



20 August 2014

[REDACTED]

H.E. Navanethem Pillay  
UN High Commissioner for Human Rights  
Office of the UN High Commissioner for Human Rights  
[REDACTED]

Switzerland

**Re: Unbalanced and Biased Comments Regarding the Conflict in Gaza.**

Your Excellency:

By way of introduction, the European Centre for Law and Justice (ECLJ) is an international, Non-Governmental Organisation (NGO), dedicated, *inter alia*, to the promotion and protection of human rights and to the furtherance of the rule of law in international affairs. The ECLJ has held Special Consultative Status before the United Nations/ECOSOC since 2007<sup>1</sup>.

We are concerned by a number of your recent comments which insinuate that Israel is committing war crimes in Gaza while barely mentioning actions by Hamas operatives who are, without any doubt, repeatedly violating International Humanitarian Law (IHL)<sup>2</sup>. For example, on 23 July 2014, you stated—correctly—that even “where a home is identified as being used for military purposes, any attack must be proportionate, offer a definite military advantage in the prevailing circumstances at the time, and precautions must be taken”<sup>3</sup>. This letter addresses, *inter alia*, what you fail to mention when you say such things. You also stated the following:

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<sup>1</sup>Consultative Status for the European Centre for Law and Justice, UN DEPT ECON. & SOC. AFF., <http://esango.un.org/civilsociety/consultativeStatusSummary.do?profileCode=3010> (last visited 25 July 2014).

<sup>2</sup>You spoke at length (more than 1500 words of a 2330-word speech) condemning Israel for its possible war crimes—completely ignoring the fact that Israel is the only party who acknowledges and attempts to follow IHL. On the other hand, you devoted less than 200 words of your speech to discussing wrongdoing by Hamas or the significant threat Hamas poses to Israel, which is appalling considering that it is a verifiable fact that Hamas is committing war crimes. Navi Pillay, Statement before the Human Rights Council 21st Special Session: Human Rights Situation in the Occupied Palestinian Territory, including East Jerusalem, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14893&LangID=E> [attached as Appendix A]. In App. A, you will find those words dealing with Israel’s supposed “war crimes” and errors in **bold**, and those dealing with Hamas’ crimes in *italics*.

<sup>3</sup>App. A.

Even if Israel has attempted to warn civilians to, for example, leave their homes or conducted an evacuation before an attack, this does not release Israel from its obligations under international humanitarian law. Any warning for civilians must meet with the requirements of international law, including that this warning be clear, credible and allows sufficient time for people to react to it<sup>4</sup>.

You alleged further that, in 16 days, 147 children were killed in Gaza and as such, “[t]heir killings raise concerns about respect for the principles of distinction, proportionality and precautions in attack”<sup>5</sup>. You also pointed out specific incidents in which several civilians were killed in Gaza and then insinuate that these “are just a few examples where there seems to be a strong possibility that international humanitarian law has been violated, in a manner that could amount to war crimes”<sup>6</sup>. This latter statement confirms that you are making *assumptions* about *possible* IHL violations.

While openly condemning Israeli strikes, you have utterly failed to recognise—much less condemn— Hamas’ responsibility for repeatedly turning otherwise protected sites (such as hospitals, schools, and mosques) into legitimate military targets by using such sites to fire rockets at Israel, as military headquarters, and as weapons storage sites. You have also failed to recognise the fact that Hamas attempts to use, and has used, civilians as human shields to deter Israeli Defense Forces (IDF) from striking legitimate military targets. Accordingly, your statements are one-sided and misleading. Hence, the purpose of this letter is three-fold: First, this letter outlines the series of egregious events initiated by Hamas militants, which gave Israel no choice but to respond in self-defence. Second, the letter discusses applicable laws of armed conflict that Israel has consistently followed and Hamas has repeatedly violated. Third, we urge you to be balanced in your criticism and strongly and consistently address the unlawful actions taken by Hamas militants in firing its rockets indiscriminately, in using civilians as human shields, and in turning otherwise protected civilian sites into military targets, all in clear violation of IHL.

## FACTS LEADING TO THE CURRENT ISRAELI-PALESTINIAN CONFLICT

The 12 June kidnapping of three Israeli teenagers in the West Bank sparked the current Israeli-Palestinian conflict<sup>7</sup>. In response to the kidnappings, Israel launched Operation Brother’s Keeper in the West Bank, a search-and-rescue mission to find the missing teens<sup>8</sup>. The Israeli investigation identified two Hamas operatives as suspects<sup>9</sup>. While Hamas did not openly claim responsibility for the kidnappings, Hamas officials publicly praised the kidnappings of the three Israeli teens as “heroic”<sup>10</sup>, in itself a despicable act.

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<sup>4</sup>App. A.

<sup>5</sup>App. A.

<sup>6</sup>App. A (emphasis added).

<sup>7</sup>*Murdered Israeli Teens Mourned In Joint Funeral, As Israel Launches Strike Against Hamas*, FOX NEWS (1 July 2014), <http://www.foxnews.com/world/2014/07/01/israeli-teens-found-dead/>.

<sup>8</sup>Lea Speyer, *360 Arrested As Operation Brothers Keeper Enters 12th Day*, BREAKING ISRAEL NEWS (24 June 2014), <http://www.breakingisraelnews.com/17063/269-terrorists-arrested-operation-brothers-keeper-enters-12th-day/#kswx537rQzX62L97.97>.

<sup>9</sup>*Id.*; see also *Murdered Israeli Teens Mourned*, *supra* note 7.

<sup>10</sup>Ari Soffer, *Watch: Hamas Official Heaps Praise On ‘Heroic’ Kidnap Operation*, ARUTZ SHEVA (18 June 2014), [http://www.israelnationalnews.com/News/News.aspx/181891#.U8\\_wQLGf-ik](http://www.israelnationalnews.com/News/News.aspx/181891#.U8_wQLGf-ik).

On 28 June, six rockets were launched from Gaza into Israel<sup>11</sup>. In response, Israel struck twelve targets in Gaza on 29 June<sup>12</sup>. On 30 June, the bodies of the three Israeli teens were found<sup>13</sup>. Following the discovery of the slain Israeli teens, a Hamas spokesman warned that if Prime Minister Netanyahu “brings a war on Gaza, the gates of hell will open to him”<sup>14</sup>. On 1 July, Israel launched thirty-four air strikes on Gaza in response to eighteen rockets fired at Israel from Gaza<sup>15</sup>. On 7 July, IDF announced from its Twitter account the commencement of “Operation Protective Edge in #Gaza against #Hamas, in order to stop the terror #Israel’s citizens face on a daily basis”<sup>16</sup>. As of 1 August, Hamas militants had fired almost 2,900 rockets at Israel<sup>17</sup>, the Palestinian death toll in Gaza had exceeded 1,400, and the Israeli death toll had reached fifty-nine<sup>18</sup>.

## INTERNATIONAL LAW RECOGNISES ISRAEL’S INHERENT RIGHT OF SELF-DEFENCE IN DEFENDING AGAINST A NON-STATE ACTOR LIKE HAMAS

As a general rule, the threat and use of force against a UN member state are prohibited by international law<sup>19</sup>. Nonetheless, Article 51 of the UN Charter recognises “the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations”<sup>20</sup>. It is essential to note that Article 51 does not *create* the right of self-defence: it is an inherent right of all states under customary international law<sup>21</sup>. This inherent right of self-defence (and the responsibility for determining when self-defence is appropriate) lies, as it always has, with the government of each state. Customary international law also recognises the right of self-defence against non-State actors<sup>22</sup>, like the terrorist group Hamas and its Islamist allies in the Gaza Strip.

Additionally, when acting in self-defence, international law “does not require a defender to limit itself to actions that merely repel an attack; *a state may use force in self-defence to remove a continuing threat to future security*”<sup>23</sup>. Further, the standard for self-defence does not limit the defender to a totally like-kind response, but provides the necessary

<sup>11</sup>Israeli Air Strikes Hit Targets In Gaza, AL JAZEERA (29 June 2014), <http://www.aljazeera.com/news/middleeast/2014/06/israeli-airstrikes-attack-targets-gaza-201462984832208983.html>.

<sup>12</sup>*Id.*

<sup>13</sup>Ben Wedeman & Dana Ford, *Missing Israeli Teens Found Dead In West Bank*, CNN (30 June 2014), <http://www.cnn.com/2014/06/30/world/meast/israel-missing-teenagers/>.

<sup>14</sup>*Id.*

<sup>15</sup>Dan Kedmey, *Israel Hammers Gaza Strip Over Kidnapped Teens’ Deaths*, TIME (1 July 2014), <http://time.com/2944876/israel-hammers-gaza-strip-over-kidnapped-teens-deaths/>.

<sup>16</sup>Marcy Kreiter, *Israel Mounts Operation To End Gaza Rocket Fire*, INT’L BUS. TIMES (7 July 2014), <http://www.ibtimes.com/israel-mounts-operation-end-gaza-rocket-fire-1621462>.

<sup>17</sup>IDF Spokesperson, *Israel Defense Forces*, TWITTER (31 July 2014, 11:00 PM), <https://twitter.com/IDFSpokesperson/status/495086588238376960>.

<sup>18</sup>Jason Burke, *Gaza ‘Faces Precipice’ As Death Toll Passes 1,400*, THE GUARDIAN (31 July 2014), <http://www.theguardian.com/world/2014/jul/31/gaza-faces-precipice-death-toll-tops-1400>.

<sup>19</sup>See, e.g., UN Charter, art. 2(4) (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”).

<sup>20</sup>UN Charter, art. 51.

<sup>21</sup>David B. Rivkin et al., *Preemption and Law In The Twenty-First Century*, 5 CHI. J. INT’L L. 467, 476 (2005).

<sup>22</sup>See, e.g., *Armed Activities on the Territory of the Congo (Dem. Rep. Congo, v. Uganda)*, 2005 I.C.J. ¶ 11 (17 Dec.) (separate opinion of Judge Simma), available at <http://www.icj-cij.org/docket/files/116/10467.pdf>.

<sup>23</sup>SEAN D. MURPHY, *PRINCIPLES OF INTERNATIONAL LAW* 447 (2006) (emphasis added).

flexibility to reduce or eliminate the threat. In other words, the degree of force employed in self-defence can be considerably greater than that used in the original armed attack<sup>24</sup>.

*Israel Has Correctly Invoked Its Inherent Right To Defend Its Citizens and Territory Against the Hamas Threat.*

Hamas militants began the current conflict by kidnapping and killing three Israeli teens and by launching rockets at Israeli civilians<sup>25</sup>. Israel responded on 29 June by launching air strikes against military targets in Gaza<sup>26</sup>. Because Israel, as a sovereign state, has the inherent right to defend its territory and citizens, it is legally justified in engaging in the current conflict against Hamas. Since the conflict began, Hamas has repeatedly refused to accept a number of ceasefire proposals<sup>27</sup>, while Israel has consistently honoured ceasefire requests to allow humanitarian assistance into Gaza<sup>28</sup>. As of 1 August, at least four ceasefire agreements had been announced during the conflict<sup>29</sup>. The fourth negotiation resulted in an agreement to have a seventy-two hour ceasefire. Hamas militants broke the ceasefire a mere ninety minutes after it had begun by attacking Israeli soldiers<sup>30</sup>.

Although, the death toll among Israeli and Palestinian civilian populations is not the same, the overwhelming majority of Palestinian civilian deaths can be directly attributed to Hamas' violations of IHL, to wit, by intentionally placing military objects in the proximity of schools, hospitals, UN facilities, private homes, mosques, etc., and/or using these very same structures for military purposes. As will be discussed below, Israel attempts to limit incidental damage caused by its military strikes, while Hamas openly invites incidental damage within Gaza. Further, Hamas specifically targets Israeli civilians. But for Israel's Iron Dome defence system's successful interception of hundreds of Hamas rockets, the Israeli civilian death toll could have been much higher. While Israel takes heroic measures to protect its civilian population, Hamas intentionally exposes its civilian population to harm. Hamas does so by diverting materials that could be used for shelters for its civilian population to build tunnels to attack Israeli border towns. Hamas' cynical goal is twofold: attack Israeli civilians near the Gaza Strip and reap the propaganda victory when Israeli responses against legitimate military targets in Gaza result in collateral Palestinian civilian casualties.

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<sup>24</sup>ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT 232 (1995); *see also* CHRISTOPHER GREENWOOD, ESSAYS ON WAR IN INTERNATIONAL LAW 80 (2006).

<sup>25</sup>*Murdered Israeli Teens Mourned*, *supra* note 7.

<sup>26</sup>*Israeli Airstrikes Hit Targets in Gaza*, *supra* note 11.

<sup>27</sup>Harriet Sherwood, *Gaza Crisis: How The Game Has Changed Since Egypt's Tabling Of Ceasefire Plan*, THE GUARDIAN (21 July 2014), <http://www.theguardian.com/world/2014/jul/21/gaza-crisis-how-game-changed-since-egypt-tabling-ceasefire-plan>.

<sup>28</sup>*See, e.g.,* Tzvi Ben-Gedalyahu, *Israel to Honor 6-Hour "Humanitarian Ceasefire" while Planning Ground Op.*, THE JEWISH PRESS (16 July 2014), <http://www.jewishpress.com/news/breaking-news/israel-to-honor-6-hour-humanitarian-ceasefire-while-planning-ground-op/2014/07/16/>; Jodi Rudoren & Anne Barnard, *Israeli Military Invades Gaza, With Sights Set On Hamas Operations*, N.Y. TIMES (17 July 2014), <http://nyti.ms/1nA2HQS>.

<sup>29</sup>Heather Saul, *Israel-Hamas 72-Hour Ceasefire Crumbles As Dozens Killed In Gaza Shelling*, INDEP. (1 Aug. 2014), <http://www.independent.co.uk/news/world/middle-east/israelgaza-conflict-kerry-warns72hour-conditional-ceasefire-is-a-respite-not-an-end-9641781.html>.

<sup>30</sup>*U.S. Calls Hamas Attack 'Barbaric' Violation Of Gaza Ceasefire* CNN, REUTERS, (1 Aug. 2014), <http://www.reuters.com/article/2014/08/01/us-mideast-gaza-whitehouse-idUSKBN0G143S20140801>.

## ATTACKING A LEGITIMATE MILITARY TARGET IS NOT A WAR CRIME

Article 52 of Additional Protocol I requires that “attacks shall be limited strictly to military objectives”<sup>31</sup>. Military objectives are in turn defined as “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”<sup>32</sup>. Notably, “[t]he presence of a protected person may not be used to render certain points or areas immune from military operations”<sup>33</sup>.

Since the beginning of Operation Protective Edge, many persons, including yourself, have roundly and publicly condemned Israel’s actions in damaging or destroying specific objects. Among such objects have been hospitals, schools, places of worship, and civilian areas which are normally protected objects under IHL. You have, however, admitted and acknowledged that “it is unacceptable to locate military assets in densely populated areas or to launch attacks from such areas”<sup>34</sup>, something Hamas routinely does. Your criticism of Hamas is too muted, especially since Hamas’ actions are the primary reason Palestinian civilians are endangered by Israeli attacks on otherwise legitimate military targets.

Determining whether incidental injury or collateral damage violates the law requires analysis of the military advantage anticipated by striking the relevant military target at the time. Many states, including the United States, judge military advantage in the context of the entire operation, not just an isolated part<sup>35</sup>. The “security of the attacking forces” is also a critical part of the calculation in assessing military advantage<sup>36</sup>. The standard is intended to prevent “[m]anifestly disproportionate collateral damage inflicted in order to achieve operational objectives”<sup>37</sup>. Since you are not privy to the information on which Israeli forces relied to make their determination regarding proportionality, your criticism is necessarily based solely on conjecture, not a reliable standard.

Evidence concerning each attack complained about during the current Israel-Hamas conflict shows that Hamas was using numerous otherwise protected sites for military purposes and not for their intended, protected purpose. As such, the otherwise protected sites had become legitimate military targets. An analysis of actions taken by each party to the conflict (i.e., Israel and Hamas) provides ample evidence that Hamas, not Israel, is the party committing war crimes. Although you recently stated that “international law is clear: the actions of one party do not absolve the other party of the need to respect its obligations under international law”<sup>38</sup>, the tone and tenor of your comments show that you are in fact accusing Israel of responding disproportionately. The vast majority of your statements single out Israeli attacks in which civilian casualties occur, yet fail to mention whether the targeted site had become a legitimate military objective due to Hamas’ actions. Since it is well-known

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<sup>31</sup>ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 52, 8 June 1977, 1125 UNTS 3 [hereinafter Protocol I].

<sup>32</sup>*Id.* (emphasis added).

<sup>33</sup>*Id.* art. 28.

<sup>34</sup>App. A.

<sup>35</sup>2 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INT’L COMM. OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: PRACTICE ¶¶ 328–29, 332, 334, 336–37, 339, at 184–85 (2005).

<sup>36</sup>*Id.* ¶¶ 329, 331, 336, 339, at 184–85.

<sup>37</sup>Stefan Oeter, *Methods and Means of Combat*, in THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW 119, 135 (Dieter Fleck ed., 2d ed. 2008).

<sup>38</sup>App. A.

from readily available, public sources that Hamas not only admits (but brags about) what it is doing, your statements are not only biased, but they, in effect, condemn the only party to the conflict that seeks to abide by the law (Israel) and in essence turn a blind eye toward the party that consistently violates the law (Hamas), thereby encouraging further violations of the very law you claim to be upholding, which, in turn, leads to additional civilian casualties.

Incidental damage on both sides may occur during an armed conflict. Such damage, including deaths and injuries of innocent civilians, though tragic, does not automatically (or necessarily) constitute a war crime. Only “willful killing” or “[i]ntentionally directing attacks against civilian objects, that is, objects which are not military objectives,” constitute a war crime<sup>39</sup>. The following discussion will demonstrate that Israeli forces attempt to target only legitimate military objectives. Civilian casualties alone do not render those attacks unlawful. Only civilian casualties that are excessive in relation to the importance of the military objective are forbidden, and you lack all evidence to make any determination about the importance of the military objective to Israel’s campaign (determinations which are based on intelligence solely in the possession of the Israeli forces), especially since such determinations depend on “circumstances ruling at the time” of an attack, not on circumstances as viewed by third parties like yourself after the attack. The discussion also shows which party is responsible for the willful killing of civilians in violation of IHL.

#### **TURNING AN OTHERWISE PROTECTED OBJECT INTO A LEGITIMATE MILITARY TARGET IS A WAR CRIME**

*By Intentionally Placing Its Weapons Caches, Firing Sites, and Military Headquarters in Civilian Areas, Hamas Is Solely Responsible for Incidental Harm to Civilians that Occurs When Israel Must Deal With Such Sites.*

Each party to a conflict has a duty, “to the extent feasible, to remove civilian persons and objects under its control from the vicinity of military objectives” as set forth in Article 58(a) of Additional Protocol I<sup>40</sup>. Furthermore, “in no event may civilians be used to shield military objectives”<sup>41</sup>. In the context of the current conflict, both Hamas and Israel are required to do everything feasible to avoid locating military objectives near dense civilian populations<sup>42</sup> and are forbidden to use civilians as human shields.

This obligation is explicitly established by Article 51 of Additional Protocol I and is considered a reflection of customary international law:

The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians

<sup>39</sup>UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, art. 8(2)(b)(ii), 17 July 1998 [hereinafter Rome Statute].

<sup>40</sup>Protocol I, *supra* note 31, art. 58(a). Although Israel is not bound by Additional Protocol I as a matter of treaty obligation, Israel recognizes that the protocol reflects customary international law. MFA, OPERATION IN GAZA: FACTUAL AND LEGAL ASPECTS 38 (2008).

<sup>41</sup>Customary Int’l Humanitarian Law, Rule 23, Location of Military Objectives outside Densely Populated Areas, ICRC, available at, [http://www.icrc.org/customary-ihl/eng/print/v1\\_cha\\_chapter6\\_rule23](http://www.icrc.org/customary-ihl/eng/print/v1_cha_chapter6_rule23).

<sup>42</sup>Israel-Lebanon Ceasefire Understanding, art. 3 (1996).

in order to attempt to shield military objectives from attacks or to shield military operations<sup>43</sup>.

Further, under the Rome Statute, the use of humans to shield a military target constitutes a war crime<sup>44</sup>. Such use of civilians to shield military targets is contrary to the principle of distinction and violates the obligation to take feasible precautions to separate civilians and military objectives<sup>45</sup>.

Article 48 of Additional Protocol I sets forth the following basic rule of distinction: "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives"<sup>46</sup>. The ICRC recognises that "the parties [to a conflict] are obliged to take all feasible precautions to spare the civilian population", pointing to the "distinction that must be made between civilians and those directly participating in hostilities" and recognising that such a distinction lies "at the heart of international humanitarian law"<sup>47</sup>.

These rules apply to "each" party to the conflict. Hamas and Israel are legally obligated to minimise their operations near civilians. While you must recognise that this obligation applies equally to "each party" to the conflict, you have overwhelmingly criticised Israel for targeting certain sites and objects and have been relatively silent about Hamas' actions that have turned otherwise protected sites and objects into legitimate military objectives—a violation of IHL. By so doing, you, in fact, implicitly encourage Hamas to continue violating IHL by providing it a significant propaganda victory over Israel every time innocent men, women, and children are killed or injured by an Israeli attack on a legitimate military target that Hamas has intentionally located in a civilian area. As such, because you fail to honestly identify, criticise, and condemn Hamas' actions, you are, in effect, complicit in Hamas' cynical ploy to endanger its own citizens as well as in the resulting harm to civilians in the Hamas-controlled Gaza Strip.

Hamas intentionally violates its duty to avoid placing civilians at risk in a cynical attempt to dissuade Israel from striking certain targets and to garner sympathy and political support when an Israeli strike on that target is successful. Hamas militants frequently and indisputably "operate in civilian areas, draw return fire to civilian structures, and on some level benefit in the diplomatic arena from the rising casualties"<sup>48</sup>. Hamas has intentionally located its military compounds and weapons caches in or next to civilian houses, mosques, and hospitals<sup>49</sup>. Where is your explicit condemnation of what Hamas is doing? But for such violations by Hamas, Israel would have no need to attack such sites at all, thereby precluding most civilian casualties.

<sup>43</sup>Protocol I, *supra* note 31, art. 51(7).

<sup>44</sup>Rome Statute, *supra* note 39, art. 8(2)(b)(xxiii).

<sup>45</sup>Customary Int'l Humanitarian Law, Rule 97, Human Shields, ICRC, *available at* [http://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter32\\_rule97](http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule97).

<sup>46</sup>Protocol I, *supra* note 31, art. 48.

<sup>47</sup>*Israel/Occupied Territory: Civilians And Medical Workers Pay Price Of Conflict*, ICRC (10 July 2014), <http://www.icrc.org/eng/resources/documents/news-release/2014/israel-palestine-gaza-civilian-medical.htm>.

<sup>48</sup>Anne Barnard & Jodi Rudoren, *Israel Says That Hamas Uses Civilian Shields, Reviving Debate*, N.Y. TIMES (23 July 2014), <http://www.nytimes.com/2014/07/24/world/middleeast/israel-says-hamas-is-using-civilians-as-shields-in-gaza.html> (emphasis added).

<sup>49</sup>*Id*

*Using Places of Worship for Military Purposes is a War Crime.*

According to Article 16 of Additional Protocol I, places of worship are protected objects<sup>50</sup>. To “use [such objects] in support of the military effort” constitutes a war crime<sup>51</sup>. While the international community has condemned Israel for attacking mosques (not a war crime in itself, unless indiscriminately targeted), nobody has openly and specifically condemned Hamas for using such places of worship for military purposes. Your lack of attention to such violations is inexcusable and only encourages further Hamas violations.

For example, on 12 July, Israel struck a mosque in Gaza<sup>52</sup>. The mosque was located near civilian homes and another religious site<sup>53</sup>. Although normally a protected object, Hamas had turned the mosque into a military objective by storing a cache of rockets there<sup>54</sup>. On 22 July, an IDF paratrooper was killed by an anti-tank missile fired from within the Khan Younis mosque<sup>55</sup>. While Hamas is openly and notoriously committing war crimes, you, again, remain silent.

*Using Schools for Military Purposes is a War Crime.*

Schools are also protected sites. Hamas located a rocket launch site near a complex of Gaza City schools<sup>56</sup>. On 16 July, the United Nations Relief and Works Agency (UNRWA) discovered twenty rockets hidden in a vacant Gaza school<sup>57</sup>. Using the building as a weapons storage site turned that structure into a legitimate military target. More alarmingly, it has been reported that the rockets discovered by UNRWA were returned to Hamas by UN officials<sup>58</sup>. This rewards unlawful behaviour. Again on 22 July, UNRWA found more rockets in a second Gaza school<sup>59</sup>. The school in which the rockets were found in the second incident is located between two other schools that housed 1,500 displaced persons<sup>60</sup>. Unfortunately, you only make occasional and incomplete references with respect to Hamas and its use of schools for military purposes (which is *per se* a war crime)<sup>61</sup>.

Specifically, you recently made the following statement:

Under international law, humanitarian relief personnel and objects used for relief operations—this would include UNRWA schools in Gaza being used as

<sup>50</sup>Protocol I, *supra* note 31, art. 16.

<sup>51</sup>*Id.*

<sup>52</sup>*Israel Airstrike Hits Gaza Mosque, Death Toll Tops 120*, MASHABLE (12 July 2014), <http://mashable.com/2014/07/12/israel-airstrike-gaza-mosque/>.

<sup>53</sup>*Id.*

<sup>54</sup>*Id.*

<sup>55</sup>Barnard, *supra* note 48.

<sup>56</sup>*Id.*

<sup>57</sup>*Rockets Found at UN Gaza School Went Missing*, ASSOCIATED PRESS (23 July 2014), <http://www.bigstory.ap.org/article/un-chief-alarmed-rockets-put-un-gaza-site-see-also-UNRWA-Strongly-Condemns-Placement-of-Rockets-In-School>, UNRWA (17 July 2014), <http://www.unrwa.org/newsroom/press-releases/unrwa-strongly-condemns-placement-rockets-school>.

<sup>58</sup>*Rockets Found*, *supra* note 57.

<sup>59</sup>*Id.*; see also *UNRWA Condemns Placement of Rockets, For a Second Time, In One of Its Schools*, UNRWA (22 July 2014), <http://www.unrwa.org/newsroom/press-releases/unrwa-condemns-placement-rockets-second-time-one-its-schools>.

<sup>60</sup>*Rockets Found*, *supra* note 57.

<sup>61</sup>*Israel, Hamas agree to 72-hour cease-fire, US says*, CBS NEWS (31 July 2014), <http://www.cbsnews.com/news/israel-and-hamas-agree-to-72-hour-humanitarian-ceasefire/>.



shelters—must be respected and protected. . . . An attack against humanitarian relief personnel and objects *used exclusively for relief operations*, is a violation of international humanitarian law and may amount to a war crime<sup>62</sup>.

Yet, what you fail to mention is that the UNRWA has admitted that multiple UNRWA schools have been used as places to store offensive weapons (as set forth above)<sup>63</sup>, thereby converting buildings normally protected by IHL into legitimate military targets. Even UN Secretary-General Ban has acknowledged that Hamas has violated IHL by using UNRWA schools for unlawful purposes and that such use renders those structures as “potential military targets”<sup>64</sup>. Secretary-General Ban, in fact, “expresse[d] outrage, and regret, at the placing of weapons in a UN-administered school”<sup>65</sup>. Why, then, do you criticise Israel for attacking them, even though they had become legitimate military targets<sup>66</sup>.

Your silence about such widely known facts indicates either that you are poorly informed about what is actually taking place in the Gaza Strip or that you favour the actual lawbreakers, neither of which is acceptable for a person in your position, especially when you choose to comment officially on events occurring there. It is Hamas that converted otherwise protected UNRWA schools into military targets by its intentional disregard of IHL. Yet, you insinuate that Israel is to blame for the civilian casualties that result from Hamas’ open and notorious violations of IHL. Such reasoning is absolutely astonishing—and casts considerable doubt on your impartiality.

*Using Civilian Neighbourhoods for Military Purposes is a War Crime.*

While Israel expends significant resources on building shelters and anti-missile equipment to protect its civilians from rockets fired indiscriminately from the Gaza Strip, Hamas, instead of building shelters to protect the population of Gaza, diverts such resources to build tunnels in civilian areas for military uses<sup>67</sup>, including under mosques, schools, and UN facilities. These tunnels were constructed and have been used by Hamas militants to enter and attack Israeli civilian communities adjacent to the Gaza Strip<sup>68</sup>. IDF forces have found at least thirty tunnels since the beginning of Operation Protective Edge<sup>69</sup>; ten tunnel openings were found underneath the Shujaiya neighbourhood<sup>70</sup>. Moreover, Hamas has fired over 140 rockets from the Shujaiya neighbourhood into Israel<sup>71</sup>.

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<sup>62</sup>Pillay condemns continuing attacks on civilians in Gaza, UN HUMAN RIGHTS NEWS AND EVENTS (31 July 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14916&LangID=E>.

<sup>63</sup>UNRWA Condemns Placement of Rockets, *supra* note 59.

<sup>64</sup>UN Chief outraged at weapons found in UN school in Gaza, THE INDIAN EXPRESS (24 July 2014), <http://indianexpress.com/article/world/middle-east-africa/un-chief-outraged-at-weapons-found-in-un-school-in-gaza/>.

<sup>65</sup>*Id*.

<sup>66</sup>App. A. You stated that “[h]undreds of homes and other civilian buildings, *such as schools*, have been destroyed or severely damaged in Gaza, and more than 140,000 Palestinians have been displaced as a result”, thereby insinuating that Israel was solely to blame even though Hamas had intentionally converted such places into military targets by using them for military purposes (emphasis added).

<sup>67</sup>The Price Of Hamas’ Underground Terror Network, IDF BLOG (26 July 2014), <http://www.idfblog.com/blog/2014/07/26/price-hamas-underground-terror-network/>.

<sup>68</sup>*Id*.

<sup>69</sup>*Id*.

<sup>70</sup>Shuja’iya: Hamas’ Terror Fortress In Gaza, ISRAEL DEFENSE FORCES (20 July 2014), <http://www.idfblog.com/blog/2014/07/20/shujaiya-hamas-terror-fortress-gaza/>.

<sup>71</sup>*Id*.

By placing the entrances to its tunnel network within the densely populated Shujaiya neighbourhood and firing rockets from the same area, Hamas intended to use the civilian population as a shield, thereby “render[ing] [the Shujaiya neighbourhood] immune from [Israeli] military operations”<sup>72</sup>. This is a clear and unambiguous violation of IHL and constitutes a war crime under the Rome Statute<sup>73</sup>. Interestingly, you stated the following:

I unequivocally reiterate to all actors in this conflict that civilians must not be targeted. It is imperative that Israel, Hamas and all Palestinian armed groups strictly abide by applicable norms of international humanitarian law and international human rights law. This entails applying the principles of distinction between civilians and combatants and between civilian objects and military objectives . . .<sup>74</sup>.

Why, if you believe the foregoing, are you not condemning, in detail, the unlawful acts of Hamas and its ongoing use of human shields?

*Using Hospitals for Military Purposes is a War Crime.*

Regarding hospitals, you are quoted as saying that civilian hospitals “may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict”<sup>75</sup>. You then continue: “Intentional attacks on hospitals *being exclusively used* as hospitals amounts [sic] to a war crime”<sup>76</sup>. What you fail to state—a *most glaring omission indeed, given the circumstances in the Gaza Strip*—is that civilian hospitals not exclusively used as hospitals *may be* legitimate military targets when such hospitals are used for illicit military purposes. That is exactly what Hamas has repeatedly done in the Gaza Strip.

It is well-known that Hamas uses hospitals as cover for its military operations. Hamas placed a rocket cache next to the Jabaliya Indonesian Hospital<sup>77</sup>. Hamas stored weapons in the Al Wafa hospital<sup>78</sup> and frequently fired on IDF troops from the Al Wafa Hospital with light weapons, anti-tank missiles, and rockets<sup>79</sup>. A tunnel opening used by Hamas was located adjacent to the Al Wafa hospital<sup>80</sup>. As such, Israel determined that the Al Wafa hospital was not being used for its normal protected purpose and was instead being used as a military installation, making it a legitimate military target. An IDF video showing the targeting of the Al Wafa Hospital shows extensive secondary explosions after the initial Israeli air strike, vindicating Israel’s position that the hospital was being used by Hamas as a weapons storage facility<sup>81</sup>.

<sup>72</sup>Convention (IV) relative to the Protection of Civilian Persons in Time of War, art. 28, 12 August 1949.

<sup>73</sup>See *supra* note 44 and accompanying text.

<sup>74</sup>App. A.

<sup>75</sup>*Supra* note 62.

<sup>76</sup>*Id.*

<sup>77</sup>*Israel Says that Hamas Uses Human Shields, Reviving Debate*, NY TIMES (23 July 2014), [http://www.nytimes.com/2014/07/24/world/middleeast/israel-says-hamas-is-using-civilians-as-shields-in-gaza.html?\\_r=0](http://www.nytimes.com/2014/07/24/world/middleeast/israel-says-hamas-is-using-civilians-as-shields-in-gaza.html?_r=0).

<sup>78</sup>Yaakov Lappin, *Israel uncovers Hamas tunnel filled with maps, weapons, and IDF uniforms*, THE JERUSALEM POST (23 July 2014), <http://www.jpost.com/Operation-Protective-Edge/Hamas-gunmen-shoot-at-IDF-from-hospital-prompting-return-fire-368599>.

<sup>79</sup>Stuart Winer, *WATCH: IDF Targets Hospital Used As Hamas Command Center*, TIMES OF ISRAEL (23 July 2014), <http://www.timesofisrael.com/idf-targets-hospital-hamas-used-as-firing-position/>.

<sup>80</sup>*Id.*

<sup>81</sup>Times of Israel, *IDF footage of strike on Al-Wafa Hospital in Gaza*, YOUTUBE (23 JULY 2014), <https://www.youtube.com/watch?v=VM1F9oP80kc>.

Similarly, Hamas created the danger to the Al Aqsa hospital by turning the area nearby into a military target by storing anti-tank missiles in the hospital's immediate vicinity<sup>82</sup>. IDF forces did not intentionally target the hospital and stopped the attack when they realised the damage being done to the hospital<sup>83</sup>. But, once again, it was Hamas which violated IHL; it was Hamas which endangered the hospital.

Hamas has routinely turned hospitals into legitimate military targets by conducting military operations from or near them. As such, these "purely civilian buildings [were] occupied [and] used by [Hamas] and such objectives may be attacked"<sup>84</sup>. Regardless of the facts, in this context, you stated that "there seems to be a strong possibility that international humanitarian law has been violated, in a manner that could amount to war crimes"<sup>85</sup>, thereby again insinuating that Israel, not Hamas, is to blame. It is Hamas, however, that daily endangers such hospitals, their staffs, and those seeking medical care there. Your silence about such Hamas IHL violations is both deafening and inexcusable. Laying the blame on Israel compounds the error and is especially egregious. Your comments suggest a serious lack of understanding and discernment on your part about such issues.

*Targeting Formerly Protected Sites That Are Being Used for Military Purposes is Not a War Crime.*

As you are well aware, Article 52 of Additional Protocol I recognises that "a place of worship, a house or other dwelling or a school," although generally protected, can sometimes be used to make "an effective contribution to military action", and the law allows attacking it if such an object makes "an effective contribution to military action and whose total or partial destruction . . . offers a definite military advantage"<sup>86</sup>.

Because Hamas uses otherwise protected buildings and facilities to store weapons, to serve as command centers, or as locations from which to fire at Israeli forces, they become legitimate military targets. Such facilities make an "effective" contribution to Hamas' military action and the destruction of which offers a "definite" military advantage to Israel. As such, by converting otherwise protected civilian buildings into legitimate military targets, Hamas violates IHL. On the other hand, Israel's targeting such legitimate military targets does not automatically or necessarily constitute a violation of IHL.

*Hamas' Indiscriminate Firing Into Israel Constitutes a War Crime.*

Indiscriminate attacks are those that are launched without consideration as to where harm will fall<sup>87</sup>—just like *Hamas rocket attacks into southern Israel*. Indiscriminate attacks are defined as

(a) [T]hose which are not directed at a specific military objective; [and]

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<sup>82</sup>Nicholas Casey & Asa Fitch, *Gaza Hospital Attack Caught Civilians In Crossfire*, WALL ST. J. (23 July 2014), <http://online.wsj.com/articles/gaza-hospital-attack-caught-civilians-in-crossfire-1406158568>.

<sup>83</sup>*Id.*

<sup>84</sup>ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ¶ 1953, at 620–21 (1987), available at [http://www.loc.gov/rf/frd/Military\\_Law/pdf/Commentary\\_GC\\_Protocols.pdf](http://www.loc.gov/rf/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf).

<sup>85</sup>App. A.

<sup>86</sup>Protocol I, *supra* note 31, art. 52.

<sup>87</sup>See *id.* art. 51(4).

(b) [T]hose which employ a method or means of combat which cannot be directed at a specific military objective<sup>88</sup>[.]

Specifically, attacks are indiscriminate if they are “expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, *which would be excessive in relation to the concrete and direct military advantage anticipated*”<sup>89</sup>. When Hamas fires rockets into Israel, not knowing where they will land, there is no “concrete and direct military advantage anticipated”, and, hence, such firing violates IHL.

Hamas has fired nearly 3,000 rockets into Israel since 8 July 2014<sup>90</sup>. At least 280 rockets intended to land in Israel landed inside Gaza instead<sup>91</sup>, meaning, *inter alia*, that Hamas is killing and injuring its own people. Taking into consideration the inaccuracy of Hamas’ rockets alone allows one to conclude that Hamas rocket attacks are indiscriminate because they are a “means of combat which cannot be directed at a specific military objective”<sup>92</sup>. If that, in itself, were not enough, Hamas also openly boasts that its rockets “accurately target the homes of the Israelis and the Zionists”<sup>93</sup>. As such, by its own admission, Hamas’ rocket fire is not directed at a “specific military target,” but rather at civilian homes, thereby establishing—without question—a war crime. Accordingly, your denunciation should be loud and clear. Yet, you treat the issue as an afterthought. Why?

#### IN COMPLIANCE WITH IHL, ISRAEL TAKES NECESSARY PRECAUTIONS BEFORE STRIKING A MILITARY TARGET NEAR CIVILIANS

In accordance with its obligation to “take all *feasible* precautions to spare the civilian population”<sup>94</sup>, Israel makes incredible efforts to “remove civilian persons and objects . . . from the vicinity of military objectives”<sup>95</sup>—even when those persons are not under Israel’s control—before engaging in a military strike.

Before striking the tunnels in the Shujaiya neighbourhood, for example, Israel dropped leaflets, made phone calls, and sent text messages to warn civilians to evacuate the area<sup>96</sup>. In response to the Israeli efforts, Hamas expressly commanded the residents of Shujaiya to ignore the IDF’s warnings<sup>97</sup>. Further, at the ICRC’s request, the IDF agreed to a two-hour humanitarian ceasefire during the course of striking the Hamas tunnels in the Shujaiya neighbourhood<sup>98</sup>. Hamas ignored the ceasefire<sup>99</sup>. Why did you not condemn Hamas?

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<sup>88</sup>*Id.*

<sup>89</sup>*Id.* art. 51(5)(b) (emphasis added).

<sup>90</sup>IDF Spokesperson, *supra* note 17.

<sup>91</sup>*Hamas Launches Rockets On Civilians In Gaza*, IDF Blog (31 July 2014), <http://www.idfblog.com/blog/2014/07/31/hamas-launches-rockets-civilians-gaza/>.

<sup>92</sup>Protocol I, *supra* note 31, art. 51(4)(b).

<sup>93</sup>Steven Emerson, *Hamas Claims Rockets Only Target Jews*, ALJEMEINER (28 July 2014), <http://www.algemeiner.com/2014/07/28/hamas-claims-rockets-only-target-jews/>.

<sup>94</sup>*Civilian and Medical Workers Pay Price of Conflict*, *supra* note 47.

<sup>95</sup>Protocol I, *supra* note 31, art. 58(a).

<sup>96</sup>*Shuja'iya: Hamas' Terror Fortress*, *supra* note 70.

<sup>97</sup>*Id.*

<sup>98</sup>*Id.*

<sup>99</sup>*Id.*

Moreover, prior to the Israeli strike on the Al Wafa hospital, Israel repeatedly warned the hospital staff that the hospital was a legitimate military target. According to Dr. Basman Alashi, the executive director of the Al Wafa hospital, Israel warned the hospital staff through daily telephone calls beginning eleven days in advance that the hospital was a target and that the hospital should be evacuated<sup>100</sup>. By 23 July, all hospital personnel had been evacuated<sup>101</sup>. Only then was the hospital struck, because Hamas forces continued to fire from the building<sup>102</sup>. Despite Hamas' unlawful actions, you somehow found a way to insinuate that it was Israel's fault: "Even if Israel has attempted to warn civilians to, for example, leave their homes or conducted an evacuation before an attack, this does not release Israel from its obligations under international humanitarian law"<sup>103</sup>. No, it does not, but your insinuation is that Israel violated its obligations under IHL. That is wrong. Your criticism is baseless and merely encourages further Hamas violations of IHL. By your comments, you betray those you purport to support.

The foregoing facts demonstrate the steps Israel routinely takes before striking a military target in an area where civilians may be present. Israel attempts to distinguish military targets from civilians by using, where possible, precise air strikes and smart munitions; Israel takes herculean efforts to warn civilians of imminent attacks through the distribution of leaflets, repeated telephone calls, text messages, and various other methods of alert, even when it disadvantages Israeli military operations. Conversely, by intentionally placing weapons and militants in civilian areas, Hamas transforms them into legitimate military targets. Hamas does so to blur the line between civilian and military targets. Hamas also encourages, and at times demands, civilians to ignore Israel's warnings. Accordingly, it is Hamas—not Israel—that is violating IHL.

As such, Hamas should be held solely responsible for the vast majority of civilian casualties in the current conflict, and all people of good will should be loudly condemning Hamas' violations. Instead, you primarily criticise Israel. That is despicable. Despite the insinuations in your statements, the events in Gaza are not occurring in a vacuum. Hamas' actions subvert the principles of IHL, whereas Israel's actions seek at all times to comply with the spirit and letter of IHL. In that light, you have abdicated your moral authority by siding, for all intents and purposes, with Hamas terrorists.

Moreover, your strong insinuations of Israeli culpability will only encourage further lawless acts by Hamas. By failing to identify and condemn Hamas, the true, responsible Party, you are encouraging similar acts by Hamas in the future. Accordingly, your public denigration of Israel, the only state in the Middle East that seeks to comply with the letter and the spirit of IHL, and your misguided support for Hamas, the actual lawbreaker in the ongoing conflict, will simply encourage Hamas operatives to continue their lawless activities. That makes you jointly responsible for the innocent civilians killed or injured because of Hamas' acts in violation of IHL. That, in turn, amounts to a fundamental betrayal of your office.

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<sup>100</sup> *Israel Bombs Gaza's Only Rehab Hospital: Staff Forced To Evacuate Paralyzed Patients After Shelling*, DEMOCRACY NOW (18 July 2014), [http://www.democracynow.org/2014/7/18/israel\\_bombs\\_gazas\\_only\\_rehab\\_hospital](http://www.democracynow.org/2014/7/18/israel_bombs_gazas_only_rehab_hospital).

<sup>101</sup> Winer, *supra* note 79.

<sup>102</sup> *Id*

<sup>103</sup> App. A.

## CONCLUSION

You were recently quoted as stating:

In Israel and Palestine, the politics of conflict, peace and security are constantly leading to the downgrading, or setting aside, of the importance of binding international human rights law and international humanitarian law. International law is not negotiable. No individual or state can be considered exempt, if they violate the law.

....

Accountability is the first step towards ensuring that the cycle of human rights violations and impunity is brought to an end. A lasting peace can only begin with respect for human rights and human dignity on both sides, and ultimately, in the full realisation of the right to self-determination<sup>104</sup>.

Such statements are self-serving and misleading—especially when it is clear that one side—*Israel*—is making herculean attempts to fully comply with IHL and the other side—*Hamas*—could essentially care less. There is no moral equivalency here. Readily available evidence establishes beyond doubt that Hamas is routinely, openly, and notoriously violating IHL. Yet, Israel is singled out by you and others for actions it would have preferred to avoid altogether, but for the incessant attacks on Israeli soil from Hamas-controlled Gaza.

The above quoted paragraph does not state which party to the conflict is violating the “rules of war”. While Hamas spends millions of dollars to dig tunnels in civilian areas to attack Israel<sup>105</sup> and puts Palestinian civilians (whom Hamas purports to care about) in the line of fire, Israel builds shelters for its people. While Hamas brags about its use of human shields<sup>106</sup>, Israel makes conscious attempts to abide by the rules of war to protect civilians. After reading your account of Palestinian injuries, coupled with references to the rules of war, one is inexorably led to believe—*albeit wrongly*—that Israel is violating IHL. This type of misleading rhetoric undermines your integrity and legitimacy. Such one-sided criticism is not only unjustified, but also dangerous, reprehensible, and morally bankrupt. It encourages *Hamas* to continue to violate IHL with impunity at the expense of innocent Israeli and Palestinian civilians. At the very least, you should be expected to even-handedly report the facts, criticise the real aggressor, and have the courage to say which party is responsible for placing innocent lives at risk. That apparently is too much to ask.

You have not seriously condemned Hamas for indiscriminately firing thousands of rockets into Israel to create terror and attack innocent Israeli civilians. The rules of war were adopted, *inter alia*, to protect civilian lives. They can only do so if they are enforced in an even-handed manner. So far, you are attacking the wrong party. Israel seeks to comply with

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<sup>104</sup> App. A.

<sup>105</sup> See Editorial Board, *The U.S. Should Push For The Disarming Of Hamas In Gaza-Israel Cease-Fire*, WASH. POST (23 July 2014), [http://www.washingtonpost.com/opinions/the-us-should-push-for-the-disarming-of-hamas-in-gaza-israel-cease-fire/2014/07/23/7c2d1d9e-1284-11e4-8936-26932befd6ed\\_story.html](http://www.washingtonpost.com/opinions/the-us-should-push-for-the-disarming-of-hamas-in-gaza-israel-cease-fire/2014/07/23/7c2d1d9e-1284-11e4-8936-26932befd6ed_story.html) (estimating the cost of each tunnel that Hamas has dug to be roughly one million dollars).

<sup>106</sup> See Elad Benari, *Watch: Hamas Spokesman Encourages Using Civilians As Shields*, ARTUZ SHEVA (7 July 2014), <http://www.israelnationalnews.com/News/News.aspx/182729#.U9kmg7Gf-ik> (reporting a video of Hamas spokesman Sami Abu Zuhri explicitly encouraging Palestinians to adopt the strategy of becoming human shields and lauding its effectiveness and its display of the brave character of Palestinians).

IHL. Only the blind—or those intentionally blinding themselves to the facts—could criticise Israel and give Hamas a pass.

We, therefore, respectfully urge you to thoroughly examine what you say before you say it. We further urge you to examine the facts to determine which party in the Gaza conflict really seeks to comply with IHL and which does not. An objective, honest, evaluation will, we are confident, lead any honest person, to conclude that Israel is the only party seeking to meet the requirements of IHL. As such, Israel should be commended, not vilified, for its efforts to carry out its IHL obligations in the face of a determined, fanatical, unprincipled foe which intentionally and indiscriminately attacks Israeli civilians and uses its own civilian population as human shields.

Respectfully submitted,



Jay Alan Sekulow  
Chief Counsel



Robert W. Ash  
Senior Counsel

# APPENDIX A



Human Rights Council 21st Special Session: Human Rights Situation in the Occupied  
Palestinian Territory, including East Jerusalem

23 July 2014

Mr. President,  
Distinguished Members of the Human Rights Council,  
Excellencies,

The situation in the occupied Gaza Strip is critical for the civilians living there and requires your urgent attention. **Since Israel announced its military operation “Protective Edge” on 7 July, Gaza has been subjected to daily intensive bombardment from the air, land and sea, employing well over 2,100 air strikes alone. The hostilities have resulted in the deaths of more than 600 Palestinians, including at least 147 children and 74 women.**

This is the third serious escalation of hostilities in my six years as High Commissioner. As we saw during the two previous crises in 2009 and 2012, it is innocent civilians in the Gaza Strip, including children, women, the elderly and persons with disabilities, who are suffering the most.

According to preliminary UN figures, around 74 percent of those killed so far were civilians, and thousands more have been injured. **Those numbers have climbed dramatically since Israel’s ground operations began on 17 July.**

**Hundreds of homes and other civilian buildings, such as schools, have been destroyed or severely damaged in Gaza, and more than 140,000 Palestinians have been displaced as a result.**

*Two Israeli civilians have also lost their lives and between 17 and 32 others have been reported injured as a result of rockets and other projectiles fired from Gaza, and 27 Israeli soldiers have been killed during military operations in Gaza.*

*As we speak, the indiscriminate firing by Hamas and other armed groups of more than 2,900 rockets, as well as mortars, from Gaza continues to endanger the lives of civilians in Israel. I have repeatedly condemned such indiscriminate attacks in the past. I do so again today.*

*I further emphasise that it is unacceptable to locate military assets in densely populated areas or to launch attacks from such areas. However, international law is clear: the actions of one party do not absolve the other party of the need to respect its obligations under international law.*

Mr. President,

**Civilian homes are not legitimate targets unless they are being used for, or contribute to, military purposes at the time in question. In case of doubt, civilian homes are presumed not to be legitimate targets. Even where a home is identified as being used for military purposes, any attack must be proportionate, offer a definite military advantage in the prevailing circumstances at the time, and precautions must be taken.**

I unequivocally reiterate to all actors in this conflict that civilians must not be targeted. It is imperative that Israel, Hamas and all Palestinian armed groups strictly abide by applicable

norms of international humanitarian law and international human rights law. This entails applying the principles of distinction between civilians and combatants and between civilian objects and military objectives; proportionality; and precautions in attack. Respect for the right to life of civilians, including children, should be a foremost consideration. Not abiding by these principles may amount to war crimes and crimes against humanity.

Mr. President,

Israel has stated that it has alerted Gazans before conducting strikes, including by using telephones, text messages and so-called warning “roof knocks,” using relatively light munitions. Even if Israel has attempted to warn civilians to, for example, leave their homes or conducted an evacuation before an attack, this does not release Israel from its obligations under international humanitarian law. Any warning for civilians must meet with the requirements of international law, including that this warning be clear, credible and allows sufficient time for people to react to it.

A number of incidents, along with the high number of civilian deaths, belies the claim that all necessary precautions are being taken to protect civilian lives. Roof-knocking itself is costing lives, with one projectile – apparently delivered from a drone – reported to have pierced a 20-centimetre concrete roof, killing three children.

People – particularly the elderly, sick and those with disabilities – are not given sufficient time to scramble out of their homes. When they do manage to run out into the street, there is nowhere to hide and no way of knowing where the next shell or missile will land.

Some eminent human rights defenders whom I spoke to inside Gaza yesterday asked for “the rule of law, not rule of the jungle”, adding that they have no peace, no security and no human rights. *With regard to the firing of rockets by armed groups from densely populated areas, they said – and I quote – “We do not choose our neighbours.”*

The disregard for international humanitarian law and for the right to life, was shockingly evident for all to see in the apparent targeting on 16 July of seven children playing on a Gaza beach. Credible reports gathered by my Office in Gaza indicate that the children were hit first by an Israeli air-strike, and then by naval shelling. All seven were hit. Four of them, - aged between 9 and 11, from the same Bakr family - were killed. These children were clearly civilians taking no part in hostilities.

The following day, three more children were killed and two others wounded, reportedly by a drone missile, in the Al-Sabra area of Gaza city while they were playing on the roof of their home as their parents prepared the daily Ramadan *iftar* meal.

These are only a few of the cases in which a total of 147 children have been killed in Gaza over the past 16 days. They had a right to life just like children in any other country. Their killings raise concerns about respect for the principles of distinction, proportionality and precautions in attack.

*Israeli children, and their parents and other civilians, also have a right to live without the constant fear that a rocket fired from Gaza may land on their houses or their schools, killing or injuring them. Once again, the principles of distinction and precaution are clearly not being observed during such indiscriminate attacks on civilian areas by Hamas and other armed Palestinian groups.*

Mr President,

On 13 July, an Israeli strike reportedly killed two women in wheelchairs and injured four other patients in a centre for persons with disabilities in Beit Lahiya.

In the area of al-Shuja'iya, the full extent of casualties and damage to property is still unclear due to the continuous military ground offensive. Based on preliminary information gathered by my office in Gaza, on 20 July, a house was hit by several artillery shells at 6:00 a.m., killing seven members of a single family (including four women and two children) and one neighbour, who had sought refuge in the house. Another five family members, including three children, were injured.

In another case, five people were still missing as of 21 July, in a house targeted in an airstrike, and are believed to be buried under the rubble. My staff are continuing to document several other cases, in which family residences were destroyed with reported loss of civilian life, and in which preliminary indications suggest not even a single member of an armed group was present.

Then, just two days ago, on 21 July, shells hit the Al-Aqsa Hospital in Deir al-Balah reportedly killing at least three people and wounding dozens of others, including doctors.

These are just a few examples where there seems to be a strong possibility that international humanitarian law has been violated, in a manner that could amount to war crimes. Every one of these incidents must be properly and independently investigated.

#### Blockade and impact of repeated military hostilities

The current conflict and destruction comes at a time when Gaza is still recovering from repeated escalations of hostilities with Israel. The crippling effects of the Israeli blockade and other measures linked to the Israeli occupation of Gaza suppress the ability of the people to go about their daily lives and prevent them from rebuilding their lives and communities after repeated military operations.

I reiterate my numerous calls for this blockade to be lifted once and for all.

This latest assault has wreaked further damage to Gaza's water and sanitation facilities. Fuel and medicine are in critically short supply, and electricity is reduced to a few hours a day, affecting ordinary households as well as compromising the ability of hospitals to treat the many injured, and to care for the most vulnerable people.

#### Situation in the West Bank

Mr President,

The current situation in Gaza has overshadowed the backdrop of heightened tensions in the occupied West Bank, including East Jerusalem. *On 12 June, three Israeli teenagers went missing near Hebron, and were subsequently found murdered.* Since then, more than 1,200 Palestinians have reportedly been arrested with some placed in administrative detention; Israel has carried out extensive operations where homes and offices have been raided and property damaged; the Israeli authorities have also resumed a policy of carrying out punitive house demolitions, and nine Palestinians have been killed in incidents involving

Israeli security forces, raising serious concerns of excessive use of force, especially in the context of demonstrations against the military operation in Gaza.

In addition, I am concerned about reports of a significant rise in incitement to violence against Palestinians, including through social media. On 2 July, a Palestinian teenager was beaten and burned alive in Jerusalem amidst an atmosphere of revenge and incitement to violence.

The killings of all four teenage boys were abhorrent and those responsible must be brought to justice. However, only those responsible for these criminal acts can legitimately be punished. Individuals may not be punished for offences they have not personally committed or be made subject to collective penalties.

#### Context of protracted occupation

Mr President,

Israel holds obligations as an Occupying Power. For Palestinians in Gaza and in the West Bank, including East Jerusalem, the current reality is not just one of repeated conflict but also one of protracted occupation, with insecurity and a constant daily struggle for human rights, in particular the right to self-determination. In Gaza, the blockade and Access Restricted Areas continue to undermine the human rights of the population. In the West Bank, ever expanding illegal Israeli settlements; settler violence; demolitions of Palestinian homes; the Wall and its associated regime; excessive use of force; and large scale detentions of Palestinians are some of the ongoing, routine abuses and human rights violations committed against the occupied population.

The scenes we witness from afar, here in Geneva or around the world, via the 24-hour news channels and social media, provide only brief glimpses of the daily reality of conflict for Palestinians and for Israelis.

A seven-year old Palestinian child in Gaza has never known life outside occupation and is already living through her or his third experience of a major Israeli military operation, including the so-called operations 'Cast Lead' in 2009 and 'Pillar of Defence' in 2012, with all the unimaginable death, destruction, terror and the life-long consequences that they inflicted.

Both Palestinians and Israelis deserve better than a life of chronic insecurity and recurring escalation in hostilities.

#### Accountability and the right to self-determination

The continued failure to properly ensure accountability on both sides following earlier escalations of hostilities in Gaza is of serious concern. The culture of impunity for alleged violations of international law invites further transgressions and the victims of the past become victims again. War crimes and crimes against humanity are two of the most serious types of crimes in existence, and credible allegations that they have been committed must be properly investigated. So far, they have not been.

According to local human rights groups, despite numerous allegations of serious international crimes, only four Israeli soldiers have been prosecuted and convicted for three incidents that occurred during Operation 'Cast Lead'. One of the convictions was for stealing a credit card. And the other three soldiers, convicted of more serious crimes, received extraordinarily light sentences. In April 2013, the Military Advocate General issued a public document indicating that it found no basis for opening criminal investigations into approximately 65 incidents involving the Israel Defense Force during the 2012 operation known as 'Pillar of Defence'.

*With respect to rocket and mortar attacks from Gaza, information available also indicates that no adequate measures have been taken to carry out effective investigations into alleged violations.*

Mr President,

I, and my predecessors and successors as High Commissioner for Human Rights, can only offer the facts, the law, and common sense. This we have done, and -- I am sure -- will continue to do, however much we are criticized for it.

We, as the International Community, the United Nations, the Human Rights Council, States, and as human beings, are obliged to do everything in our power to protect all civilians and ensure that human rights are respected, protected and fulfilled worldwide.

In Israel and Palestine, the politics of conflict, peace and security are constantly leading to the downgrading, or setting aside, of the importance of binding international human rights law and international humanitarian law. International law is not negotiable. No individual or state can be considered exempt, if they violate the law.

I hope that the parties will respond positively to the visit of the Secretary-General to the region and his call for an immediate ceasefire. But what must we finally do to move beyond a ceasefire that will inevitably be broken again in two or three years, leading to yet more dead civilian men, women and children? Accountability is the first step towards ensuring that the cycle of human rights violations and impunity is brought to an end. A lasting peace can only begin with respect for human rights and human dignity on both sides, and ultimately, **in the full realisation of the right to self-determination.**

All these dead and maimed civilians should weigh heavily on all our consciences. I know that they weigh heavily on mine. All our efforts to protect them have been abject failures. More powerful entities, such as the Security Council, and individual States with serious leverage over the parties to this dreadful and interminable conflict, must do far more than they have done so far to bring this conflict to an end once and for all.

Thank you.