



**Al Mezan Center for Human Rights**

**Habitat International Coalition –  
Housing and Land Rights Network**



Jabaliya, Gaza and Cairo  
14 January 2009

## **OPEN LETTER**

**H.E. Father Miguel d'Escoto Brockmann**

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Permanent Mission of Nicaragua to the United Nations  
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Your Excellency:

Al Mezan Center for Human Rights (Gaza) and the Housing and Land Rights Network of Habitat International Coalition, comprised of civil organizations concerned with human settlements in over 100 countries, appreciate the momentous duty that you face in addressing the probable war crimes and crimes against humanity being carried out in Gaza since 27 December 2008. It may be unreasonable to invoke reference to a Middle East peace process except in a posthumous sense in this context. However, at stake still are prospective consequences of the present assault by Israel on Gaza that promise to undermine further the credibility of the states and governments of the international system globally, the United Nations Organization and international law norms as such, unless an appropriate and principled response is seen to come from the General Assembly (GA) that effectively upholds international human rights, humanitarian norms and international criminal law. The challenge before you and the GA embodies no less than those stakes, having global dimensions.

In support of that looming task, Al Mezan Center for Human Rights and the Housing and Land Rights Network of Habitat International Coalition offer the attached contribution to the GA's work, outlining the issues involved and the values at stake for the GA's consideration. In the spirit of problem solving and preservation of fundamental principles of the UN Charter, we urge the GA to take the requisite measures to establish justice and enforce the rule of law commensurate with the promise of the applicable instruments of international law. The world expects no less.

Toward that end, we join the numerous other civil movements and experts across the globe in supporting the establishment of a special tribunal that calls to justice those parties of record and other perpetrators of the war crimes and crimes against humanity carried out

against the civilians of Gaza in this conflict. To wit, Israel's wanton destruction of homes and other civilian properties and infrastructure is one demonstrable means by which the current conduct of warfare breaches numerous international prohibitions against criminal conduct, requiring full reparations as remedy for the legal and natural persons affected.

The attached brief summarizes essential details of these documented charges that inform the audaciously hopeful proposal for international accountability in the form of a special tribunal on Israel's continued occupation and current assault of the Gaza Strip. We submit these notes for your consideration and remain supportive of that adjudication-and-reparation effort.

In the meantime, we look forward to receiving information on your positive efforts to achieve remedy to the grave breaches ongoing in the occupied Gaza Strip under your presidency.

Please be assured of our highest consideration,

Yours,

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# Call to Justice: Targeting Gaza Homes and Civilians as War Crimes

## *The Need for a Special Tribunal*

Legal experts and international human rights bodies have long established that human rights law and its corresponding State obligations do not disappear with the outbreak of conflict. In support of that legal fact, international case law and the findings of UN human rights treaty bodies provide ample support for the contention that a State's human rights obligations extend to areas beyond its national borders to areas within its "effective control."<sup>1</sup>

The current war on Gaza has arisen from a background of ethnic cleansing and population transfer carried out by Israeli forces since the origins of the State of Israel and over 41.5 years of military occupation and siege.

The recent Hamas retaliation for Israel's blockade, targeted assassinations and incursions into the Gaza Strip primarily has taken the form of rockets launched randomly at Israeli settlements near the Gaza Strip. While those actions are not permitted under international law, neither is the overwhelmingly disproportionate destruction that Israel has wreaked on the Gaza Strip since it began its offensive "Operation Cast Lead" on 27 December 2008.

Of particular concern is the systematic destruction of homes and other civil property, facilities and infrastructure. Since 27 December, Israeli forces have destroyed at least 470 Palestinian homes, of which some 172 were deliberately targeted, and damaged 3,000–4,000.<sup>2</sup> (Houses located under Israeli invasion around Gaza are not included in this figure, but are expected to be in the dozens.) Despite Israel's 1991 ratification of the International Covenant on Economic, Social and Cultural Rights, which enshrines the human right to adequate housing, this particular human rights violation forms part of a consistent pattern of illegal Israeli practice constituting war crimes and crimes against humanity since the occupation of OPT commenced in 1967. More recently, the Israeli military attack on homes characterized its 2006 war on Lebanon, whereas 42 of the 54 documented massacres during that campaign involved direct targeting of homes and shelters of displaced persons.<sup>3</sup> "Operation Cast Lead" follows that same pattern embodying the elements of crime that also constitute grave breaches of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, which Israel ratified in 1951 and remains *de jure* applicable to Israel's continuing occupation of Palestine.

Of the international humanitarian law (IHL) rules applicable to attackers, the most relevant are the principles of distinction, proportionality and necessity, and the obligation to take related precautionary measures to protect civilians. These obligations are cumulative; that means that an attack must comply with all of the rules in order to be lawful.<sup>4</sup>

### *Distinction:*

In order to comply with the principle of distinction, the parties to a conflict must distinguish between civilians and combatants at all times,<sup>5</sup> and they may direct attacks only at military objectives. Such targets are defined as those objects that, by their nature, location, purpose or use, effectively contribute to military action, and whose total

or partial destruction, capture or neutralization, in the current circumstances, provides a definite military advantage.<sup>6</sup>

Israeli army spokesperson Major Avital Leibowitz has asserted the Israeli military position that "Anything affiliated with Hamas is a legitimate target."<sup>7</sup> Also demonstrating intent to commit war crimes, Israel's Foreign Minister Tzipi Livni announced on 29 December: "They don't make a distinction, and neither should we."<sup>8</sup> This expression of intent to dismiss the IHL principle of distinction is consistent with Israel's military behavior since the start of the operation and may make Israeli implementers of this unlawful practice liable for prosecution for war crimes.

Israel launched its "Operation Cast Lead" at 11:30 AM on 27 December, a time when Gaza's urban centers are known to be teeming with civilian population and the hour in which children are changing shifts at school. The place and timing of the first and subsequent attacks obviously could not have been without the expectation of causing the greatest possible civilian losses. On that day, Israeli forces launched an attack on the Ibrahim al-Maqadma Mosque, located in the densely populated Jabaliya Refugee Camp, during prayer time when it was crowded with some 200 worshippers, killing 16.<sup>9</sup> Israeli forces conducted other attacks on Hamas officials when they were surrounded by their family members and neighbors.<sup>10</sup> Given this pattern, it is logical to conclude that the Israeli attackers have sought to cause incidental loss of civilian life, civilian injuries and damage to civilian objects.

Civilian infrastructure has suffered grave damage. On 2 January, Israeli airstrikes in the al-Mughraqa area damaged a main drinking water pipe, cutting off water supplies to 30,000 people in Nusairat Camp. In addition, according to the CMWU (Gaza's water utility), 48 of Gaza's 130 water wells are not functioning for lack of electricity, damage to the pipes or diminished fuel reserves on which its electricity generators depend. At least 45 additional water wells are operating only partially and may be shut down all together for lack of fuel and electricity. Due to the general security, the CMWU has been prevented from repairing the damage to the networks.<sup>11</sup>

As of 7 January, 800,000 people in northern and central Gaza have been without running water. Sewage and water systems have undergone considerable damage, causing sewage flooding in Beit Hanoun and Beit Lahiya. Five of Gaza's 37 waste-water pumping stations have been shut down due to lack of electricity and fuel for back-up generators. Further, the current military operations could damage the sand walls of the Beit Lahiya sewage pond and cause a massive sewage spill, which would directly affect 15,000 inhabitants.<sup>12</sup>

The Israeli attacks also destroyed 38 mosques; 13 of which were directly and wantonly targeted. 39 schools were damaged, of which five (inc. one university) were directly targeted. Israeli attacks also destroyed 42 public civilian facilities; including the offices or community-based organizations and quasigovernmental institutions. Furthermore, it destroyed 107 privately owned workshops and small industrial and commercial plants. The Israeli army also destroyed 90 police and security installations and 25 sites that were used for military purposes by armed groups.<sup>13</sup>

### *Proportionality:*

Israel's continuous blockade of Gaza does not alter the unjustifiable character of the rocket attacks issuing from there; however, it does suggest that Israel has not only acted knowingly to deepen the desperation of Gaza's inhabitants. In turn, the State of Israel has violated the IHL proportionality principle by the sheer scale of civilian harm resulting from its subsequent military assault, making unlawful Israeli conduct far greater than that of Palestinian unlawful conduct.

By 12 January, Palestinian medical personal were reporting that Israel had killed at least 935 people in Gaza, at least 80% of them civilians.<sup>14</sup> Israeli sources claimed to have killed 300 Hamas fighters. Palestinian fighters reportedly had killed three Israeli noncombatants, while 10 Israeli soldiers apparently died in the offensive, including three allegedly falling to "friendly fire" when an Israeli tank shell hit a building in which they were resting.

The kill ratio provides one indicator of disproportionality, with the Israeli assault leaving over 900 Palestinians dead as compared with 13 Israelis. That makes a kill ratio of more than 69 to 1.

Israeli army Deputy Chief of Staff Brigadier General Dan Harel has further revealed the clear intention to disregard the binding IHL principle of proportionality. He stated in the first days of "Operation Cast Lead" that "We are hitting not only terrorists and launchers, but also the whole Hamas government and all its wings." Harel continued to specify, "We are hitting government buildings, production factories, security wings *and more*." He added plainly, "We are demanding governmental responsibility from Hamas and are *not making distinctions between the various wings*. After this operation there will not be one Hamas building left standing in Gaza, and we plan to change the rules of the game (emphasis added).<sup>15</sup>

This has translated into willful, disproportionate attacks on civilian targets, as indicated above, using very heavy weaponry. In this case, "indiscriminate attacks"—that is, attacks that strike civilians or civilian objects and military objectives without distinction--may qualify as direct attacks against civilians. Indiscriminate attacks are expressly prohibited by Additional Protocol I. This prohibition reflects a well-established rule of customary law applicable in all armed conflicts.<sup>16</sup>

### *Necessity:*

The only circumstance in which a conflict party lawfully may target civilians is at such time as they assume a direct role in hostilities.<sup>17</sup> Thus, attacks on civilian objects<sup>18</sup> are unlawful unless, at the time of the attack, they were used for military purposes and their destruction serves a definite military purpose, fulfilling the strict requirement of military "necessity."

Israeli civilian and military spokespersons have repeated their intent to destroy targets not characterized as having military use, or the destruction of which does not meet the requirements of military necessity. "Hamas's civilian infrastructure is a very, very sensitive target. If you want to put pressure on them, this is how," said Matti Steinberg, a former adviser to Israel's domestic security.<sup>19</sup>

Neither is the political leadership of Hamas nor are family homes legitimate military targets. Nonetheless, Israeli forces targeted the home of Islamic law professor and Hamas leader Sheikh Nizar Rayyan in Jabaliya, on 1 January, killing him and 15 members of his family, including 11 children. The force of the bombardment destroyed ten adjacent houses. On 11 January, Israeli forces killed four members of a single family when an Israeli tank fired a shell into their home in Gaza City.<sup>20</sup>

The Israeli attackers also have destroyed 38 mosques, 13 of which they directly and wantonly targeted. Of the 39 schools damaged, at least five (and one university) were directly targeted. Moreover, Israeli attacks have destroyed 42 civilian facilities, including office of community-based organization and quasigovernmental institutions. So far, Israel's army in Gaza has destroyed 107 privately-owned workshops and small industrial and commercial plants, as well as 90 civil police and security installations. That is in addition to its destruction of 25 sites that were used for military purposes by armed groups.<sup>21</sup>

The prospect of many more wanton demolitions is not only feared, but the Israeli attackers have demonstrated their intent to destroy more homes, in addition to the 470 already flattened and between 3,000 and 4,000 damaged. The Israel army reportedly has issued telephone and text messages to hundreds of households warning of the imminent destruction of their homes. As of 3 January, however, apparently the Israeli forces had carried out only 37 of such targeted and forewarned house demolitions.<sup>22</sup>

The Israeli pattern of targeting refugees and displaced persons has continued in the present conflict. On 4 January, Israeli forces knowingly massacred some 30 Palestinians in the Zaitun neighborhood, southeast of Gaza City, when they shelled a house where they had ordered about 110 civilians to take shelter and remain indoors. Just 24 hours after the order, the Israeli army shelled the house. About half the Palestinians sheltering there were children. The Israeli army personnel then prevented medical teams from entering the area to evacuate and treat the wounded, allowing some International Committee of the Red Cross (ICRC) and the Palestinian Red Crescent Society staff eventually to approach the site on foot—without ambulances—during the three-hour lull in hostilities three days later to evacuate about 30 survivors, including 18 wounded.

Israeli missiles killed 43 Palestinians and wounded more than 100 on 8 January 2009, when Israeli bombers targeted the UN-operated al-Fakhura School sheltering hundreds of people in the Jabaliya Refugee Camp. That attack came despite the school's clear markings with the UN flag and UN officials coordinating information on the school's position with the Israeli military. Earlier, Israeli bombers killed three Palestinians in an attack on Asma' Bint Bakr School in the Beach Refugee Camp in western Gaza City.<sup>23</sup>

After these events, Israeli planes began dropping leaflets on Saturday, 10 January, warning of escalated military operations and calling for local people to collaborate with the Israeli war effort. The leaflets told the Gaza population that "The Israeli [Defense] Forces are not working against the people of Gaza, but against Hamas and the terrorists only" and added incredibly: "Stay safe by following our orders."<sup>24</sup>

On 11 January 2009, an Israeli aircraft fired a missile into a crowd of children who were near a mosque in the north of Beit Lahia, killing the five of them; three girls and two boys: Haitham Yasir Ma'ruf, 12; Fatima Muhammad Ma'ruf, 16; and `Abd ul-Rahman

Ghabin, 14; Khawla Ramadan Ghabin, 16; and her sister, Samar Ramadan Ghabin, 14.<sup>25</sup>

It should be noted that such indiscriminate attacks may qualify as direct attacks against civilians. Indiscriminate attacks are expressly prohibited by Additional Protocol I. This prohibition reflects a well-established rule of customary law applicable in all armed conflicts.<sup>26</sup>

The nature of these attacks as well as their objects reflect a serious violation of the distinction rule; particularly as the Israeli military employs effectively the most advanced, sophisticated means of surveillance that enable it to distinguish between civilian and military targets. This establishes that the attacks were launched willfully and in knowledge of circumstances giving rise to the expectation of excessive civilian casualties, which may give rise to the inference that civilians were actually the object of attack.<sup>27</sup>

#### *Protection of civilians:*

In compliance with applicable international law, a military attacker must take all feasible precautions to minimize and, where possible, prevent incidental civilian injury or loss of life and damage to civilian objects.<sup>28</sup> IHL prescribes specific precautionary measures to be taken in the planning and conduct of attacks.<sup>29</sup> Moreover, an attacker is required to give effective advance warning of attacks that may affect the civilian population, unless circumstances do not permit.<sup>30</sup>

The general IHL principle of precaution also requires each party to the conflict to give effective advance warning of attacks that may affect the civilian population, providing enough time and opportunity to evacuate safely, unless circumstances do not permit.

At least 3,725 people have been injured and/or maimed during the same period. This number includes at least 760 children and 448 women.<sup>31</sup> Among the Palestinians killed on 8 January, were a Palestinian general, a hospital administrator driving to work and two children, aged nine and 11, who were hit by bullets from a machine gun. Israeli soldiers shot one of the boys dead while he was in his home, and the other one while he was on the street.<sup>32</sup> On 10 January, an Israeli tank shell killed nine people in a garden outside a home in the northern Gaza town of Jabaliya. The nine were from the same clan and included two children and two women.<sup>33</sup>

During Operation Cast Lead, the Israeli army reportedly used new tactics; including the “roof-knock.” This is when a relatively small rocket is fired from Israeli military aircraft that is strong enough to blast open the roof of a targeted building, as a “warning message” to the building's inhabitants, giving them only a few minutes to evacuate before the building is completely destroyed.

This illegal tactic has caused numerous civilian casualties. One example is the case of the Salha family. On Friday, 9 January, Israeli aircraft attacked the house of Fayiz Salha with a heavy missile. A drone had fired a warning missile two minutes earlier. The inhabitants did not manage to leave the house before the major bombardment; therefore, Israeli forces killed six of its residents; including four children and two women: Rula Fayiz Salha, 1; Baha' Fayiz Salha, 4.5; Rana Fayiz Salha, 12; Dhia' Fayiz Salha,

14; Fatima al-Haw, 22; Randa Fayiz Salha, 33. The house was completely destroyed and four neighboring homes were damaged in this attack.<sup>34</sup>

Pilots also fired missiles when ambulances or neighbors of bombarded houses were clearly seen coming to help the individuals residing there. For example, on 11 January 2009, an Israeli aircraft fired a missile into a crowd of residents of the al-Karama apartment compound, killing Ibrahim Ayish Salman, 25. When neighbors tried to help the victim, a second missile was fired at them, killing Ala' Fathi Bashir, 40, and his 18-year-old son, Suhaib. Yet, when neighbors tried to help them, aircrafts fired a third missile, killing a 40-year-old woman, Lamia Hasan Bashir, and another 75-year-old woman, Jamila Hasan Zyadeh. Four other people were injured in this attack.<sup>35</sup>

On 4 January 2009, an Israeli aircraft fired a guided missile at an ambulance in the Zaitun neighborhood, east of Gaza City, their way to collect injured people in the area. The three crewmen were killed, as a result. They were identified as: Anas Fadhil Na'im, 25; Raf'at `Abd ul-`Al, 25; and Yasir Kamal Sa'id, 24.<sup>36</sup>

On 12 January 2009, an Israeli aircraft fired a missile at Hammouda-and-Banna apartment compound, which is located in al-Zarqa' area in Jabaliya town. While the residents of the compound were trying to evacuate their apartments following the first attack, the Israeli occupation forces fired several artillery shells at the tower, killing 18-year-old Ayat Kamal al-Banna, and injuring four others, including two children. Once Ambulances arrived at the scene of the attack to pick up the victims, at approximately 4:22pm, Israeli troops fired several shells at them, hitting an ambulance and killing a doctor, Issa `Abd ul-Rahim Salih, 28, and injuring ambulance driver Ahmed `Abd ul-Bari, 25. The shelling of the same apartment compound continued, killing a 23-year-old woman, Fariat Kamal al-Banna, and a 20-year-old man, Mustafa al-Basha, and injuring another five people.<sup>37</sup>

These willful attacks “amount to recklessness; i.e., gross criminal or wicked negligence, or gross and criminal disregard of duties.” In such cases of willful killing, even if committed by fault of omission, criminal intent can be inferred if death is the foreseeable consequence of such omission.<sup>38</sup>

Israel—with the compliance of the lawless Middle East Quartet—effectively imposed a regime of collective punishment on Gaza's 1.5 million people since the Hamas electoral victory in January 2006. The Quartet imposed Israel's own three conditions on Hamas: to renounce violence, recognize Israeli state sovereignty and abide by previous Oslo-process agreements. Hypocritically, the Quartet never applied those conditions reciprocally on the Israeli government, and instead condoned its impunity on all three counts. Israel kidnapped and incarcerated many Hamas elected representatives, political leaders and supporters, and assassinated others. Palestinian militant groups in Gaza indicated Israel's continued occupation and siege, targeted killings and further blockade of the territory as pretexts for their violent resistance. Israel consistently violated most of the agreements concluded during the Oslo process, and never implemented its part of the Agreement on Movement and Access negotiated with Quartet backing.<sup>39</sup> Thus, Israel's collective punishment continued unimpeded.

Despite a fragile cease fire in effect since June 2008, Israel launched an incursion into Gaza on 4 November and, on 5 November 2008, sealed all the ways into and out of



Gaza, preventing food, medicine, fuel, parts for water and sanitation systems, fertilizer and other essentials from entering Gaza. Israel prevented all but some 137 trucks of food to enter Gaza in November (as compared with an average of 123 trucks per day in October and 564 per day in December 2005). UNRWA, which now feeds approximately 750,000 people in Gaza and requires 15 trucks of food daily to do so, completely ran out of food aid for three days in November. That resulted in 20,000 people going without needed supplies each day. On 18 December UNRWA suspended all food distribution for both emergency and regular programs because of the blockade.

Israel has been subject to charges of consistently using food and medicine deprivation as weapons in its collective punishment of Gaza's population since the Hamas election victory in January 2006. Expert parties such as Christian Aid and the UN Special Rapporteur on the right to food<sup>40</sup> repeatedly have called on Israel to desist from this unspeakable practice.

Collective punishment is not specifically defined as a war crime, although it is strictly prohibited. However, certain forms of collective punishment may involve war crimes and crimes against humanity if they involve population transfer or other grave harm to protected persons (i.e., civilians). Food deprivation measures by Israel are in flagrant violation of international humanitarian law, which stipulates that "1. Starvation of civilians as a method of warfare is prohibited. 2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive."<sup>41</sup>

The precise number of displaced persons in Gaza is unknown. However, 32 UNRWA schools across the Gaza Strip have capacity to shelter 30,000 people in shelters, but aid officials warned that the dire security situation made it impossible to operate at full capacity.<sup>42</sup> According to Al Mezan Center for Human Rights, those seeking shelter in UN installations represent only about 10% of the total newly displaced persons in Gaza.<sup>43</sup>

The Israeli invasion forces have displaced civilians violently by means of house bombardment, or threatened bombardment of neighbors' houses, by direct attacks on their houses resulting in casualties, and by spreading fear among them by dropping threatening leaflets and/or otherwise ordering them to evacuate their homes. At the same time, as shown below, the Israeli army has cut Gaza into four parts and launched attacks on humanitarian workers; rendering humanitarian agencies unable to tend to even 10% of the displaced population.

#### *Prohibited weapons and humanitarian access:*

On 10 January 2009, Palestinian witnesses reported that Israeli forces had fired white phosphorus shells—a weapon banned around built-up areas—at Khuz`a village near Gaza's southeastern border. The inflammatory material ignited a row of houses. (Khuz`a is the site in which Israeli soldiers opened fire on Palestinian farmers and ISM volunteers sowing lentils seeds in the nearby fields on 6 November 2008.<sup>44</sup>) The recent

attack killed one woman and injured more than 100, most suffering from gas inhalation and burns.<sup>45</sup>

Despite coordination with the Israeli military command, humanitarian relief operations have been interrupted by Israeli bombing and ground operations. UNRWA, the UN agency in charge of Palestinian refugees, resumed operations after suspending them because of Israeli attacks on its convoys.<sup>46</sup> An Israeli assault on another school UNRWA employee was killed in a third strike on one of the schools.

On 8 January, Israeli soldiers opened fire at a UNRWA food-laden truck in northern Gaza Strip, killing the driver and wounding another worker in the truck.<sup>47</sup> The ICRC has reported that Israel's prevention of humanitarian access has abandoned the dead and wounded Palestinians in Gaza and rendered them unreachable by medical teams. On 7 January, ICRC personnel discovered four young children huddled around 12 bodies inside a shelled house. The Israeli forces ordered ICRC aid workers from an army outpost about 80 metres from the destroyed house to leave the area, where more than a dozen other wounded Palestinians were languishing in bombed houses.<sup>48</sup> The ICRC director of operations has reported that "Many people in Gaza don't get the emergency medical care they need. Some are even dying because ambulances can't reach them in time, which is frankly appalling."<sup>49</sup> Israeli forces have killed six medical personnel who were transporting the injuries.<sup>50</sup>

In addition to the war crimes and grave breaches cited here, widespread reports now indicate that Israeli forces are carrying out forced evacuations of entire neighborhoods of people who go mainly to nearby schools or other public buildings not yet destroyed. Because of consistent Israeli targeting these structures also, they are considered no more secure than the Palestinians homes. The congregation of so many people in such enclosed spaces increases the likelihood of continued civilian casualties when airstrikes target the area.

#### *Criminal liability:*

Serious violations mentioned above and other principles of international humanitarian law by individuals constitute war crimes. States are obliged under international law to investigate these and other war crimes committed within their jurisdiction,<sup>51</sup> allegedly committed by their nationals or armed forces, or on their territory, and to prosecute any suspected violators.

The UN Security Council overwhelmingly adopted resolution 1860, calling for an immediate ceasefire. The resolution is binding on all states parties; however, Israel has dismissed it and instead intensified its assault on Gaza, now in "stage 3."

There is no legal or moral justification for firing rockets at civilian targets, and such behavior violates both IHL and international human rights norms associated with the rights to life, health and adequate housing, among others, as well as constituting a war crime. At the same time, the nature of the offence should be evaluated within the context of its occurrence.

The situation clearly calls for investigation and trial of those decision makers and implementers who bear liability for these crimes. It is imperative that the Security Council

establish a special tribunal for that urgent purpose. However, unlikely it may be to expect the Security Council to function as needed, given its veto procedures typically used to ensure impunity. That event would call for the General Assembly to invoke the Uniting for Peace resolution<sup>52</sup> authorizing the GA to act in security matters when the Security Council fails in its duty to do so, as well as under Article 22 of the UN Charter, authorizing the General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions..

Liable parties calling for, approving, ordering and/or expressing intent in the commission of war crimes include, but are not limited to, the following persons of record:

- Chief of Staff General Gabi Ashkenazi, head of the Shin Bet Security Service
- Defence Minister Ehud Barak
- Major Gen Uzi Dayan, former chairman of the Israeli National Security Council
- Director of Shabak Yuval Diskin
- Major General (Res.) Giora Eiland, formerly head of the National Security Council
- Northern Commander Major General Gadi Eisenkot
- Deputy Chief of Staff Brigadier General Dan Harel
- Knesset Speaker Dalia Itzik
- Major Avital Leibowitz
- Yisrael Beiteinu Party Chairman Avigdor Lieberman
- Foreign Minister Tzipi Livni
- Likud Party Chairman Benjamin Netanyahu
- Prime Minister Ehud Olmert
- President Shimon Peres
- Israeli Ambassador to UK Ron Prosor
- Vice Premier and Minister in the Prime Minister's Office Haim Ramon
- Colonel (Res.) Gabriel Siboni
- Matti Steinberg, former domestic security adviser
- Foreign Ministry Deputy Director-general Yarden Vatikay
- Deputy Defence Minister Matan Vilnai
- Head of the Military Intelligence Directorate Amos Yadlin

Any effort to produce a sustainable ceasefire should ensure that Israel, as well as Hamas respect humanitarian law, which most concretely means an end to Israel's interference with the transport and access of goods needed for the maintenance of normal civilian life, and preventing the repeat of such measures in retaliation for some rocket attack in the future.

The restoration of stability and international law would require also full reparations for affected legal and natural persons subject to gross violations, grave breaches and crimes carried out in the conduct of this gratuitous war.

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<sup>1</sup> Examples include International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, advisory opinion, 8 July 1996, *I.C.J. Reports 1996 (I)*, p. 226, at p. 240, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, advisory opinion, 9 July 2004, *I.C.J. Reports 2004*, para. 106; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *I.C.J. Reports 2005*, para. 219. European Court of Human Rights, *Loizidou v. Turkey* (40/1993/435/514), 18 December 1996; and *al-Skeini* op cit., and, in the case of Israel's human rights obligations in the post-1967 occupied territories, see the Concluding Observations of the Human Rights Committee, monitoring the Covenant on Civil and Political Rights, CCPR/C/79/Add.93, CCPR/C/ISR/2001/2; the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.27 (1998) and E/C.12/1/Add.90 (2003); the Committee against Torture CAT/C/XXVII/Concl.5 (2001);

- the Committee on the Elimination of Racial Discrimination (CERD) CERD/C/304/Add.45 (1998) A/52/18, para. 19(3), and CERD Prevention of Racial Discrimination, including Early Warning and Urgent procedures A/49/18 (1994). The Human Rights Committee interprets States' human rights obligations to extend to protecting "anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party." See General Comment 31, "Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004), para. 10.
- <sup>2</sup> Al Mezan Center for Human Rights, "The Occupation forces continue targeting civilians and the civil institutions under Inertia of the International Community to Respect Its Legal and Moral Obligations," press release, 11 January 2009.
- <sup>3</sup> See HIC-HLRN, *The Summer War on Habitat in Lebanon: Addressing Housing Rights Violations as War Crimes* (Cairo: HIC-HLRN, November 2006), Annex 3.
- <sup>4</sup> Therefore, humanitarian norms and violations relating to attacks on civilians (unrelated to attacks on the home or other shelter); the use of human shields; the mistreatment of prisoners of war; attacks on humanitarian services, equipment, institutions and personnel fall beyond the present scope.
- <sup>5</sup> *Ibid.*, pp. 3–8 (Rule 1), 25–36 (Rules 7–10).
- <sup>6</sup> *Ibid.*, pp. 25–32 (Rules 7–8).
- <sup>7</sup> Griff Witte and Sudarsan Raghavan, "'All-Out War' Declared on Hamas: Israel Expands List of Targets to Include Group's Vast Support Network in Gaza," *Washington Post* (30 December 2008), p. A01, at: [http://www.washingtonpost.com/wp-dyn/content/article/2008/12/29/AR2008122900373\\_2.html?sid=ST2008123000511&s\\_pos=](http://www.washingtonpost.com/wp-dyn/content/article/2008/12/29/AR2008122900373_2.html?sid=ST2008123000511&s_pos=).
- <sup>8</sup> Amnon Meranda, "Tibi: Politicians counting Palestinian bodies," *Y-net News* (29 December 2008), at: <http://www.ynetnews.com/articles/0.7340.L-3646487.00.html>.
- <sup>9</sup> Sakher Abu El Oun and Mai Yaghi, "Invading Israeli troops battle Hamas fighters in Gaza," *Middle East Times* (4 January 2009), at: [http://www.metimes.com/Politics/2009/01/04/invading\\_israeli\\_troops\\_battle\\_hamas\\_fighters\\_in\\_gaza/afp/](http://www.metimes.com/Politics/2009/01/04/invading_israeli_troops_battle_hamas_fighters_in_gaza/afp/).
- <sup>10</sup> One clear example is the aerial attack on the home of Nizar Rayyan, a known Hamas leader, when he was inside the house with his 15-member family; including 11 children and four women.
- <sup>11</sup> OCHA, "Protection of Civilians Weekly Report, 1–8 January 2009," at: <http://unispal.un.org/unispal.nsf/47d4e277b48d9d3685256ddc00612265/728f5c23074b54308525753900731d0b!OpenDocument>.
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- <sup>13</sup> Al Mezan Center for Human Rights, Press Release 13/2009, 11 January 2009, at: [www.mezan.org](http://www.mezan.org).
- <sup>14</sup> Al Mezan, 12 January 2009, op cit.
- <sup>15</sup> "Deputy chief of staff: Worst still ahead," *Y-net News* (29 December 2008), at: <http://www.ynetnews.com/articles/0.7340.L-3646462.00.html>.
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- <sup>17</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, 2 volumes, Volume I. Rules, Volume II. Practice (2 Parts) (Cambridge: Cambridge University Press, 2005) [hereafter *ICRC Study*], pp. 19–24 (Rule 6).
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- <sup>19</sup> Witte and Raghavan, op cit.
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- <sup>22</sup> Hazim Balousha and Tony O'Loughlin, "Text messages and phone calls add psychological aspect to warfare in Gaza," *The Guardian* (3 January 2009), at: <http://www.guardian.co.uk/world/2009/jan/03/israelandthepalestinians-middleeast>.
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- <sup>26</sup> *ICRC Study*, op cit.
- <sup>27</sup> *Ibid.*, p. 189 (Rules 7–10).
- <sup>28</sup> *Ibid.*, p. 51 (Rule 15).
- <sup>29</sup> *Ibid.*, pp. 51–67 (Rules 15–21).
- <sup>30</sup> *Ibid.*, pp. 62–65 (Rule 20). The duty to warn as part of the duty to protect life may also be derived from ICCPR article 6.
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- <sup>32</sup> "Nearly 40 die on another day of bloodshed," *AP* (8 March 2002), at: <http://www.independent.co.uk/news/world/middle-east/nearly-40-die-on-another-day-of-bloodshed-750052.html>.
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- <sup>34</sup> Al Mezan Center for Human Rights, "IOF Continue to Raid Homes, Destroy Them on Their Residents - Death Toll in Gaza Rises to 830, including at Least 194 Children and 58 Women," press release, 10 January 2009.
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- <sup>37</sup> Al Mezan Center for Human Rights, Humanitarian Crisis Deepens as IOF Escalates Its Aggression: Thousands of Gazans Isolated under Scarcity of Food, Power, Healthcare and Water; Press Release, 13 January 2009.
- <sup>38</sup> The ICRC commentary on the Fourth Geneva Convention affirms this view, which is upheld also in international criminal case law. Bruno Zimmerman, "Article 85," in Yves Sondo, Christophe Swinarski and B. Zimmerman, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 29 August 1949* (Geneva: Martinus Nijhoff, 1987), no. 3474, as cited in Knut Dörmann, with contributions by Louise Doswald-Beck and Robert Kolb, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* (Cambridge: Cambridge University Press, 2002), p. 42. See also ICTY, Judgment, *The Prosecutor v. Zejnil Delalic and Others*, IC-96-21-T, paras. 437, 439.
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- <sup>41</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art. 54, Protection of objects indispensable to the survival of the civilian population.
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