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Brian Roberts

August 13, 2014

The Honorable Ban-Ki Moon

Secretary-General

United Nations

760 United Nations Plaza

New York, N.Y. 10017

Dear Secretary General;

The Simon Wiesenthal Center thanks you for the opportunity to once again meet with you to discuss the concerns of our 400,000 constituent families and world Jewry in connection with the current Hamas war waged against the State of Israel.

Mr. Secretary General, as a longtime NGO of the United Nations and UNESCO we must frankly ask you how many times will the world allow itself to be held hostage by Hamas? This is the third time since 2005 when Israel unilaterally withdrew from Gaza that Hamas has brought death and destruction to the people of Gaza. Once again they are using the people of Gaza, the civilian infrastructure and UN facilities in its non-stop campaign to terrorize the Jewish state.

Here are a number of truths that must not be ignored:

First. Israel never willfully targeted any Palestinian civilians. Your initial sharp and one-sided criticism of Israel was not justified and unfortunately contributed to an unfair and deeply biased environment in the international community. The United Nation's so-called Goldstone Report on the last Gaza conflict was so biased that it was disavowed by its own author and stained the reputation of the UN. We must object in the strongest terms of any attempts to write another Goldstone style, fatally - flawed anti-Israel report.



While we too deeply share your concern over every civilian casualty, you know very well that Israel did not seek this war nor did she intentionally target civilians. A clear statement by you of these facts would be appropriate and helpful.

Second. The Simon Wiesenthal Center urges you to announce an official inquiry by the UN into the use by Hamas of various UNRWA schools. It is critical that the UN act to repair the tarnished integrity of the organization. Further, the anticipated international aid, estimated to be in the billions of dollars, to repair civilian homes and infrastructure in Gaza, cannot be supervised by UNRWA. The systematic hijacking of previous aid, cement, and building materials by Hamas to build an underground superhighway of terror is scandalous and a violation of the wishes of the donors who did not contribute funds for rockets or tunnels. Those who failed to stop such theft and serial abuse of humanitarian aid, must held accountable and should not have any involvement in supervising or dispersing of future funds. Future aid must be supervised directly and transparently by donor nations and outside supervisors agreed upon by Israel. Further, no large-scale reconstruction work should begin prior to the total disarming of Hamas and the destruction of all of the thousands of rockets and missiles Hamas still harbors.

Third: There has been an explosion of anti-Semitism and genocidal hatred against Israel from Europe to Australia. Rather than denouncing this toxic situation Navi Pillay, the UN High Commissioner for Human Rights, contributed to it by being so rabidly one-sided in her criticisms of Israel. During her tenure there was no effort to investigate previous crimes against humanity by Hamas, including its own admission that 160 Palestinian children died building their terrorism tunnels. Her behavior demands a public censure from the Secretary General. Further we urge the Secretary General to help ensure that the upcoming UN General Assembly, which is confronted with a human rights disaster of epic proportions in Syria, with ethnic cleansing in Iraq, with a difficult situation in Ukraine and with continuing human rights outrages in North Korea, not be allowed to degenerate into an anti-Israel hate fest. The General Assembly will be convening during the Jewish High Holy Days, and local Jewish communities



around the world will already be on high security alert. Anymore demonization of Israel emanating from the halls of the United Nations will only contribute to anti-Semitism globally.

Finally we attach a list of 19 separate violations of international statutes serially committed by Hamas, which until now has done nothing. We would be happy to supply more background information should your office require it.

Respectfully,

Rabbi Marvin Hier
Dean and Founder

Rabbi Abraham Cooper
Associate Dean

Review of Hamas Violations of International Law

1) **Hamas' rocket attacks directed at Israel's civilian population** centers deliberately violates the basic principles of distinction. (Additional Protocol I, arts. 48, 51(2), 52(1).) Any doubt about this is resolved by the fact that Hamas itself has boasted of its intention to hit population centres. It is well accepted in customary international law that *—[i]ntentionally directing attacks against the civilian population as such or against individual civilians not taking part in hostilities* constitutes a war crime. (Rome Statute, art. 8(2)(b)(i))

2) **Staging of Attacks From Residential Areas and Protected Sites:** The Law of Armed Conflict not only prohibits targeting an enemy's civilians; it also requires parties to an armed conflict to distinguish their combatant forces from their own civilians, and not to base operations in or near civilian structures, especially protected sites such as schools, medical facilities and places of worship. As the customary law principle is reflected in Article 51(7) of Additional Protocol I: *'—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 attempts to shield military objectives from attacks or shield, favour or impede military operations.'*



3) Use of Civilian Homes and Public Institutions as Bases of Operation - see (2) for citations.

4) Misuse of Medical Facilities and Ambulances - Any time Hamas uses an ambulance to transport its fighters it is violating the Law of Armed Conflict: Under Article 23(f) of the 1907 Regulations annexed to the Hague Convention IV Respecting the Laws and Customs of War on Land, which reflects customary international law, it is —*especially forbidden...[t]o make improper use of a flag of truce, ... as well as the distinctive badges of the Geneva Convention.* Article 44 of the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) also provides that: —*... the emblem of the Red Cross on a white ground ...may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments... ||*

5) Booby-trapping of Civilian Areas - see (2) for citations.

6) Blending in with Civilians and Use of Human Shields - As the **ICRC rule states**, "It can be concluded that the use of human shields requires an intentional co-location of military objectives and civilians or persons hors de combat with the specific intent of trying to prevent the targeting of those military objectives."

7) Exploitation of Children - Hamas has paramilitary summer camps for kids. There are reports, from this war and previous ones, of children fighting and being used for



tunnel digging. violates the Law of Armed Conflict, including prohibitions against allowing children to take part in hostilities. As customary international law is reflected in this regard in Additional Protocol I, the parties to a conflict must take "all feasible measures" to ensure that children "do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces." (Additional Protocol I, art. 77(2))

8) Interference with Humanitarian Relief Efforts - While Israel kept its end of humanitarian truces. Hamas used them to shoot rockets into Israel, including the Kerem Shalom crossing where humanitarian goods are brought into Gaza. All of these actions violate the Law of Armed Conflict, which requires parties to allow the entry of humanitarian supplies and to guarantee their safety. Article 59 of the Fourth Geneva Convention requires parties in an armed conflict to "permit the free passage of [humanitarian] consignments and shall guarantee their protection." Article 60 of the same Convention protects the shipments from being diverted from their intended purpose, something Hamas has certainly done in the past and is reported to have done in this conflict as well.

9) Hostage-taking - The Fourth Geneva Conventions, article 34, says flatly "The taking of hostages is prohibited." This is not an "arrest" as Israel-haters claim, and this is not a prisoner of war situation as Hamas has made clear - the purpose of Hamas' hostage-taking falls under the **definition on the International Convention Against the Taking of Hostages:** "*Any person who seizes or detains and threatens*



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on the International Convention Against the Taking of Hostages: *"Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention."*

10) **Using the uniform of the enemy** - Additional Protocol I prohibits the use of enemy flags, military emblems, insignia or uniforms "while engaging in attacks or in order to shield, favour, protect or impede military operations". [3] Under the Statute of the International Criminal Court, "making improper use ... of the flag or of the military insignia and uniform of the enemy" constitutes a war crime in international armed conflicts when it results in death or serious personal injury. [4] According to some, this is considered perfidy, a war crime. (h/t Joshua)

11) **Violence aimed at spreading terror among the civilian population** - Rule 2 of ICRC's Customary IHL is "Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." It quotes Article 51(2) of Additional Protocol I prohibits "acts or threats of violence the primary purpose of which is to spread terror among the civilian population". Hamas rockets are aimed not only at killing civilians, but also at spreading terror among Israelis.



12) **Targeting civilian objects, such as airports or nuclear power plants** - **Rule 7** of the Customary IHL says "Attacks must not be directed against civilian objects," quoting Articles 48 and 52(2) of Additional Protocol I.

13. **Indiscriminate attacks** - Besides targeting civilians and civilian objects, **Rule 11** of the ICRC CIHL states flatly that "Indiscriminate attacks are prohibited." By definition, every Qassam rocket attack and most of the other rocket and mortar attacks are by their very nature indiscriminate.

See also **Rule 71**, "The use of weapons which are by nature indiscriminate is prohibited."

14) Proportionality in attack - **ICRC's Rule 14** states "Launching an attack which may be 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, is prohibited." Rocket attacks against civilians have zero military advantage, so by definition they are disproportionate to their military advantage.

See also **Rule 18**: "Each party to the conflict must do everything feasible to assess whether the attack may be 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."



15) **Advance Warning - Rule 20** of the ICRC CIHL states "Each party to the conflict must give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit." Given that Hamas has used the media and SMS calls to threaten Israelis, it is clear that they have the ability to warn before every rocket attack. Their failure to do so is a violation of IHL.

16) **Protecting civilians - Rule 22** of the ICRC Customary IHL states, "The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks." Hamas not only has failed to protect civilians in Gaza by building bomb shelters, they have deliberately put civilians in harm's way.

17) **Attacking medical units - Rule 28** states, "Medical units exclusively assigned to medical purposes must be respected and protected in all circumstances." Hamas has shot mortars at the Israeli field hospital, set up for Gazans, near the Erez crossing.

18) **Protection of Journalists** - Hamas has threatened journalists, implicitly and explicitly, accusing some of being spies and sometimes not allowing them to leave Gaza, making them effectively hostages. **Rule 34** states "Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities."



19) **Mistreating the dead. Rule 113** says, "Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited." Hamas has **shown off an alleged chip** cut out from the (presumably) dead body of Shaul Oron.