



General Assembly

Distr.: General
3 September 2014

English only

Human Rights Council

Twenty-seventh session

Agenda item 7

**Human rights situation in Palestine and other
occupied Arab territories**

Written statement* submitted by the BADIL Resource center for Palestinian Residency and Refugee rights, a non- governmental organization in special consultative status

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

[22 August 2014]

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

GE.14-15414 (E)



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Stop the Ongoing Crime of Forced Displacement and Ensure Accountability

Mr. President, Distinguished Members of the Council,

BADIL Resource Center for Palestinian Refugee and Residency Rights strongly condemns Israel's indiscriminate and disproportionate attacks against Palestinian civilians and civilian objects in the Gaza Strip, and the consequent mass forced displacement. BADIL is concerned about the international community devastating failure to exert real pressure on Israel, the occupying power, to bring its actions in line with its obligations under international humanitarian law.

No place for invoking self-defense justification

'Operation Protective Edge' erupted in the context of an already on-going armed conflict and belligerent occupation. The population of the Gaza Strip has been living under an Israeli imposed blockade for the past seven years, which constitutes a form of collective punishment, expressly prohibited under international humanitarian law, as well as an ongoing offensive measure threatening the stability of Gaza and infringing the right of well-being of its population and every individual's "right to life, liberty and security of person". The pre-existing state of armed conflict, the constant and systematic violations of Palestinians collective and individual fundamental rights, the illegally punitive and coercive measures and attacks undertaken by Israel before the recent offensive attacks, prohibits Israel from invoking the right to self-defense, under Article 51 of the UN Charter, as a justification for the military attacks on civilians in the region.

Politics of Displacement

The forced displacement of Palestinians by Israel can be traced back to as early as the very establishment of the State of Israel and by the end of 2013, an estimated 7.8 million Palestinians were forcibly displaced persons (66 percent of the global Palestinian population), 170,000 internally displaced persons inside the oPt. The displacement of Palestinians constitutes a main goal of Israel's strategy aiming at perpetuating illegal control over Palestinians and their land. It is pursued by the official policies of denial of residency, installment of a permit regime, land confiscation and denial of use, discriminatory zoning and planning, segregation, denial of natural resources and access to services, denial of refugee right to return and suppression of resistance.

The current mass forced displacement in Gaza is another dimension of such policy, an episode that Israel wrongly justifies on grounds of a military offensive that violate numerous rules of international humanitarian law (IHL).

The Ongoing Crime of Forced Displacement in Gaza

The current displacement of Gazans is the consequence of not only Israeli attacks, which have been marked by largely targeting civilian objects and causing unjustifiable civilian deaths, but also of Israeli forces' instructing hundreds of thousands of residents of Gaza Strip to their homes.

According to OCHA's figures, the number of Palestinian IDPs in Gaza peaked at 500,000 on August 6th – corresponding to nearly 30% of Gaza's population –, out of which 100,000 have had their homes destroyed or damaged beyond repair. As of August 20th, 17,200 housing units had been completely destroyed or severely damaged, while, as of August 15th, 5,635 houses had sustained damaged but were still inhabitable in part, and 33,625 suffered minor damage.

Forced displacement, “unless the security of the civilians involved or imperative military reasons so demand”, constitutes a violation of customary IHL (Rule 129), and of Article 49 of Geneva Convention Relative to the Protection of Civilian Persons in Time of War (hereinafter Geneva Convention), and may amount to war crimes and crimes against humanity.

As observed by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), “it is the absence of a genuine choice that makes displacement unlawful”.¹ Therefore, forced displacement by be caused indirectly,² by the “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment”, which do not give the relevant person a genuine choice, thus characterizing their displacement as involuntary.³

Accordingly, Israel’s shelling of civilian areas, as well as the ordering of civilians to leave their homes or areas of residence, can be taken as the unlawful causes of forced displacement insofar as such practices give Gazans no option other than leave, in order to survive – i.e., no *genuine choice* –, an understanding that has precedence in international jurisprudence.⁴ These practices are undertaken under a situation of confinement, leaving literally no safe place for civilians in Gaza. Moreover, Israel, the occupying power, has paid no attention either to ensure the well-being of displaced persons (Article 49), or to its obligation to establish neutralized zones to shelter civilians (Article 15 of the Geneva Convention).

Evidence has shown that Israeli attacks violate IHL principles, mainly distinction and proportionality. Firstly, Israel violates IHL principle of distinction by:

- (i) actively targeting civilians;⁵
- (ii) actively targeting civilian objects, such as homes,⁶ schools⁷, hospitals⁸ and mosques;⁹
- (iii) justifying such strikes – mentioned in items (i) and (ii) – by arguing that the civilians structures attacked were members of, or belonged to, certain political parties with armed branches¹⁰, ignoring the fact that such groups engage in civil governance beyond their military wing, and, thus, its members and structures do not constitute military objects in themselves; and
- (iv) despite possessing precision weapons, making use of heavy artillery to attack densely populated areas,¹¹ a class of military weapon that is not designed for precision use.

Secondly, Israeli attacks violate the IHL principle of proportionality by causing excessive loss of civilian life, injury to civilians and/or damage to civilian objects not justified by the military advantage obtained from such attacks.¹² In addition, the overall disproportionate character of Operation Protective Edge is reflected in the unjustifiably high number of civilian Palestinian deaths caused by Israeli current military offensive in Gaza.¹³

The unlawfulness of such attacks renders it impossible to justify the displacement they cause for military reasons, once their targets are not legitimate military ones and/or since their very *modus operandi* violate basic principles of IHL. Moreover, the displacement of Gazans cannot be justified as due to security reasons either: on the contrary, the Israeli attacks that constitute one of the causes of displacement are the very security reason why Palestinians are fleeing their homes and areas of residence.

By the same token, Israeli warnings constitute threats inasmuch as they do not envisage the possibility of cancelling an attack in case civilians choose not to leave: an Israeli warning leaflet stated that “[w]hoever disregards these instructions and fails to evacuate immediately endangers their own lives, as well as those of their families”.¹⁴ Israeli understanding that those who do not heed its warnings become legitimate targets clearly violates the notion of customary IHL that “all obligations with respect to the principle of distinction and the conduct of hostilities remain applicable even if civilians remain in the zone of operations after a warning has been issued”.¹⁵ In that context, Israeli warnings become, in reality,

an ultimatum, leaving civilians no genuine choice other than leave. Furthermore, such warnings – which include fake warnings, informing families that their homes will be attacked, but that are not followed by any attacks – spread terror among the civilian population, in violation of customary IHL (Rule 2), and article 33 of the Geneva Convention.

Thereupon, given the reasoning above and considering the UN Human Rights Council's concern over Israel's current military offensive in Gaza, and the urgency to bring to the attention of the Security Council and General Assembly any matter which may threaten the maintenance of international peace and security, BADIL calls on Mr. President and the Distinguished Members of the Council to:

- Discredit Israel's employment of self-defense and explicitly announce that the root cause of hostilities is Israel's belligerent occupation and accompanied violations of international law, including the Palestinian inalienable rights to self-determination and return;
- Condemn Israel's indiscriminate and disproportional shelling of civilian objects and areas, as well as its warnings, as practices intended to cause panic among Gazans and to compel them to leave their homes or areas of residence for no legitimate reason;
- Call upon all UN organs, regional bodies and States to immediately resort to all the operational measures at its disposal, including the adoption of military embargo and diplomatic and restrictive measures, in an effort to ensure Israel's compliance with its obligations;
- Recommend that the UN independent Commission of Inquiry, established by UNHRC Resolution S-21, investigate the ongoing crime of forced displacement of Palestinians in oPt with special focus on displacement in Gaza;
- Demand states to refrain from undermining the Palestinian accession of the Rome Statute of the International Criminal Court and to support future judicial investigation and prosecution, either by international and regional judicial bodies or through the exercise of universal jurisdiction by third parties.

¹ See <http://www.icty.org/x/cases/krnjelac/acjug/en/krn-aj030917e.pdf>.

² See <http://www.refworld.org/docid/4ff5dd7d2.html>, Article 8(2)(b)(viii), para. 1(a).

³ See <http://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>.

⁴ See, e.g., http://www.icty.org/x/cases/djordjevic/tjug/en/110223_djordjevic_judgt_en.pdf.

⁵ See, e.g., <http://www.hrw.org/news/2014/08/04/gaza-israeli-soldiers-shoot-and-kill-fleeing-civilians> and <http://www.amnestyusa.org/news/press-releases/israelgaza-attacks-on-medical-facilities-and-civilians-add-to-war-crime-allegations-0>.

⁶ See, e.g., <https://twitter.com/IDFSpokesperson/status/486852057567997952>.

⁷ See, e.g. <http://www.amnesty.org/en/news/israelgaza-attack-un-school-gaza-potential-war-crime-must-be-investigated-2014-07-30>.

⁸ See, e.g., <http://www.aljazeera.com/news/middleeast/2014/07/deaths-as-israeli-tanks-shell-gaza-hospital-2014721124111171397.html>.

⁹ See, e.g., http://www.washingtonpost.com/world/gaza-mosques-fall-to-israeli-airstrikes-without-any-groundswell-of-outrage/2014/08/09/01900458-b403-483d-af1f-1fa2b1121dc7_story.html.

¹⁰ See e.g. <http://www.hrw.org/news/2014/07/22/gaza-airstrike-deaths-raise-concerns-ground-offensive>.

¹¹ See, e.g., http://www.nytimes.com/2014/08/04/world/middleeast/international-scrutiny-after-israeli-barrage-strike-in-jabaliya-where-united-nations-school-shelters-palestinians-in-gaza.html?_r=0.

¹² See, e.g., <http://www.hrw.org/news/2014/07/15/israelpalestine-unlawful-israeli-airstrikes-kill-civilians> and <http://www.hrw.org/news/2014/07/22/gaza-airstrike-deaths-raise-concerns-ground-offensive>.

¹³ See http://www.ochaopt.org/documents/ocha_opt_sitrep_20_08_2014.pdf.

¹⁴ See <https://twitter.com/IDFSpokesperson/status/490811849718259712/photo/1>.

¹⁵ See http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter5_rule20.