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# Israel and Palestine—An Analysis of the 2014 Israel-Gaza War from a Genocidal Perspective

Shannon M. Culverwell  
*James Madison University*

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Israel and Palestine—An Analysis of the 2014 Israel-Gaza War from a Genocidal Perspective

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An Honors College Project Presented to  
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by Shannon Marie Culverwell

May 2017

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Accepted by the faculty of the Department of Justice Studies, James Madison University, in partial fulfillment of the requirements for the Honors College.

FACULTY COMMITTEE:

HONORS COLLEGE APPROVAL:

---

Project Advisor: Sue, Spivey, Ph.D.,  
Professor, Justice Studies

---

Bradley R. Newcomer, Ph.D.,  
Dean, Honors College

---

Reader: Tara Parsons, Ph.D.,  
Assistant Professor, Justice Studies

---

Reader: Dr. Terry Beitzel, MA, PhD.,  
Assistant Professor, Justice Studies

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## Introduction

Within the last seventeen years, over 10,600 Palestinians and Israelis have been killed because of the seemingly never-ending conflict (B'Tselem, 2017 and UNHRC, 2015). Of those 10,600 Palestinians and Israelis killed in the last seventeen years, approximately 2,300 died in the most recent 2014 Israel-Gaza War (World Report 2014, 2015). As the deadliest military offensive to occur since the onset of the conflict in 1948, the international community has largely condemned the actions taken by Palestinian and Israeli actors during the 2014 conflict as having deliberately targeted protected civilians and civilian areas (Amnesty International, 2014).

Despite this widespread condemnation, the International Criminal Court (ICC) is currently the only international institution to have initiated a criminal investigation<sup>1</sup> regarding 'alleged crimes' committed in the occupied Palestinian territory, since the initial start of the conflict on June 13, 2014 (ICC, 2017). While the ICC is presently only in the second phase of its preliminary examination, the court has identified a variety of 'alleged violations' committed by the IDF, Hamas and various other Palestinian armed groups. Although the ICC has yet to determine whether these alleged acts amount to 'crimes of atrocity'<sup>2</sup> and therefore fall within the court's subject-jurisdiction, the international community has generally referred to these acts as amounting to 'war crimes' and 'crimes against humanity' (Amnesty International, 2014 and UNHRC, 2015). While it is commendable that a significant portion of the international community has publically recognized the seriousness of the acts committed during the 2014

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<sup>1</sup> While very few international institutions have the authority or jurisdiction to conduct a criminal prosecutions, organizations like the UN that do have criminal jurisdiction over the matter and have expressed their concern for the matter, have refrained from conducting any officials investigations

<sup>2</sup> According to the United Nations (2014), atrocity crimes refers to genocide, crimes against humanity and war crimes.

conflict, the international community has entirely ignored the most serious crime of all: genocide.

As the ongoing conflict between Israel and Palestine is inherently rooted in their religious-national differences as Israeli-Jews and Arab-Palestinians, it is necessary to examine the conflict from a genocidal perspective. Discounting the possibility that the crimes committed during the 2014 conflict may amount to acts of genocide, fundamentally ignores and denies the shared experiences suffered by Palestinian and Israeli individuals as a part of their respective religious-nationalist group. As such, the primary purpose of this study is to determine whether the actions taken by Israeli and Palestinian actors throughout the 2014 Israel-Gaza War constitute as acts of genocide under international law. This analysis is necessary to not only recognize the shared experiences felt by Israeli-Jews and Arab-Palestinians, but also with the aim of more fully understand the conflict and one day find a durable peace for the future.

In order to understand the present conflict as a possible genocide, a review of the literature is essential to develop an understanding of the concept of genocide and determine how scholars have applied this concept to the Israeli-Palestinian conflict. A methods section will follow, in which key terms are conceptualized and the research design is established. A brief history of the conflict will come next in order to develop a necessary understanding of the conflict as a whole. A single case study will then follow, separately examining the actions of Palestinian and Israeli actors in order to determine whether they constitute as genocide under international law. The study will then conclude with a short discussion regarding the findings and what this means for any possible future investigation.

## Literature Review

### 1. Lemkin and the Legal Codification of Genocide

The term genocide was first used by Raphael Lemkin (1944) in his book *the Axis Rule in Occupied Europe*, to signify “the destruction of a nation or an ethnic group,” (Lemkin, 1944: 79). He understood genocide as acts directed against an individual or group of individuals, solely based on their membership in a larger group, in order to cause the destruction of that group as a whole. According to his conception of genocide, genocidal acts do not have to result in the *immediate* destruction of a nation or group, but may also constitute as a coordinated plan *intended* to destroy the “essential foundations of the life of the national group, with the aim of annihilating the groups themselves,” (Lemkin, 1944: 79). His conception of genocidal was not limited to physical killing, rather it included acts that deprived and severely endangered human life. He identifies two phases within genocide. The first being the destruction of the oppressed groups’ national pattern or group identity and the second the imposition of the oppressor’s nationality upon the oppressed. Lemkin specifically recognized the imposition of the oppressor’s nationality on the oppressed as an act of genocide, in itself, because it caused the social death of that group. According to his conceptualization, the crime of genocide is more than just the physical death and destruction of a group but also includes the death and destruction of that group’s culture. He specifically understood the destruction of a culture as a “special kind of crime because culture is the unit of collective memory” which results in the loss of those individual member’s identities and memories (Lemkin, 2009, 12).

Following the publication of his work, Lemkin (1944) actively called upon the United Nations (UN) to codify his definition of genocide under international law. Despite his active involvement in the process, the recognized legal definition of genocide is significantly different



from the one Lemkin intended. The Convention on the Prevention and Punishment of the Crime of Genocide (UNGC) (1948) legally criminalized genocide as a punishable act under international law in 1951, upon receiving the necessary signatures from member's states. Since its official enactment into law, the international community understands the crime of genocide as a norm of *jus cogens* and therefore a criminal act regardless of whether a state has signed or recognized the Genocide Convention (Bassiouni, 1996).

According to this convention, the crime of genocide is defined as a specific set of acts which are "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious" (UNGC, 1948, 1). The convention explicitly recognized five acts of genocide, which the convention defines as:

- a) killing members of the group;*
  - b) causing serious bodily or mental harm to members of the group;*
  - c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
  - d) imposing measures intended to prevent births within the group;*
  - e) and forcibly transferring children of the group to another group.*
- (UN CPPCG, 1948: 1)*

In addition to the crime of genocide, the UNGC (1948) also recognized conspiracy, direct and public incitement, complicity, and attempts to commit genocide as punishable acts under international law.

The definition of genocide created by the UNGC was significantly narrower than that of Lemkin's original interpretation. The UNGC limited its understanding of 'groups' to exclude political and social groups and ultimately omitted Lemkin's (1944) concept of cultural genocide

and social death. Arguably, the most significant change made by the UNGC (1948) from that of Lemkin's original conceptualization of the crime, is arguably its inclusion of "intent to destroy" (UNGC, 1948, 2). This inclusion of 'intent' differs from Lemkin's understanding of the crime, because he recognized any act that resulted in the destruction of a group as an act of genocide, but under international law an act is only that of genocide if it was committed with the *intent* of destroying a group. Ultimately, this inclusion of intent further narrowed and restricted the applicability of the crime of genocide under international law.

## **2. Genocide after Lemkin and the Genocide Convention**

Even though the definition of genocide created by the UNGC is currently the only legally enforceable one, scholars continue to interpret and create new definitions of genocide. Drost (1959) was the first scholar to re-examine the concept following its official codification in 1951. Unlike Lemkin (1948), who was upset that the UNHRC excluded cultural genocide, Drost (1959) voiced his pleasure in the fact that the term had been excluded. While he recognized a group's culture as an inherent part of their identity, which deserves international protection, he ultimately felt that the infringement on a group's culture was largely a matter of human rights and not that of genocide. He understood genocide as exclusively referring to "the deliberate destruction of the physical life of individual human beings by reason of their membership of any human collectivity" (Drost, 1959). More precisely, he recognized genocide as a type of "group murder," that does not require the complicity of a states' government and can occur despite the government's best effort to prevent it. His overall conceptualization of genocide largely correlated with that of the legal definition, but he did disagree with the convention's choice to exclude political groups, which he recognized as requiring protection against genocide under international law.

Similar to Drost, both Arendt (1964) and Horowitz (1976) criticized the UNGC for its narrow and restrictive understanding of ‘victim’ groups. Deviating from Drost (1959), who recognized genocide capable of occurring without the complicity of a state, both Arendt (1964) and Horowitz (1976) emphasized the role of the state or the bureaucratic characteristic inherent to genocide. Arendt (1964) specifically criticized the legal definition of genocide, for creating what she considers a prejudice, which implies that foreign nations and groups of other races are the only victims of genocide. While she emphasized that genocidal acts are directed against any type of group, she understood genocide as only capable of being perpetrated by a state or other bureaucratic perpetrator.

Horowitz (1976) similarly understood genocide as acts perpetrated by a state’s government against any innocent minority group. He referred to genocide as “a structural and systematic destruction of innocent people by a state bureaucratic apparatus” (Horowitz: 1976, 18). More precisely, he recognized genocide as a “systematic effort over time to liquidate a national population, usually a minority,” (Horowitz: 1976, 18). While the work of Drost, Arendt, and Horowitz aimed to develop a deeper understanding of the crime of genocide, the emphasis these scholars placed on the role of the state ultimately led to a wider debate concerning the relationship between genocide and the state.

### **3. Mass Murder, the State, and the Liberal Paradigm**

The academic atmosphere of the 1980s was largely characterized by various scholar’s attempts to redefine “genocide” as exclusively referring to cases in which mass murder was perpetrated by a state. Moses (2004) labeled this view as the “liberal paradigm,” in which scholars increasingly emphasized the physical death of the victim group and the role of the state in perpetrating genocide. Most scholars who held this view often recognized the Holocaust as the

model for all genocides. Horowitz (1984), Barbara Harff (1984), and Chalk and Jonassohn (1990) best exemplify this view. All three scholars excluded non-lethal techniques from their interpretation of genocide and only recognized instances of mass killings as constituting genocide. Horowitz (1984) expanded upon his previous work and defined genocide as a systematic act, which is highly organized and always perpetrated by a state's government against a minority. Specifically, he understood the crime as the "collective murder" of a group, which he says was most apparent in the holocaust. Various liberal scholars held this view of the Holocaust as the 'model genocide' at the time. Harff (1986) similarly held this view and echoed Horowitz's emphasis of the state's essential role in perpetrating genocide. According to her conceptualization, genocide amounts to a "form of state terror" or pre-meditated mass murder perpetrated by the state or a groups closely associated with the state (Harff, 1984).

Similarly, Chalk and Jonassohn (1990) identified genocide as "a form of one sided mass killings in which a state or other authority intended to destroy a group as defined by the perpetrator," (Chalk and Jonassohn, 1990 and Curthoys and Docker, 2008). While Chalk and Jonassohn recognized the destruction of a culture as a serious crime, unlike Horowitz and Harff, the authors refer to this as a distinctly separate crime, which they labeled 'ethnocide'. Helen Fein (1990) similarly emphasized the role of physical death, but found Chalk and Johassohn's conception, as well as that of Horowitz and Harff, as severely limited due to what she considered their overemphasis on the state's role as the perpetrator. She conceived genocide as "a sustained, purposeful action by a perpetrator to physically destroy a collectivity directly or indirectly, through interdiction of the biological and social reproduction of group members, sustained regardless of the surrender or lack of threat offered by the victim."

#### **4. The State, Intent, and the Post-Liberal Paradigm**

While Fein's conception of genocide more closely reflected that of Lemkin's, Moses (2003) cites that her understanding of genocide was still widely criticized by 'post-liberal theorists' for excluding the destruction of a culture. Moses specifically referred to 'post-liberal theorists,' as representing the opposite side of the previously identified paradigm. Post-liberal theorists, such as Kuper (1980), Barta (1987) and Churchill (1997), largely condemned the liberal paradigm as having created a narrow and restricting definition of genocide.

Kuper (1980) and Barta (1987) rightfully condemned the view that genocide only occurs as a systematic and state sponsored attack, which results in the destruction of human groups in their entirety. Both scholars condemned this view, as it ignores a significant portion of genocidal acts. Barta (1987) rather understood genocide as occurring because of either a genocidal state or a genocidal society, which he understood as two inherently different entities. A genocidal state was similar to that of the liberal view in that the state intentionally perpetrates a genocide on a group. He considered a society genocidal when the state, regardless of its intent, consciously or unconsciously subjects a whole group to "remorseless pressures of destruction inherent in the very nature of the society" (Barta, 1987, 239).

Churchill (1987) also provided an alternative to the liberal view of intent. Specifically, he understood genocide as having various 'degrees' based upon the perpetrators "exterminatory intent" (Stone, 2008, 12). He modeled this notion of 'exterminatory intent' upon US homicide laws and therefore recognized genocide based upon the degree and severity of the act. Both Churchill and Moses (2003) condemned the common view held by liberal theorists, which emphasized the uniqueness of the Holocaust as the only true genocide. Eventually, those theorists who recognized the Holocaust as the only true genocide were recognized as Holocaust scholars, rather than genocide scholars. While genocide scholars abandoned the Holocaust as a

unique phenomenon, a significant number of scholars continue to emphasize physical death and harm as the primary characteristic of genocide. Despite this, Moses (2003) recognized that the debate between liberal and post-liberal scholars to has reached an impasse.

### **5. Structural Causes and the Effect of Colonialism**

Following the atrocities in Rwanda and the former Yugoslavia, genocide studies emerged as its own distinct academic field, in which scholars have become more concerned with understanding genocide for the purpose of preventing and prosecuting it (Cuthoys and Docker, 2008). Compared to the previous research, which focused on redefining genocide, recent genocide literature primarily analyzes the structural causes of genocide (Bloxham and Moses, 2010). Like Jones (2008) who analyzed the relationship between gender and genocide or Shaw (2010) in his examination of genocide from a sociological perspective.

Within the last two decades' the genocide field has witnessed an increase in studies regarding the specific relationship between settler-colonialism and genocide. Scholars such as Barta (1986), Patrick Wolfe (2006), and Dirk Moses (2010) have largely re-examined the works of Lemkin and Sartre regarding the apparent association between colonialism and genocide. Kuper (1980) was one of the first to recognize the validity of Sartre's (1967) controversial position on settler-colonialism. Specifically, Sartre (1967) recognized colonization as by its "very nature an act of cultural genocide," because the acquisition of inhabited territory from the native group by the colonial state, systematically liquidates the characteristic of that native group's society away from the land (Cuthoys and Docker, 2008, 15). While Kuper (1980) felt that Sartre's analysis was undermined by several overgeneralizations, he ultimately acknowledged the validity of Sartre's position and further expanded upon his theory in order to include decolonization, as well. He specifically understood colonization as creating "dangerously

plural or divided societies,” which forces different groups together and may later lead to systematic violence and genocide upon the eventual decolonization of the region (Kuper, 1981 and Curthoys and Docker, 2008).

Similarly, Barta (1987), Wolfe (2006), and Bloxham and Moses (2008), have examined the relationship between settler-colonialism and genocide. These scholars have largely come to understand the settler-colonial process of taking land from indigenous groups as inherently destructive to the native group, and therefore genocidal, regardless of whether this destruction was the settler’s *intent*. Wolf (2006) specifically, understands settler colonialism as a structure, rather than an individual event, in which settler-colonial societies create ‘pervasive inequalities, which are usually codified in law, between the settler and indigenous populations’ (Moses, 2008). Scholars have increasingly begun to examine the effect of colonialization in specific cases in order to determine whether this relationship resulted in long-term genocidal effects.

## **6. Settler-Colonialism and Ethnic Cleansing in Palestine**

While numerous case studies have scrutinized the effects of settler-colonialism in the Americas, Africa, and Latin America, a number of scholars have recently begun to examine the settler-colonial relationship between Israel and Palestine. Pappé (2005), Shaw (2010), Docker (2012), Lloyd (2012), Rashed and Short (2012), and Rashed, Short and Docker (2014) have all analyzed the 1948 conflict from a settler-colonial perspective. In this relationship, these scholars recognize the Zionist Jews as the ‘settlers’ and the ‘Arab Palestinians’ as the indigenous population. These scholars specifically, consider the destructive settler-colonial relationship as having originated within the Zionist movement itself, due to the nationalistic nature of the movement, which called for the development of an exclusively Jewish state in an area that was largely populated by Arab Palestinians.

Pappé (2005) was one of the first to view Zionism from a settler colonial perspective. His analysis specifically understood Zionist hostilities and the early planning of Israelis to transfer Arabs out of the territory, as evidence of ethnic cleansing. Docker (2012) later utilized Pappé's findings, and theory developed by Lemkin, in order to understand the historiography of the conflict from a settler-colonial perspective. His analysis specifically argued that Israel and the Zionist movement previously and continue to commit genocide against the Palestinian people with the intent of further settling Israelis in the contested area. While Docker frames the entirety of his article upon the relationship between settler-colonialism and genocide, Shaw (2010) just barely acknowledges the existence of such a relationship in his own work. The two scholars differ significantly in their understanding of settler-colonialism and its effect upon the ongoing Palestinian crisis. Shaw (2013) considers the work of Docker (2012) and that of Rasheed and Short (2012) to have implied a much closer relationship between settler-colonialism and genocide than what he feels is justified. According to the Shaw (2013), this understanding of the conflict from a settler-colonial perspective does not recognize the actual cause of the conflict nor does it acknowledge genocidal acts, which he considers not to involve colonial settlement.

While Shaw (2010) and Docker (2012) differ significantly regarding their understanding of the role of settler-colonialism in the Israeli and Palestinian conflict in 1948, both scholars agree that 'ethnic cleansing' is genocide and that the actions taken by Israel in 1948 constitute as a genocide. Shaw (2010) later criticized Pappé's work for labeling the 1948 conflict between Israeli-Jews and Arab Palestinians as an 'ethnic cleansing', as he considers ethnic cleansing to be an aspect of genocide and not an alternative to 'genocide'. Shaw (2013) similarly criticized the works of both Rasheed and Short (2012) and Alsheh (2012) as having over emphasized the role of settler-colonialism and as having not established a full understanding of the conflict.



Regardless, he recognized the importance of their analyses in strengthening the argument that Israel's actions during 1948 were that of a genocide. While Rasheed and Short (2012) and Alsheh (2012) both label the conflict as genocide, they ultimately differ in their understanding of it. Rasheed and Short (2012) recognize Israel's expulsion of Palestinians in 1948 as having targeted Palestinians as a distinct *national group*, whereas Alsheh (2012) identifies the entirety of *Palestinian society* as the target of genocide. Regardless of why Israeli Jews targeted Palestinians, Rashed et, al (2014) understands Israel's actions during the conflict as having caused the 'social death' of Palestinian people.

While these scholars support Shaw's (2010) conception of the conflict as genocide rather than ethnic cleansing, various scholars disagree. Pensal (2013) agrees with Pappé's (2005) analysis and understand the acts committed in 1949 by Israel not as genocide, but rather as ethnic cleansing. He makes this distinction due to the relatively low number of Palestinians killed during the conflict. Holocaust scholar Bartov (2010), on the other hand, strongly opposed the labeling of the 1948 conflict as a genocide and has also refrained from classifying the events as ethnic cleansing. In an academic exchange with Shaw (2010), Bartov (2010) criticized Shaw for what he considers as the inflation of ethnic cleansing to that of the crime of genocide. He specifically referred to Shaw's understanding of genocide as so general that it has become historically meaningless. While Bartov refused to consider the actions taken by Israel in 1948 as either genocide, or ethnic cleansing, he conceded that the logic of Zionism might have promoted at the most 'population displacement'. Ultimately, Bartov (2010) condemned his analysis as groundless, prejudicial, anti-semitic and as having intended to delegitimize the State of Israel.

## **7. Memoricide and Nakba**

Holocaust scholars like Bartov, are not the only people to largely disregard the violence and forced exodus of Palestinians in 1948 as a possible genocide deserving of analysis. Up until recently, the majority of genocide scholars have completely disregarded the experience of Palestinians when analyzing such relevant concepts as settler-colonialism, ethnic cleansing, and nation building. Rasheed et, al (2014) has referred to this gap within genocide literature as an act of *memoricide*, in itself. Pappé (2005) first defined memoricide as acts which ‘erase the history of one people in order to write that of another people’s over it,’ (Pappé: 2005, 231). He identified this memoricide in the Palestinian case as the ‘master plan of expulsion and destruction’ of Palestinian culture through the replacement of ‘de-Arabisation with Judaisation’ (Pappé: 2005, 231). Docker (2012) also examined the act of memoricide in Israel-Palestine and understood memoricide as an inherent feature of colonization. In the case of the Israel-Palestinian conflict, he explicitly refers to Israel’s actions as a colonial actor as having attempted to erase Palestinians from history through the destruction of Palestinian land, architecture, and art.

Rashed et, al (2014) also analyzed this memoricide in the context of Israel’s ‘Nakba denial’. Nakba means catastrophe in Arabic and is the term used by Palestinians and Israeli Arabs to refer to the exodus of hundreds of thousands of indigenous Palestinians during the formation of Israel in 1948 (Masalha 2007, 1). According to Sarah (2012) the Nakba has come to suggest a dual meaning which refers both to the forced exodus of Palestinians in 1948, while also referring to their ongoing daily suffering because of their separation from their families, homes, and land. Massad (2008), best exemplifies this suffering when he refers to the 60<sup>th</sup> anniversary of the Nakba as not being an anniversary, ‘but rather one more year of enduring its brutality; that the history of the Nakba has never been a history of the past but decidedly a history of the

present' (Massad, 2008,). While this event has been examined as genocide, the active denial of its existence requires further analysis and Pappé (2005), Docker (2012), and Rashed et, al (2014) have all explicitly called for further analysis in order to understand the current conflict and subsequently find peace.

According to the Rashed et, al (2014), the lack of research on the Nakba has allowed the Zionist narrative to remain largely unquestioned both by Israelis and Western academics, which has resulted in a wide scale denial of the Palestinians experiences during the Nakba. Abu-Saad (2008), Black (2009), and Rashed (2014) understand Israeli's continuous denial of the Nakba as a tool to suppress Arab-Palestinian identity, which should be recognized as an act of genocide. The suppression of Palestinian identity, according to Black (2009) and Rashed (2014), was officially codified within Israel's national legislation. This is apparent in Israel's 2009 banning of the word 'Nakba' within Palestinian schools, and the 'Budget Foundation Law' or 'Nakba law', which withholds state funding from institutions, which recognizes or commemorates the Nakba. Rashed et, al (2014) recognizes these policies and the active denial of the Nakba as acts as a cultural genocide, which he refers to as part of a larger structural settler-colonial genocide that began in 1948 and continues today.

### **8. The Occupation, the Gaza War, and Operation Protective Edge**

As detailed by Rashed et, al (2014), genocide scholars have largely ignored the current situation in Israel and Palestine as a possible genocide case study, despite its clear relevance to the genocide field. Considering Lemkin's (1944) emphasis on the relationship between genocide, occupation and war, the minimal scholarly research regarding the topic is surprising. Lendman (2008), Cook (2008), Rashed and Short (2012), and Rashed et, al (2014) have all examined the occupation and the detrimental effects it has had on the Palestinians. While Cook (2008) does not

regard the occupation itself as a genocide, he does refer to the ongoing occupation as a form of ethnic cleansing and implies that Palestinians may one day face their own genocide. He also credits the ongoing occupation as having forced Palestinian society into “an almost permanent state of social, economic and political underdevelopment,” (Cook: 2012, 32). Chomsky and Pappé (2011) came to a similar conclusion when they condemned Israel’s occupation for directly causing the ghettoization of Palestine.

Lendman (2008) and Rashed and Short (2012) were more specific in their analysis of the occupation. Their study specifically examined the effects of what they refer to as Israel’s ‘collective punishment’ of Palestine in 2007-2008 following the election of Hamas. Both works recognize Israel’s implementation of the 2007 air, water and land blockade as having intended to restrict the movement of Palestinians, cripple their economy, and inflict conditions intended to endanger the life and health of Palestinian people. In their analysis, Rashed and Short (2012) also scrutinized Israel’s Nakba laws, economic sanctions and actions taken during Operation Cast Lead as acts of genocide. They are not alone in their understanding of the 2008 to 2009 conflict as a genocidal campaign. Chomsky and Pappé (2011) also condemned Israel for its use of excessive force and denial of medical personnel into Gaza during Operation Cast Lead. While Pappé refrained from labeling the conflict a genocide, Chomsky considers the IDF’s attacks as genocide, due to their systematic targeting of Palestinian universities, industries and necessary resources. As such, Chomsky and Pappé (2011) and Rashed and Short (2012) recognized Israel’s actions as planned attacks intended to collectively punish and destroy Gaza’s society as a whole.

Despite the fact that the 2014 Israel-Gaza War occurred nearly three years ago, genocide scholars have largely ignored the recent conflict as a genocidal case study. Max Blumenthal (2014) and the Russell Tribunal on Palestine (2014) are the only known sources to have

examined the 2014 Israel-Gaza war as a possible genocide. Blumenthal's (2014) examination of the conflict recognized the actions taken by Israel as that of a genocide and a 'politicide', which he defined as 'partial or total destruction of a community of people with a view to deny them self-determination,' (Blumenthal, 2015, 14). His analysis determined that the actions and statements made by members within Israel's nationalist and religious far right wing incited genocidal violence and forced a significant number of Israel's moderate party to flee the political arena.

Blumenthal later offered his own legal analysis to the Russell Tribunal on Palestine. The Russell Tribunal on Palestine<sup>3</sup> (2014) conducted its own citizen's tribunal, in response to the devastating effects the conflict has had on Gaza's population. This tribunal specifically examined Israel's actions as possible war crimes, crimes against humanity and the crime of genocide. Upon hearing the testimonies of legal experts and relevant actors, the tribunal found that numerous actions taken by Israel during the conflict legally amounted to war crimes and crimes against humanity. In regards to the crime of genocide, the tribunal found Israeli leaders guilty of direct and public incitement to commit genocide. Concerning the overall conflict, the tribunal recognized Israel's acts as genocidal but due to a lack of specific intent, the tribunal refrained from officially declaring the conflict a genocide. Ultimately, the court concluded its analysis by highlighting its concerns that the systematic impunity of Israeli officials, the IDF, and Israeli citizens will lead to a genocide, if one has not already begun.

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<sup>3</sup> The Russell Tribunal on Palestine (2014) is an International People's tribunal created by citizens actively involved in the promotion of peace and justice in the Middle East.

## Chapter 2—Methodology

Upon examining the relevant literature regarding the ongoing Israeli and Palestinian conflict; it is apparent that there is a need for further investigation of the topic from a genocide perspective. While genocide scholars have examined the conflict, the research has primarily focused on the role of settler-colonialism and the events that occurred in 1948. Since the available literature has largely refrained from examining the current occupation and most recent military conflict, the field of study could significantly benefit from a contemporary analysis of the most recent 2014 military conflict. While Max Blumenthal and the Russell Tribunal on Palestine previously examined the 2014 Israel-Gaza War from a genocidal perspective, both investigations exclusively examined the actions taken by Israel and completely ignored those taken by Hamas and various Palestinian armed groups. Therefore, a more thorough and unbiased analysis of the 2014 conflict is needed in order to fully understand the conflict as a whole and one day achieve durable peace between the two nations.

This analysis seeks to answer the question to what extent the actions taken by Israel and Palestine since June 2014, constitute as genocide as defined by the 1948 Convention on the Prevention and Prosecution of the Crime of Genocide (UNGC). I choose this legal definition and the specific period under investigation because of the International Criminal Court's (ICC) ongoing preliminary examination. As the ICC's legal jurisdiction is limited to only those actions, which occurred in the Gaza strip, West Bank, and East Jerusalem after June of 2014, there is a pressing need to examine the actions taken by Israeli and Palestinian actors during this time as possible acts of genocide. As this analysis is primarily concerned with the actions taken by Israeli and Palestinian actors during the military conflict in Gaza, this analysis will only examine actions taken in the Gaza Strip, and not the West Bank or East Jerusalem. Future studies should

analyze the actions taken within the West Bank and East Jerusalem during and following the 2014 Israel-Gaza War as possible acts of genocide according to international law.

### **1. The Legal Conceptualization of the Crime of Genocide**

While genocide scholars recognize a variety of definitions and acts that are not included in the UNGC's definition of genocide, as it is the only definition that is legally enforceable under international law and therefore for the purpose of this empirical analysis genocide is understood as such. The UNGC explicitly recognizes five acts as acts that may constitute as genocide, but these acts are only genocidal if they are committed with the "intent to destroy" a group "in whole or in part" (UNGC, 1948: 1). While international actors and genocide scholars interpret 'intent' as an explicit policy or clear directive by the state to destroy a group, the United Nations Special Adviser on the Prevention of Genocide (OSAPG) and the precedent set by the International Criminal Tribunal for Rwanda (ICTR) specify that this intent can be inferred from various actions committed by an actor (OSAPG, n/a and Human Rights Watch, 2010). Specifically, the ICTR determined that in cases in which explicit intent is not clear, intent is often inferred from the alleged perpetrators words, deeds, or "patterns of purposeful action" (Human Rights Watch, 2010: 16). The OSAPG and the ICTR have both identified specific factors, which may indicate a perpetrators intent to destroy a group in whole, or in part, some of which include:

*"the use of derogatory language against members of the victim group; the general context of the acts; the scale and systematic nature of the acts; the type of weapons used; the extent of bodily harm; the number of individuals in a group effected; the targeting of that groups property; and the relative proportionality of the attempted or achieved destruction of a group"* (OSAPG, n/a and Human Rights Watch, 2010).

This does not include all acts, which may indicate a perpetrator's intent to destroy a group in 'whole or in part,' but these acts were highlighted due to their specific relevance to large-scale military conflicts.

Additionally, while the UNGC does not clearly define what constitutes as the destruction of a group "in whole or in part", the OSAPG and the ITCR recognize this destruction as exclusively referring to the physical or biological destruction of a group (Human Rights Watch, 2010). While the actual extermination of a group does not have to occur, in order to constitute as "in whole or in part" the perpetrators acts must have been intended to destroy a "substantial number of individuals" from that group (Human Rights Watch, 2010:28 and OSAPG, n/a). As defined by the UNHC, this physical destruction can occur through five specific acts.

The first act, killing members of a group, while widely recognized as the most visible aspect of genocide, is not legally required to occur in order for a genocide to have taken place. This means that under international law genocide can occur, even if one person was never killed. As such, under international law in order to constitute as a violation of article 2 (a) of the UNGC, 'killing' is understood as "homicide" in which the perpetrator intentionally killed one or more individuals, due to their membership or perceived membership within the targeted group (Human Rights Watch, 2010, 48).

The second recognized act of genocide prohibits causing serious bodily or mental harm to members of a specific group, and is slightly more ambiguous than the first and has undergone a significant amount of legal analysis. For the purpose of this analysis, the conceptualization of serious bodily harm is based upon the legal precedent set within the *Ntabakuze and Nsengiyumva*, 2008 Trial Chamber decision. This decision understood serious bodily harm as "serious acts of physical violence falling short of killing that seriously injure the health, cause



disfigurement, or cause any serious injury to the external or internal organs or senses.” (Human Rights Watch, 2010, 53). In regards to mental harm, precedent set within the *Akayesu* judgement requires that mental harm exceed “temporary unhappiness, embarrassment, or humiliation” and must result in “grave and long-term disadvantage to a person’s ability to lead a normal and constructive life,” (Human Rights Watch, 2010, 54). While this precedent requires that mental harm be more than temporary in order to constitute as an act of genocide, this mental or physical harm does not have to result in permanent or irremediable damage. Ultimately, instances involving serious mental or physical harm must be addressed in a case-by-case basis in order to determine whether they violate article 2 (b) of the UNGC.

The third act of genocide prohibits “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,” is relatively straightforward under international law (The UNGC, 1948, 2). The ICTR has understood conditions of life calculated to bring about a groups physical destruction, as the purposeful infliction of “circumstances which will lead to a slow death” of a group (Human Rights Watch, 2010, 56). The ICTR and the OSPAG have specifically recognized “lack proper housing, clothing, hygiene, and medical care” as conditions which bring about the physical destruction of the group as a whole or in part. The relevant case, which prohibits “imposing measures intended to prevent births within a group” is relatively limited, but the ICTR’s legal interpretation of this act has explicitly recognized “sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages” (The UNGC, 1948, 1 and Human Rights Watch, 2010, 57). The relevant legal precedent concerning article 2 (e), is relatively straightforward as well, as it understands the forcible transferring of children from one group to the other, as just that.

When any one of these acts are inflicted against individuals of a group with the intent to destroying that group, the act or acts constitute as genocide under international law. These acts are illegal regardless of whether they actually result in the crime of genocide. According to the UNGC (1948) “the direct and public incitement to commit genocide” is also a punishable act under international law regardless of whether genocide occurred. While the UNGC recognizes incitement to commit genocide as a crime under international law, what this entails is still relatively ambiguous and has subsequently been subject to various legal interpretations. The ICTR has specifically recognize the crime of incitement as the direct provocation of a group to commit genocide against another group, either through speeches, shouting, verbal threats, or through the dissemination of similarly provocative written or printed text (Human Rights Watch, 2010: 64).

In order to constitute as incitement to commit genocide, this ‘provocation’ must be direct and public. Under international law, ‘direct’ incitement requires that the statements or action be “more than vague or indirect suggestions of incitement,” and rather having specifically having intended to “provoke another to engage in criminal conduct” (Human Rights Watch, 2010, 65). Proving that a statement directly intended to incite genocide is not enough, this statement or action must also have been ‘public’ in order to constitute as inciting genocide. In order to constitute as ‘public,’ the statement or action must be made in a public place or to members of the public, through mass media such as radio or television. While the available legal doctrine does not explicitly refer to social media or the internet, as there has not been a recent criminal hearing regarding the crime of incitement since the rise of social media, this analysis understands published statements made on social media as a ‘public’ statement.

## **2. A Single Case Study and the use of Secondary Data**

This legal conceptualization of genocide is applied within this analysis in order to determine whether the actions taken by Israeli and Palestinian actors legally constitute as genocide. For this study, I primarily followed Robert Yin (2013) while conducting my case study analysis. I utilized a case study design, as it is best suited to understand such complex social phenomena, like genocide, and investigate real-life situations in which the investigator has “little control over the events” (Yin, 2013, 10). As this method is more comprehensive and encompassing than other designs, this type of research design is best suited to conduct a thorough analysis of the 2014 Israel-Gaza War, as a case study design is capable of dealing with a large variety of evidence and conceptual conditions concerning the definition of genocide.

As this study primarily seeks to understand and compare the actions taken by Israeli and Palestinian actors during the 2014 Israel-Gaza War as possible acts of genocide, I chose to conduct a single case study based upon the location and specific event in question, rather than a comparative study comparing two differing cases. This design ultimately allows for a clearer understanding of why the war started and what exactly happened throughout the fifty-one-day long conflict (Yin, 2013). As the conflict under investigation occurred nearly three years ago and took place across the other side of the world, collecting my own data was impracticable. As a result, I conducted my analysis exclusively utilizing secondary data, as it was the only feasible means of gaining relevant and reliable data on the conflict.

Since this case study is only examining the individual case of the most recent 2014 Israel-Gaza War, when choosing my data on the conflict, I only included data published after June 2014. As the 2014 war involves a large amount of information, in order to gain a basic understanding of the conflict my first wave of research solely included large-scale reports

regarding the conflict as a whole. Ultimately, the majority of my data was collected from the United Nations Human Rights Council (UNHRC) 2015 Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council Resolution S-21/1\*\*\* (UNHRC, 2015). The UNHRC (2015) conducted its own independent inquiry into the conflict, which collected victim and witness testimonies via skype and telephone. While the UNHRC attempted to perform various onsite fact-finding missions, the state of Israel never granted the commission access to the Occupied Palestinian Territory or into Israel. In order to collect data, the UNHRC commission also utilized secondary data from trusted resources such as non-governmental organization, human rights organizations, and international law experts.

As the United Nations Human Rights Council (UNHRC) is independent from the main governing body of the UN, the data received from this report possess minimal bias and discrepancies. As no report can be fully without bias, I utilized this source as my primary set of data and continued to fact check and collect additional data relating to events or concepts of relevance addressed in the UNHRC report. While researching for more specific information, in order to ensure that the data utilized in my study was as factual and free of bias as possible, I primarily utilized reports and investigations conducted by international organizations such as the United Nations, Human Rights Watch, Amnesty International, the World Health Organization, the World Bank and various regional human rights organizations.

The data collected ultimately provided me with a relatively complete understanding of the 2014 conflict. Based upon the analysis of the data, specific actions taken by Israeli and Palestinian actors during the 2014 conflict were identified as possible violations of genocide under international law. Specifically, this analysis identified the crime of direct and public incitement to commit genocide and the crime of genocide itself. In regards to the crime of

genocide, based upon the conceptualization of the five recognized acts of genocide and the analysis of the data collected, evidence was identified supporting a need for further analysis into possible violations of the UNGC concerning article 2 (a), (b), and (c). Ultimately, the information available within the secondary data analysis did not support the need for a deeper analysis concerning the last two crimes of genocide. Ultimately, this study sought to utilize the data collected in order to provide a better understanding of the Palestinian conflict as a possible genocide and determine to what extent Israeli and Palestinian actions constitute as genocide under international law. This is necessary in order to; more fully understand the conflict and the experiences suffered by Israeli-Jews and Arab-Palestinians as members of religious-national group.

### Chapter 3—Understanding the History of the Conflict

While scholars generally assume that the ongoing Israeli-Palestinian conflict began in 1948, following the creation of the Jewish state, this is an oversimplification. (Tesler, 2009). It is often forgotten that Israelis and Palestinians share a far deeper history that spans back as far as ancient times, to when the two groups identified themselves exclusively as ‘Jews’ and ‘Arabs,’ and not as Israeli-Jews or Arab-Palestinian. For hundreds of years, the two groups lived together in relative harmony as Semitic people. Due to this shared history, the two groups gradually developed national identities inherently based upon their cultural and religious roots to what is now the contested territory of Israel and Palestine.

The concept of national identity did not truly develop until the late nineteenth century, when individuals in Europe began to identify themselves as members of a nation that deserved the right to rule themselves (Benin, J and Hajjar, L, 2014). This desire for sovereignty and self-determination quickly spread throughout the world and almost immediately manifested itself through the Zionist movement. As the Jews were forcibly spread throughout the world due to the diaspora<sup>4</sup>, the Zionist movement sought to reunify the Jewish people through the creation of a national state in the Jewish holy land, located in what was then Ottoman ruled Arab territory. While scholars such as Pappé (2005) and Shaw (2010) exclusively identify the development of the Zionist movement in 1897 as having sparked the conflict, it is often ignored or forgotten, that a similar nationalist movement also emerged among the Arab population at the time (Tessler, 2009). Arabs throughout the Middle East sought to overthrow, first the Ottoman Empire and

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<sup>4</sup> The Jewish diaspora refers to the forced exile or scattering of Israelites, Judahites, and the Jews from their religious home land, of what is now the state of Israel (Jewish Virtual Library, 2017). While this occurred throughout history, the primary diaspora occurred in 70AD when the Romans forced Jews to leave Jerusalem and what was then Palestine. As a result of this ‘diaspora’, Jews were forced to relocate throughout the world and were not relocated under a single Jewish state until the establishment of Israel in 1948.

then later British colonial rule, in order to create their own autonomous region of Arab nation states. While the two groups of people had previously been able to cooperate and live in peace with one another, as an increased number of Jews began to resettle the area, it would soon become clear that Zionism and Arab nationalism were fundamentally incompatible (Tessler, 2009).

Between 1916 and 1948, relationships between Jews and Arab's steadily deteriorated as a result of rapidly increasing Jewish settlement, the colonization of the territory by Britain through the British Mandate for Palestine and most notably over the promised development of two separate states for Israeli Jews and Arab Palestinians (Israel Profile, 2017). Following World War II and the Holocaust, the General Assembly created the U.N. Special Committee on Palestine (UNSCOP), with the intent of creating a feasible solution for both the Jewish and Arab population living in Palestine (Palestinian territories timeline, 2015). On November 29, 1947, the UN General Assembly officially agreed to partition the British Mandated for Palestine into two separate states, in which the UN would govern the cities of Jerusalem and Bethlehem as recognized international zones. At the end of 1946, UNSCO found the population of Palestine to have been approximately 1,846,000, in which 65 percent were Arabs (1,203,000) and 33 percent Jewish (608,000). Despite having the larger population, the partition plan allotted the Jewish state more territory on the assumption that Jewish immigration would increase in the region due to their displacement and genocide in Europe.

## **1. Independence and War**

Immediately, Palestinians and the Arab region as a whole rejected the partition plan (Israel Profile, 2017). While the Zionist leadership publically accepted the proposal, both sides prepared for war and fighting erupted almost immediately following the end of the British

Mandate. Despite having a smaller population, Zionist forces were significantly more organized and armed than the Arab Palestinians. By April of 1948, Zionists had gained control over the territory allotted to them and had begun to expand into territory that was designated to Arab Palestinian by the UN's partition plan (Benin, J and Hajjar, L, 2014). Less than a month later, Zionist leader David Ben-Gurion announced the established the Jewish State of Israel on May 14, 1948. This declaration officially began the Arab-Israeli War of 1948 in which Egypt, Syria, Jordan, Iraq and Lebanon declared war and subsequently invaded the Jewish state (Palestinian territories timeline, 2015). The war lasted for roughly a year and by April of 1949, all of the conflicting Arab states had signed their own individual Armistice Agreements with the State of Israel, officially ending the violence and first Arab-Israeli War.

Due to the conflict, Israel was victorious and successfully expanded its territory beyond the original partition borders, to possess over 77 percent of what had previously been the British-mandate of Palestine (Benin, J and Hajjar, L, 2014). Jordan and Egypt took control of what was left of Palestine; Jordan occupied the West Bank and East Jerusalem, whereas Egypt controlled the Gaza Strip (Palestinian territories timeline, 2015). As a result of the violence and Israel's significant expansion, over 700,000 Arab Palestinians voluntarily left or were forcibly expelled from the territory as refugees. While a great deal of those Palestinians relocated to the West Bank and Gaza strip, significant numbers were instead settled into refugee camps within Jordan, Lebanon, and Syria <sup>5</sup>(Palestinian territories timeline, 2015).

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<sup>5</sup> Despite the 1949 the establishment of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) and Resolution 194, which ensured Palestinian refugees the right to return, the large majority of the population has been restricted from doing so."



## **2. An Uneasy Peace and Three Decades of Conflict**

Despite the armistice agreement, Israeli and Arab relations remained strained following the war. Throughout most of the 1950s, political leaders and media outlets on both sides of the conflict regularly engaged in provocative dialogue and political warfare, often resulting in violent skirmishes (Israel Profile, 2017). A noticeable skirmish occurred in 1956, when Great Britain and France gained control of the Suez Canal and Israel successfully captured the entirety of the Gaza Strip and Syrian Sinai Peninsula. Israel eventually returned these two territories and for the next ten years, relations remained relatively tense, but no significant conflicts arose between Israel and its surrounding Arab nations. Despite this relative ‘peace’, disputes continued between Israel and Palestinian people, specifically in response to ongoing arguments over water diversion projects and an increased rise in nationalism among Palestinians living in the contested territory. In May of 1964, Ahmad Shuqeiri united Palestinian people under the Palestinian Liberation Organization (PLO), which established an official national covenant, basic set of laws, and an army (the Palestine Liberation Army) for the first time in occupied Palestine. (Palestinian territories timeline, 2015).

A year later, Israel launched a preemptive attack against Egypt, Syria, and Jordan in response to the mobilization of Arab troops along Israel’s borders and Egyptian President Nasser’s public declaration calling for the annihilation of the Jewish State (Benin and Hajjar, 2014). During what the Six Day War, Israel defeated Arab forces and ultimately regained control of the West Bank, Gaza Strip and Sinai Peninsula, as well as the Golan Heights (Benin and Hajjar, 2014). While the UN Security Council (UNSC) passed Resolution 242, which recognized the national rights of Palestinians and called for the eventual withdrawal of Israel from territory acquired during the Six Day War, Israel remains in the majority of these territories as an

occupying power. As a result of this accusation of land, Israeli occupation and settlement continued unabated for the next decade, which then led to the Yom Kippur War and the Ramadan War in 1973 (Israel Profile, 2017). Between 1978 and 1981, Israel and Egypt signed the first peace treaty between the Jewish state and an Arab nation at Camp David, which officially established diplomatic relations and officially ended their ongoing war. As the first Arab state to recognize Israel's existence, Egypt regained control of the Sinai Peninsula. This peace was short lived as Arab dissent in Egypt and other Arab nations led to the assassination of Egyptian President Anwar Sadat, which subsequently reignited tensions.

### **3. The First and Second Intifada**

As a result of failed diplomatic efforts to reach a territorial compromise and the continuous expansion of Israeli settlements into the West Bank and East Jerusalem, Palestinian anger eventually erupted in widespread riots, demonstrations, and boycotts condemning Israel's occupation in the late 1980s (Tessler, 2009). Violent outbursts eventually intensified, transforming into a coordinated uprising of thousands of Palestinian, known as the First Intifada. From 1987 and 1991, approximately 20,000 Palestinians and Israelis were injured or killed (Benin and Hajjar, 2014). After the First Intifada, which lasted nearly five years, the PLO and the Israeli government were able to make significant progress towards peace despite the political divisions in Palestine (Palestinian territories timeline, 2015). These divisions were largely due to the increasing political rivalry between the PLO and the newly formed Hamas, an Islamic resistance and extremist group (Benin and Hajjar, 2014). Despite this, during the 1990 Oslo Accords Israel formally recognized the PLO as a legitimate governing entity and officially granted Palestinians self-rule and elections throughout the occupied territory. These agreements were significant not only because it was the first time Israel and Palestine explicitly recognized

each other's rights to exist as two separate states and national groups, but more important was their official pledge towards peace and finding a lasting solution to end their dispute.

Despite this pledge for peace, later attempts to end the conflict at the 2000 Camp David II Summit failed. The international community has largely cited this failure as having resulted from Israeli Likud party leader Ariel Sharon's provocative visit to the Haram al-Sharif, a sacred holy site shared between Muslims and Jews. This visit and the end of the peace talks reignited violence and provocation between Palestinians and Israelis, which eventually resulted in the Second (al-Aqsa) Intifada (Klausner, 2002). This conflict was significantly more bloody and violent than the first and has been viewed by numerous scholars and actors as an "armed conflict short of war," (Benin and Hajjar, 2014). The conflict lasted for five years and bore witness to an increase in Hamas led suicide bombings and rocket attacks. In response to these attacks, Israel officially reoccupied the West Bank and created the West Bank Security Wall, which currently stands at roughly 200 miles in length (Harris, 2013). Despite international condemnation of the structure, the wall remains in place today.

In 2005, Israeli and Palestinian officials, including Hamas, agreed to an official ceasefire (Benin and Hajjar, 2014). While the ceasefire ended overt violence between Israel and Palestine, tensions remained and significantly escalated in 2006 following Hamas' electoral victory, in which the extremist organization won a majority of the seats in Gaza (Wilson, 2006). In response, Israel enacted a full air, land, and water blockage of the Gaza strip, which completely restricted what imports or exports enter into the territory. While Israel has recently loosened some of its restrictions on the Gaza strip, the blockade remains in full force. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has identified this blockade as

severely undermining the living conditions in Gaza and as having further fragmented the overall economic and social fabric of the occupied Palestinian territory (OCHA, 2017).

#### **4. A Decade of ‘Operations’**

In December 2008, tensions once again erupted in violence when Hamas fired rockets into Southern Israel in response to the ongoing Gaza Blockade (Javid and Shamim, 2014). In retaliation, Israel launched its own artillery barrage and armed invasion of Gaza. Operation Cast Lead, or the Gaza War, lasted three weeks and resulted in the death of nearly 1,500 Palestinians and 13 Israelis. Following the conflict, the international community has condemned both Israel and Palestine for perceived war crimes and called for the creation of a durable peace (pro-con, 2017). Discussions for a two-state solution reemerged in 2009 when President Obama reaffirmed his alliance with Israel, despite his condemnation of Israel’s continued settlement into the West Bank, and his commitment to create two separate states (Sham, 2014). For four years the United States, Israel, and Palestine seriously negotiated the creation of a sovereign state of Palestine, which ultimately failed in 2012 when Israel refused to stop building settlements or contemplate the possibility of returning to pre-1967 borders.

Nearly ten months after the failed peace negotiations, the two states acceded into violence again. In response to Palestine’s campaign to elevate its UN status to that of a Non-Member Observer State and renewed Hamas rocket attacks, Israel began its own military offensive, known as Operation Pillar of Defense, in an attempt to overthrow Hamas militias and their ability to launch attacks in Gaza (pro-con, 2017). The conflict lasted eight days, and killed nearly 174 Palestinians (Nebehav, 2012). Despite the conflict, the UN granted Palestine Non-Member Observer State status, therefore recognizing the PLO and Palestine as a state. During this time of peace, US Secretary John Kerry reignited peace talks for the first time since 2010 (Sham, 2014).

The talks lasted ninety days, but subsequently failed due to rising tension between Israelis and Palestinians following the kidnaping and murder of three Israeli teens by Hamas (Occupied Palestinian Territory, 2014).

While all three of the conflicts resulted in wide scale destruction and loss of life, the most recent military conflict was the deadliest and most destructive. The 2014 Israel-Gaza War, sometimes referred to as Operation Protective Edge, was fought primarily between the Israel Defense Forces (IDF), Hamas, and a variety of independent Palestinian armed groups. The war lasted for seven weeks in which Palestinian rockets, Israeli air strikes and ground operations killed over 2,300 Palestinians and 73 Israelis (Bannoura, 2014). Four months after the cease-fire, Palestine acceded into the Rome Statute of the ICC, therefore granting the court's jurisdiction to investigate alleged war crimes committed in Gaza since the June 2014 conflict (ICC, 2017). While the ICC does not have jurisdiction over the State of Israel, the ICC has opened a preliminary examination into the military conflict. Although numerous national and international organizations have publicized their concerns through inquiries and investigations regarding alleged violations of international law, the ICC preliminary examination is currently the only formal criminal investigation into the conflict (ICC Preliminary report, 2016).

## **6. The Current ICC Preliminary Examination**

The ICC is presently in the second phase of its preliminary examination regarding “alleged crimes committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014” (ICC Preliminary Examination Report, 2016, 25). According to the 2016 Report on the ICC's Preliminary Examination Activities, the Court has identified a number of alleged crimes committed by Palestinian armed groups, Hamas, and the IDF, which may fall within the court's jurisdiction. The alleged crimes identified in the report are limited and may later be

expanded upon depending on future analysis. Specific ‘alleged acts’ committed by Palestinian armed groups during the 2014 Gaza Conflict include attacks against civilians, the use of protected persons as shields, and ill-treatment of persons accused of being collaborators. Similar ‘alleged acts’ committed by the IDF have also been identified and include intentional attacks against residential buildings and civilians, medical facilities and personnel, UNRWA schools, and other civilian objects or infrastructure (ICC Preliminary Report, 2016, 28-29). Unlike other preliminary examinations discussed within the 2016 Preliminary report, the ICC has thus far refrained from officially classifying any of these alleged crimes as possibly amounting to genocide, war crimes, crimes against humanity, or the newly created crime of aggression.

While the Court has not yet determined whether any of the alleged acts committed by the IDF or various Palestinian armed groups fall within its subject-matter jurisdiction, numerous international actors have referred to the actions taken by both sides of the conflict as ‘war crimes’ and ‘crimes against humanity’. Specifically, the UN Human Rights Council (2015) Independent Commission of Inquiry on the 2014 Gaza Conflict found that the actions committed by the two states could amount to war crimes under international law, while Amnesty International (2015) and the Russel Tribunal on Palestine (2014) recognize the alleged acts as constituting as war crimes and crimes against humanity (Amnesty International, 2014). Currently the only organization to examine the conflict as a possible genocide was the Russel Tribunal on Palestine (2014), but this examination exclusively looked at the actions committed by Israel and not those by Palestinian actors.

The international community’s near exclusive referral to the acts committed during this conflict as war crimes or crimes against humanity is surprising considering the severity of the violence and the inherent racial, religious and national differences associated with the overall

conflict. Although the conflict as a whole appears as an ongoing dispute regarding territorial and self-determination rights, as this examination of the history revealed, this conflict is inherently rooted in ethnic, religious, and national differences between Israeli-Jews and Arab-Palestinians. Due to these differences and the near century long conflict, Israeli and Palestinians have polarized themselves as fundamentally different and seemingly incompatible national groups<sup>6</sup>. While this polarization does not necessarily make the conflict inherently genocidal, the ethnic, racial and national differences innate to the conflict and the systematic cycle of military conflicts since 2007 may indicate that the most recent conflicts were not fought with legitimate military objectives, but rather with the intent of committing genocide against the ‘other group’. The next three chapters will therefore analyze the actions taken by Israeli and Palestinian actors during the 2014 Israel-Gaza War. Specifically, this next chapter will specifically identify whether or not the Israeli and Palestinian actions leading up to the conflict constitute as direct and public incitement to commit genocide.

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<sup>6</sup> the OSAPG (n.d) analysis of genocide has recognized that conflicts over land, group identity, power and security as factors contributing to genocidal conflict. Considering the fact that the conflict is [http://www.un.org/en/preventgenocide/adviser/pdf/osapg\\_analysis\\_framework.pdf](http://www.un.org/en/preventgenocide/adviser/pdf/osapg_analysis_framework.pdf)

## **Chapter 4: Direct and Public Incitement to Commit Genocide**

The last chapter briefly examined the history of the Israeli-Palestinian conflict and briefly addressed the crimes under investigation in the ICC's current preliminary examination. This examination of the history specifically highlighted the ethnic, religious, and national differences between the two groups as Israeli Jews and Palestinian Arabs. These differences and the systematic cycle of violent conflicts since 2007 supported the need for further analysis the 2014 Israel-Gaza War. While the last chapter identified the ICC Preliminary Examination and current crimes under investigation, ultimately the crime of genocide was not included. Therefore, this analysis seeks to examine the conflict as a possible genocide. Before analyzing the actions taken by Israel and Palestine during the official military conflict, this section will first examine the events leading up to the 2014 Israel-Gaza War. Specifically, this chapter will determine whether either group violated article 3(c) of the Genocide Convention on the Prevention and Punishment of Genocide (UNGC), which prohibits the "direct and public incitement to commit genocide," by any person (UNGC, 1948, article 3(c)).

An examination of the events leading up to the conflict is necessary due to the extremely hostile and racially charged atmosphere among Israelis and Palestinians. While the kidnapping and murder of three Israeli teens on June 12, 2014 has largely been acknowledged as officially reigniting hostile relations between Israel and Palestine, relations between the two groups were already tense at the time due to the failure of the nearly ten month long US led peace negotiations between Israel and the Palestinian Authority (PA) (Blumenthal, 2014). Due to Prime Minister Netanyahu's withdrawal from the peace talks, Israel canceled the promised prisoner release of long-time Palestinian detainees. The international community has regarded as having



caused significant anger and resentment among Palestinians, which seemingly motivated the decision made by two rogue Hamas members to kidnap and murder three Israeli teens.

Despite the fact that the Israeli teens were murdered almost immediately after their kidnaping on June 12, Israel's investigation lasted for nearly three weeks (Blumenthal, 2014). In this time, tensions arose among the Israeli and Palestinian public, which eventually erupted in wide scale protests, riots, and a significant rise in inflammatory rhetoric between the two groups. Within this racially charged atmosphere, Israeli authorities discovered the teen's bodies on June 29 (Amnesty, 2014). Following this discovery, a significant rise in anti-Palestinian rhetoric increased among Israeli citizens, which seemingly led to the revenge killing of a Palestinian teen on June 2 by three Israelis. The discovery of the boy's burned body was the final catalyst, which reignited rocket attacks against Israel by Hamas and numerous Palestinian armed group, and subsequently resulted in Israel's own military operation in Gaza.

Although the collapse of the peace talks and the discovery of the teen's bodies have been recognized as having caused the racially motivated killings, statements made by Palestinian and Israeli officials during this time have also been understood as having largely contributed to the racially charged atmosphere in which these acts occurred. The UN Human Rights Council's (2015) independent commission of inquiry report, which will be here on referred to as the UNHRC report, condemned the actions taken by Israeli and Palestinian leaders and explicitly called upon the two groups to actively "prevent statements that dehumanize the other side, incite hatred, and only serve to perpetuate a culture of violence" (UNHRC, 2015). While the UNHRC report and the ICC's Preliminary Examination have exclusively referred to these actions as having incited violence, they also contributed to a genocidal environment. The OSAPG (n.a) identifies an increase in "inflammatory rhetoric or hate propaganda" among state leaders as

setting a tone of impunity, which therefore creates circumstances that facilitate genocide. As such, the statements made by Israeli and Palestinian officials leading up to the conflict may not have only contributed to what the UNHRC (2015) refers as a ‘cultural of violence’, but also intended to incite genocide among their respective populations. Therefore, this analysis will look at individual statements and actions made by leaders within both groups and determine whether they constitute as genocide under international law.

### **1. Incitement to Commit Genocide by Hamas Officials**

As the first official act of violence committed during this conflict began with the kidnaping and murder of three Israeli teens by two Hamas affiliates, this analysis first examines the statements made by Palestinian officials. While scholars like Blumenthal (2014), have largely attributed the failed peace talks and prisoner exchange as having created a feeling of helplessness among Palestinians which directly led to the kidnaping and murder of the Israeli teens on June 14, this cannot solely be understood as having contributed to the murder and kidnaping of the three teens. Statements made by Palestinian leaders prior to the conflict largely contributed to Palestinian hostilities and should be recognized as having directly incited violence against Israeli people. This is apparent in the ICC Preliminary Examination Report (2016) which highlighted its concern for the escalation of violence in Palestine, specifically concerning alleged instances in which Palestinian political leaders incited violence against Israelis<sup>7</sup>. Although the ICC has yet to identify any specific instances of concern, the State of Israel report (2015) and the UNHRC

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<sup>7</sup> While the ICC Preliminary Examination Report (2016) only expressed concern regarding alleged incitement of violence by Palestinian officials and groups, this does not mean that Israeli officials did not commit similar actions. This is likely a result of the ICC’s limited jurisdiction, which restricts the court from examining actions, which occurred outside of the occupied Palestinian territory. As any statements made by Israeli officials, which may have incited violence, occurred in Israel, these acts are outside of the court’s jurisdiction unless the state of Israel officially accedes into the Rome Statute.

(2015) report identified specific instances in which statements by Hamas officials were recognized as inciting violence against Israeli people.

The first instance of alleged incitement was published on Facebook by Hamas spokesperson Hussan Badram on June 10, two days prior to the kidnapping and subsequent murder of the three Israeli teens (State of Israel, 2014). The statement specifically called upon Palestinian men living in the West bank to “fulfill their duty... by targeting the occupation soldiers and its settlers” (The Tower, 2014). While this post does not explicitly call upon Palestinian men to kill or injury Israelis, the targeting of the occupations soldiers and settlers can reasonably be inferred as a call for violence. Badram’s violent and criminal intent is further supported by an additional post made the same day, which stated:

*“The occupation must pay a high price in the blood of its soldiers and settlers until it is persuaded to solve the issue of prisoners on hunger strike. This is everyone’s task, on the individual and organizational levels,” (The Tower, 2014).*

Badram’s call for the blood of Israeli soldiers and settlers clearly intends to incite violence against Israeli people. While the statement has clear political motivations, specifically concerning the release of the promised Palestinian prisoners, as this statement provokes indiscriminate violence against Israeli settlers solely based on their national identity; this statement therefore incites genocide against Israelis. As the statement was published to his Facebook page and therefore is visible for the public to see, this statement constitutes as public act. Whether or not it constitutes as a ‘direct’ action under international law is relatively unclear, as the relevant legal precedent regarding incitement only stipulates that the statement be “more than a vague or indirect suggestion of incitement” (Human Rights Watch, 2010: 65). While the words used do not overtly call for the killing of Israelis, ultimately the statement called for the

‘targeting’ of Israeli people so that they may ‘pay a high price in blood.’ Due to Badram’s call for blood, this statement constitutes as direct and public incitement to commit genocide. This understanding of the statement as inciting genocide, is further supported by the fact that two days following its publication two Palestinians did in fact ‘target’ the three Israeli teen settlers and made them ‘pay a high price in blood’.

Following this call for genocidal violence and the subsequent kidnaping and murder of the three teens, the State of Israel (2015) accused Hamas of waging a campaign of incitement, in which Hamas officials posted similarly inflammatory statements, speeches, and videos to Palestinian television channels and social media throughout the conflict. As a participant in the conflict, Israel’s report is recognized as biased and therefore the alleged reports of incitement were crosschecked and confirmed by the Middle East Media Research Institute (MEMRI) catalogue. MEMRI (2014) identified a variety of statements, but those made by Hamas spokesperson Fawzi Barhoum are of specific concern for this analysis. On July 30, 2014, in an interview with the Lebanese Al-Quds TV channel Barhoum explicitly called upon all Arabs living in Israel and the West Bank to carry out terror attacks against Israeli people (MEMRI, 2014). The following are excerpts taken from Barhoum’s interview:

*Let me say, loud and clear, to our people in the West Bank: Don't you have cars? Don't you have motorcycles? Don't you have knives? Don't you have clubs? Don't you have bulldozers? Don't you have trucks? Anyone who has a knife, a club, a weapon, or a car, yet does not use it to run over a Jew or a settler, and does not use it to kill dozens of Zionists, does not belong to Palestine.*

*Palestine says loud and clear: Real men are those who avenge the blood of Gaza. Real men are those who avenge the blood of the Gaza Strip. Real men will not sleep until they have avenged the blood of Gaza. (MEMRI TV, 2014).*

Unlike the previous statement given by Badram, this statement is explicitly clear in the call for violence against Israelis. While the argument can be made that these comments intended to incite political violence, and not genocide, any statement that incites violence against a specific set of people due to their membership or perceived membership within a specific group, is inherently genocidal. This specific statement is genocidal in its nature as it clearly intended to provoke a physical attack against Israeli people solely on the basis of their identity as ‘Zionists’ and ‘Jews’. As the statement was made during a televised interview and explicitly called for the killing of Israelis, due to their membership in that group, Barhoum’s statement constitutes as direct and public incitement to commit genocide.

The last instance of alleged incitement by Hamas occurred on July 9, 2014 and rather than a social media post or televised video, the act of concern aired as a song on Al-Aqsa TV (MEMRI TV, 2014). Below are two excerpts from a song created by Hamas members which aired on the Al-Aqsa TV:

*Annihilate all the Zionists! Rock Israel's security! Strive to engage the Zionists in combat. Burn their camps and their soldiers. Rock Israel's security, and expose it to flames and volcanos. Strive to engage the Zionists in combat. Burn their camps and their soldiers. Rock Israel's security, and expose it to flames and volcanos... Volcanos! Attack! Carry out bombings! Shock them! Annihilate all the Zionists! Rock Israel's security! Attack! Carry out bombings! Shock them! Annihilate all the Zionists!*

*They cannot endure war. They turn out to be like cobwebs, when they encounter knights.  
Rock Israel's security! Light furnaces in its heart. Raze it to the ground, exterminate the  
cockroaches' nest, and banish all the Zionists. Attack! (MEMRI TV, 2014)*

This song is arguably the strongest evidence that Hamas and its member's provocative statements were said with the intent of inciting acts of genocide, rather than violence. From a legal perspective, the lyrics depicted above clearly intended to incite genocide as they call upon Palestinians to murder and injure Israeli civilians based upon their perceived membership in that group, specifically through bombings, stabbings, and arson. The lyrics in this song clearly depict Hamas' genocidal intent to destroy Israeli people in 'whole or in part'. This intent to destroy Israelis 'in whole or in part' is apparent in the phrases '*annihilate* all the Zionist' and '*exterminate* the cockroaches' nest'. The use of the words 'annihilate' and 'exterminate' 'all Zionists' clearly illustrates Hamas's intention to not only cause physical injury or death to part Israel's population, but the intent to destroy Israelis in whole or in part.

Beyond that of the legal analysis of incitement, this song provides further evidence of Hamas's intent to incite genocide as the lyrics in the song dehumanizes Israelis as "less than human" and therefore easier to kill. While international law does not recognize dehumanization as an indicatory component of genocide, genocide scholars recognize the integral component that dehumanization plays in the overall genocide process<sup>8</sup>. Various scholars specifically regard dehumanization as a considerable warning sign previewing the occurrence of a genocide

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<sup>8</sup> Gregory Stanton is best known for his interpretation of polarization as an integral process in the 10 stages of genocide. According to him, "Dehumanization is when one group treats another group as second-class citizens" (Stanton, 2013: 2) Within this stage, members of a group are often compared with "animals, parasites, insects or diseases" in order to make them more easy to kill (Stanton, 2013: 2). Similarly, Helen Fein has also acknowledged the role of dehumanization occurs when the 'other groups' is expelled from what she refers to as the "human universe of moral obligation" (Fein, 1979).

Fein, H. Accounting for Genocide. New York, NY: The Free Press, 4.

(Neilsen, 2015). This act of dehumanization, while not legally required or recognized under international law as an act of genocide, is arguably an almost unavoidable step in the genocide process in which one or both groups dehumanizes the other as fundamentally different and less than human. There for this dehumanization and the explicit calls for violence against Israeli citizens based on their religious-national identity constitutes as ‘direct and public incitement to commit genocide’.

## **2. Incitement to Commit Genocide and Dehumanization by Israeli Officials**

This dehumanization was also apparent within the public rhetoric of Israeli officials following the abduction of the three youths. Like that of Hamas officials, statements and actions made by Israeli political and religious figures leading up to the 2014 conflict have been widely condemned by the international community as having incited violence and hatred against Palestinians (UNHCR, 2015 and the Washington Institute, 2016). The UNHRC (2015) specifically condemned the actions taken by Israeli political and religious figures as having largely contributed to the rise in “extreme anti-Palestinian rhetoric” and hatred on social media. While not a statement, but an action, the Israeli government has also befallen criticism by scholars such as Blumenthal (2014) for the investigation into the missing teens, which is viewed as having contributed to the rise in extreme anti-Palestinian rhetoric and having created a racially charged atmosphere.

Specifically, Blumenthal accused Netanyahu and the Israeli police of purposefully deceiving the public into believing the three boys were still alive despite evidence, which indicated otherwise<sup>9</sup>. This is apparent in the fact that the Chief police investigator told the

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<sup>9</sup> Blumenthal (2014) cites the fact that despite the forensic evidence, blood, bullets, and DNA, which indicated that the three teens had been murdered in the car almost immediately after their abduction; Netanyahu refrained from telling the public this. Rather, Netanyahu and the chief police investigators led the public and the parents of the

parents of the teens that the gunshots heard in recorded phone calls were blanks, despite the fact that the available evidence indicated otherwise (Levi, 2014). This discrepancy and the IDF's gag order over the investigation, which concealed the facts of the case from journalists and the wider public, supports Blumenthal's theory that this investigation was intentionally prolonged in order to increase tensions among the Israeli population (Horowitz, Roth and Weiss 2014). This investigation lasted for twelve days, in which the State of Israel initiated an international social media campaign called #BringBackOurBoys and Operation Brother's Keeper<sup>10</sup>. The seemingly prolonged investigation and these two campaigns further destabilized the situation and increased hostilities among both Israeli and Palestinian people (Blumenthal, 2014). All of these actions, according to Blumenthal, contributed to feelings of hostility, anger and a desire for violence or 'blood lust' that eventually exploded upon the discovery of the three boys in June 30.

Within hours of the news that the teens were killed mobs and call for violence on social media erupted among the large majority of Israel's society. Mobs of Israeli youths formed riots throughout Israel and the West Bank, chanting "Death to Arabs" as they marched (Blumenthal, 2014). Spontaneous Facebook pages also developed immediately after the discovery of the bodies, which called for vengeance and the alienation of Palestinian Arabs. Whether the investigation was intentionally prolonged in order to create a genocidal atmosphere remains unclear, but it must be noted that it took Israel nearly two weeks to find the teen's bodies, which were buried in a shallow grave only ten kilometers from where the initial kidnaping occurred, despite the states' advanced technologies (Blumenthal, 2014). Considering this and the

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murdered teens into believing the teens were not dead and that the shots heard in one of the boys phones calls was a blank.

<sup>10</sup>According to Blumenthal (2014) #BringBackOurBoys was an international social media campaign, which sought to publicize the kidnapping and increase sympathy from Western democracy's and Jews abroad. Operation Brother's Keeper was a military campaign in which the IDF increased the number of arrests and house raids, in an attempt to find the missing teens and discourage collaboration with Hamas.



subsequent dehumanizing and provocative statements made by government and political officials, there is reason to believe the investigation was purposefully prolonged to increase racial hostilities between the two groups. This theory is supported by the fact that, immediately following the discovery of these bodies various Israeli political and religious leaders made public statements, which have been widely condemned as further aggravating the situation rather than deescalating the calls for violence among the Israeli people. Specifically, three statements were identified as inciting violence, and possibly genocide, against Palestinians.

Prime Minister Netanyahu's public response to the discovery of the teen's bodies specifically sparked concern among the international community as inflammatory rhetoric. In numerous public post made to twitter on June 30, 2014 Netanyahu referred to the perpetrators as "human animals" and covertly called for violence against Palestinians (Blumenthal, 2014). The five separate posts ultimately read as:

*"PM at the Cabinet meeting: With heavy grief we found 3 bodies. All signs indicate they are of our abducted youths Eyal, Gilad and Naftali. They were abducted & murdered in cold blood by human animals. On behalf of the entire Jewish People, I would like to tell the dear families- the mothers, fathers, grandmothers and grandfathers, and brothers and sisters – we are deeply saddened, the entire nation weeps with you. Vengeance for the blood of a small child, Satan has not yet created. Neither has vengeance for the blood of 3 pure youths who were on their way home to their parents who will not see them anymore. Hamas is responsible and Hamas will pay. May the memories of the 3 boys be blessed."* (Blumenthal, 2014).

While the passage does not explicitly upon Israelis to commit a violent crime, the dehumanization of the perpetrators as "human animals" and the call for "the blood of a small

child, Satan has not yet created” deserve further analysis. Netanyahu’s reference to the Palestinian perpetrators as ‘human animals’ should not only be understood as exclusively dehumanizing the two perpetrators of the crime, but having rather indirectly referred to all Palestinians living in the West Bank. As the government’s gag order on the investigation hid all information regarding the accused perpetrators, except that they were Palestinian, this statement dehumanized all Palestinians as ‘human animals’ rather than the two murderers.

The labeling of Palestinians as ‘human animals’ was not said with the sole intent of equating the population to animals, but was also in reference to a well-known biblically-inspired poem “On the Slaughter” which dramatized a terrible pogrom in 1903, which resulted in the brutal murder of a large number of European Jews (Blumenthal. 2014). As this reference ultimately equates the Palestinians to the Russians in 1903, this statement should be understood as an attempt to further escalate racial hostilities between the two groups and incite genocidal violence against Palestinians. While the phrase “the blood of a small child, Satan has not yet created” was in reference to a poem, in the context of an already racially charged climate this statement equated Palestinians to Satan and demonized Palestinian children as inherently evil beings, compared to the ‘blood of the 3 pure youths’. While this statement is unlikely to equate to incitement under international law, as the call for violence was not direct, that does not mean Netanyahu’s statement was not inherently genocidal in its nature. Regardless of whether the statement directly called upon Israelis to commit a violent act, the statement called for Palestinian blood and served to further dehumanize and polarize the two groups as one being ‘innocent’ and the other ‘evil’.

Rabbi Noam Perel made a similar biblical reference. The secretary general of the Bnei Akiva, the world’s largest Zionist youth movement, explicitly called for the revenge of an entire

nation and transformation of the Israeli Defense Force (IDF) into “an army of avengers” that “will not stop at 300 Philistine foreskins,” (Kashti, 2014). This statement was in reference to the biblical story of David who killed two hundred Philistine, comprising of people living in the five city-states of Gaza, Ashkelon, Ashdod, Ekron, Garth, and brought their foreskins back as proof. While the statement is not explicit in that it does not use the word ‘kill’ or ‘slaughter’, the objective of the statement is clear in that it calls for the mass murder of more than three hundred Palestinians. The seriousness of this statement is exemplified by the fact that the Zionist youth movement itself has condemned by Rabbi Perel for this statement, as numerous branches of the organization in 2014 threatened to cut ties if the Rabbi was not removed (Maltz, 2014). Although the statement is not ‘direct’ in the sense that it does not directly refer to Palestinians, in the context it is clear that he is referring to Palestinians as a whole. He directly called upon Israelis, or what he refers to as an ‘army of avengers’, to kill and seriously maim over three hundred Palestinians clearly constitutes as direct and public incitement to commit genocide against the Palestinian people. Ultimately, his inference that the killing ‘would not stop at 300 Philistine foreskins,” is clear evidence for his call for the destruction of Palestinians in whole or in part.

Ayelet Shaked, who is an important and influential figure within the nationalistic-right-winged Jewish Home Party, made a similar statement. Like that of Rabbi Perel, following the discovery of the Israeli teens, Shaked posted a similarly inflammatory post to Facebook, which has been regarded as having incited violence against Palestinians. While the post consisted of a four-paragraph excerpt from an article written by Uri Elitzur,<sup>11</sup> the first and last passages of her post are of the most significant concern to this analysis. The two statements read as:

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<sup>11</sup> Uri Elitzur was a right-wing extremist and one of the leaders of the settler movement. He served as a speechwriter and advisor to Netanyahu, and ultimately sought to colonize Palestinian land for further and complete settlement.

*“The Palestinian people has declared war on us, and we must respond with war. Not an operation, not a slow-moving one, not low-intensity, not controlled escalation, no destruction of terror infrastructure, no targeted killings. Enough with the oblique references. This is a war. Words have meanings. This is a war. It is not a war against terror, and not a war against extremists, and not even a war against the Palestinian Authority. These too are forms of avoiding reality. This is a war between two people. Who is the enemy? The Palestinian people. Why? Ask them, they started.”*

...

*“Actors in the war are those who incite in mosques, who write the murderous curricula for schools, who give shelter, who provide vehicles, and all those who honor and give them their moral support. They are all enemy combatants, and their blood shall be on all their heads. Now this also includes the mothers of the martyrs, who send them to hell with flowers and kisses. They should follow their sons, nothing would be more just. They should go, as should the physical homes in which they raised the snakes. Otherwise, more little snakes will be raised there.” (cited in Norton, 2015).*

Like that of Netanyahu and Rabbi Perel, Shaked’s statement clearly dehumanizes Palestinians as inherently villainous and directly calls for the physical harm and destruction of Palestinians. This dehumanization is apparent in the first passage, as she explicitly refers to the entirety of Palestinians as “the enemy”. Furthermore, she specifically demonized civilians and Palestinian mothers not involved in the combat, as “enemy combatants” in need of bloodshed.

Shaked’s statements not only dehumanized Palestinians as inherently an enemy to Israel, her statements in the last passage of her post openly called for the physical and biological destruction of the group as a whole, and should therefore be understood as direct and public

incitement. This is apparent in her direct call for the death of ‘the martyrs’ and the physical destruction of Palestinians homes so that no ‘more little snakes will be raised there.’ As her statement explicitly calls for the physical death of all people and the destruction of Palestinian homes in order to prevent future births of ‘little snakes’, there is no doubt that her intent was to bring about the physical destruction of Palestinian people in whole or in part. While she eventually deleted the post, it ultimately received over 1,000 likes and shares on Facebook before it was deleted and has been regarded by the Russel Tribunal (2014) and Blumenthal (2014) as inciting genocide and as having significantly fueled widespread anti-Palestinian rhetoric and ultranationalist atmosphere that spurred the revenge killing of a Palestinian teen on July 2.

In conclusion, this analysis found that a variety of statements made by Palestinian and Israeli officials significantly contributed to the escalation of violence, leading up to the 2014 conflict. Due to the dehumanizing nature of these statements, the public forum in which they were published, and their explicit calls for violence against individuals on the basis of their membership in the ‘other group’, these acts were ultimately recognized as direct and public incitement to commit genocide and therefore violate article 3 (c) of the UNGC. While dehumanization in itself is not legally recognized as a crime or act of genocide under international law, the OSAPG and numerous genocide scholars recognize the momentous role that dehumanization plays within the process of genocide. Due to the identified instances in which Palestinian and Israeli officials attempted to incite genocidal violence and the systematic use of dehumanizing rhetoric, the context in which the conflict developed and society as a whole is inherently genocidal. As such, this next chapter will examine alleged acts taken by Israeli and Palestinian actors during the conflict, and possible violations of article 2(a) of the UNGC.

## **Chapter 5: Causing Serious Bodily or Mental Harm to Members of the Group**

The last chapter examined a variety of statements made by Israeli and Palestinian officials preceding the official military conflict, in order to determine whether these statements violated article 3 (c) of the Genocide Convention (UNGC, 1948, 2). In turn, statements made by numerous Hamas officials and Israeli political and religious figures were recognized as having significantly contributed to the escalation of violence leading up to the 2014 conflict. This analysis understood these statements as legally constituting direct incitement to commit genocide, due to the dehumanizing quality of the statements and their calls for violence against their respective ‘other group.’ As evidenced by these instances of incitement and dehumanization, it is likely that the conflict was genocidal as well. This next chapter will therefore examine whether the actions taken by Palestinian and Israeli actors during the 2014 conflict violated article 2 (a) and (b) of the UNGC (1948), which prohibits “killing members of the group” and “causing serious bodily or mental harm to members of the group” (UNGC, 1948, article 2 (a) and (b)). This analysis will specifically examine the actions taken by numerous Palestinian groups, primarily Hamas, and the IDF, as possible acts of genocide that intended to kill or cause serious mental and bodily harm to members of their ‘other group’.

International law and global politics continues to place considerable emphasis on the presence of physical death and injury when determining whether genocide occurred, despite the fact that various scholars recognize that genocide more often than not results in the social death of a group, rather than the physical death. This overemphasis is largely due to the fact that physical death and injury is the most visible and prosecutable act of genocide. Unlike the legal definition of war, which stipulates that at least 1,000 deaths occur in order to constitute as a war under international law, the UNGC does not require a specific number of deaths or injuries to

have occurred in order to constitute as genocide (Collier and Hoeffler, 2004). Despite this lack of an explicit numerical requirement, the UNGC stipulates that in order to constitute as a genocidal act, the act must have been committed with the intent to destroy a group ‘in whole or in part’ (UNGC, 1948). According to the legal precedent established in the ICTR, in order to be found as intending to destroy a group ‘in whole or in part’, the act in question must have been directed against a “substantial number of individuals in the group” (Human Rights Watch, 2010, 62). As the number of individuals injured or killed during the conflict is relatively substantial, there is reason to believe the actions taken by Palestinian armed groups and the IDF were committed with the intent of killing or causing serious mental and bodily harm to individuals of their respective ‘other group.’

During the seven-week conflict, approximately 2,251 Palestinians and 71 Israelis were killed, and an additional 11,231 Palestinians and 1,600 Israelis were injured (World Report 2014, 2015). Of those killed, the United Nations has confirmed that 1,500 Palestinians and five Israelis were civilians. While it is unclear as to the exact number of civilians injured during the conflict, the OCHA (2015) has confirmed that the majority of those individuals injured on either sides of the conflict were innocent civilians. While death and injury is an inherent cost of war, the international community has largely criticized the military actions taken by Hamas, various Palestinian armed groups, and the IDF, as having intentionally targeted protected civilians (UNHRC, 2015). Although the targeting of civilians is not a genocidal act in itself, the intentional killing or injuring of civilians solely based on their national or religious identity is. As such, the military actions taken by Hamas and the IDF will be examined as having deliberately targeted innocent civilians with the intent of killing and causing serious bodily or mental harm to members of their respective ‘other group’ in order to destroy them ‘whole or in part.’

## **1. Did Hamas and other Palestinian Armed Groups Kill or Cause Serious Bodily Harm to Israeli People?**

Like that of the previous chapter, this analysis will first examine acts committed by numerous Palestinian armed groups since they were the first to launch an aerial attack against Israel. As the number of Israelis killed or injured is more apparent than those who suffered serious mental harms, this section will first examine actions taken by Palestinian armed groups that killed or caused serious bodily harm to Israeli people in order to determine whether they were committed with the intent of destroying Israeli-Jews in whole or in part. The next section will then examine whether the actions taken by Palestinian armed groups intended to cause serious mental harm to Israeli-Jews.

According to the UNHRC (2015), throughout the conflict the combined forces of Hamas and various other Palestinian armed groups fired 4,881 rockets and 1,753 mortars towards Israel, which ultimately killed 71 Israelis and injured another 1,600 (UNHRC, 2015). Of the total number of Israelis killed and injured, the UNHRC found that five civilians were killed and approximately 1,600 Israeli civilians, including 270 children, were injured because of these combined attacks. Of those individuals wounded, the report found that “36 people [were] wounded by shrapnel, 33 people [were] hurt by shattered glass or building debris, and 159 people [were] injured in the rush to reach shelters” (UNHRC, 2015, 19).

The UNHRC (2015), Amnesty International (2015), and Human Rights Watch (2014) have all publically criticized and condemned the attacks made against Israel, due to the indiscriminate nature of the weapons used and the seemingly purposeful targeting of Israeli citizens or populated areas. The international community considers the use of these specific rockets and mortars, which are largely manmade, as inherently indiscriminate weapons because



they do not possess precise targeting systems and are therefore by their nature unable to distinguish between civilian and military combatants (Amnesty International, 2014). While the mortars used during the conflict lack precise targeting capabilities and have a relatively short firing range, when they are launched high into the air space above densely populated areas of Israel they are both deadly and destructive (Human Rights Watch, 2014). The rockets used by Hamas and other Palestinian armed groups function in a similar manner, but have a comparatively further firing range between 20km to 80km and therefore are capable of reaching further within Israel (Amnesty International, 2014). Although the use of rockets and mortars by Palestinian forces clearly violates the principle of distinction under international law, their use of inherently indiscriminate weapons does not necessarily constitute a genocidal act. The exclusive use of these indiscriminate weapons is largely evidence of the limited resources and military capabilities of Hamas and other Palestinian armed groups in Gaza, rather than their intent to destroy Israeli citizens.

The choice to target these indiscriminate weapons against densely populated civilian areas, on the other hand, may constitute as an act of genocide intended to kill or cause serious bodily harm to Israeli citizens. Evidence collected by the UNHRC (2015) and Human Rights Watch (2014) largely supports this claim, found that Hamas and affiliated Palestinian armed groups deliberately fired the majority of their rockets and mortar attacks were towards densely populated civilian areas of Israel and known Kibitzes. While some Palestinian armed groups explicitly declared their intent to only target military objectives<sup>12</sup> during the conflict, statements made by Hamas officials and the Qassam Brigade<sup>13</sup> on social media explicitly professed that

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<sup>12</sup> Amnesty International (2014) identified that Hamas appeared to have aimed some mortars at legitimate military objectives. Mortars have a shorter range (of 3km to 10km) than rockets, but are still an imprecise weapon and must therefore never be used to target military objectives located amidst civilians or civilian object

<sup>13</sup> The Qassam Brigade is currently the largest military faction of Hamas (UNHRC, 2015).

these attacks were intended to target not only civilian populated areas, but Israeli citizens themselves (UNHRC, 2015, The Cyber and Jihad Lab, 2014, and Human Rights Watch, 2015). Hamas spokesperson Fawzi Barhoum explicitly confirmed the intentional targeting of civilians when he said in an interview on Al-Aqsa TV on July 11, that:

*“The missiles of Al-Qassam will not hit any Arab home. Rest assured, our missiles accurately target the homes of the Israelis and the Zionists.” (MEMRI, 2014).*

While these rocket and mortar attacks are largely incapable of directly targeting Israeli homes, due to their inherently indiscriminate nature, this statement makes it clear that these attacks were intended for and directed against Israeli civilians and civilian areas. As the UNHRC (2014) identified a significant amount of coordination between Hamas and other Palestinian armed groups throughout the 2014 conflict, all attacks directed towards civilian areas should be understood as having been coordinated with Hamas officials. Therefore, this analysis recognizes all rocket and mortar attacks as having intentionally targeted Israeli civilians, unless a group made an explicit advance<sup>14</sup> warning prior to an attack on a civilian area in Israel.

While the international community has exclusively referred to the use of indiscriminate weapons and the direct targeting of Israeli citizens by Hamas, and other Palestinian armed groups, as amounting to war crimes or crimes against humanity, these attacks may also constitute as acts of genocide intended to kill or cause serious bodily harm to Israelis citizens. As these attacks directly targeted Israeli-Jews and not just Israeli citizens, the attacks were inherently genocidal by their nature. This intentional targeting of Israeli-Jews solely on the basis of their

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<sup>14</sup> The UNHRC (2015) reported a number of instances in which Palestinian attacks against civilian populated areas, such as airport, were accompanied with sufficient warning. Due to their relative success in limiting the number of lives lost, instances when these early warnings were given should not be ignored.

national and religious identity, is apparent in a statement made by Barhoum during the 2014 war, which proclaimed to Israeli Arabs living in cities such as Haifa, Jaffa, and Lod that:

*“The rockets fired by the Al-Qassam Brigades will not hit you. We know those parts. We are familiar with the geography and with the history. Not a single Arab Palestinian child will be hit by one of our missiles. Our rockets are aimed at the Hebrews, the murderers, the Israelis, the criminals.” (MEMRI, 2014).*

This statement confirms the genocidal intent behind all attacks perpetrated by or coordinated with Hamas. This is apparent as Barhoum’s statement explicitly declares that Hamas, and any attacks affiliated with Hamas, not only targeted Israeli citizens, but rather purposefully targeted Israeli citizens on the basis of their religious and national identity as ‘Israeli-Jews,’ over those Arab-Israelis or Christian-Israelis. While Barhoum does not explicitly state that these actions were intended to destroy Israelis’ in whole or in part,’ the genocidal intent is clearly evident within Hamas’ founding charter, which declares that the organization’s main political objective is to develop a sovereign state of Palestine and destroy Israel in the name of Islam (Hamas Covenant, 1988). Specifically, Hamas’ Covenant states that:

*“Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it” (The Martyr, Imam Hassan al-Banna, of blessed memory)” (Hamas Covenant, 1988, 1).*

As this document explicitly states Hamas’ intent to ‘obliterate’ Israel, all military attacks made by, or coordinated with Hamas, should be recognized as intending to kill or cause serious bodily harm to Israeli citizens with the intent of destroying Israeli-Jews in ‘whole or in part.’

While these attacks intended to kill or cause serious bodily harm to Israeli-Jews, due to Israel's Iron Dome these attacks were relatively unsuccessful in killing Israeli-Jews. As these attacks clearly intended to kill Israeli citizens based on their group membership, and likely to have been successful had Israel not possessed such an advanced missile defense system. These acts therefore should be understood as attempted genocidal killings, which violates article 2 (a) of the UNGC. In regards to those 1,600 Israelis injured as a result of these attacks, while it is clear that a relatively substantial number of Israeli citizens were injured, due Israel's limited cooperation with the UNHRC investigation, the severity of these injuries is relatively unknown (UNHRC, 2015). As the legal precedent regarding serious bodily harm requires that injuries result in "serious acts of physical violence falling short of killing that serious injure the health, cause disfigurement, or cause any serious injury to the external or internal organs or senses," in order to constitute as a legal violation, the severity of the injuries must be known (Human Rights Watch, 2010, 53). While this analysis cannot say for sure whether the bodily harm suffered by Israelis is sufficient, enough to constitute as a 'serious bodily harm,' due to the type of attacks it is reasonable to assume a significant portion of injuries amounted to 'serious harms.' This can be assumed from the fact that, the majority of Israelis were injured because of "flying shrapnel, shattered glass, building debris and in the rush to seek protection during an attack," which likely caused more than minor injuries (UNHRC, 2014).

Two specific instances identified by the UNHRC (2015) support this claim that rocket attacks caused serious bodily harm. In one instance, an Israeli citizen Jeham Breman was seriously injured visiting his three-year-old son's kindergarten class when a mortar exploded and the "debris fractured [his] scapula, which destroyed the cartilage on his hand, and punctured his lung" (UNHRC, 2015, 24). While he survived, his movement are "extremely limited" and at the

time of his statement, he was still attending physiotherapy sessions (UNHRC, 2014: 24). In a second attack, Gad Yarkoni's legs suffered severe damage and were later amputated due to a mortar attack on a Jewish Kibbutz in Nirim Israel (UNHRC, 2015: 23). Considering the severity of the physical damage inflicted on these two individuals by Palestinian mortar and rocket attacks, it is likely that a significant proportion of the 1,600 Israelis injured sustained injuries of this magnitude. Until further information is released regarding the severity of the injuries sustained by Israeli individuals, legally these attacks would not be recognized as acts of genocide under international. Due to the likely seriousness of the injuries, this analysis recognizes the attacks made by Hamas and Palestinian armed groups as intending to cause serious bodily harm with the intent of destroying Israel in whole or in part.

## **2. Did Hamas and other Palestinian Armed Groups Cause Serious Mental Harm to Israeli People?**

Unlike physical death and injury, mental harm is generally covert and not always physically visible. Therefore, it is significantly more difficult to document than those physical injuries sustained to an individual. While there is no explicit statistic regarding the number of Israelis who suffered mental harm as a result of the 2014 Israel-Gaza conflict, the UNHRC (2015), the State of Israel (2015) and Amnesty International (2015) all identified a significant increase in the number of Israeli civilians suffering from mental health problems as a result of these attacks. According to the State of Israel (2015), mental health organizations throughout the state identified tens of thousands requests made by Israeli civilians for medical assistance concerning their mental health status. The Sha'ar HaNegev Regional Council in Israel, not affiliated with the state of Israeli, reported to Amnesty International (2014) a similar rise in the number of Israeli citizens who required mental health services. According to reports, the large

majority of the mental health trauma identified was primarily instances of severe anxiety and PTSD because of the rocket and mortar attacks, as well as the discovery of Palestinian tunnels connecting the Gaza Strip to Israeli territory. Like that of the physical harm caused as a result of Hamas and Palestinian armed groups attacks on Israel, this increase in psychological trauma and mental health support among Israeli citizens must also be analyzed as a possible violation of article 2(b) of the UNGC (1948).

In order to determine whether the actions taken by Hamas and other Palestinian armed groups intended to cause serious mental harm among Israelis, the two specific causes for the rise in mental health problems must be examined. In regards to the creation of Palestinian tunnels, the UNHRC (2015) identified a significant number of Israeli citizens who associated their increased anxiety because of the discovery of Palestinian tunnels having infiltrated Israeli cities and settlements in the West Bank. While Israel's Ministry of Foreign Affairs said that the creation of tunnels were primarily created in order to "carry out attacks against civilians," (UNHRC, 2015, 62). The UNHRC (2015) did not find any specific evidence supporting this claim; the report recognized that Hamas created these tunnels for military and civilian purposes. Despite numerous cases in which the knowledge of the tunnels resulted in 'severe stress,' among Israelis, as these tunnels had both military and civilian functions it is unlikely that they were created with the intent of causing serious mental harm to Israeli citizens (Amnesty International, 2014).

Concerning Palestinian rocket and mortar attacks, the majority of the identified mental health problems among Israeli citizens were cited as correlating with these attacks. While there is no explicit policy or public statement by Hamas or any other Palestinian armed groups indicating their intent to cause serious mental harm against Israelis, there is reason to believe these attacks

intended to do just that. As the UNHRC (2015) recognized that Palestinian rocket and mortar attacks are relatively incapable of gaining any substantial military advantage over Israel, due to the inability of these attacks to be accurately directed at any given military target. The report subsequently inferred that the launching of rockets and mortars into Israel by Hamas and other Palestinian armed groups is done with the “primary purpose of spreading terror amongst the civilian population” (UNHRC, 2014, 29). Furthermore, as the US State Department (2017) has recognized Hamas as a terrorist organization since 1997, it is reasonable to assume that these acts intended to spread terror among the Israeli population. This theory is further supported by the fact that Hamas and various other Palestinian armed groups had been launching attacks against Israeli citizens for weeks leading up to the official military conflict. The organizations historical use of suicide bombers also suggests that the attacks made during the conflict were not directed at military targets but rather intended to not only kill and physically harm Israelis, but to inflict serious mental harm against the civilian population as a whole.

Although the definition of terrorism is widely contested under international law and among scholars, terrorism is largely understood as “violence... or the threat of violence—used and directed in pursuit of, or in service of, a political aim” which is generally “directed against noncombatants and designed to instill fear in an audience” (Hoffman, 2006, 3 and Viotti & Kauppi, 2013, 256). As a result of these acts of terror, individuals and societies effected often suffer from serious psychological problems. Numerous individuals are known to become physically ill because of this constant fear and anxiety. In the case of Israel, ongoing and unpredictable mortar and rocket attacks by Hamas and other Palestinian armed groups have resulted in significant psychological problems among the population (State of Israel, 2015). These attacks specifically caused constant fear and anxiety, and in extreme cases deliberating

anxiety attacks among Israeli citizens (UNHRC, 2015 and State of Israel, 2015). A number of cases have also been identified in which Israeli citizen's anxiety manifested into physical side effects such as, "heart palpitations, muscle weakness and tension, fatigue, nausea, chest pain, shortness of breath, stomach aches, or headaches" (State of Israel, 2015, 126). Although the UNHRC and other international organizations were unable to access information from within Israel, the report heightened a specific instance of severe mental harm (2015). This report identified a case in which a young women developed such constant and severe anxiety as a result of the rocket and mortar attacks, eventually she developed "epileptic like seizures whenever she heard a rocket or sounds associated with the attacks" (UNGA, 2015, 148).

Despite a lack of explicit intent to inflict serious mental harm against Israeli citizens, it can be assumed that Hamas intended to cause such harms. This is inferred from the Hamas Covenant (1988) and from the fact that the psychological effects associated with such terror attacks is known to cause serious psychological trauma. Therefore, these rocket and mortar attacks should be understood as having been committed with the intent of destroying Israelis 'in whole or in part.' While this analysis recognizes these attacks as acts of genocide intended to cause 'serious mental harm,' these acts are likely not to be recognized under international law as causing "grave and long-term disadvantage to a person's ability to lead a normal and constructive life" due to a lack of specific intent and individual cases resulting in serious mental harm. Despite this, it is necessary to recognize the detrimental effect that these terror attacks have had on Israelis and Israel's society as a whole<sup>15</sup>. This constant fear and anxiety of a terrorist

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<sup>15</sup> As a result of the constant fear of terrorist attacks, in the form of rocket, mortar, or suicide bombings, Israeli citizens have suffered from a significant loss of personal freedom and as a result of PTSD, individuals may intentionally restrict their involvement with people or situations in fear of encountering or being reminded of terror related violence (Hoffman, B. (2006). Specifically, the constant fear of a terrorist attack has been recognized as restricting the ability of individuals to engage in their society and culture.



attack restricts the ability of individuals to engage in their society and community. While social death and the destruction of a culture is not recognized as an act of genocide under international law, it is important to understand the impact these actions have had on the society as a whole.

### **3. Did the IDF Kill or Cause Serious Bodily Harm to Palestinians Living in Gaza?**

Unlike that of Hamas, Israel's constitution and legislative policies, do not explicitly declare the state's genocidal intent to destroy Palestinian as a group. Despite this lack of explicit intent, there is reason to believe the actions taken by the IDF during the 2014 Israel-Gaza War were intended to kill or cause serious harm to Palestinians living in Gaza with the intent of destroying Palestinians 'in whole or part.' The disproportionate use of force and seemingly excessive number of Palestinians either killed or physically injured during the conflict supports this theory. The UNHRC (2014) found that as a result of Israel's air strikes and ground operations in the Gaza Strip, approximately 2,251 Palestinians were killed and another 11,231 Palestinians were injured as a result of the fifty-day long conflict, the majority of which has been identified as innocent civilians. While international reports and investigations reported relatively little on specific instances in which Palestinians were injured, these reports identified that 10 percent of the injuries suffered by civilians were permanent (UNHRC, 201). While the international community has largely condemned Israel's actions as having violated the principles of distinction, precaution and proportionality, they have not examined the IDF's actions as possible acts of genocide. Due to the previously identified instances of incitement and dehumanization among Israeli officials, there is reason to believe the IDF's actions violated article 2 (a) and (b) of the UNGC (1948). This section of the analysis will specifically examine alleged instances in the IDF targeted civilians and civilian protected areas, used indiscriminate weapons, and the implemented the Hannibal directive in Rafah.

According to the UNHRC (2015), during the 2014 Israel-Gaza War the IDF launched more than 6,000 aerial attacks against Gaza. Investigations and reports by the UNHRC (2015), the Human Rights Watch (2014), and Amnesty International (2014) all identified that a significant number of these attacks seemingly deliberately directed against civilian populated and protected areas. While these reports all identified instances in which the IDF protected shelters, ambulances, and medical personal allegedly targeted, this analysis will focus primarily on the IDF's direct targeting of residential homes and buildings as a genocidal attack due to the scale and systematic nature of these attacks. As such, it is necessary to recognize that the IDF's direct targeting of UNWRA shelters, ambulances and medical personal resulted in a substantial number of Palestinian deaths and injuries. Specifically, in the three identified attacks against protected shelters, the UNHRC (2015) reported that approximately 47 Palestinians were killed and at least another 200 were injured because of these attacks. In regards to alleged attacks against ambulances and recognized medical personnel, the UNHRC identified at least 24 instances in which the IDF targeted ambulances and medical personnel. These attacks killed 23 medical personal and injured another 83 Palestinians.

Of most concern to the international community has been the IDF's deliberate targeting of residential homes and buildings throughout the Gaza Strip. Despite the fact that the UNHRC (2015) was unable to identify the exact number of direct attacks made against residential homes, the report specifically found that over 142 Palestinian families were targeted and somewhere between 742 to 1066 Palestinians were found to have died in their homes because of attacks on residential complexes. While the exact number of Palestinians injured during these attacks is unknown, it is reasonable to assume that the number is relatively high due to the disproportionate

number of women and children injured <sup>16</sup> during the entire conflict. Israel and the IDF have defended their direct attacks against residential homes as legitimate military objectives, due to the ‘alleged’ presence of Hamas members or use of these homes to store weapons. While the UNHRC (2015) and Amnesty International (2014) have expressed their concern regarding these allegations and condemned Hamas for endangering civilian lives, ultimately the two reports understand the IDF’s attacks as illegal. Under international law even in cases in which suspected military targets are present, military actors have an obligation to refrain from attacking civilian areas, especially in cases in which the possible civilian casualties or injuries are clearly disproportionate when compared to the feasible military gain.

As such, all attacks against residential buildings are illegal under international law, regardless of whether or not the UNHRC identified a legitimate military objective. While the UNHRC (2015) confirmed that out of the 15 cases examined, only nine of the IDF’s direct targeting of residential homes possessed evidence of a possible military objective. In the other six cases, the report specifically identifies a complete lack of evidence to explain the purposeful targeting of these homes and civilians. These six identified cases and any other case that the IDF may have directly targeted despite any evidence of a legitimate military target, should be understood as having intended to kill or cause serious harm to Palestinians. While it is illegal under international law and arguably genocidal to target *any* residential buildings, as this indicates a complete lack of regard or “callous indifference” for the lives of innocent Palestinians (UNHRC, 2014, 72). The intentional targeting of residential homes without the presence of a

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<sup>16</sup> As a significant number of women and children were injured during the overall conflict, it is likely that these injuries occurred as a result of the IDF’s attacks against residential homes and areas. This can be inferred, because the UNHRC (2015) report expressed concern for the disproportionate effect that these residential attacks had on women and children, who were largely restricted from leaving their homes throughout the conflict.

military target indicates that the IDF's attacks largely intended to cause wide scale casualties and physical injuries among Palestinians people, rather than obtain a military advantage over Palestinian forces (Amnesty International, 2014).

The IDF's intent to cause wide scale death and injury is apparent due to the calculated timing of the attacks. The UNHRC (2015) identified that nearly all attacks made against residential homes were conducted in the evening or dawn hours, specifically during *iftar* or *shhur* in which Muslim Palestinians families were gathered for their Ramadan meals (UNHRC, 2015). The timing of these attacks designates the IDF's intent to not only attack military objectives, but more clearly to ensure that whole families would be home during the attack and therefore cause significantly more casualties and injuries. While the IDF said that it made all attempts to limit civilian casualties, the UNHRC report concluded that

*“a reasonable commander must have been aware that such an attack was likely to result in a high number of civilian casualties as well as in considerable destruction,” (UNHRC, 2015, 60).*

Therefore, these attacks likely were intentional and deliberate attacks intended to kill or cause serious bodily harm to Palestinians.

This purposeful targeting of civilian homes may indicate that the IDF was operating under a genocidal policy. The UNHC (2015) says as much, in its assessment of the IDF's massive and destructive attacks on residential homes. The report specifically raises its concern that:

*“these strikes may have constituted military tactics reflective of a broader policy, approved at least tacitly by decision-makers at the highest levels of the Government of Israel” (UNHRC, 2015, 66).*

Considering the previously identified instances of genocidal incitement and use of dehumanizing rhetoric against Palestinians by Israeli governmental officials, such as Prime Minister Netanyahu, these attacks should be understood as having intentionally targeted Gaza citizens solely based on their identity as Palestinians. Further investigation into this alleged broader policy is necessary in order to determine if the existence of such a policy. Despite this, these attacks should therefore be understood as having killed and caused serious bodily harm against Gaza residents with the intent of destroying Palestinians ‘in whole or in part.’ While the intent of these acts is not explicitly stated, ultimately the intent is inferred from the systematic targeting of these residential buildings despite the clearly devastating effect it was having on protected civilians.

Of additional concern has been the choice of weapons and the use of force by the IDF during the aforementioned airstrikes and its overall military operation in Gaza. The UNHRC (2015), Amnesty International (2014), and Human Rights Watch (2015) have largely referred to the IDF’s use of artillery, mortars and other explosive devices in the heavily populated areas as constituting as indiscriminate and disproportionate attacks against Palestinian people. While the State of Israel (2015) has said that the IDF utilized munitions, that would minimize civilian casualties and injuries, the evidence indicates otherwise. Specifically, the IDF’s use of mortars, tank shells, and other highly explosive weapons has been recognized by the UNHRC (2015) and the NGO Action on Armed Violence (2014) as indiscriminate and deadly in the context of Gaza. This is due to the wide area effect of these weapons, which is detrimental and therefore prohibited in the densely civilian populated areas like the Gaza Strip. Due to the wide range and scale of the destruction associated with these weapons, even in instances in which the IDF directly targeted a specific military objective, such attacks killed and injured a significant

number of innocent civilians because of the damage associated with these attacks (UNHRC, 2015).

The UNHRC (2015) and Amnesty International (2015) heighth two specific weapons as having had a significantly detrimental effect on Palestinian civilians. The first being the IDF's use of an explosive weapon known as GBU-31/MK, which was found to have been used in several attacks against residential buildings. According to engineers and weapons designers, the GBU-31 has an extremely wide impact range and concussive effect. The physical damage of such weapons is known to "rapture lungs, burst sinus cavities, and tear off limbs hundreds of feet from the blast site," (UNGA FULL, 2014, 62). According to trauma physicians, the death and injury to those individuals near such an attack "would be pretty nasty" (San Diego Union Tribune, 2003). The international community expressed similar concerns in regards to the IDF's use of flechettes throughout the military conflict. According to Amnesty International (2014) flechettes are small, sharply pointed steel darts, which are approximately 3.5cm-long. When used around 5,000 to 8,000 flechettes are packed into artillery shells and when fired into the air, these darts cover "an area about 300m by 100m" (Amnesty International, 2014). Due to their wide range and the physical damage that flechettes are capable of inflicting, this weapon is intended solely for mass infantry attacks against other military troops. Therefore, when used in such a densely populated area as Gaza, the use of flechettes "pose a very high risk to civilians".<sup>17</sup> While these weapons are not inherently illegal under international law, their use in the context of

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<sup>17</sup> While there is relatively limited information concerning the use of flechettes in the 2014 Israel-Gaza War, the State of Israel (2015) has confirmed their use in the conflict. Numerous reports have identified a specific instance during the conflict in which case of Nahla Khalil Najjar, who has been identified as having suffered serious injuries to her face and chest as a result of the IDF's use of flechette shells in the village of Khuzaa on July 17th (Withnall, 2014).

Gaza has been understood, by Amnesty International (2014), B'Tselem (2011), and Human Rights Watch (2003), as indiscriminate and possibly amounting to war crimes.

Considering the known damage these weapons inflict upon civilians and the international community's recognition of Israel's use of similar weapons in previous conflict as indiscriminate, the IDF's choice to use such weapons is inherently genocidal. Unlike that of Hamas and other Palestinian armed groups, which used indiscriminate weapons because they are the only available weapons, the IDF is in possession of weapons which are more suited for civilian combat and that are more capable of accurate precision targeting. Despite this, the IDF intentionally choose to use weapons with a wide scale effects and that have been recognized by the international community as extremely dangerous to civilians in the context of the Gaza conflict. The UNHRC (2015) recognized that the IDF's choice of artillery weapons was intentional and utilized despite the knowledge of the effect such an attack would have on civilians. Specifically, the report stated:

*“when choosing a weapon with a wide-area effect like artillery to strike a target located in a densely populated area... the IDF must have been aware that there was a strong likelihood that military objectives and civilian objects alike would be struck” (UNHRC, 2015, 116).*

As the international community understands that, the IDF purposefully chose to use, and continued using these weapons despite the well-documented effect they were having on Palestinian civilians. The IDF's choice to use these weapons should be recognized as having intended to kill or cause serious bodily harm to Gaza citizens with the intent of destroying Palestinians 'in whole or in part'. As the UN and the precedent set within the ICTR recognizes that genocidal intent can be inferred from the “intensity and scale of acts... types of weapons

employed (in particular weapons prohibited under international law),” Israel’s choice of weapons and excessive use of these weapons acts as evidence of the IDF’s genocidal intent to destroy Palestinians living Gaza ‘in whole or in part’ (OSAPG, n/a, and Human Rights Watch, 2010).

The devastating effect of the IDF’s choice of weapons and indiscriminate use of force was most apparent on August 1<sup>st</sup> in Rafah, which has been recognized by Amnesty International (2015) as “one of the deadliest Israeli attacks during the war” and has since been dubbed ‘Black Friday’ by Gaza residents (Amnesty International, 2015, 6). As a result of Israel’s implementation of the Hannibal directive in response to Hamas’ capture of an Israeli soldier, somewhere between 135 to 200 Palestinians were killed and even more injured, the most of whom were killed or injured in the first couple of hours of the four-day long attack. The Hannibal Directive is only employed if an Israeli soldier is captured. Ultimately, the directive allows any Israeli field commander to implement “active artillery fire and air force strikes” around an area without permission from their base of operation (Amnesty International, 2015, 19). In the context of Rafah, the UNHRC (2015) specifically reported that during this one attack:

*the IDF fired over 1000 shells against Rafah within three hours and dropped at least 40 bombs. Tanks and bulldozers demolished dozens of homes. Inhabitants came under intense attacks in their homes and in the streets. (UNHRC, 2015, 91).*

Essentially, the UNHRC (2015) found that during this attack, all people buildings and vehicles in Rafah became a ‘military target’ (UNHRC, 2015). This is evident in the number of civilians killed following the implementation of the directive.

This attack on Rafah and the Hannibal Directive in general have been widely condemned by the international community. Specifically, the attack on Rafah and the Hannibal directive clearly violate the principles of distinction and proportionality. The UNHRC (2015) and



Amnesty International (2015) acknowledges that the IDF perpetrated its attack despite the knowledge that such an attack would result in significant loss of civilian life. As such, the both reports regarded the IDF's actions in Gaza as feasibly amounting to war crimes. While the IDF's actions clearly constitute as violations of the principle of distinction and proportionality, the implementation of the Hannibal directive in Rafah more clearly constitutes as genocide, rather than war crimes. It is apparent that the Hannibal Directive as a military policy violates international law and is a war crime in itself, but the implementation of the Hannibal Directive in the context Rafah makes the directive genocidal. This is due to the context in which the directive was implemented and the IDF's purposeful targeting of innocent civilians specifically based on their identity as Arab Palestinians, or enemies to Judaism (UNHRC, 2015).

While the UNHRC blames the 'military culture' and political policies as a significantly contributing to the mindset of individual members of the IDF which allowed them to implement such a deadly attack on Rafah, "in total disregard for its impact on the civilian population," (UNHRC, 2015, 96). This 'military culture' refers to the rise in not only national secularism, but also a "rearmed Jewish messianism<sup>18</sup>" which actively reaffirms Israel's need to defend the Jewish religion from its enemies (Blumenthal, 2014, 20). As a result, it may be understood that a significant number of Israeli-Jews in the military have successfully morphed Palestinian society and its civilians, not just Hamas or members of other Palestinian armed groups, into an *enemy* against Judaism.

As a result, the conflict between Israel and Palestine arguably morphed into one of a holy war. This call for a holy war against Palestinians is most explicitly clear in the statements made by the commander who implemented the Hannibal Directive, Colonel Ofer Winter, proceeding

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<sup>18</sup> A messianism, refers to "a savior or liberator of the Jewish people" (Jewish Virtual Library, 2017).

the initial ground invasion into Gaza (Blumenthal, 2014). In a letter penned to his soldiers in the Givati Brigade on July 17, 2014 Col. Winter not only reiterated the widespread religious-nationalist narrative among the Jewish army and called for a holy war against Gaza, in essence he called for the mass murder of Palestinians living in Gaza. This is most apparent in two specific excerpts from his letter, which stated:

*History has chosen us to be the sharp edge of the bayonet of fighting the terrorist enemy “from Gaza” which curses, defames and abuses the God of Israel’s battles.*

...

*We will do everything to live up to the mission and wipe out the enemy and remove the threat from the Nation of Israel. Nobody here returns without performing.*

...

*We will act and do everything to return our lads safely. Using all means at our disposal and with all required force. (Abunimah, 2014).*

Winter’s letter not only frames the 2014 Israel-Gaza War as that of a holy war intended to defend Judaism from the Palestinian threat, essentially he foreshadowed the actions that he and his troops would implement in less than two weeks after the letter was published. This letter further dehumanized the Palestinians in Gaza as threats to the Jewish religion and further enflamed religious and racial differences perceived to exist between the IDF and the citizens of Gaza. Considering this statement and those previously published by Israeli officials, the actions taken by the Givati Brigade in Rafah should be understood as having deliberately killed and harmed Gaza residents with the intent of destroying Palestinians in whole or in part.

Ultimately, the IDF’s purposeful targeting of residential homes, the use of indiscriminate and disproportionate weapons, and the implementation of the Hannibal directive in Rafah should all be understood as having intended to kill and cause serious bodily harm to Gaza residents. The systematic manner and the sheer scale of the attacks utilized by the IDF is clear evidence of the

IDF's intent to destroy Palestinians in 'whole or in part.' Considering the sheer number of Palestinians killed because of the overall conflict, the actions taken by the IDF violated article 2(a) of the UNGC. Although there is relatively little available information concerning specific cases of injury and therefore the severity of the harm inflicted upon injured Palestinians, the UNHRC (2015) recognized that out of the 11,310 injuries sustained during the conflict, ten percent or 1,123 injuries resulted in permanent damage.<sup>19</sup> While international law does not stipulate that a 'serious bodily harm' amount to permanent damaged, this percentage illustrates the severity of the bodily harm inflicted upon Palestinian civilians. Considering the sheer scale of individuals injured and the number of injuries, which resulted in permanent damage, the IDF's actions likely intended to cause serious bodily harm and therefore violated article 2(b) of the UNGC.

#### **4. Did the IDF's Actions Cause Serious Mental Harm to Palestinians in Gaza?**

As with any military conflict, individuals effected by violence and destruction often do not exclusively suffer physical harm, but emotional or mental harm as well. Therefore, it is no surprise that the UNHRC (2015) and Doctors Without Borders (MSF) (2014) both identified a significant increase in reported cases of mental trauma throughout Gaza during and following the 2014 Israel-Gaza War. The UNHRC (2014) specifically identified that 20 percent of Gaza's entire population, including approximately 373,000 children, require "long term mental health assistance," because of the most recent military conflict (UNHRC, 2015, 156). Considering this, it is necessary to further examine the extent and severity of this trauma in order to determine

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<sup>19</sup> The severity of the physical harm inflicted upon Palestinians is apparent in the fact that more than 100 amputations occurred as a result of the conflict (WHO, 2015).

whether the IDF's actions deliberately inflicted 'serious mental harm' on Gaza residents with the intent of destroying Palestinians 'in whole or in part'.

While MSF (2014) and the majority of other health organizations in Gaza focused primarily on providing medical treatment to individuals who were physically harmed during the conflict, a significant number of Palestinians also received mental health consultations or treatment. Although there is no specific statistic regarding the number of Palestinians who sought treatment for these issues, the number was clearly substantial as the Palestinian authority in Gaza had to reinstate MSF's mental health program in order to meet the needs following the 2014 conflict (MSF, 2014). Of those Palestinians who sought mental health consultations in Gaza, the majority attributed their mental health issues to loss and trauma they suffered as a result of military conflict (WHO, 2015, 12). As a result of this loss and trauma, the UNHRC (2015) identified a "profound sense of hopelessness among" and significant increase in PTSD and anxiety disorders among Gaza's population <sup>20</sup>(UNHRC, 2015, 156). The scale of this mental trauma is apparent within the Gaza Community Mental Health Program, as the director of the program identified that of the total number of children referred to the health center, at the time of this report 50 percent of these children suffered from PTSD (Cohen and Pierce, 2015).

While there is relatively little information concerning the specific cases and severity of these problems, like that of Israeli citizens, reports have identified a number of cases in which Gaza citizens have been become physically ill and suicidal as a result of their anxiety and PTSD

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<sup>20</sup> According to the WHO (2014) following an assessment on the mental health needs in Gaza, the number of Palestinians with mental disorders as a result of the conflict is unknown, but "though the precise extent of current mental disorders in Gaza is not known, meta-analysis of the most robust epidemiological surveys (those using random samples and diagnostic interviews) in conflict-affected populations around the world show an average prevalence of 15.4% (30 studies) for PTSD and of 17.3 % (26 studies) for depression"

(UNHRC, 2015 and UNRW, 2016). The physiological trauma inflicted on Palestinian children has also resulted in serious physical symptoms as well. Specifically, the UNHRC (2015) and WHO (2015) have identified numerous cases in which children and teenagers who suffered from PTSD or anxiety have experienced increased aggression, violence, extreme night terrors, and even urine retention problems or bed wetting as a result of their exposure to the conflict. While further investigation is needed to identify a more precise understanding of the number and severity of these cases, MSF (2014) has recognized that the majority of Palestinians who sought mental health assistance experienced “psychological suffering which impedes their normal life” (MSF, 2014: 70).

As the precedent set within the *Akayesu* judgement understands ‘serious mental harm’ as having to have impacted a person’s “ability to lead a normal and constructive life,” those Palestinians with severe PTSD and anxiety identified by MSF should be understood as having suffered ‘serious mental harm’ (Human Rights Watch, 2010, 62). Whether or not the IDF’s actions during the conflict intended to cause serious mental harm to Palestinians is unclear. As the UNHRC (2015) recognized the IDF’s choice of weapons, excessive force, and targeting of residential areas as having been conducted with the knowledge of the physical risk these acts pose to civilians, it is reasonable to assume that the IDF was also aware of the psychological or mental harm these attacks would have had on Palestinians living in Gaza. Despite this knowledge, due to a general lack of information regarding individual cases of mental harm and what specifically caused the trauma, it is unclear as to whether these acts were committed with the specific intent of causing serious harm. Due to this lack of information, from a legal perspective these attacks are unlikely to be recognized under international law as having intended to cause mental harm and will likely be understood as a ‘relatively’ natural consequence

of war. While the IDF's actions may not legally constitute as having violated article 2 (b) of the UNGC, it is important to recognize that the IDF's military attacks were committed with a blatant disregard to both the physical and psychological well-being of innocent Gaza civilians.

In conclusion, this analysis ultimately found that a variety of actions taken by Hamas and the IDF throughout the seven-week long conflict violated articles 2 (a) and (b) of the UNGC. Specifically, this analysis found that the direct targeting of rockets and mortars against Israeli-Jews by Hamas, and those Palestinian armed groups coordinating with Hamas, intended to kill or 'cause serious bodily or mental harm' to Israeli-Jews with the intent of destroying Israelis in whole or in part'. In regards to the IDF, the direct targeting of residential homes, intentional use of indiscriminate weapons, and the implementation of the Hannibal Directive in Rafah were recognized as genocidal acts intended to kill or cause serious bodily harm to Palestinian residents living in Gaza. While this analysis recognized the detrimental effect the conflict had on the mental health of Gaza residents and the IDF's clear disregard for such trauma, due to a lack of information and intent, the IDF's actions were not recognized as having intended to cause serious mental harm to Palestinians in Gaza. As such, this next chapter will examine the IDF's actions as possible violations of article 2 (c) of the UNGC, which prohibits inflicting upon a groups conditions of life calculated to bring about its destruction in whole or in part.

## **Chapter 6— Deliberately Inflicting Conditions of life Calculated to Bring about the Physical Destruction of Palestinians in Gaza**

The last chapter examined the actions taken by Hamas, various Palestinian armed groups, and the Israeli Defense Force (IDF) as possible violations of article 2 (a) and (b) of the UNGC. Ultimately, the actions taken by these actors were recognized as having killed and caused serious bodily harm to members of their respective ‘other group,’ with the intent of destroying that group ‘in whole or in part’. While the last chapter examined both Palestinian and Israeli actions as possible acts of genocide, this chapter will solely examine the actions taken by the IDF and the State of Israel. Specifically, this chapter will determine whether the actions taken by the IDF and State of Israel violated article 2 (c) of the 1948 Genocide Convention (UNGC), which prohibits “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” (UNGC, 1948). In order to understand Israel’s actions during the 2014 Israel-Gaza War as having possibly intended to inflict conditions of life calculated to bring about the physical destruction of Palestinians living Gaza, this analysis will also examine the effects that the blockade have had on the Gaza strip since the war ended.

While the actions taken by various Palestinian armed groups were harmful and destructive, this analysis choose to exclude these actions. Actions taken by Hamas and various other Palestinian armed groups were excluded due to the limited military capabilities of Palestinian armed groups in Gaza and their inability as the occupied group to exert control over the Jewish state. As such, this analysis recognizes Palestinian armed groups as largely incapable of inflicting conditions on Israel that would bring about its physical destruction. The next chapter will examine this power dynamic in further detail, but as of now the recognized power capabilities of Palestinian actors in comparison to those of the state of Israel’s provides

reasonable evidence that Palestinian actors feasibly cannot inflict physically genocidal conditions of life onto Israeli people. As the more powerful and occupying state, this analysis exclusively recognizes Israel as having the ability to inflict on Gaza resident's conditions of life calculated to bring about the physical destruction of Palestinians in whole or in part.

As the last chapter exemplified, the IDF's actions during the 2014 conflict resulted in widespread and disproportionate loss of human life and injury among Palestinians living in Gaza. Unfortunately, the war did not only result in wide scale death and injury. The IDF's actions also caused "massive destruction" to essential civilian infrastructure and services throughout all of Gaza (Amnesty International, 2015). The IDF's actions during the conflict have specifically been recognized as having severely damaged or destroyed a variety of necessary civilian homes and services like that of Gaza's power plant, various water and sewage treatment facilities, and a number of medical facilities in Gaza. The physical destruction of Gaza itself had a detrimental effect on Palestinians living in Gaza during and after the conflict. As a result of Israel's ongoing air, sea and water blockade, this effect has been further aggravated.

The actions taken by the IDF during the conflict and those taken by the state of Israel since its conclusion have been widely condemned by the international community as violating international law. Due to the context in which the war began and the seemingly deliberate targeting of Palestinian civilians by the IDF, there is reason to believe that these attacks deliberately inflicted conditions of life calculated to bring about the physical destruction of Gaza residents, with the intent of destroying Palestinians in whole or in part. This analysis will specifically examine how the IDF's actions contributed to the serious housing, electricity, water, and health situations in Gaza and determine whether or not these situations constitute as conditions of life calculated to bring about the physical destruction of a group.



## **1. The Housing Epidemic**

The last chapter identified the IDF's attacks against residential buildings as having been committed with the intent of killing and causing serious bodily harm to Palestinians. While these attacks killed and injured thousands of Palestinians, they also caused the complete destruction of five percent of Gaza's entire housing stock (OCHA, 2014). The UNHRC (2015) identified that 18,000 residential housing complexes in Gaza, including some UNRA Shelters, were destroyed "in whole or in part" and an additional 80,000 Palestinian homes and properties required significant rehabilitation following the conflict (UNHRC, 2015). Overall, the IDF's attacks damaged 142,071 housing units during the conflict (OCHA, 2014).

As a result of this damage 500,000 Palestinians, or roughly 29 percent of Gaza's population, were internally displaced during the height of the war (UNHRC, 2015). While the Palestinian Authority (PA) and the United Nations Relief and Works Agency for Palestine (UNRWA) provided shelter for Palestinians whose homes were destroyed, these facilities did not necessarily offer adequate safety or security. This was largely a consequence of the overcrowding of the shelters due to the sheer number of internally displaced individuals. Like that of Palestinian homes, these shelters were also vulnerable to attack by the IDF because the shelters allegedly housed military weapons or near alleged military objects. As a result, the conflict continuously uprooted Palestinians from both their homes and from their temporary shelters. As internally displaced individuals, Palestinians without homes were extremely vulnerable to death, injury, and illness (The World Bank, 2015). Unlike other military conflicts, such as the one in Syria, displaced persons are largely able to escape the violence and seek protection outside of their countries as refugees; Palestinians displaced in the Gaza strip had

nowhere to go to because of Israel's unwavering control over Gaza's borders. Therefore, displaced Palestinians were subject to the harms of the conflict.

Even though the conflict officially ended in late August of 2014, a significant number of Palestinians displaced during the conflict remain internally displaced within Gaza today. According to UNRWA (2015), a year after the conflict, approximately 100,000 Palestinians remained displaced and the majority of the homes destroyed or damaged during the war had yet be reconstructed. While the number has declined slightly, Human Rights Watch (2016) found that as of 2016 approximately 65,000 Palestinians continue to remain internally displaced within Gaza because of the 2014 conflict. Amnesty International (2016) and the UNHRC (2015) found that Israel's ongoing blockade of Gaza largely contributes to this prolonged displacement and delayed reconstruction.

Since Israel has complete control over what enters and exits the Gaza Strip, the Palestinian Authority (PA) in Gaza has been largely unable to obtain necessary construction materials or assistance in order to rebuild and repair the residential complexes damaged during the conflict (UNHRC, 2015). While the UN created the Gaza Reconstruction Mechanism (GRM) in order to facilitate cooperation between the two governments, this organization has largely been incapable of dealing with Gaza's needs (Gaza Reconstruction Mechanism, 2015). This is primarily due to the significant power given to Israel. The GRM granted Israel the power to determine what materials can be imported and what projects the PA is allowed to be implement in Gaza. Restricted materials include items such as "cement, gravel and metal bars". This restriction has resulted in Israel's near prohibition of necessary reconstruction materials. Essential reconstruction materials have been largely restricted from entering Gaza due to Israel's

labeling of them as “dual use”<sup>21</sup> items, which are capable of both military and civilian purposes and therefore constitute as a threat to Israel’s national security (UNHRC, 2015, 152). While some of the materials identified by Israel may pose a certain amount of risk to the state, the international community has identified these materials as indispensable for reconstruction efforts.<sup>22</sup> In addition to restricting reconstruction materials, Israel has also limited a significant portion of humanitarian assistance from accessing Gaza. As a result of this, humanitarian agencies like the UN have been largely unable to provide assistance and facilitate the physical reconstruction of Palestinian homes in Gaza (UNHRC, 2015). Human Rights Watch (2017) specifically found that Israel’s restrictions have obstructed the reconstruction or rehabilitation of roughly 17,800 housing units in 2016 alone.

The OSAPG and the legal precedent set by the ICTR, recognize that a lack of proper housing creates “circumstances that could lead to a slow death,” (OSAPG, n.a., and Human Rights Watch, 2015, 56). As such, the actions taken by the IDF during the 2014 Israel Gaza War and those actions taken by the State of Israel preceding the conflict should be understood as having deliberately inflicting on Gaza resident’s conditions of life intended to bring about the physical destruction of Palestinians in whole or in part (OSAPG, n.a., and Human Rights Watch, 2015, 56). While the state of Israel could argue that the destruction of Palestinian homes was a natural consequence of war, the genocidal intent can be inferred from the IDF’s deliberate targeting of residential homes and the active obstruction of reconstruction efforts by Israel. As

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<sup>21</sup> Israel currently has two lists of “dual” civilian-military items (OCHAOPT, 2015). The list for Gaza includes items such as “electronic and electric equipment, communications equipment, and industrial raw materials, are used to rebuild and upgrade offensive tunnels leading to Israel; to manufacture weapons, particularly rockets; and to create technological combat support units.” Israel has specifically alleged that these items and numerous others, are often used to create weapons and “fortifying tunnels.” (Human Rights Watch, 2016).

<sup>22</sup> It has been recognized that at the current, only 24 truckloads of necessary construction material are permitted to enter Gaza, despite the fact that 606 truckloads a day is necessary to complete reconstruction within five years (Gaza Reconstruction Mechanism, 2015).

identified in the last chapter, the IDF's was found to have specifically targeted residential homes despite evidence indicating the dangerous effect that these attacks had on individual's and their homes. While these attacks were primarily understood as having been committed with the intent of killing or causing serious bodily harm to Gaza residents, the UNHRC (2015) highlights the fact that the IDF had to have known the effect that such an attack would have on residential homes. As such, these attacks should be understood as having also intended to destroy residential homes and displace large numbers of Palestinians.

The intent can be inferred from the IDF's choice of weapons and the purposeful targeting of inhabited and uninhabited homes. Specifically, the IDF's use of highly explosive artillery weapons throughout the conflict were chosen with the knowledge and therefore the intent, that these attacks would not only cause significant death and injury, but also substantial physical damage to residential areas in Gaza. Similarly, the IDF's intent is evident in the fact that the UNHRC (2015) found evidence that the IDF targeted more than 200 residential buildings in which civilians and Palestinian fighters were not present. While the IDF has claimed these homes were being used for military purposes, the UNHRC (2015) has found relatively little information confirming this fact. As there is no legal military objective to gain over destroying an inhabited house, the IDF's attacks should be recognized as having intended to impose conditions of life that would bring about the physical destruction of Palestinians in whole or in part.

In regards to Israel's actions preceding the conflict, its restrictions on necessary construction materials and humanitarian assistance should be understood as intentionally impeding construction efforts in order to maintain conditions of life in Gaza that would bring about the physical destruction of Palestinians. While Israel has defended its restriction of dual

use materials as necessary for its national security, Israel does not have to completely restrict these materials and could protect its national security through more intensive monitoring and tracking of ‘dual use’ materials. The choice to impose a blanket ban over ‘dual use’ materials also signifies Israel’s intent to exert power over Gaza, rather than a need to protect its own national security. This is clear in the fact that Israel has not only restricted the importation of reconstruction materials, but has also restricted humanitarian assistance itself from entering into the Gaza Strip. As humanitarian actors are neutral bodies and clearly do not possess as a threat to the state’s national security, Israel’s overall restrictions clearly intend to maintain conditions of life calculated to bring about the physical destruction of Palestinians living in Gaza. Considering the scale of the destruction to Gaza’s entire housing stock and the fact that these conditions have lasted for nearly three years, Israel’s actions deliberately withhold proper housing from Palestinians living in Gaza in order to bring about the physical destruction of Palestinians in whole or in part.

## **2. The Ongoing Electricity Crisis**

The IDF has been accused of not only targeting residential homes, but also necessary civilian infrastructure like Gaza’s power plant. Gaza’s sole power plant was struck by a round of shelling launched by the IDF, on July 29, which caused an explosion that destroyed a whole section of the power plant (UNHRC, 2015). As a result of this attack, the power plant was ultimately forced to shut down entirely. As Gaza receives roughly 30 percent of its electricity from this single power plant, and the rest is purchased from Israel and Egypt, the plant’s destruction had a detrimental effect on Gaza residents. During the 2014 war, the complete closure of the plant resulted in power outages which lasted up to 22 hours a day. These power shortages had a devastating effect on Palestinians living in Gaza as they left individuals and

families in the dark and largely without a means to refrigerate their food or air condition their homes during the stifling summer heat. These power outages also had a broader effect on Gaza's population as a whole. According to the UNHRC (2015) as a result of the power plant's closure and the overall damage to Gaza's electricity related infrastructure, Gaza's power outages:

*“forced hospitals to operate at limited capacity; led to a drastic reduction in the pumping of water to households; and affected desalination plants and sewage treatment, which significantly impacted on a wide range of human rights, in particular the rights to health, water and sanitation.” (UNHRC, 2015, 154).*

Despite the devastating effect that these power outages were having on Palestinians living in Gaza, necessary repairs were unable to be made to the plant due to the conflict. While a number of facilities were in possession of backup generators, such as hospitals and some water treatment facilities, these generators were also under significant strain as a result and were often inoperable due to a lack of available fuel throughout the conflict (OCHAOPT, 2014).

Sadly, even though the armed conflict ended, Gaza's electricity crisis did not. Despite the ceasefire and the development of the GRM, reconstruction materials needed to repair Gaza's power plant and rehabilitate its overall electricity infrastructure have scarcely been allowed to enter the Gaza strip (Gaza Reconstruction Mechanism, 2015). Specifically, Israel's blockade has largely restricted the importation of necessary materials such as, spare parts, electrical equipment, and fuel needed to bring Gaza's electricity infrastructure to an expectable level (OCHA, 2015). As a result, reports found that relatively little reconstruction has occurred in the last two and a half years. Specifically, as of January 2017 the damage sustained by Gaza's power plant has yet to be fully repaired and as a result the plant is currently only capable of operating “at half of its original capacity” (Najjar, 2017).

Due to this, Gaza has become almost completely dependent on Israel for power, which has allowed Israel to inflate the prices of its electricity and fuel to nearly triple the cost of what had previously been offered by Egypt <sup>23</sup>(B'tselem, 2017). Subsequently, the PA and Palestinians individuals living in Gaza are largely unable to afford electricity. As a result of both the near destruction of Gaza's electricity infrastructure, Israel's severe restrictions of reconstruction materials and the inflation of the price of electricity, residents continue to suffer from severe electricity shortages. In June of 2015, nearly a year after the conflict ended, the OCHA (2015) and the UNHRC (2015) found that over 20 percent of Gaza's citizens did not have access to electricity and those Palestinians who did, suffered from severe blackouts that lasted between 12 to 16 hours a day. While this was expected to get better with time, the situation has progressively worsened since then. In January of 2017 protests broke out throughout all of the Gaza Strip in response to increasingly longer and more frequent electricity blackouts. Specifically, the current electricity crisis left Gaza residents without electricity for nearly 21 hours a day in January (Najjar, 2017). While international donors have provided financial resources to assist with the problem, this is only a temporary solution. What is needed to elevate the crisis is the complete rehabilitation of Gaza's power plant (OCHA, 2015).

Considering the severity of the blackouts and the detrimental effect this has had on Gaza resident's basic standard of living and their right to health, water and sanitation, Israel's actions during and proceeding the 2014 Israel-Gaza War should be recognized as having deliberately inflicted conditions of life calculated to bring about the physical destruction of Palestinians

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<sup>23</sup> Gaza has always obtained a significant proportion of its electricity from Israel and Gaza, but the destruction of its power plant made Gaza almost completely dependent on this electricity. While Egypt had previously sold electricity of the Palestinian Authority, upon discovering illegal tunnels in Egypt the government complete stopped trading. As a result, Gaza has had to rely solely on Israel for power. (OCHAOPT, 2015).

living Gaza, in whole or in part. The intent to bring about such life threatening conditions is clear in the IDF's direct targeting of Gaza's power plant and the State of Israel's intentional impediment of rehabilitative efforts intended to restore electricity to Gaza residents. While the UNHRC (2015) did not confirm whether the attack was intentional, the fact that the power plant was struck on three previous occasions prior to the attack on July 29, indicates that the IDF did in fact target the power plant. As UNHRC and international community previously recognized Gaza's power plant as a civilian object which is "indispensable to the survival of the civilian population," due to the IDF's previous targeting of the plant in 2008, this direct attack was arguably committed with the knowledge and therefore the intent of inflicting conditions of life calculated to bring about the physical destruction of Palestinians living in Gaza.

Following the conflict, Israel's restrictions on reconstruction materials, electrical supplies and its intentional inflation of the price of electricity for Palestinians, intentionally hinder Gaza's ability to reconstruct its electrical infrastructure in an attempt to maintain conditions in Gaza which will lead to a slow death. Israel defends its restrictions on construction materials as necessary for its national security, but as the previous section highlighted, Israeli actors could take a more active role in the reconstruction process or delegate this to a neutral party facilitator like the UN in order to monitor and secure the legitimate use of identified 'dual use' materials in Gaza. Instead Israel has chosen to impose detrimental restrictions not only on construction materials, but also supplies and equipment necessary for the general upkeep of Gaza's electrical infrastructure. These restrictions in combination with Israel's inflation of the price of electricity should be understood as intending to preserve these conditions.

In 2015, the World Bank identified that Palestinians payed the highest tariffs related to power, in the entire region of the Middle East (Hadid, 2015). While Gaza is able to buy its



electricity, government controlled companies in Israel have raised the prices and attached such high tariffs that this electricity is largely unaffordable. While this could be considered a business policy, due to the state's involvement and the blatantly detrimental effect this has had on Gaza residents, the inflation of electricity and fuel prices should be understood as purposefully contributing to the electricity crisis. Ultimately, due to the recognized necessity of electricity for the "survival of the civilian population," in Gaza, the IDF's attacks against the power plant and Israel's intentional obstruction of rehabilitative efforts should be recognized as deliberately inflicting conditions of life calculated to bring about the physical destruction of Palestinians living in Gaza, in whole or in part.

### **3. A Never Ending Water Emergency**

By the end of the 2014 conflict, the OCHA recognized Gaza as having been on "the brink of a public health crisis"<sup>24</sup>(UNHRC, 2015,153). This near crisis was primarily due to Gaza's inability to conduct water and sanitation treatments, due to the partial destruction of Gaza's power plant and the wide scale damage sustained to vital water and sanitation facilities throughout the territory. Gaza's overall water and health (WASH) infrastructure also suffered significant damage as a result of the conflict. Specifically, the UNHRC (2015) reported that 63 water facilities were damaged and an additional 23 were completely destroyed as a result of the IDF's aerial campaign and ground operations in Gaza. Of the sewage treatment facilities in the

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<sup>24</sup> At the time of the conflict, an early warning system was put in place by the OCHA in order to monitor the rise of 13 communicable diseases. Due to the largescale displacement, overcrowding, severe damage to the public health infrastructure the OCHA was extremely concerned about the spread of disease and possible outbreaks (WHO, 2015).

territory, the UNHRC found that 60 percent of the sewage treatment plants and 27 percent of its pumping stations were completely destroyed.

This destruction and the lack of necessary electricity almost fully prevented Gaza facilities from conducting necessary water and sewage treatments throughout the conflict. As a result, the lack of treatments further contaminated Gaza's main aquifer and significantly increased the risk of water borne illness such as diarrhea and meningitis (Supplement to Readings on Water, 2016 and Health Cluster, 2014). The crisis was further compounded by the destruction of various wells, pipelines, and reservoirs, which was reported to have resulted in 15,000 tons of solid waste having been leaked into Gaza streets and its aquifer which further contaminating the already polluted water supplies (IMEU, 2015). As a result of Gaza's inability to conduct water treatments and the increasing contamination of the aquifer, the majority of the water that was available to Gaza citizens was undrinkable.

Due to the power shortages caused by the closure of Gaza's power plants, even untreated water was largely unavailable to Gaza residents. As homes and residential business in Gaza primarily rely on an electric powered pumping systems, Palestinians had essentially no way of accessing water unless they possessed their own backup generator (UNHRC, 2015). Even then, most residents were unable to obtain the necessary fuel needed to run these generators. As a result, nearly 1.2 million Palestinians living in Gaza were unable to access running water (Supplement to Readings on Water, 2016). Overall, the OCHA (2014) found that the majority of Palestinians were unable to access even the minimal standard of thirty liters of water, which the World Health Organization has identified as necessary to live off each day (OCHA, 2014).

Like that of the electricity crisis, Gaza's water situation was precarious prior to the 2014 conflict and upon its end, the water situation did not get any better. The situation in Gaza has not

gotten better, rather it has seemingly begun to deteriorate since the ceasefire. Specifically, the damage caused during the 2014 conflict had a detrimental effect on Gaza's aquifer, which was over strained and considerably contaminated prior to the conflict (Europarl, 2016). As the damage caused during the conflict remains relatively the same, the contamination of the aquifer has increased significantly. Like that of the housing and electrical situation, delays in the rehabilitation of Gaza's water and sanitation facilities are primarily due to the restrictions imposed by the GRM and Israel's blockade. Specifically, Israel and the GRM severely limited the importation of construction materials, restricted the movement of necessary public health specialists or technicians from entering Gaza and most significantly delayed the implementation of necessary health and sanitation projects (WASH) (EWASH, 2016).

As a result of this delay in reconstruction, the most recent statistics have found that only 10 percent of Gaza residents have access to safe drinking water, due to continuing problems related to the quality and quantity of water available to them (Europarl, 2016). While some Palestinian residents have access to municipal waters, ultimately due to contamination from the aquifer and the overall water network throughout Gaza, this water is only usable for household chores or bathing (Water Situation Alarming in Gaza, 2017). In order to obtain safe drinking water residents in Gaza are either forced to walk miles each day in order to reach a desalination station or have to rely on private and expensive external suppliers to provide them with 'safe drinking water' (Al-Mughrabi, 2017). As these suppliers are largely private and uncontrolled, the water provided is not only expensive but often contaminated as well and subsequently contributes to lower health and hygiene throughout Gaza (Gaza one year on and Al-Mughrabi, 2017). The International Community has highlighted the need for a more permanent solution, as the current situation in Gaza endangers the health and well-beings of Palestinians living in Gaza.

Specifically, the World Bank (2017) has recognized that if programs aren't put in place to deal with the contamination and water scarcity in Gaza by 2020, "the damage will be irreversible" (World Bank, 2017, 2).

Due to the severity of the destruction caused during the conflict, the impacts it has had on Palestinians, and the continued deterioration of water quality in Gaza, the IDF's actions during the 2014 conflict and Israel's continued blockade should be understood as deliberately inflicting conditions of life calculated in Gaza to bring about the physical destruction of Palestinians in whole or in part. While this analysis did not find any evidence indicating the IDF's purposeful targeting of water or sanitation facilities, the IDF's shelling of Gaza's power plant and the overall disproportionate use of force used during the conflict should be understood as having intended to further deteriorate Gaza's already dangerous water situation. This intent can be inferred from the fact that these acts were committed despite the knowledge of the effect that such an attack would have on Gaza's infrastructure (UNHRC, 2015).

Israel's seemingly deliberate impediment of the rehabilitation of Gaza's water and sanitation facilities indicates its intent to maintain conditions of life in Gaza that will lead to the slow death of Palestinians. Israel's intent to further exacerbate the water situation in Gaza is clear in the fact that it has not only prohibited items it constitutes as dual use, but the state has deliberately prevented the implementation of necessary water and sanitation (WASH) projects in Gaza. This is apparent in the fact that "46 out of 53 WASH projects for Gaza are at stake" of being further delayed or canceled by Israel (EWASH, 2016, 2). As there is no feasible security threat associated with the implementation of WASH projects facilitated by the international community, there is no reason to prevent the implementation of necessary projects except to further aggravate the water situation and ensure that the damages incurred are permanent. As the

OSAPG recognizes the deliberate deprivation of *clean* water from a group as conditions which bring about a slow death and the scale of the current water emergency, the IDF's actions and Israel's ongoing blockade should be recognized as intending to destroy all Palestinians living in Gaza, in whole or in part.

#### **4. Inaccessibility to Health Care**

As emphasized within the previous sections and the last chapter, the actions taken by the IDF had a devastating effect on the physical well-being of Palestinians living in the Gaza Strip. Due to the sheer number of Palestinians physically effected by the conflict, Gaza's medical system was put under significant pressure in its attempt to provide medical assistance to the thousands of Palestinians in need. Gaza's already fragile health care system <sup>25</sup> was further destabilized following a variety of attacks perpetrated by the IDF, which were seemingly intended to restrict Gaza's ability to provide lifesaving medical assistance to injured Palestinians. These actions specifically regard what has been understood as the IDF's purposeful targeting of Gaza's power plant, medical facilities, as well as ambulance and medical personnel.

As briefly mentioned, the partial destruction of Gaza's power plant had severe consequences on hospitals and medical facilities in the territory. Specifically, the attack seriously limited the amount of electricity available to hospitals and other medical facilities, which further limited their already narrow capacity to operate (UNHRC, 2015, 153). While hospitals and other medical facilities were given priority during these power outages, the electricity provided was

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<sup>25</sup> Prior to the conflict, Gaza's medical system was already limited in its ability to provide necessary services to Palestinians, which Amnesty International (2014) has largely attributed as having result from what was at the time the seventh year of Israel's blockade of Gaza. Specifically, hospitals in Gaza had already suffered from a lack of fuel, power, water supplies and significant shortages of necessary drugs and medical supplies proceeding the conflict.

still unreliable and couldn't always power necessary medical equipment (Health Emergency Highlights, 2014). This subsequently limited the number of services and treatments available to patients harmed in the conflict. Even when electricity was available, due to its relatively limited quantity and unreliable nature, surgeries and medical procedures became increasingly life-threatening due to the risk of complications associated with voltage surges or loss of electricity. Despite the limited amount of electricity available to them, those medical facilities that remained physically intact throughout the conflict continued to provide what services they could.

That being said, a number of hospitals and clinics were physically impacted by the conflict and were subsequently completely unable to provide medical assistance to those in need or further limited in their capabilities. As a result of both direct and indirect attacks perpetrated by the IDF, the Gaza Strip Joint Health Assessment report (2014) found that "17 hospitals, 56 primary health care clinics and 45 ambulances were destroyed or damaged" as a result of the conflict (Health Emergency Highlights, 2014). Despite international condemnation, the IDF has defended its targeting of hospitals as legitimate military objectives, due to the alleged use of hospitals to store military weapons and equipment (UNHRC, 2015). While the UNHRC (2015) neither confirmed nor denied the presence of military weapons in hospitals, ultimately the international community has recognized these attacks as disproportionately harming civilian lives and infrastructure. Not only were patients at risk of direct harm as a result of these attacks, the physical destruction of Gaza's medical facilities indirectly harmed Palestinians in Gaza, as these attacks further limited the quality of health procedures available to them throughout the conflict. The IDF's attacks often damaged the physical structure of the hospital or clinic and destroyed or damaged necessary medical equipment, supplies, and even death of health professionals.

While the total number of health professionals killed in the IDF's targeting of hospitals is unknown, the UNHRC (2015) found that 23 medical personnel were killed in the field as a result of IDF attacks against ambulances. These deaths have largely been regarded by the international community as having resulted from the direct targeting of ambulances and medical personnel attempting to provide assistance to injured Palestinians throughout the conflict. In addition to killing 23 medical personnel, these attacks either damaged or completely destroyed 43 ambulances. While the UNHRC (2015) and Amnesty International (2014) have not confirmed whether the IDF intentionally targeted internationally protected ambulances and paramedics, both reports identified specific instances in which ambulances were targeted by IDF artillery fire and recognized medical personnel were directly shot at, despite a complete lack of evidence indicating the presence of a legitimate military objective in the vicinity<sup>26</sup>. Ultimately, these attacks not only resulted in the immediate death of patients and medical personnel, but also limited the number of medical transportation systems and medics available to individuals injured as during the conflict.

Like that of the housing, electricity, and water situations following the conflict, these problems have continued beyond the conflict. The UNHRC (2015) report found that nearly a year after the conflict, necessary reconstruction of seven hospitals and an additional 12 clinics were significantly delayed due to the GRM's restriction of construction materials needed. In addition to preventing the physical rehabilitation of a significant number of hospitals, the GRM's and Israel's restrictions also severely limit the importation of medical equipment and medical

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<sup>26</sup> The UNHRC (2015) report specifically identified that most instances in which clearly ambulances fell under direct military fire occurred in situations in which there was no evident threat or military activity in the vicinity. In some of these attacks, a new ambulance was sent to respond and rescue civilians and injured colleagues and were subsequently fired upon by the IDF a second time.

supplies that were destroyed or depleted as a result of the conflict. Specifically, as of May 2016 Palestine's Minister of Health identified 570 necessary medicines and 39 medical supplies that medical facilities have constitutently been unable to keep stock of due to the blockade (WHO, 2016).

While the ongoing electricity crisis was previously address, it is necessary to briefly highlight the impact that this lack of electricity continues to have on medical facilities in Gaza. Due to the prevailing daily power blackouts, hospitals and clinics in Gaza have been forced to rely on backup generators in order to power their facilities (WHO, 2016). While these generators provide more power than that of the electricity offered to them, these generators are also unreliable due to a lack of fuel throughout Gaza and the overall strain put upon these machines daily. As a result, hospitals are frequently subject to either power outages or electrical surges which have dire consequences on the patients receiving medical services that require electricity<sup>27</sup> (UNHRC, 2015). As a result of the limited electrical capacities of hospitals and clinics in Gaza, specialized treatments and surgeries are almost completely unavailable and as a result Palestinian individuals have had to rely on medical services outside of Gaza.

Due to the ongoing Gaza blockade, in order to receive external medical care, individuals must receive direct approval from Israel in order to obtain the necessary referral or travel permits needed to leave Gaza (WHO, 2016). As a result, a comprehensive referral system has developed between Israel and the PA in order to obtain these health permits. While this system is facilitated by numerous international organizations such as the World Bank, World Health Organization and the European Union, ultimately Israeli authorities have the final say in who is or is not issued medical related permits. As a result of this, a majority of Gaza referral applications are either

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<sup>27</sup> This is most apparent in Gaza's ICU unit, in which premature babies require constituent electricity in order to power necessary incubators (IMEMC news, 2016).



denied or significantly delayed in their attempts to seek medical treatment (WHO, 2016). As of December 2016 the WHO (2016), found that 58.3 percent of the 2,596 applicants who applied to leave Gaza through the Erez checkpoint were denied or severely delayed<sup>28</sup>. As the majority of those Palestinian referral applicants have applied in an attempt to seek specialized medical services, such as oncology, orthopedics, cardiology and neurosurgery, the complete denial or even the delay of such permits can have a deadly impact on those individual's health conditions.

As the OSAPG and the legal precedent set within the ICTR have explicitly recognized the deprivation of medical services from a group as an act of genocide that will lead to a slow or indirect death, the IDF's attacks during the 2014 conflict and Israel's continuing Gaza blockade should be recognized as deliberately inflicting upon Palestinians conditions of life calculated to bring about their physical destruction in whole or in part (OSAPG, n.a and Human Rights Watch, 2015). While the IDF has argued that it only targeted legitimate military objectives, this analysis recognizes the attacks against Gaza's power plant, medical facilities, ambulances and medical personnel as having been deliberately targeted in an attempt to prevent Palestinians from receiving adequate medical assistance. The intent of these attacks can be inferred from the lack of alleged military objectives in a significant number of these attacks and the choice of destructive and indiscriminate weapons, despite the IDF's possession of more accurate and less destructive precise targeting weapons systems (UNHRC, 2015).

Additionally, Israel's severe restrictions of necessary importations and the movement of Palestinians should be understood as intentionally impeding the rehabilitation of Gaza's health system and therefore having intended to maintain conditions of life that lead to a slow death.

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<sup>28</sup> Specifically, 91 requests for permits were official denied, while another 1,422 were completely ignored and received no response (WHO Monthly Report, 2016). Of those who were denied and ignored 111 were elderly individuals over the age of 60 and 323 were children and often regarded appointments for numerous specialized medical services.

This intent is most apparent in the restrictions of necessary medical equipment and supplies. As the importation of essential medicines and incubators arguably do not pose as a threat to Israel's national security, Israel's withholding of such supplies must intend to maintain conditions of life which will lead to the slow death of Palestinians living in Gaza. While Israel could make the counter argument that it permits Gaza citizens to travel through its borders in order to obtain medical assistance, ultimately this referral system is genocidal as over half of Palestinian applicants are either denied or receive no response. As a significant number of those who apply for specialized care do so in order to receive treatment for life threatening illnesses such as cancer or brain tumors, Israel's denial or lack of response to applications indirectly leads to the immediate or slow death of Palestinians (WHO, 2016). Due to the scale and the systematic nature of these actions, the IDF's actions during the 2014 conflict and Israel's restrictions since then should be recognized as deliberately inflicting conditions of life calculated to bring about the physical destruction of Palestinians living in Gaza, in whole or in part.

In conclusion, this analysis found that the actions taken by the IDF's and the State of Israel during and following the 2014 Israel-Gaza War violated article 2 (c) of the UNGC, which prohibits acts that deliberately inflict conditions of life intended to bring about the groups physical destruction in whole or in part. The IDF's direct targeting of essential civilian infrastructure, such as residential homes, Gaza's power plant, and various medical facilities, and its overall use of force throughout the conflict constitute as deliberate attacks intended to create conditions of life calculated to bring about the physical destruction of Palestinians living in Gaza. Similarly, Israel's restrictions on the movement of goods and people from entering or exiting the Gaza Strip actively maintain these deadly conditions. Ultimately, the actions taken by the IDF and the State of Israel were recognized as acts of genocide because they deliberately

restrict Palestinians in Gaza from accessing necessary rights, such as that of housing, electricity, clean water, and health services, that are permitted to Israeli citizens. As such, these actions are clearly directed against residents in Gaza on the solely basis of their identity as Arab Palestinians. The next chapter will conclude this study with a short analysis regarding the overall findings. Specifically, it will identify why the actions taken by the IDF, Hamas, and affiliated Palestinian armed groups constitute as acts of genocide, how this relates to the power dynamic between Israel and Palestine, and what this means for future investigations and the conflict.

## Chapter 7—Conclusion

The last chapter examined the actions taken by the IDF and the state of Israel as possible violations of article 2 (c) of the 1948 Genocide Convention (UNGC). This analysis specifically found that the actions taken by the IDF throughout the conflict and Israel's restrictive blockade legally constitute as having deliberately inflicted upon Gaza conditions of life calculated to bring about the physical destruction of Palestinians in whole or in part (UNGC, 1948). This last chapter will conclude by explaining why the actions taken by the IDF, Hamas, and affiliated Palestinian armed groups constitute as acts of genocide, how this relates to the power dynamic between Israel and Palestine, and what this means for future investigations.

Upon examining the 2014 Israel-Gaza War in its entirety, it was apparent that a variety of international laws were violated by the IDF, Hamas and various other Palestinian armed groups. Specifically, this analysis identified countless instances in which actors on both sides of the conflict incited violence, utilized prohibited weapons, and directly targeted recognized civilians and civilian populated areas in their attacks. As a result, the seven week long conflict killed 2,324 and injured another 12,831 Palestinians and Israelis (UNHRC, 2015). While the international community has exclusively referred to the actions taken by various Israeli and Palestinian actors as feasibly amounting to 'war crimes' and 'crimes against humanity,' this analysis determined that these attacks constitute as acts of genocide under international law. Although the acts taken by Israeli and Palestinian actors may also constitute as 'war crimes' and 'crimes against humanity,' ultimately their actions were acts of genocide because they were committed with the intent of killing or harming large numbers of individuals due to their membership in their respective religious-national groups.

This intent to destroy large numbers of individuals on the basis of their religious-nationalist identity as either an ‘Arab-Palestinian’ or ‘Israeli-Jew’ is apparent in the statements and choices made by various Israeli and Palestinian political and military officials. In regards to Hamas and affiliated Palestinian armed groups, numerous statements were made by military officials which declared their intent to not only target protected civilians, but to kill and harm those individuals due to their religious-nationalist identity as ‘Israeli-Jews’. The intent to not only kill or harm individuals, but destroy Israeli-Jews is explicitly clear in the Hamas Charter. As such, all attacks made by or affiliated with Hamas throughout the conflict intended to bring about the physical destruction of Israeli-Jews in whole or in part. Similarly, various statements made by political, military, and religious officials in Israel openly called for violence, revenge and the death of individuals in Gaza solely on the basis of their religious-nationalist identity as Arab-Palestinians. While the intent to destroy Arab-Palestinians was not explicitly called for within their constitution or any publicly available policies, as set by the legal precedent within the ICTR this genocidal intent was inferred from various statements made by Israeli officials and from the IDF’s direct targeting of civilians, purposeful choice to use indiscriminate weapons and overall disproportionate use of force.

Therefore, the targeted killing of Israeli and Palestinian individuals due to their membership in a specific religious-nationalist is what distinguishes the actions taken by the IDF, Hamas and affiliated Palestinian armed groups as acts of genocide rather than crimes against humanity or war crimes. This distinction is important, because all three crimes are similar in the fact that they prohibit military actions that purposefully kill or are knowingly committed despite the risk they pose to noncombatants, crimes against humanity and war crimes specifically prohibit systematic attacks against “civilian populations,” whereas genocide prohibits the

targeted destruction “of individuals that collectively form part of a single group,” (The Rome Statute, 2001 and Sands, 2013). Referring to the actions taken by the IDF, Hamas and affiliated Palestinian armed groups exclusively as war crimes or crimes against humanity completely disregards the shared experiences and loss suffered by Israeli and Palestinians as a religious-nationalist group.

While the actions taken by the IDF, Hamas and affiliated Palestinian armed groups were intended to bring about the physical destruction of their respective ‘other group’ and therefore constitute as acts of genocide, ultimately this analysis recognizes the IDF and the State of Israel as exclusively possessing the capabilities necessary to actually execute a genocide. That is not to discount Hamas and affiliated Palestinian armed groups as genocidal actors. The intent to destroy Israelis in whole or in part is apparent and as such Hamas’ attacks must be recognized as individual acts of genocide and therefore attempted genocide under international law. As of now, this analysis has found that Hamas and affiliated Palestinian armed groups are incapable of bringing about the physical destruction of Israelis in whole or in part, due to the current power dynamic inherent in the relationship between Israel and Palestine.

As the occupying and settler-colonial state, Israel has successfully implemented the Gaza blockade which has virtually able to control over what enters and exists the Gaza Strip. Due to this control over Gaza’s borders, Hamas and other Palestinian armed groups are largely unable to access advanced weapons and therefore lack the military capabilities necessary to bring about physical destruction of Israelis, in whole or in part. Even though Hamas and other Palestinian armed groups have been able to obtain materials needed to build and target a significant number of rockets and mortars against Israeli citizens, when up against Israel’s Iron dome missile detection system these weapons are relatively incapable of killing a ‘substantial portion’ of

Israel's population. This is apparent in the fact that out of the "4,881 rockets and 1,753 mortars" launched against Israel, only six Israeli civilians and 67 Israeli soldiers were killed throughout the conflict (OCHA, 2015). While these attacks are capable of injuring Israelis, as identified by the 1,600 Israelis who were injured during the 2014 hostilities, due to the limited information regarding the severity of their injuries it is as of now unclear whether these injuries constitute as genocide under international law (UNHRC, 2015).

What is clear, is the fact that Israel's near complete control over the Gaza Strip and access to more advanced weapons has allowed the state to unabatedly kill, injury, and inflict conditions of life on Palestinians in Gaza intended to about the destruction of Arab-Palestinians, in whole or in part. This is apparent in the disproportionate number of Palestinians killed and injured throughout the conflict, which killed 2,251 and injured another 11,231 Palestinians. While there is relatively limited information on the severity of these injures, the UNHRC (2015) found that ten percent of the injuries suffered during the conflict were permanent and therefore constitute as 'serious bodily harm' under international law. Considering this, Israel directly killed and seriously injured approximately 3,374 Palestinians living in Gaza. This number doesn't include those Palestinians Israel has indirectly killed in the last two and a half years due to a lack of housing, electricity, water and medical aid available to Palestinians living in Gaza. This ability to obstruct necessary reconstruction and therefore maintain conditions of life which cause a slow death, is what make's Israel more capable and guilty of perpetrating a genocide against Arab-Palestinians living in Gaza.

Although the IDF and the State of Israel did not utilize the same genocidal tactics as those used in Yugoslavia or Rwanda, the actions taken in Gaza during the 2014 Israel-Gaza War constitute as genocide because they were intended to and have succeeded in destroying Arab-

Palestinians in whole or in part. The attempt by the international community to create a ‘model’ genocide in which all genocides are compared too, only serves to limit the applicability and understanding of the crime of genocide. Every genocide develops differently. Some manifest near instantaneously and result in the gruesome slaughter and systematic rape of individuals, like that of Rwanda or the Yugoslavia genocide. Others, happen gradually and covertly kill, injure, and repress thousands of people solely based upon their religious national identity, like that of the Palestinians living in Gaza. While the recent 2014 conflict resulted in the death and serious bodily harm of more than 3,374, this is only one snapshot of a seemingly never ending conflict, which has directly killed over 9,000 Arab-Palestinians in the last seventeen years (B'Tselem, 2014 and the UNHRC, 2015). This covert genocide must end and must be prosecuted under international law.

While the ICC and the international community have a legal and moral obligation to recognize and prosecute Israeli and Palestinian actors for their respective parts in perpetrating or attempting to commit genocide during the 2014 Israel-Gaza War, this will likely never happen. Global politics which dictate the rulings of the ICC and the actions taken by the UN, will never permit such a trial or prosecution to occur. The international community will therefore continue to utilize labels such as ‘war crimes,’ ‘crimes against humanity,’ or even ‘atrocities crimes’ to refer to the genocidal acts continuously committed by Israeli and Palestinian actors (UNHRC, 2015 and OSAPG, 2014). In this instance, the labeling of Israeli and Palestinian crimes as ‘war crimes’ and ‘crimes against humanity’ only serves as euphemism which blatantly ignores the acts for what they truly are.

Even though the crimes committed by Israeli and Palestinian actors during the 2014 Israel-Gaza War will never receive legal recognition under international law, the conflict is still



that of a genocide. Regardless of whether the ICC or the UN recognizes it as such, the systematic killing and harming of Israeli-Jews and Arab-Palestinian individuals on the basis of their religious national identity continues today and will continue as long as the conflict prevails. While international institutions, like the ICC and the UN, are nearly bound by global politics to ignore the genocidal nature of this conflict, international scholars and non-governmental organizations have an obligation to overcome this pressure to ignore the conflict as that of a genocide. Specifically, referring to human rights organizations such as Amnesty International and Human Rights Watch, which despite their promise of 'impartiality' continue to adhere to global politics and refuse to even analyze the conflict as a possible genocide. As these organizations were created with the intent of being free of political biases and influence, organizations like Amnesty International and Human Rights Watch have a duty to recognize and publicize what the international community itself cannot. The continuous ignorance and denial of the Israeli and Palestinian genocide cannot endure, otherwise both religious-nationalist group will continue to commit acts of genocide against one another until either group ceases to exist. As the genocidal conflict has already taken over 10,600 Palestinian and Israeli lives in the past seventeen years alone, the question remains. How many more Palestinians and Israelis have to die before this crime is recognized?

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