



21 August 2014

VIA FACSIMILE (212-963-2155) &
OVERNIGHT DELIVERY SERVICE

H.E. Ban Ki-Moon
Secretary-General
United Nations Headquarters



Re: Misuse of UNRWA Facilities by Hamas Operatives in Gaza

Your Excellency:

By way of introduction, the European Centre for Law and Justice (ECLJ) is an international, Non-Governmental Organisation, 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 2007¹. The ECLJ offices are located in Strasbourg, France.

In light of our commitment to the rule of law in international affairs, we were distressed to learn of the intentional misuse of UNRWA facilities² in the Gaza Strip in support of Hamas operatives in their attacks on Israel, a UN member state in good standing, in obvious violation of principles enunciated in the UN Charter³, a number of UN Security Council resolutions⁴, and International Humanitarian Law (IHL)⁵. The very reputation and legitimacy of the UN and its various arms and agencies are at

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

²Tovah Lazaroff, *UNRWA Investigating 20 Rockets Found in One of Its Vacant Schools*, THE JERUSALEM POST (14 Aug. 2014), <http://www.jpost.com/Middle-East/UNRWA-investigating-20-rockets-found-in-one-of-its-vacant-schools-363279> (discussing the UNRWA's discovery of twenty rockets hidden in a vacant, UNRWA-run school in the Gaza Strip); Elad Benari, *UN Chief 'Outraged' Over Rockets Stored in UNRWA School*, ARUTZ SHEVA (14 Aug. 2014), <http://www.israelnationalnews.com/News/News.aspx/183277#.U-0SxPldVSI> (discussing a second batch of rockets found in an UNRWA-run school in the Gaza Strip); U.N. Secretary-General, *Secretary-General, Outraged at Rockets Found in United Nations-Administered School*, ¶ 2, U.N. Doc. SG/SM/16045 (23 July 2014) (Secretary-General Ban Ki-moon "is alarmed to hear that rockets were placed in an UNRWA school in Gaza and that subsequently these have gone missing.").

³U.N. Charter art. 2, para. 4.

⁴See, e.g., S.C. Res.1373, ¶ 1(d), U.N. Doc. S/RES/1373 (28 Sept. 2001); S.C. Res. 1456, ¶ 2(e), 3, U.N. Doc. S/RES/1456 (20 Jan. 2003).

⁵See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), arts. 48, 51(7), 52(1), 58, (8 June 1977).



stake, especially since Hamas is widely recognised as a terrorist organisation⁶. Further, the return to Hamas of the rockets unlawfully stored in UNRWA facilities strongly suggests that UNRWA employees may be acting in concert and/or co-operating with Hamas operatives in unlawfully attacking a UN member state. That cannot be tolerated and may, in fact, constitute a war crime⁷. At a minimum, it places in question the legitimacy and impartiality of all UNRWA operations in Gaza.

Unless and until the United Nations takes firm action against Hamas' open and notorious violations of the UN's protected status under international law, both UNRWA structures and personnel will be vulnerable to legitimate military attacks by Israeli armed forces, acting in national self-defence. As you yourself have noted, UN structures enjoy protected status under international law, but only insofar as they are not used for military purposes⁸. Hamas' unlawful placement of rockets in UNRWA facilities converted such facilities from protected objects under international law into legitimate military objectives.

As Secretary-General, you are in the unique position to deal with such violations. We appreciate very much the strong condemnation you have already issued about Hamas' misuse and endangerment of UN facilities in Gaza. That is a good start, but more is required. As you did in the wake of the Mavi Marmara incident, we urge you to appoint a Commission of Inquiry composed of disinterested persons of international stature and unquestioned integrity to investigate the following: (1) how Hamas rockets came to be stored in UNRWA facilities; (2) what person or persons may have facilitated such storage; (3) why UNRWA personnel did not sufficiently control access to UNRWA facilities to ensure that their protection

⁶*See, e.g., Foreign Terrorist Organizations*, U.S. DEPARTMENT OF STATE: BUREAU OF COUNTERTERRORISM (14 Aug. 2014), <http://www.state.gov/j/ct/rls/other/des/123085.htm> (designating Hamas as a terrorist organisation on 8 October 1997); Council Common Position 2003/651/CFSP of 12 September 2003 updating Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Common Position 2003/482/CFSP, O.J. L. 229/42 13.9.2003 (listing "Hamas (including Hamas-Izz al-Din al-Qassem)" among "Groups and Entities" defined as terrorist organisations); *Currently Listed Entities*, PUBLIC SAFETY CANADA (24 Mar. 2014), <http://www.publicsafety.gc.ca/ent/ntnl-sert/entr-trrsm/lstd-nts/errnt-lstd-nts-eng.aspx> (listing "Hamas (Harakat Al-Muqawama Al-Islamiya) (Islamic Resistance Movement)" as a terrorist organisation on Canada's Public Safety website). Even Arab nations have recognized the danger Hamas poses to them and the world and have banned Hamas' activities. *See, e.g.,* Custodian of the Two Holy Mosques King Abdullah bin Abdulaziz Al-Saud's statement to the Arab and Islamic Nations and the International Community (1 Aug. 2014), available at http://www.saudiembassy.net/announcement/announcement_08011401.aspx (condemning Hamas, among other groups, as "terrorists" who "hijack Islam"); Yasmine Saleh, *Court Bans Activities of Islamist Hamas in Egypt*, REUTERS (4 Mar. 2014), <http://www.reuters.com/article/2014/03/04/us-egypt-hamas-idUSBREA230F520140304> (discussing an Egyptian court's ban on Hamas activity); Khaled Abu Toameh, *King Abdullah Says No to Hamas*, GATESTONE INSTITUTE (17 Sept. 2013), <http://www.gatestoneinstitute.org/3978/king-abdullah-hamas> (recognising that Hamas has been banned in Jordan for the past fifteen years).

⁷Numerous countries have recognised that Hamas is a terrorist organisation, see footnote text, *supra* note 6. And, since 9/11, the UN Security Council has made clear that providing any assistance to a terrorist group is a violation of international law, *supra* note 4. Hence, support of Hamas terrorists by UNRWA employees—by allowing Hamas to use UNRWA facilities as weapons storage sites and by returning such weapons to Hamas—may well in itself violate IHL.


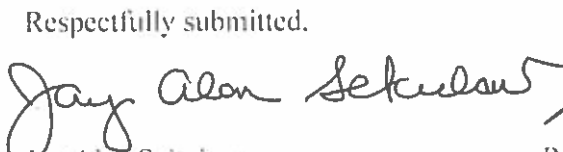
⁸*Outraged at Rockets Found in United Nations-Administered School*, *supra* note 2 ("[Secretary-General] expresses his outrage, and regret, at the placing of weapons in a UN-administered school. By doing so, those responsible are turning schools into potential military targets, and endangering the lives of innocent children, UN employees working in such facilities, and anyone using the UN schools as shelter.").

under international law was not compromised; (4) which UNRWA personnel collaborated and/or co-operated with Hamas operatives to allow them access to UNRWA facilities; (5) who made the decision to return such rockets to Hamas and why; (6) what other types of Hamas military activities have taken place in close proximity to UNRWA and other UN facilities in Gaza, thereby endangering UNRWA/UN facilities and personnel as well as persons seeking refuge there; and (7) all other facts that bear on Hamas' misuse and endangerment of UN facilities in the Gaza Strip.

We believe that time is of the essence in this matter. We strongly urge you to act without delay in establishing such a commission. Until such an investigation takes place and effective measures are put in place to preclude future violations of UNRWA's protected status, the impartiality of UNRWA will remain in question, and Israeli doubts about the sanctity of UNRWA facilities will be fully justified. It is, therefore, in everyone's interest that an unbiased commission composed of otherwise disinterested persons of unquestioned integrity be appointed forthwith. If UN facilities wish to enjoy the protection of international law, they must comply fully with the requirements of international law and be used solely for non-military purposes.

We look forward to your acting swiftly to begin investigating the details of the IHL violations involving UNRWA facilities in Gaza. Should you believe that we might be able to assist in this matter, please do not hesitate to let us know.

Respectfully submitted,



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