

The International Community Must End Israel's Collective Punishment of the Civilian Population in the Gaza Strip

As international and criminal law scholars, human rights defenders, legal experts and individuals who firmly believe in the rule of law and in the necessity for its respect in times of peace and more so in times of war, we feel the intellectual and moral duty to denounce the grave violations, mystification and disrespect for the most basic principles of the laws of armed conflict and of the fundamental human rights of the entire Palestinian population committed during the ongoing Israeli offensive in the Gaza Strip. We also condemn the launch of rockets from the Gaza Strip, as every indiscriminate attack against civilians, regardless of the identity of the perpetrators, is not only illegal under international law but also morally intolerable. However, as also implicitly noted by the UN Human Rights Council in its Resolution of 23 July 2014, the two parties to the conflict cannot be considered equal, and their actions – once again – appear to be of incomparable magnitude.

Once again it is the unarmed civilian population, the 'protected persons' under International humanitarian law (IHL), who is in the eye of the storm. Gaza's civilian population has been victimized in the name of a falsely construed right to self-defence, in the midst of an escalation of violence provoked in the face of the entire international community. The so-called Operation Protective Edge erupted during an ongoing armed conflict, in the context of a prolonged belligerent occupation that commenced in 1967. In the course of this ongoing conflict thousands of Palestinians have been killed and injured in the Gaza Strip during recurrent and ostensible 'ceasefire' periods since 2005, after Israel's unilateral 'disengagement' from the Gaza Strip. The deaths caused by Israel's provocative actions in the Gaza Strip prior to the latest escalation of hostilities must not be ignored as well.

According to UN sources, over the last three weeks, at least 1,373 Palestinians in Gaza have been killed and 8,265, including 2,502 children and 1,626 women, have been injured. Several independent sources indicate that only 15 per cent of the casualties were combatants. Entire families have been murdered. Hospitals, clinics, as well as a rehabilitation centre for disabled persons have been targeted and severely damaged. During one single day, on Sunday 20th July, more than 100 Palestinian civilians were killed in Shuga'iya, a residential neighbourhood of Gaza City. This was one of the bloodiest and most aggressive operations ever conducted by Israel in the Gaza Strip, a form of urban violence constituting a total disrespect of civilian innocence. Sadly, this was followed only a couple of days later by an equally destructive attack on Khuza'a, East of Khan Younis.

Additionally, the offensive has already caused widespread destruction of buildings and infrastructure: according to the UN Office for the Coordination of Humanitarian Affairs, over 3,300 houses have been targeted resulting in their destruction or severe damage.

As denounced by the UN Fact-Finding Mission (FFM) on the Gaza conflict in the aftermath of Israel's 'Operation Cast Lead' in 2008-2009: "While the Israeli Government has sought to portray its operations as essentially a response to rocket attacks in the exercise of its right to self defence, the Mission considers the plan to have been directed, at least in part, at a different target: The people of Gaza as a whole" (A/HRC/12/48, par. 1883). The same can be said for the current Israeli offensive.

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The civilian population in the Gaza Strip is under direct attack and many are forced to leave their homes. What was already a refugee and humanitarian crisis has worsened with a new wave of mass displacement of civilians: the number of IDPs has reached more than 457,000, many of whom have obtained shelter in overcrowded UNRWA schools, which unfortunately are no safe areas as demonstrated by the repeated attacks on the UNRWA school in Beit Hanoun. Everyone in Gaza is traumatized and living in a state of constant terror. This result is intentional, as Israel is again relying on the 'Dahiya doctrine', which deliberately has recourse to disproportionate force to inflict suffering on the civilian population in order to achieve political (to exert pressure on the Hamas Government) rather than military goals.

In so doing, Israel is repeatedly and flagrantly violating the law of armed conflict, which establishes that combatants and military objectives may be targeted, *i.e.* 'those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.' Most of the recent heavy bombings in Gaza lack an acceptable military justification and, instead, appear to be designed to terrorize the civilian population. As the ICRC clarifies, deliberately causing terror is unequivocally illegal under customary international law.

In its Advisory Opinion in the Nuclear Weapons case, the ICJ stated that the principle of distinction, which requires belligerent States to distinguish between civilians and combatants, is one of the "cardinal principles" of international humanitarian law and one of the "intransgressible principles of international customary law".

The principle of distinction is codified in Articles 48, 51(2) and 52(2) of the Additional Protocol I of 1977 to the 1949 Geneva Conventions, to which no reservations have been made. According to Additional Protocol I, "attacks" refer to "acts of violence against the adversary, whether in offence or in defence" (Article 49). Under both customary international law and treaty law, the prohibition on directing attacks against the civilian population or civilian objects is absolute. There is no discretion available to invoke military necessity as a justification.

Contrary to Israel's claims, mistakes resulting in civilian casualties cannot be justified: in case of doubt as to the nature of the target, the law clearly establishes that an object which is normally dedicated to civilian purposes (such as schools, houses, places of worship and medical facilities), is presumed as not being used for military purposes. During these past weeks, UN officials and representatives have repeatedly called on Israel to strictly abide by the principle of precaution in carrying out attacks in the Gaza Strip, where risks are greatly aggravated by the very high population density, and maximum restraint must be exercised to avoid civilian casualties. HRW has noted that these rules exist to minimize mistakes and "when such mistakes are repeated, it raises the concern of whether the rules are being disregarded."

Moreover, even when targeting clear military objectives, Israel consistently violates the principle of proportionality: this is particularly evident with regard to the hundreds of civilian houses destroyed by the Israeli army during the current military operation in Gaza. With the declared intention to target a single member of Hamas, Israeli forces have bombed and destroyed houses although occupied as residencies by dozens of civilians, including women, children, and entire families.

It is inherently illegal under customary international law to intentionally target civilian objects, and the violation of such a fundamental tenet of law can amount to a war crime. Issuing a 'warning' – such as Israel's so-called roof knocking technique, or sending an SMS five minutes

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before the attack - does not mitigate this: it remains illegal to wilfully attack a civilian home without a demonstration of military necessity as it amounts to a violation of the principle of proportionality. Moreover, not only are these 'warnings' generally ineffective, and can even result in further fatalities, they appear to be a pre-fabricated excuse by Israel to portray people who remain in their homes as 'human shields'.

The indiscriminate and disproportionate attacks, the targeting of objectives providing no effective military advantage, and the intentional targeting of civilians and civilian houses have been persistent features of Israel's long-standing policy of punishing the entire population of the Gaza Strip, which, for over seven years, has been virtually imprisoned by an Israeli imposed closure. Such a regime amounts to a form of collective punishment, which violates the unconditional prohibition set forth in Article 33 of the Fourth Geneva Convention and has been internationally condemned for its illegality. However, far from being effectively opposed by international actors, Israel's illegal policy of absolute closure imposed on the Gaza Strip has relentlessly continued, under the complicit gaze of the international community of States.

As affirmed in 2009 by the UN Fact Finding Mission on the Gaza Conflict: "Justice and respect for the rule of law are the indispensable basis for peace. The prolonged situation has created a justice crisis in the Occupied Palestinian Territory that warrants action" (A/HRC/12/48, para. 1958) Indeed: "long-standing impunity has been a key factor in the perpetuation of violence in the region and in the reoccurrence of violations, as well as in the erosion of confidence among Palestinians and many Israelis concerning prospects for justice and a peaceful solution to the conflict". (A/HRC/12/48, para. 1964)

Therefore,

- We welcome the Resolution adopted on 23 July 2014 by the UN Human Rights Council, in which an independent, international commission of inquiry was established to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory.
- We call upon the United Nations, the Arab League, the European Union, individual States, in particular the United States of America, and the international community in its entirety and with its collective power to take action in the spirit of the utmost urgency to put an end to the escalation of violence against the civilian population of the Gaza Strip, and to activate procedures to hold accountable all those responsible for violations of international law, including political leaders and military commanders. In particular:
 - All regional and international actors should support the immediate conclusion of a durable, comprehensive, and mutually agreed ceasefire agreement, which must secure the rapid facilitation and access of humanitarian aid and the opening of borders to and from Gaza;
 - All High Contracting Parties to the Geneva Conventions must be urgently and unconditionally called upon to comply with their fundamental obligations, binding at all times, and to act under common Article 1, to take all measures necessary for the suppression of grave breaches, as clearly imposed by Article 146 and Article 147 of the Fourth Geneva Convention; these rules are applicable by all interested parties as well;
 - Moreover, we denounce the shameful political pressures exerted by several UN Member States and the UN on President Mahmoud Abbas, to discourage recourse to the

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International Criminal Court (ICC), and we urge the Governmental leaders of Palestine to invoke the jurisdiction of the ICC, by ratifying the ICC treaty and in the *interim* by resubmitting the declaration under Article 12(3) of the Rome Statute, in order to investigate and prosecute the serious international crimes committed on the Palestinian territory by all parties to the conflict; and

- The UN Security Council must finally exercise its responsibilities in relation to peace and justice by referring the situation in Palestine to the Prosecutor of the ICC.

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240. Andrés Felipe Gómez Ariza, Colombia, Public International Law LLM candidate, University of Leicester, UK
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242. Kelly L. Grotke, PhD, Affiliate Research Fellow, Erik Castrén Institute of International Law and Human Rights, University of Helsinki, Faculty of Law, Iceland
243. Kumaravadivel Guruparan, Lecturer, Department of Law, University of Jaffna, Sri Lanka
244. Mateenah Hunter, LLB (Wits), LLM Public Interest Law and Policy (UCLA), Attorney, South Africa
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246. Issaaf Ben Khalifa, Lawyer, University of Carthage, Tunisia
247. Urfan Khaliq, Professor of International Law, Cardiff University, UK
248. Ahmed Amine Khamlichi, Investigator at the CNRS, France
249. Adilur Rahman Khan, Senior Advocate at Supreme Court of Bangladesh

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254. Roberto Lamacchia, Lawyer, President, Association Democratic Jurists, Turin, Italy
255. Michelle Landy, Solicitor, London, UK
256. Federico Lenzerini, Assistant Professor of International Law, University of Siena, Italy
257. Afsaneh Lotfizadeh, Human Rights Researcher (UCL LL.M graduate), London, United Kingdom
258. Michael Lynk, Professor, Faculty of Law, Western University, London, Ontario, Canada
259. Osama Malik, Advocate, Islamabad High Court Bar Association, Pakistan
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261. Ana Manero Salvador, Associate Professor of Public International Law, University Carlos III, Madrid, Spain
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294. Michael Ratner, President Emeritus, Center for Constitutional Rights, New York, USA
295. Edel Reagan, LL.M, Irish Center for Human Rights, Galway, Northern Ireland
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317. Lydia Vicente-Márquez, Executive Director, Rights International Spain

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326. Richard Wild, Lecturer, School of Law, University of Greenwich, UK
327. Pål Wrange, Professor of International Law, Stockholm University, Sweden

328. Selma Abdel Qader, LLM, SciencesPo, PSIA, Paris, France
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332. Carla Biavati, Members of the IPRI - Institute for Peace Research, Italian branch
333. Linda Bimbi, International Section of the Lelio and Lisli Basso Foundation, Rome
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378. Carlo Tagliacozzo, Human Rights Activist, Turin, Italy
379. Jeanne Theoharis, Distinguished Professor of Political Science, Co-Founder of Educators for Civil Liberties, Brooklyn College of CUNY, New York, USA
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