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Joint written statement* submitted by the Union of Arab Jurists, the General Arab Women Federation, the Indian Movement "Tupaj Amaru", non-governmental organizations in special consultative status, the International Educational Development, Inc., the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 July 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Israel should face war crimes trials over Gaza

This report submitted to the Human Rights Council for its July 23, 2014 special session on the situation in the Occupied Palestinian Territory, including East Jerusalem, describes the crimes committed by Israel against the civilian population in Gaza during the Operation Protective Edge. After two weeks of shelling over 583 people have been killed, among them over 479 civilians, homes, schools and hospitals have been levelled to the ground and over 100.000 people have been displaced. The disproportionate use of force amounts to war crimes and must be brought to justice as it seriously violates international humanitarian law.

When on July 8, 2014, Israel launched its Operation Protective Edge against Gaza it argued that the use of force was justified by the fact that Israel “had no choice” but to defend itself against what it called the “ Hamas terrorist organization in Gaza” that “is intentionally and indiscriminately threatening the lives of 3.5 million innocent men, women and children” by its rockets and that “no nation, no people and no Government could tolerate it.”¹ Although the right to self-defense is enshrined in international law, two long-standing principles of self-defense however make the argument questionable: those of necessity and proportionality.²

The principle of necessity and proportionality

Generally spoken defensive action must be necessary to adequately defend the threatened interests; and the necessary defensive action must be proportionate to the danger. Necessity implies that the use of force in self-defense must be limited to the attainment of legitimate military objectives. Proportionality implies that the retaliatory impact and/ or civilian cost must be considered. These principles intersect with other instruments of international humanitarian law providing for the protection of civilians during times of war.³

“Operation Protective Edge” violates these provisions on multiple levels. Contrary to allegations of self-defense, it was the Israeli PM’s calls for vengeance on Hamas after the murder of three Israeli teens in July 2014 that set of the avalanche of violence. Without proving concrete evidence Israel blamed Hamas for the murders and promised to wreak vengeance on the movement in Gaza.⁴ From the outset on “Operation Protective Edge” thus carried the characteristics of retaliation campaign⁵, targeting Palestinians as a whole and the new unity government in particular. Such a campaign stands in opposition to the principle of necessity, in serious violation of the UN Charter and fundamental international law principles and thus falls under the definition of aggression. “Operation Protective Edge” further totally undermines all principles of proportionality. Israel has to fully respect its obligations under international law including the protection of civilians and civilian infrastructure, the horrific developments in Gaza have reached intolerable heights: Israel is bombing civilian houses with people in them entire families have been buried under rubble, and streets lie in ruins. Any perceived link to Hamas serves as justification for an attack, even if it includes firing at densely populated civilian areas, with deadly results on a shocking scale.⁶ The horrifying reality on the ground makes it impossible to further countenance the cynical use of legal terms such as “proportionality”, “discriminate” and “duty of care”.

¹ http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7214

² The idea originated with the 1907 Hague Conventions and was later codified in Article 49 of the Draft Articles on State Responsibility (1980) and is referred to the Additional Protocols of the Geneva Conventions (1977)

http://legal.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf

³ Factsheet: The legal Right to Self-Defence, CJPME

<http://www.cjpmo.org/DisplayDocument.aspx?DocumentID=71>

⁴ <http://america.aljazeera.com/articles/2014/7/21/gaza-hamas-netanyahu.html>

⁵ Compare: Human Rights Organizations: “Refrain from Collectively Punishing Palestinians.”

http://www.btselem.org/press_releases/20140622_joint_release

⁶ Source: BTselem

Disproportionate use of force

Since the Israeli military launched Operation Protective Edge, countless attacks against the homes of Palestinians have been reported. According to the IDF it is enough for a person to be involved in military activity to render his home (and his neighbors' homes) legitimate military targets, without having to prove any connection between his activity and the house in which he and his family live. This interpretation is unfounded and illegal. International humanitarian law provides that a legitimate target is only a legitimate target when damaging the structure can provide a military advantage. Treating homes as legitimate targets is an unlawful, distorted interpretation of the concept amounting to war crime. The gravity of the violation is compounded when uninvolved civilians are injured.

Throughout the operation Protective Edge the harm to civilians has become excessive. Although "Israel claimed that bombings were being carried out with the "knock on the roof" procedure (whereby the military warns inhabitants previous to the attack) many times the inhabitants were not given sufficient time to leave. In other cases they refused to leave despite the warning given. In such cases, the military must not treat the houses as empty. In order to protect civilians international humanitarian law furthermore requires the military to ensure that warning are "effective". An ineffective warning breaches the military's legal obligations, with lethal results: if civilians are not given enough time to leave their homes, or if the military ignores their decision to stay, it is as though they were not warned at all. Throughout the operation Protective edge Israel has persistently been found guilty of this crime.

As of July 22 the Palestinian fatalities have risen to over 580, among them over 479 civilians including more than 120 children and many times extinguishing entire families, including six children of the the Kaware' family home in Khan Yuni, 8 members of al-Haj family killed in Khan Yunis refugee camp an at least 24 members of the Abu Jamaa family were killed in an F-16 strike on their home in. What was left of the home was a crater. It took the family 12 hours to dig out the 24 bodies. One of the at least 24 members killed was still in diapers.

The disproportionality of the use of force is especially visible since on July 17, 2014 Israel launched a ground operation. In Shejaiya, one of Gaza's poorest and most crowded neighborhoods, Sunday 20, 2014 became the bloodiest day of the Israeli military offensive, with at least 100 civilians killed as Israeli troops advanced the residential neighborhood and battered the area with heavy artillery fire and constant airstrikes. Even hospitals and mosques came under attack.

Nevertheless Israel rejected a 3 hour humanitarian ceasefire requested by the ICRC on Sunday 20 to allow help to injured & deaths in Shujaia. Ambulances that did eventually brave the shelling to try and rescue people came under fire. One of them took a direct hit, killing the paramedic inside. A TV correspondent was also killed. Such indiscriminate attacks are in serious violation of international law, amounting to war crimes. A hospital is not a military target and may not be targeted even after it is evacuated. Israel did even not shrink back from the use of white phosphorus in densely populated civilian residential areas. When white phosphorus lands on skin it burns deeply through muscle and into the bone and has serious long term effects. It is far past time that the international community takes firm and swift action to stop the bloodshed.

As of 22 July 2014 it is estimated that over 100.000 people have fled their homes. The number of internally displaced hosted by UNRWA has already exceeded the equivalent figure during "Cast Lead operation" in 2008-9, which was the deadliest escalation recorded in Gaza since 1967.⁷ Nevertheless and despite international calls for restraint Israel insists that Protective Edge will not cease until the Hamas' infrastructure is destroyed, whatever it takes. The unacceptability of the Israeli military operation from a moral and legal perspective must be brought to an end and the international community must not fail to put all possible pressure on the leading geopolitical actors.

Ever since this latest major military operation against Gaza started on July 8, Israel has been guilty of war crimes. The overwhelming evidence supports basic Palestinian allegations that Israel is guilty of aggression in violation of the UN Charter and in flagrant violation of its obligations under the Geneva Conventions to protect

⁷ http://www.ochaopt.org/documents/ocha_opt_sitrep_21_07_2014.pdf

the civilian population. Israel is further guilty of using excessive and disproportionate force against a defenseless society. Such crimes amount to crimes against humanity and must be brought to justice.⁸ Therefore the international community should indict the criminal acts and constant violations of international law committed by the State of Israel, its aiders and abettors as well as its high level officials along with its chiefs of staff and their predecessors.

Conclusion and requests:

The Israel policy of collective punishment violates the fundamental rules of international law and contravenes the basic customary moral standards by punishing people for the misdeeds of others. No country in the world should get away easily with slaughter, destruction and repression such as the war crimes systematically committed by Israeli against the people in Gaza and the West Bank. The world must stop being a mute spectator in view of these crimes, daunted by the cynical exploitation of continuing guilt about the past. Israel is in consistent and grievous breach of the Geneva Conventions. What should the international community do about it?

Requests:

- An immediate cease fire must be imposed without any delay in order to protect innocent civilians
- An independent international investigation on the repeated Israeli assaults on the Gaza strip and the targeting and killing of civilians must be conducted
- The responsible officials of the aforementioned war crimes must be brought to the International Criminal Courts.

* Geneva International Centre for Justice (GICJ), BRussels Tribunal, Arab Lawyers Association- UK, Association of Humanitarian Lawyers (AHL), non-governmental organisations without consultative status, also share the views expressed in this statement.

⁸ Compare: <http://richardfalk.wordpress.com/2014/07/>