



6 December 2023

VIA OVERNIGHT DELIVERY SERVICE

H.E. António Guterres
Secretary-General of the United Nations
United Nations Headquarters
46th Street & 1st Avenue
New York, NY 10017

Re: Hamas' Use of UNRWA Personnel and Facilities

Your Excellency:

By way of introduction, the European Centre for Law and Justice (ECLJ) is a non-governmental organisation located in Strasbourg, France, dedicated to the promotion and protection of human rights around the world. The ECLJ has held Special Consultative status with the United Nations Economic and Social Council since 2007.¹

In light of our commitment to the rule of law in international affairs, we are distressed to learn of the reports coming out of Gaza regarding UNRWA personnel's involvement in Hamas' war crime of hostage taking and the intentional misuse of UNRWA facilities in the Gaza Strip in support of Hamas.² Such actions clearly violate the UN Charter,³ a number of UN Security Council resolutions,⁴ and International Humanitarian Law (IHL).⁵ The very reputation and legitimacy of the UN and its various arms and agencies are at stake, especially since Hamas is widely recognised as a terrorist organisation and consistently engaged in these unlawful practices.⁶

¹ *The European Centre for Law and Justice*, U.N. DEPT. OF ECON. AND SOC. AFFS., <https://esango.un.org/civilsociety/consultativeStatusSummary.do?profileCode=3010> (last visited 6 Dec. 2023).

² Pamela Falk, *Israel Says These Photos Show How Hamas Places Weapons in and Near U.N. Facilities in Gaza, including schools*, CBS NEWS (8 Nov. 2023), <https://www.cbsnews.com/news/israel-photos-hamas-gaza-weapons-un-facilities-including-schools>.

³ U.N. Charter art. 2, ¶ 4.

⁴ See, e.g., S.C. Res. 1373, ¶ 1(d) (28 Sept. 2001); S.C. Res. 1456, ¶ 2(c) (20 Jan. 2003).

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

⁶ See, e.g., *Foreign Terrorist Organizations*, U.S. DEPT. OF STATE: BUREAU OF COUNTERTERRORISM, <https://www.state.gov/foreign-terrorist-organizations> (last visited 6 Dec. 2023) (designating Hamas as a terrorist organisation on 8 October 1997); *Currently Listed Entities*, PUBLIC SAFETY CANADA, <http://www.publicsafety.gc.ca/cnt/ntnl-scr/cntr-terrorism/lstd-ntts/crmt-lstd-ntts-eng.aspx> (last visited 6 Dec. 2023) (listing "Hamas (Harakat Al-Muqawama Al-Islamiya) (Islamic Resistance Movement)" as a terrorist entity). Also, Germany recently banned "activities supporting Hamas, which builds on the EU's designation to fully restrict and criminalize support of the terrorist group." Matthew Miller, *The United States Applauds Germany's Ban on Hamas Activities*, U.S. DEPT. OF STATE (8 Nov. 2023),

On 29 November 2023, it was reported that one of the kidnapped Israeli children was held hostage for more than 50 days in the attic of the house of an UNRWA teacher.⁷ While he was holding the boy hostage in his home, the teacher did not provide adequate food or medical attention to the boy.⁸ A spokeswoman for UNRWA acknowledged the allegations, but declined to comment.⁹ According to the same report, another hostage was held captive by a doctor in Gaza, who continued to provide care to children in the hospital, but not for the Israeli child.¹⁰

Moreover, another report shows a video posted on the official Facebook page of an UNRWA-run school in Nablus, showing a young student calling for the victory of Hamas' "Jihad warriors" in Gaza.¹¹ UNRWA school teachers have also praised Hamas attacks on Israel.¹² The report also revealed that more than 100 Hamas terrorists were confirmed to have graduated from UNRWA schools.¹³

These reports, as well as the recently reported use of an UNRWA warehouse facility as a Hamas rocket launching site in Gaza ("and another very close to an UNRWA-run school")¹⁴ strongly suggests that UNRWA employees may be acting in concert and/or cooperating with Hamas operatives in unlawfully attacking a UN Member State. That cannot be tolerated and may, in fact, constitute a war crime.¹⁵ At a minimum, it places in question the legitimacy of all UNRWA operations in Gaza.

Unfortunately, this is not the first time UNRWA and Hamas have been accused of unlawfully collaborating during a time of war. In July 2014, for example, Hamas' rockets were found in at least three separate UNRWA schools.¹⁶ Reports indicated that

<https://www.state.gov/the-united-states-applauds-germanys-ban-on-hamas-activities>. Following the attacks of 7 October 2023, Japan designated Hamas as subject to "asset freezing for terrorists and others, among other measures." Rishikia Singh, *Which Countries Recognise Hamas as a 'Terrorist' Organisation*, INDIAN EXPRESS (21 Nov. 2023), <https://indianexpress.com/article/explained/everyday-explainers/israel-countries-recognise-hamas-terrorist-list-9036186>. See also *Senator Collins, Bipartisan Group Urge UN to Designate Hamas as a Terrorist Organization*, SUSAN COLLINS (17 Nov. 2023), <https://www.collins.senate.gov/newsroom/senator-collins-bipartisan-group-urge-un-to-designate-hamas-as-a-terrorist-organization>.

⁷ @HenMazzig, X (29 Nov. 2023, 2:09 PM), <https://x.com/HenMazzig/status/1729940723535888686?s=20>; @bokeralmog, X (29 Nov. 2023, 1:46 PM), <https://x.com/bokeralmog/status/1729934849161494658?s=20>.

⁸ *Released Hostage Says He Was Held by UNRWA Teacher in Gaza – Report*, JERUSALEM POST (30 Nov. 2023, 2:40 AM), <https://www.jpost.com/middle-east/article-775777>.

⁹ Charles Hilu, *UNRWA Teacher Held Israeli Hostage in Attic for Almost 50 Days: Report*, WASH. FREE BEACON (29 Nov. 2023), <https://freebeacon.com/latest-news/unrwa-teacher-held-israeli-hostage-in-attic-for-almost-50-days-report>.

¹⁰ @HenMazzig, *supra* note 7.

¹¹ *Released Hostage Says He Was Held by UNRWA Teacher in Gaza – Report*, *supra* note 8.

¹² *Id.*

¹³ *Id.*

¹⁴ Falk, *supra* note 2.

¹⁵ Numerous countries have recognised that Hamas is a terrorist organisation. 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. Hence, possible support of Hamas terrorists by UNRWA employees—by reportedly holding hostages and allowing Hamas to use an UNRWA facilities as rocket launching sites—may well violate IHL.

¹⁶ Ilan Ben Zion, *Rockets Found in UNRWA School, for Third Time*, TIMES OF ISR. (30 July 2014, 1:28 AM), <https://www.timesofisrael.com/rockets-found-in-unrwa-school-for-third-time>; Cf. *Agency Demands Full Respect for the Sanctity of Its Premises in Gaza*, UNRWA (17 July 2014), <https://www.unrwa.org/newsroom/press-releases/unrwa-strongly-condemns-placement-rockets-school>.

in one instance, UNRWA actually returned the rockets to Hamas, rather than destroy them.¹⁷ Such actions fall far short of what is expected of UNRWA, or any other UN agency.

Unless and until the UN 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 know, UN structures enjoy protected status under international law, but only insofar as they are not used for military purposes.¹⁸ Hamas' unlawful placement of hostages in the homes of UNRWA employees and placement of rocket launch sites in UNRWA facilities converts such facilities from protected objects under international law into legitimate military objectives, as terrorist locations.

As Secretary-General, you are in the unique position to deal with such violations. We are aware of your 31 October 2023 statement on the situation in Gaza.¹⁹ In this regard, we emphasise Israel's unquestionable right to act in self-defence in response to the savage and unprovoked terrorist attacks recently committed by Hamas against innocent Israeli men, women, children, and the elderly.

Moreover, we urge you to appoint a commission of inquiry composed of disinterested persons of international stature and unquestioned integrity to investigate the following: (1) UNRWA employees alleged to have held Israeli hostages taken by Hamas; (2) UNRWA facilities used as rocket launching sites; (3) UNRWA personnel who may have facilitated such actions; and (4) all other facts that bear on Hamas' misuse and endangerment of UN facilities in the Gaza Strip.

It must also be noted that such allegations are not made in a vacuum. UN Member States have conducted individual, independent inquiries into such allegations and have made the decisions to stop funding UNRWA, finding such allegations credible. For example, Germany, the largest donor to UNRWA, stopped funding UNRWA after an internal review found that its learning material glorifies jihad and teaches antisemitism. Other countries and administrations have stopped funding Palestinian organisations for the same reasons.²⁰

We believe that time is of the essence in this matter. We strongly urge you to act **without delay** in establishing a commission of inquiry. Until such an investigation takes place and effective measures are put in place to preclude future violations of

¹⁷ Shimon Cohen & Maayana Miskin, *UNRWA Gives Rockets to Hamas: Rockets Found in UN School Are Reportedly Handed over to Terrorist Group*, ISR. NAT'L NEWS (20 July 2014, 8:28 AM), <https://www.israelnationalnews.com/news/183089>.

¹⁸ See Falk, *supra* note 2 (by reportedly using an UNRWA warehouse facility as a rocket launching site, those responsible are turning the warehouse facility into a potential military target and endangering the lives of innocent civilians as well as UN employees).

¹⁹ *Secretary-General's Statement - On the Situation in Gaza*, U.N. (31 Oct. 2023), <https://www.un.org/sg/en/content/sg/statement/2023-10-31/secretary-general%E2%80%99s-statement-the-situation-gaza>.

²⁰ Mary Chastain, *Germany Pulls Funding to U.N. Palestinian Aid Group After Review Finds It Handed Out Antisemitic Material*, LEGAL INSURRECTION (29 Nov. 2023, 5:00 PM), <https://legalinsurrection.com/2023/11/germany-pulls-funding-to-u-n-palestinian-aid-group-in-gaza-after-review-finds-it-handed-out-anti-semitic-material>.

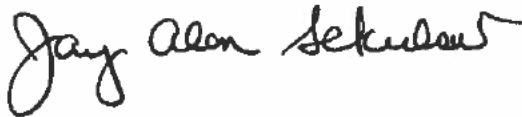
UNRWA's protected status, the impartiality of UNRWA will remain in question, and ongoing doubts about the sanctity of UNRWA facilities will be justified.

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.

Based on the credible evidence regarding past misuses of UNRWA facilities by Hamas and the new allegations of UNRWA employees' involvement in Hamas' war crimes, the UN has an obligation to discontinue UNRWA's mandate.

We look forward to your acting swiftly to begin investigating the details of the potential 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,

A handwritten signature in black ink that reads "Jay Alan Sekulow". The signature is written in a cursive, flowing style.

Jay Alan Sekulow
Chief Counsel