



הארגון הבינלאומי של עורכי-דין ומשפטנים יהודים  
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS

**Statement by the International Association of Jewish Lawyers and Jurists  
(IAJLJ) on the appointment of a Commission of Enquiry by the UN Human  
Rights Council with regard to the events of the recent conflict in the Gaza Strip**

26 April 2009

This statement is submitted following Iranian President Mahmoud Ahmadinejad's appearance before the Durban Review Conference on 21 April 2009, where he called for eradicating Zionism and alleged that Israel was created "on the pretext of Jewish suffering" during World War II.

**BACKGROUND**

On 3 April 2009, the United Nations Human Rights Council announced the appointment of South African jurist Richard J. Goldstone "to lead an independent fact-finding mission to investigate international human rights and humanitarian law violations related to the recent conflict in the Gaza Strip." The appointment followed the adoption of a resolution by the Human Rights Council at the conclusion of its Special Session on 9 and 12 January, addressing "the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip." Council President Ambassador Martin Ihoeghian Uhomoibhi expressed confidence that the mission "will be in a position to assess in an independent and impartial manner all human rights and humanitarian law violations committed in the context of the conflict that took place between 27 December 2008 and 18 January 2009 and provide much needed clarity about the legality of the thousands of deaths and injuries and the widespread destruction that occurred."

**POSITION OF THE IAJLJ**

The IAJLJ rejects this mission for the following basic reasons:

1. The Commission of Enquiry's mandate is *a priori* biased and totally one-sided.
2. Palestinian and Hamas violations are ignored.
3. Israel, the only democracy in the Middle East, with a vibrant system of internal checks and balances and active NGOs functioning freely, is eminently capable of investigating its own behavior objectively and critically.

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### THE FACTS

The events in Gaza that occurred in early 2009 cannot be evaluated in a vacuum, as the mandate of the Mission stipulates. The following facts furnish the essential and indisputable backdrop to the situation:

Between January 2001 and December 2008, 8,165 rocket and mortar attacks were launched by Hamas and other terrorist groups in Gaza on civilian communities in southern Israel.

In August 2005, Israel unilaterally withdrew completely from the Gaza Strip, with a view to promoting peace in the region.

Following this disengagement, the Hamas terrorist regime that seized control in Gaza proceeded to pursue the goals explicitly stated in its 1988 Charter of murdering Jews and obliterating Israel. It escalated its unprovoked and indiscriminate attacks against civilian targets in towns and population centers in undisputed Israel territory, with the number of attacks rising from 1,255 in 2005 to 2,774 in 2006.

The six-month truce period negotiated by Egypt in June 2008 was repeatedly breached by Hamas, which fired 362 missiles and rockets into Israel during the period of the so-called truce. On 19 December 2008, Hamas unilaterally abrogated the "truce" and over the following seven days launched 280 indiscriminate rocket attacks aimed at civilian population centers in southern Israel. It thereby left Israel with no alternative other than to implement its right and duty to protect its population from naked aggression as expressed in Article 51 of the United Nations Charter.

### THE LEGAL POSITION

In the exercise of its inherent right of self-defense under Article 51 of the UN Charter, Israel initiated its military operation against Hamas and the other terrorist groups in Gaza on 27 December 2008.

Israel has the unquestionable right to have recourse to legitimate and proportionate use of force, which it was compelled and duty bound to use in defending its population against Hamas and other terrorist attacks from Gaza.

The terrorist actions of Hamas fully correspond to the generally accepted definition of terrorism as being acts indiscriminately directed against a country's civilian population with the intent to kill and maim as many victims as possible and thereby create widespread terror and panic.

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Israel has adhered to the basic principles of international humanitarian law, has respected the distinction between combatants and civilians and has observed due proportionality in the course of its precise and accurate counter-strikes, as confirmed by world renowned international law experts.

Hamas and other terror groups, by disguising themselves as civilians and shielding themselves, together with their weapons, missiles and missile-launchers, among the civilian population, flagrantly violated Article 28 of the Fourth Geneva Convention.

Hamas terrorist militias have committed grave breaches of international humanitarian law, in total disregard of the rules incumbent on combatants (see appendix).

**CONCLUSION**

The Human Rights Council is not an objective body capable of credible investigation in the case of Israel. Since its inception, the Council has consistently obscured the fact that Israel conducted its military operations in the exercise of its legitimate right of self-defense, with due advance warning to civilian populations unavoidably affected by a terrorist enterprise aided and abetted by Iran's endorsement, support and encouragement.

Confronted by the genocidal aims of Hamas, a racist, terrorist, criminal organization, no state in the world would have hesitated to remove the intolerable aggression which Israel has tolerated with restraint for seven years.

The IAJLJ feels duty-bound to bring these facts and observations to the Commission's attention, in the expectation that the rule of law and equality of all states will be respected.

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**APPENDIX: Hamas Activities in Breach of International Law**

1. Indiscriminate use of missiles and rockets directed at Israel's population centers launched without even the pretence of any aiming device and therefore clearly intended to cause death, injury and damage to civilians and civilian targets, whether homes, hospitals, shopping malls, schools, factories or business premises.
2. Launching attacks from densely populated areas, storing missiles and rocket launchers under houses of worship, homes, university premises and other protected areas to develop weapons and explosives. Such conduct systematically abuses protection to civilians and civilian objects under international law, while putting the safety and welfare of such civilians at acute risk. Such reprehensible acts, in grave violations of the Laws of Armed Conflict, constitute war crimes, as well as crimes against humanity.
3. Disregard of the fundamental principle of distinction at all times between civilians and combatants as expressed in Article 48 of Additional Protocol I to the Geneva Conventions of 1948 and Relating to the Protection of Victims of International Armed Conflict of 1977. Such conduct is considered a war crime under Article 8 (2)(b)(i) of the 1988 Rome Statute of the International Criminal Court, which criminalizes "intentionally directing attacks against the civilian population as such or against individual civilians not taking part in hostilities."
4. Contravening the prohibition of the commission of acts or threats of violence with the primary purpose of spreading terror among the civilian population, a serious violation of an express prohibition stipulated by the Laws of Armed Conflict, notably under Article 51(2) of Additional Protocol I to the 1949 Geneva Conventions and Relating to the Protection of Victims of International Armed Conflict (1977), which provides: "The civilian population as such, as well as individual citizens shall not be the object of attack. Acts or threats among the civilian populations of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited."
5. A party to the conflict, in this case a terrorist militia, is also accountable for violating basic provisions of international law for the protection of civilian populations under its own control by using the presence of civilians to make certain locations, areas or military forces immune from military operations. Making use of civilian facilities such as universities for weapons development and making systematic use of homes and places of worship for hiding and storing rockets, explosives and ammunition undermines the protection afforded to civilians in armed conflict, placing such civilian locations in grave risk of attack. This practice is in direct contravention of the Laws of Armed Conflict, which prohibit the use of the presence of civilians to render certain points, areas or military units immune from military operations. Such practices constitute a war crime, such as a violation of Article 8(2)(b)(xxiii) of the Rome Statute of the ICC, which features in the listing of "war crimes," "utilizing the presence of a civilian...to render certain points, areas or military forces immune from military operations."

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6. A particularly horrendous practice, even exceeding the storing of weapons and launching attacks from within civilian areas, is the increasingly widespread use of civilians as “human shields” by Hamas terrorist units. Extant video footage documents the call to men, women and children to assemble and form “human shields” at military targets where imminent attack is expected. Such conduct is undoubtedly a war crime.

7. Abuse of the flag of the insignia of the UN and the distinctive emblem of the Geneva Convention as in the use by Hamas of ambulances for transporting terror groups actively participating in hostilities or for seeking refuge in hospitals. Such conduct jeopardizes medical personnel, the sick and the wounded and also undermines the special protection given them by international law. These acts are particularly forbidden under the Laws of Armed Conflict as formulated in Article 23(f) of the 1907 Regulations annexed to the Hague Convention IV Respecting the Laws and Customs of the War on Land. Similar prohibitions are to be found in Article 44 of the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field (1949) and similarly under Article 38 of the Additional Protocol I to the Geneva Conventions of 1949 and relating to the Protection of Victims of International Armed Conflict (1977).

8. An additional and reprehensible practice is the use of children by the Hamas terrorist organization to participate in hostilities. Children have been recruited and employed for hostile activities, including carrying out suicide attacks, digging tunnels and smuggling weapons. Such exploitation of children is specifically barred under Article 77(2) of the Additional Protocol I to the 1949 Geneva Conventions and relating to the Protection of Victims of International Armed Conflict (1977), which prohibits children of less than 15 years from participating in hostilities or being recruited into armed forces. Furthermore, Article 8(2)(b) (xxvi) of the ICC’s Rome Statute enumerates the following as a war crime: “conscripting or enlisting children under the age of 15 into the national forces or using them to participate actively in hostilities.”

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