

Will Israel's War Crimes Go Unpunished?

The credibility of the International Criminal Court has fallen into question because it focuses on human rights abusers in weak countries while ignoring those in powerful countries or with powerful friends, a criticism being tested again by Israel's slaughter in Gaza, as Brian J. Trautman notes.

By Brian J. Trautman

Israel's month-long military barrage of Gaza known as "Protective Edge" included numerous attacks on civilian-populated sites, including on homes, hospitals, mosques, markets and United Nation (UN) schools-turned-shelters.

To date, Israel's assault has killed at least 1,300 Palestinian civilians, including over 400 children, and injured more than 10,000. (Some estimates are much higher.) An estimated half a million people have been displaced. Upwards of 10,000 homes have been destroyed and countless others partially damaged.

Strikes on some of the abovementioned sites have prompted international calls for officials of Israel's government to be investigated for possible war crimes in Gaza.

Referring to the deadly July 30 attack on a UN school, the human rights organization Amnesty International argued that "If the strike on this school was the result of Israeli artillery fire it would constitute an indiscriminate attack and a likely war crime." On Aug. 7, citing "mounting evidence" that Israel engaged in "apparently deliberate attacks against hospitals and health professionals in Gaza" which "left six medics dead" and injured many more, Amnesty International called for an "immediate investigation."

The organization also published "disturbing testimonies from doctors, nurses, and ambulance personnel" which detailed "harrowing" life-saving efforts of medical personnel faced with an "utterly impossible situation" of working "with bombs and bullets killing or injuring their colleagues."

Military attacks of this sort, according to Amnesty International, "are absolutely prohibited by international law and would amount to war crimes" and "only add to the already compelling argument that the situation should be referred to the International Criminal Court."

In a recent statement to the UN General Assembly, Pierre Krähenbühl, Commissioner General for the United Nations Relief and Works Agency (UNRWA), the UN Agency providing assistance and protection to five million Palestine refugees, underscored the losses suffered: "the conflict did not spare UNRWA

installations and staff.”

Summarizing the destruction, the Commissioner added: “Ninety of our premises have been damaged. Six of our schools were hit directly by shelling or affected by rocket fire in their immediate vicinity, with serious loss of life and injuries.”

The UNRWA, explained the Commissioner, has “condemned such military actions by Israel explicitly and unreservedly” and “cannot comprehend why they occurred, and even less why they happened so repeatedly.” Moreover, the UNRWA has “asked for investigations to be carried out and for accountability.”

The Commissioner acknowledged his agency had found some unused schools being used by Hamas for weapons storage. However, as a result of UNRWA inspection work and a “clear and deliberate” information sharing campaign, people on the ground as well as world governments were aware of the nature and location of these sites.

The international body tasked with the responsibility of ensuring that the most serious crimes are punished is the International Criminal Court (aka “the ICC” or “the Court”). Founded in 2002 under the Rome Statute, an international treaty, and based in The Hague, the Netherlands, the ICC is an autonomous, permanent court established to investigate, prosecute and try individuals (e.g., high-level government officials) accused of crimes of international concern, namely genocide, crimes against humanity, war crimes and the crime of aggression. As of May 2013, the Rome Statute has been ratified by 122 countries, not including the United States or Israel.

According to the Court’s website, while the Nuremberg and Tokyo tribunals were established to prosecute the atrocities committed during World War II, many violations of international law during the Twentieth Century went unpunished. And while the UN General Assembly proposed a permanent international court in 1948 and again after the Cold War, it was not until the 1990s that serious negotiations took place to create such a court.

By this time, crimes against humanity were being committed in the territory of the former Yugoslavia and in Rwanda. The Court is currently conducting investigations on crimes allegedly committed in eight states, including Sudan (for the situation in Darfur), the Democratic Republic of the Congo, Uganda and Libya. In addition, preliminary analyses that may lead to investigations are ongoing in eight situations, including Afghanistan, the Republic of Korea, Honduras and Nigeria.

Some have argued that the ICC does not have jurisdiction in Gaza because

Palestine is not a signatory to the Roman Statute. Others believe the ICC does have jurisdiction despite this fact. In an article published by the Guardian newspaper on Aug. 8, the Bar Human Rights Committee (BHRC) of England and Wales outlined two main reasons why the ICC does indeed have jurisdiction in this case: “the United Nations general assembly’s decision to grant Palestine observer-state status means the ICC has jurisdiction to investigate allegations of crimes” and “a 2009 declaration submitted by the Government of Palestine, accepting the jurisdiction of the court, provides the prosecutor with the jurisdictional basis to initiate an investigation.”

While this approach can serve as a potential path forward for the ICC to open an investigation, the BHRC points out that it “continues strongly to encourage Palestine’s ratification of the Rome Statute as the most straightforward basis for ICC jurisdiction over crimes committed on its territory.”

Israel is already attempting to recruit supporters to stave off an ICC investigation of its leaders. Last week, Benjamin Netanyahu, Israel’s prime minister, turned to allies in U.S. Congress for a pledge of support. Regardless of the efforts of Israel or its closest ally, the United States, to prevent the ICC from seeking justice for the Palestinians and international aid workers killed and wounded in Gaza, the Court has a duty to at least open an investigation.

The credibility of the ICC hangs in the balance. No individual who violates international law should escape justice. If Israeli officials are not investigated for possible war crimes in Gaza, then the tragic lessons learned from the last century about failures in international criminal justice and the consequences of inaction will have been in vain.

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