

On July 8, 2014, Israel launched "Operation Protective Edge," an intense bombing campaign and ground incursion against the occupied Palestinian territory's Gaza Strip, the densely populated home to 1.8 million Palestinians. During this latest offensive there have been many reports of violations of international humanitarian law, including war crimes. This factsheet will explain these terms and discuss some opportunities for accountability.

What is International Humanitarian Law?

International Humanitarian Law (IHL) arose in the late 19th century out of the understanding that even in warfare there are certain lines that must not be crossed. IHL provides a legal framework for protecting civilians, non-combatants (for example, those who have laid down their arms or are injured) and Prisoners of War (POWs). IHL is comprised of treaties setting out rules of war, including the Geneva Conventions and Hague Conventions, as well as customary rules (general practice accepted as law) and general principles of law.

What are key principles of IHL?

Combatants must at all times distinguish between legitimate targets and civilians. Civilians, civilian property and infrastructure are not to be targeted. "Military objectives," which can be targeted, are limited to those which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances at the time, offers a definite military advantage. When in doubt over whether a target which is normally for civilian purposes can be attacked, combatants must presume it is civilian.

Parties are also required to ensure that attacks are proportional. An attack or method of attack against a military objective is prohibited if it is expected to cause civilian death or injury which would be excessive in relation to the concrete and direct military advantage anticipated.

Civilian safety is paramount. Some acts banned under IHL include:

- Collective punishment, or when civilians or other non-combatants are punished for an offense they have not committed
- Attacks on medical staff, ambulances and hospitals,

which are specifically protected persons and objects

- Attacks that destroy, remove or render useless objects indispensable to the survival of the civilian population
- Acts or threats of violence with a primary purpose of spreading terror among a civilian population
- Taking civilian hostages, killing the wounded or sick, torture and other inhuman or degrading treatment
- Use of weapons that cause superfluous injury, unnecessary suffering or which are inherently incapable of distinguishing between combatants and non-combatants

During an armed conflict, when there is a grave or serious breach of the laws of war, it is considered a **war crime**.

Either during or outside of an armed conflict, certain crimes are considered **crimes against humanity** when they are widespread or systematic. According to the Rome Statute of the International Criminal Court, these crimes include, but are not limited to:

- Murder, extermination, torture, or enforced disappearance of persons
- Forcible transfer of population
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
- Persecution
- Apartheid

Under IHL, what are Israel's obligations as an occupying power?

The current bombardment and invasion of Gaza is taking place in the context of Israel's prolonged belligerent occupation of Gaza and its closing of Gaza's access to the outside world. An occupation occurs when the authority of a hostile army "has been established and can be exercised" over the territory. While Israel claims that it is not occupying Gaza, numerous U.N. resolutions and reports have found otherwise, as the area is a part of the occupied Palestinian territory seized in 1967. Moreover, Gaza is considered occupied as a result of the authority and "effective control" exercised by Israel over Gaza, such as control of Gaza's land borders, air space and waters, control of "buffer" zones within Gaza, and control over other critical aspects of life such as the population registry.

As an occupying power, Israel is required under the Fourth Geneva Convention to ensure the health and safety of the civilians in territory it occupies. Although Israel cannot legally

blockade territory it is occupying, it has imposed a closure – commonly referred to as a siege or blockade - on Gaza since 2007. The closure, which amounts to collective punishment, has severely weakened Gaza’s infrastructure and widely impacted the wellbeing of civilians by limiting their access to food, medicine, building supplies, and other life essentials. It has led to widespread malnutrition, an inability to rebuild homes and infrastructure previously destroyed by Israel, and the severe restriction of movement of people into and out of Gaza.

What could international institutions and other countries do to enforce IHL?

International Criminal Law (ICL) makes it possible to hold accountable perpetrators responsible for war crimes and crimes against humanity, from generals to army privates to non-state actors. The International Criminal Court is being discussed as one way to enforce ICL for alleged war crimes and crimes against humanity in Gaza. Cases can be brought before the court through a referral from the UN Security Council, or from individual states. In this case, a referral from the Security Council is unlikely, as the U.S. frequently exercises its veto power to protect Israel; it has done so over 40 times since 1972 to unilaterally block Security Council resolutions which condemn Israeli human rights violations. Further, the U.S. and others have exerted political pressure on Palestine not to use the Court.

The UN has worked in other ways to pursue accountability. For example, in July 2014, the UN Human Rights Council formed a commission of inquiry into Israeli violations of IHL and human rights law, although this commission will not be able to bring criminal charges or issue sanctions. The resolution also called for the parties to the Fourth Geneva Convention, which covers the conflict in Gaza, to be convened to respond to alleged violations.

Another alternative for accountability is for individual nations to try alleged perpetrators. In fact, doing so is a duty for all parties to the Fourth Geneva Convention. Although processes in each nation vary, for certain serious crimes under international law there is universal jurisdiction, or the ability to assert jurisdiction over an alleged perpetrator irrespective of where the crime was committed, or where parties involved are from. This means that because these crimes are such an affront to international law and the dignity of all humankind, perpetrators can be brought to justice across the globe.

What are the United States’ obligations under international and U.S. law?

The Fourth Geneva Convention requires the U.S. “ensure respect” for the Convention, and to bring alleged perpetrators of grave breaches before U.S. courts, or extradite them for trial elsewhere. The U.S. could do this by bringing criminal charges against perpetrators, as United States federal criminal statutes prohibit war crimes, torture, and genocide. U.S. courts can also hear civil suits brought by victims to address serious rights violations. For example, CCR brought a civil case in U.S. court under the Alien Tort Statute against Israeli official Avi Dichter for war crimes and extrajudicial killings on behalf of Palestinians killed or injured in a 2002 air strike in Gaza, but it was dismissed on immunity grounds.

Israel is the largest recipient of U.S. military aid, an average of \$3.1 billion annually which accounts for 55% of all U.S. foreign military funding. All U.S. military aid is subject to obligations set forth in various federal statutes. The Foreign Assistance Act (FAA) bars assistance to any government that “engages in a consistent pattern of gross violations of internationally recognized human rights,” except in certain circumstances. The Arms Export Control Act (AECA) restricts arms sales to foreign governments to a few narrow uses, including internal security, “legitimate” self-defense, and preventing proliferation of weapons of mass destruction. Under the Leahy Laws the State Department is required to vet all foreign units and individuals authorized to use force that receive U.S. support. If credible information surfaces that a unit (or individual) took part in gross human rights violations, it is barred from receiving funding.

Beyond the existing laws mentioned above, the President and Congress can pass further restrictions if aid recipients are found to have committed gross human rights violations, as the U.S. has done in the past on aid to Indonesia, Turkey, Guatemala and numerous other countries that were found to be committing human rights violations.

Despite these responsibilities under U.S. law and the widespread reports of gross, systemic violations of IHL by Israel, including but not limited to during Operation Protective Edge, there continues to be a lack of meaningful action by any branch of the U.S. government to restrict U.S. aid to Israel’s military. Arms transfers to Israel are ongoing and, since the start of the Operation, the U.S. Congress has *increased* their proposed aid to Israel. *(Last updated: 7/31/14)*

What can you do?

Demand the U.S. enforce the Leahy Laws and cut funding to any Israeli units accused of human rights violations. Take action on CCR’s website: www.ccrjustice.org/get-involved/action/gaza

Get involved in the global movement to impose Boycotts, Divestment, and Sanctions (BDS) against Israel. Information and resources are available from the US Campaign to End the Israeli Occupation [http: www.endtheoccupation.org](http://www.endtheoccupation.org) and legal support is available via Palestine Solidarity Legal Support: www.palestinelegalsupport.org