



Letter to EU Foreign Ministers to Address Violations between Israel and Hamas

March 16, 2009

Dear Foreign Minister,

As you meet with your colleagues from the General Affairs & External Relations Council, we urge you to address the pressing matter of serious violations of international humanitarian law committed by Israel and Hamas in the Gaza Strip and southern Israel. We call on you and your colleagues from European Union member states to press for a comprehensive and impartial international inquiry into allegations of serious violations of international law and to insist on accountability for those responsible for these violations, which may amount to war crimes, by committing or ordering them or as a matter of command responsibility.

Failure to hold accountable those on both sides of this conflict who deliberately or recklessly harmed civilians will leave victims and their families without recourse to justice or compensation. Inevitably, perceptions of impunity by Palestinians and Israelis alike will deal a serious blow to efforts to bring about a stable truce in Gaza and a political settlement of the larger conflict.

Both Israel and Hamas have a poor record of conducting genuine and impartial investigations, and of holding members of their own forces accountable for war crimes. Similarly, current and planned international investigations are inadequate to the apparent violations that occurred during the conflict. The current UN Board of Inquiry investigation is limited to selected attacks on UN facilities, while the planned investigation mandated by the UN Human Rights Council would focus only on Israeli conduct.

The EU has demonstrated leadership in pursuing accountability for war crimes and combating impunity around the world. This policy should also be applied to crimes committed in the Israeli-Palestinian conflict.

A failure by the EU to insist on accountability of states seen as allied, such as Israel, will be perceived in the region as demonstrating an indefensible double-standard regarding alleged violations of international human rights and humanitarian law, and will undercut the EU's credibility on behalf of international justice. The United Nations Security Council's referral of the Darfur conflict to the International Criminal Court (ICC) and the court's recent issuance of an arrest warrant for Sudanese President Omar al-Bashir on charges of war crimes and crimes against humanity underscore the need for accountability and justice to be impartial. The EU was the primary force behind the Security Council's successful effort to refer the Darfur situation to the ICC in March 2005. The EU now should lead the way to ensure that a mechanism is created to gather the facts about serious international humanitarian law violations committed in the Gaza conflict. Given the disappointing records of Israel and the Hamas authorities regarding accountability mechanisms for their own forces, an impartial international investigation into allegations of serious violations of international law by Israel and Hamas during the recent fighting in Gaza is essential to establish key facts and to recommend further steps for holding violators accountable and providing compensation to victims.

Despite Israel's refusal to allow Human Rights Watch access to Gaza during and since the recent hostilities, our researchers were able to enter Gaza for several weeks when Egypt opened the Rafah crossing. During that period, Human Rights Watch conducted extensive field investigations into the conduct of the conflict by both parties. We found that both sides showed a serious disregard for the safety of civilians and repeatedly acted in violation of the laws of war.

The following is a summary of our main concerns to date regarding the conduct of hostilities by Israeli and Hamas forces:

Concerns Regarding Israel

Closure

Prior to, during, and since its major military operations in the Gaza Strip, Israel has imposed extensive restrictions on the flow of people and goods into and out of Gaza. Ostensibly a security measure, these

restrictions in fact amount to a form of collective punishment against Gaza's 1.5 million civilian population in violation of the Geneva Conventions. Far from limiting the blockade to armaments or similar war-related materiel, Israel continues to block desperately needed humanitarian aid, food and other necessities, as well as reconstruction material from entering Gaza, and to throttle the territory's economy by preventing agricultural and other exports. The excessive restrictions on relief supplies violate international humanitarian law provisions on access to humanitarian assistance. Israel's broader blocking of goods and medicine violate the Fourth Geneva Convention on occupation, which is still applicable in Gaza. Israel remains the occupying power in Gaza, despite the withdrawal of its troops, because it continues to exercise effective control over Gaza's airspace, sea space, and land borders, as well as the territory's electricity, water, and sewage systems, and population registry. Under the Fourth Geneva Convention, an occupying power is obligated to ensure the health and well-being of the civilian population to the fullest extent possible. European Union states also have obligations to promote adherence to the Fourth Geneva Convention, as article 1 common to the four Geneva Conventions of 1949 requires all states parties to respect *and ensure respect* for the Conventions.

High Explosive Heavy Artillery

Human Rights Watch documented Israel's repeated firing of 155mm high explosive artillery munitions into densely populated areas of Gaza, in violation of the laws of war prohibition against indiscriminate attacks. These shells inflict blast and fragmentation damage up to 300 meters from the point of impact; the internal guidelines of the Israel Defense Forces (IDF) forbid targeting them within 350 meters of friendly troops. Human Rights Watch observed these shells being fired into built-up urban areas of Gaza during the hostilities. After our researchers entered the territory on January 21, they saw many of the shells that had struck in heavily populated areas, including 155mm shrapnel in the main compound of the United Nations Relief Works Agency (UNRWA). The IDF in November 2006 had stopped its previous frequent firing of heavy artillery into Gaza after two high-profile incidents involving large numbers of Palestinian civilian casualties. Regrettably in January 2009, the IDF resumed the unlawful use of this weapon in densely populated areas.

White Phosphorus Munitions

Israel repeatedly burst white phosphorus munitions in the air over populated areas of the Gaza Strip, up to the last days of its military operation, killing and injuring civilians, and damaging civilian structures, including a school, a market, a humanitarian aid warehouse and a hospital. The IDF's extensive use of white phosphorus over many parts of the Gaza Strip, despite plentiful evidence of the munitions' indiscriminate incendiary effect, was neither incidental nor accidental, but intentional. Even if intended as an obscurant to block troop movements rather than as a weapon, the IDF's firing of air-burst white phosphorus shells from 155mm artillery into densely populated areas indicates the commission of war crimes. Human Rights Watch investigated two particularly egregious examples: on January 15 the IDF air-burst white phosphorus over the UNRWA headquarters in Gaza City, destroying warehouses, supplies of flour, vehicles, and more than €2.86 million in medical supplies; in the second case, on January 17 the IDF air-burst white phosphorus at a low altitude over a UN-run school in Beit Lahiya that was sheltering about 1,600 internally displaced persons, killing two children and wounding 14 other civilians.

Shooting of Civilians Holding White Flags

Human Rights Watch documented six cases in which Israeli soldiers opened small-arms fire on Palestinian civilians, killing a total of 10 people—among them five women and three children—and wounding at least eight civilians. In each of these cases, the victims were standing, walking or driving with other civilians who were trying to convey their civilian status by waving a white flag. These people were not taking an active part in hostilities at the time, and were therefore protected persons under the laws of war. At the very least Israeli forces failed to adequately distinguish between combatants and civilians. At worst, they purposefully targeted civilians.

Targeting Civilian Objects

The IDF appears to have used an unjustifiably expansive definition of military targets during the operation. According to official Israeli statements, Israeli forces attacked a range of presumptively civilian facilities, from government offices to police stations, on the basis that they provided at least indirect support to Hamas's military wing. This violates the crucial distinction between civilians and combatants that lies at

the heart of the laws of war, and which requires that civilians take a direct part in the hostilities before they become legitimate military targets. The IDF's logic would entitle Hamas to target virtually any government building in Israel on the grounds that its officials and workers indirectly supported the IDF. In similar fashion, civilian objects become legitimate objects of attack only if they are used to store weapons, deploy fighters, or serve some other military function. Hamas militants did use some civilian buildings, including mosques, to store weapons, but Israel has offered no evidence that the majority of civilian objects it attacked, including the Ministry of Justice and an ice cream factory, were in any way serving a military purpose.

Insufficient Warnings

The IDF repeatedly justified attacks in civilian areas by saying that it had adequately warned the civilian population in advance, either by dropping leaflets, making telephone calls or breaking into local radio and television broadcasts. International humanitarian law requires armed forces to provide "effective advance warnings" of an attack when circumstances permit. Human Rights Watch found that warnings given in Gaza by the IDF failed to meet that standard of effectiveness. The warnings were vague: often addressed to the "inhabitants of the area," they did not provide sufficient information on what areas would be attacked or when civilians should take appropriate action. When dropped from airplanes, leaflets scattered over wide areas, leading some civilians to disregard them. In many cases, the warnings did not instruct civilians where to find safety after fleeing their homes. Some warnings told civilians to head to the centers of towns, and in some cases those centers, including Gaza City, later came under attack. Moreover, even after warnings have been given, international humanitarian law requires attacking forces to take all feasible precautions to avoid loss of civilian life and property; attacking forces may not assume that all persons remaining in an area after a warning has been issued are combatants. As Human Rights Watch documented in numerous cases, the IDF frequently failed to take all feasible precautions to avoid harm to civilians.

Wanton Destruction of Civilian Property

Human Rights Watch is still conducting research on the intentional destruction by Israeli ground forces of

civilian property throughout Gaza. According to the UN Development Program (UNDP), the recent hostilities in Gaza resulted in the damage or destruction of more than 14,000 homes, 68 government buildings, and 31 offices of nongovernmental organizations. The World Health Organization says that almost half of the 122 health facilities it surveyed in Gaza were damaged or destroyed. In several cases investigated so far, Human Rights Watch found that the pattern of destruction strongly suggests that Israeli ground forces demolished homes in a wholesale manner in the absence of military necessity, in violation of international humanitarian law.

Concerns Regarding Hamas

Rocket Attacks on Civilians

Prior to the Israeli military offensive, throughout the conflict, and in the nearly two months thereafter, Hamas and other Palestinian armed groups fired rockets into Israeli civilian areas. In the period since December 27, when Israel commenced its operations, Palestinian armed groups have fired hundreds of rockets into southern Israel, striking the towns of Sderot and Ashkelon, among others, with some reaching within 30 kilometers of Tel Aviv. The rockets fired by Hamas—locally made "Qassam" rockets and some longer-range Soviet-designed "Grad" rockets—are so inaccurate as to be incapable when fired toward civilian areas of being aimed in a manner to discriminate between military targets and civilian objects. Rocket attacks since December 27 killed three Israeli civilians, injured approximately 200, and badly disrupted civilian life in the affected communities. Statements from Hamas officials indicate that they are directing their rockets at Israeli population centers. The use of such rockets against civilian areas violates the prohibition on deliberate and indiscriminate attacks. Those who willfully conduct such attacks are responsible for war crimes.

Sparing Civilians from Hostilities and "Human Shields"

The laws of war do not ban urban combat or prohibit fighting from civilian areas, but parties to a conflict must take all necessary precautions to protect civilians against the dangers resulting from armed hostilities.

They must to the extent feasible avoid locating military objectives, such weapons, ammunition and headquarters, within or near densely populated areas. Hamas forces at times deployed in populated civilian homes and used them to monitor or attack Israeli forces. Human Rights Watch documented cases in which Hamas fired rockets from very near populated homes or other civilian objects. Launching rockets from within densely populated areas--thus making civilians in the vicinity vulnerable to counterattacks - violates the requirement to take all feasible precautions to protect civilians from harm.

Parties to a conflict must never use the presence of civilians to purposefully shield themselves from attack, which is a war crime. In the case of the IDF attacks that Human Rights Watch was able to investigate, we did not document any cases in which Hamas fighters deliberately used civilians to protect themselves against an Israeli attack. However, our investigation in this regard has been limited by the Israeli government's refusal to permit our researchers access to Gaza.

Unlawful Violence against Other Palestinians

Parallel with its conduct of military hostilities with Israel, and in part using that conflict as a rationale, Hamas violated the human rights of Gazan residents. After Israel began its military offensive on December 27, 2008, Hamas authorities in Gaza took extraordinary steps to control, intimidate, punish, and at times eliminate their internal political rivals and those suspected of collaboration with Israel. The attacks continued throughout Israel's campaign, and have slowed but not stopped since major hostilities ceased on January 18, 2009. During the chaos of Israel's offensive, Hamas security forces or masked gunmen believed to be connected to Hamas or operating with its tolerance extra-judicially executed 18 people, mainly those accused of collaborating with Israel. Masked gunmen also beat and maimed by shooting dozens of its political opponents, especially members and supporters of its main political rival, Fatah. The internal violence in Gaza has continued over the past seven weeks. Palestinian human rights groups in Gaza have reported at least 30 killings of unarmed civilians, as of February 27, 2009.

Next Steps

Applying the mechanisms of accountability to the situation in Gaza will not be easy. But the work has to

start now in the form of an impartial, international commission of inquiry to determine key facts and to recommend mechanisms for holding violators accountable and providing compensation to victims. If the UN Security Council cannot agree to establish such a commission, the EU should encourage Secretary-General Ban Ki-moon to take the initiative. Either way, progress in establishing accountability will require bold leadership. None are better placed to demonstrate that leadership than the EU and its 27 member states.

The primary other mechanism for an impartial international inquiry, the ICC, is currently less promising, but the EU can still play an important role. Israel has not ratified the Statute of the ICC, so the court would not be able to claim jurisdiction *ex officio*. In February, the Palestinian Authority filled a so-called article 12 declaration with the International Criminal Court granting the court jurisdiction over Gaza. But the ICC will first have to decide whether to accept jurisdiction over a territory requested by an entity that is not internationally recognized as a state. However, the EU could press for the UN Security Council to establish a UN commission of inquiry into serious violations of the rules of war and to recommend next steps to ensure accountability and compensation for the victims, as happened in the case for Darfur.

Failure to push for accountability in Gaza would undermine the credibility of both the EU as a global voice for international justice and international justice institutions themselves, which the EU has reinforced and supported. Given the extent of atrocities still being committed around the globe, this is a risk the EU cannot afford to take.

Sincerely yours,

Lotte Leicht

EU Director

Human Rights Watch

CC: Ambassadors to the Political and Security Committee

Political Directors

EU Special Representative for the Middle East

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