

Baroness Catherine Ashton, EU High Representative for Foreign Affairs and Security Policy
Ambassadors of the EU Political and Security Committee

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PHROC Open Letter regarding the EU's responsibility to stop Israel's targeting of Palestinians in the Gaza Strip

Your Excellencies,

On 8 July 2014, the European Union (EU) issued a statement addressing the ongoing engagement of hostilities in the occupied Gaza Strip. In its short statement, the EU strongly condemned the "indiscriminate fire into Israel by militant groups in the Gaza Strip" and deplored the growing number of civilian casualties "caused by Israeli retaliatory fire".

As of 14 July 2014 at 1 p.m, Palestinian human rights organisations have documented the killing of 174 Palestinians, including 34 children and 28 women, in the context of 'Operation Protective Edge'. According to Al Mezan's initial investigations, 132 of the killed Palestinians are to be considered civilians. Furthermore, at least 1.051 Palestinians have sustained injuries and 1.302 houses have been destroyed or damaged. Al Mezan further specifies that 23 schools, 34 mosques, an ambulance centre, 13 NGO offices, 38 fishing boats and 5 hospitals were damaged or destroyed.

The Palestinian Human Rights Organisations Council (PHROC), a coalition of twelve Palestinian human rights organisations, are gravely concerned about Israel's indiscriminate and disproportionate attacks against, already vulnerable, Palestinian civilians and civilian objects. The population of the Gaza Strip has been living under an Israeli imposed closure for the past seven years, constituting a form of collective punishment. As a result, 70 per cent of Palestinians in the Gaza Strip are dependent on humanitarian assistance and Palestinians have been hindered from recovering from damage and destruction caused during previous Israeli offensives, including '[Operation Cast Lead](#)' and '[Operation Pillar of Defense](#)'.

The ongoing Israeli military attack erupted in the context of an already ongoing armed conflict and belligerent occupation. As such, Israel cannot rely on the right to self-defence within the meaning of Article 51 of the UN Charter and must instead act in accordance with the laws regulating the conduct of hostilities. In fact, considered against the backdrop of Israel's widescale punitive military operation across the West Bank following the disappearance, and eventually the regrettably death, of three Israeli settlers, the recent engagement of hostilities in the Gaza Strip indicates that a larger political agenda fuels Israel's actions.

PHROC reiterates that international humanitarian law must be abided by all parties engaged in hostilities during armed conflict. The principle of distinction requires all parties to distinguish between civilians and combatants, as well as between civilian objects and military objectives. Furthermore, the principle of proportionality dictates that launching an attack, which may be expected to cause incidental loss of civilian life, injury to civilians or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited. Failure to abide by these principles of

international humanitarian law may result in the commission of war crimes. Considering recent attacks on Palestinian police stations, it must be emphasised that international humanitarian law holds that civil police officers who are responsible for regular police duties such as ordinary internal law enforcement or traffic regulation are defined as civilians.

In addition, Palestinian civilians in the OPT are protected persons under the Fourth Geneva Convention. As an Occupying Power, Israel must ensure the welfare and safety of the occupied population and respect Palestinians' right to life and dignity. As such, prior to launching a military attack Israel is obliged to provide "effective advance warning" of attacks that "may affect the civilian population" and take precautions in the choice of means and methods of attack with a view of avoiding and minimizing civilian casualties. The 'roof-knocking method' currently and previously employed by Israel, in which Israel warns Palestinian civilians of an upcoming airstrike by bombing their home, must be considered unlawful in and of itself due to the intentional and unnecessary damage caused to civilians' homes and the unjustified threat to civilian lives that it poses. Worse even, Palestinian civilians have been killed by 'warning missiles' during the recent round of hostilities, including at least three women. On 13 July 2014, 15-year old Ibrahim An-Najjar was killed by a 'warning missile'. These methods of advance warning cannot be considered effective and the fact that Israel allegedly 'warns' civilians of upcoming attacks does not absolve Israel from its obligation to comply with the principles of distinction and proportionality.

By their own admission, Israel has thus far intentionally targeted Palestinian civilians and homes. For example, on 8 July, the Israeli army spokesperson announced that the Israeli military had deliberately bombed four homes of persons defined by Israel as senior Hamas activists.¹ According to international customary law, a permissible military objective is "limited to those objects which by their nature, location, purpose or use make an effective contribution to military action [...] or offers a definite military advantage"². In these instances, the punitive targeting of the family homes of persons that may have links with armed groups and that are additionally not taking active part in hostilities, cannot be considered permissible.

Considering the privileged and historic relationship between Israel and the European Union and its Member States, the European Union is in a powerful position to exert pressure on Israel to bring to an end its continued violations of international humanitarian law. Moreover, as High Contracting Parties to the Fourth Geneva Convention, individual EU member states must ensure that Israel complies with its obligations under the same Convention. By the same token, the European Union has committed itself to address third states' compliance with international humanitarian law. The EU Guidelines on Promoting Compliance with International Humanitarian Law, provides a host of operational measures that the EU should undertake to fulfill its own commitments, including issuing demarches and public statements and undertaking restrictive measures.

PHROC notes that the international community's failure to ensure that Israel does not violate the rights of Palestinians during previous military attacks; the lack of pressure exerted on Israel to hold to account perpetrators of grave breaches of the Geneva

¹ http://www.btselem.org/gaza_strip/20140708_gaza_operation

² ICRC, International Customary Law Rule 8

Conventions and international crimes; the non-compliance with the legal obligation to search for persons alleged to have committed , or to have ordered to be committed, grave breaches of the Fourth Geneva Convention and bringing them before their own courts in accordance with Article 146 of the Fourth Geneva Convention; and the political resistance to implement UN reports and recommendations such as the Fact-Finding Mission on the Gaza conflict of 2008-09 , has allowed Israel to continue its unlawful conduct of hostilities during Operation Protective Edge.

In view of the upcoming EU Foreign Affairs Council meeting and the continued political dialogue between the EU and Israel, PHROC calls on the EU and its member states to:

- Clarify Israel's obligations as an Occupying Power engaged in hostilities in Palestine;
- Immediately and unequivocally deplore Israel's indiscriminate and disproportionate attacks against Palestinian civilians and civilian objects;
- Demand that all parties comply with their international humanitarian law obligations, including the principles of distinction, proportionality and military necessity;
- Refrain from condoning Israel's misuse of the notion of self-defence;
- Take the position that the root cause of the ongoing hostilities is Israel's belligerent occupation and accompanied violations of international law, including the Palestinian inherent right to self-determination;
- In line with its own commitments and according to the EU Guidelines on Promoting Compliance with International Humanitarian Law, immediately resort to all the operational measures at its disposal, including the adoption of restrictive measures, in an effort to ensure Israel's compliance with its legal obligations;
- Ensure that perpetrators of violations of international law are held to account, including through the exercise of universal jurisdiction;
- Unequivocally support Palestinian accession of the Rome Statute of the International Criminal Court in order to ensure that an international forum will be accessible to address the crimes committed during the course of ongoing hostilities in the OPT as well as previously committed and continuing crimes.

Sincerely,



**Addameer Prisoners'
Support and Human
Rights Association**
Sahar Francis
General Director



**Aldameer Association
for Human Rights**
Khalil Abu Shammala
General Director



Al-Haq
Shawan Jabarin
General Director



**Al Mezan Center for
Human Rights**
Issam Younis
General Director



**Badil Resource Center
for Palestinian
Residency and Refugee
Rights**

Nidal Alazza
General Director



**Defence for Children
International
Palestine Section**

Rifat Kassis
General Director



**Ensan Center for
Human Rights and
Democracy**

Shawqi Issa
General Director



**Hurryyat - Centre for
Defense of Liberties
and Civil Rights**

Helmi Al-araj
General Director



**Jerusalem Center for
Legal Aid and Human
Rights**

Issam Aruri
General Director



**Ramallah Center for
Human Rights Studies**

Iyad Barghouti
General Director



**Women's Centre for
Legal Aid and
Counselling**

Maha Abu Dayyeh
General Director



**The Palestinian Center
for Human Rights**

Raja Sourani
General Director

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