflict escalated into full-scale war after the Israeli Defense Forces 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. 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. The war also killed 71 Israelis, including 66 soldiers and 5 civilians. The scale of the attacks and their targeted nature caused many in the international community to accuse both sides of war crimes.

Q: Why does the international community have a Responsibility to Protect in this case?
A: In 2005 (see box at right), UN Member States agreed that they had a collective responsibility to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing. While the legality of the attacks from both sides are currently under investigation by a UN Commission of Inquiry, civil society organizations and UN officials have stated that violations of International Humanitarian Law (IHL), which potentially amount to war crimes, were committed by both sides. Therefore, the international community bears a responsibility to protect Israeli and Palestinian populations affected by such war crimes.

Q: How does the first pillar of the Responsibility to Protect apply in this context?
A: As RtoP only relates to intra-state conflicts, and not inter-state conflicts, many questioned the applicability of the Responsibility to Protect in this conflict; underscoring the complex governance situation in which Gaza finds itself. The question whether Gaza is an Occupied Territory or a sovereign independent entity is significant in determining whether the primary RtoP is applicable, as Pillar I of RtoP (see box above) only applies to atrocities committed within a state's borders and against its own population. While Israel removed its civilian and military structures from Gaza and thereby relinquished their control over the territory, most governments and international organizations continue to consider Gaza an occupied territory. Israel's 2008-09 & 2014 ground invasion into Gaza suggests that it can adopt control over the territory at will. Furthermore, 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. Thus, according to international customary law (Hague Regulations), the reality on the ground suggests that Israel continues to have control over Gaza. Gaza's status non-withstanding, there remain continuing obligations on all parties to adhere to international humanitarian law and to ensure the protection of civilians.

Q: How have Hamas & Israel upheld their Responsibility to Protect in Gaza?
A: 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 is 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 center of the conflict, between two opposing sides in a time of war constitutes a complex scenario. As the war in 2014 demonstrated, neither party upheld their responsibility, as both Hamas, in control of Gaza, and the Israeli forces were accused of war crimes, manifestly failing in protecting civilian lives. It is significant to emphasize that both parties broke laws of war. A significantly higher Palestinian death toll wasn't indicative of Hamas' respect for international law, it rather reflected Israel's effective "Iron Dome" defense system. According to the Responsibility to Protect statutes (Pillar III), if a state, or in this case two parties sharing control of the state, fails to protect their population, or is in fact the perpetrator of such crimes, it is the responsibility of the international community to take collective action in a timely and decisive manner.

Q: How has the international community upheld its Responsibility to Protect in Gaza?

A: The international community's primary responsibility involves encouraging states to uphold their responsibility to protect. In the midst of the 2014 war, UN Special Adviser on the Prevention of Genocide, Adama Dieng, and the UN Special Adviser on RtoP, Jennifer Walsh, released a statement expressing their serious concern for the escalation of the violence and the targeting of civilians. Underscoring that both parties had violated international humanitarian law that could constitute atrocity crimes, they called upon Israel, Hamas and the Palestinian Authority to take immediate steps to safeguard the protection of the population of Gaza. 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". The UN High Commissioner for Human Rights, Navi Pillay, stated that Israel's attacks on homes, schools, and hospitals, as well as Hamas' indiscriminate rocket-fire were both deliberate offenses of international law. She emphasized that the international community cannot allow impunity and must ensure that both sides are held accountable for their transgression of international law. The UN Secretary-General Ban Ki-moon 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". Since the war concluded, civil society groups, such as Human Rights Watch and Amnesty International, have proven indispensable in providing detailed accounts of potential war crimes. Their detailed investigation of specific attacks have shed light on the debate whether certain attacks were indeed indiscriminate, disproportional or deliberately targeted at civilians.

Q: How has the international community failed to uphold its Responsibility to Protect in Gaza?

While the international community condemned and heavily criticized both parties for breaching international humanitarian law and failing to protect their population, timely and decisive action to halt the commission of atrocities was not taken. The statutes of the Responsibility to Protect stipulate that any military action is to be authorized by the UN Security Council and carried out in accordance with the UN Charter. While the UN Security Council expressed grave concern for the deterioration of the situation in Gaza and called for full respect of international humanitarian law, including the protection of the civilian population, it did not consider taking any kind of stronger action. Many believe that such a debate would have been void of purpose, as the USA – a staunch ally of Israel – would be sure to veto any attempt to involve the Security Council in the conflict.

Nevertheless, while the international community wasn't able to sufficiently protect civilians in the 2014 war, another critical element of RtoP is to ensure the prevention of future atrocities. Ending the cycle of impunity and establishing accountability mechanisms is therefore an essential aspect of the international community's Responsibility to Protect, as it brings perpetrators of atrocity crimes to justice and acts as a deterrent for future crimes. To this end, the Human Rights Council adopted a resolution in July 2014 that established an independent international Commission of Inquiry to investigate all violations of international humanitarian and human rights law in the Occupied Palestinian Territory in the context of the military operation that began on 13 June 2014. The findings of the Commission of Inquiry are to be submitted to the Human Rights Council in June 2015. In another effort to promote accountability, the International Criminal Court has opened a preliminary examination into the "situation in Palestine", investigating both Israeli attacks and rockets fired by Hamas into Israeli territory. This inquiry was made possible by Palestine's decision to join the International Criminal Court in January of 2015. These developments are encouraging and suggest a stronger effort to end the cycle of impunity, despite Israeli refusal to cooperate with either investigation.