



Dear Ms Ashton,

Dear Member States,

Dear Commissioner for Trade

Dear members of the European Parliament

Brussels, 28 July 2014

Open letter: deplored the EU position on Gaza, FIDH calls for a position grounded on international law

FIDH deplores the statements and positions of the European Union in response to the situation in Gaza, notably as evidenced in the Council Conclusions of July 22nd¹ and in the position adopted by EU member States at the Special Session for the UN Human Rights Council on July 23rd.²

As demonstrated below, the EU's Council Conclusions in response to the ongoing crisis are blatantly unbalanced, introducing double standards that threaten the credibility of the EU's engagement in support of human rights and international law worldwide. In addition, the EU failed to provide the required answer to the situation when passing over the issue of addressing the accountability for the crimes perpetrated in this context.

As such, the EU illustrates the “downgrading, or setting aside, of the importance of binding international human rights law and international humanitarian law” which was deplored by the High Commissioner for Human Rights in relation to addressing the politics of conflicts, peace and security between Israel and Palestine.³

– ***Unbalanced qualification of the crimes***

While the EU condemns and qualifies the crimes committed by Hamas and militant groups in the Gaza strip, it refrains from qualifying the crimes committed by the Israeli Defence Force, whose intervention in blatant violation of international humanitarian law may question the mere role of these international obligations.

Indeed, in the same paragraph the EU condemns “*the indiscriminate firing of rockets into Israel by Hamas and militant groups in the Gaza Strip*” as “*criminal and unjustifiable acts*” while referring to “*Israel's legitimate right to defend itself against any attacks*” only underlying “*that the Israeli military operation must be proportionate and in line with international humanitarian law*”, without qualifying the nature of the crimes unfolding in front of our eyes.

○ ***Unbalanced engagement with the respective governments***

¹ EU Council conclusions on the Middle East Peace Process, 22 July 2014, http://www.europa.eu/articles/en/article_15300_en.htm

² All 9 EU Member States that are members of the UN HRC (Austria, Czech Republic, Estonia, France, Germany, Ireland, Italy, Romania and the United Kingdom) abstained from voting the Resolution S-21/L.1 « Ensuring respect for international law in the Occupied Palestinian Territory, inc. East Jerusalem » https://twitter.com/UN_HRC/status/491980926461943808/photo/1

³ See Statement by the UN High Commissioner for Human Rights, Ms Navi Pillay, to the UN HRC's 21st Special session on the Occupied Palestinian Territory, 23 July 2014, ow.ly/ztZTF (HCHR Statement)

While the EU's position on the Middle East reiterates its commitment for a two-State solution, notably in calling for a halt to the continued settlement expansion which "make the prospect [of that solution] increasingly unattainable", it addresses the governments of both Israel and Palestine in radically different languages.

Indeed, the EU's support to the Palestinian state building is *conditioned* on a "credible prospect for the establishment of a viable Palestinian State, based on the respect of the rule of law and human rights", while the support, aid and cooperation with the Israeli government⁴ is not, in spite of the Israeli's government ongoing and repeated violations of international law in the context of the Occupation, the closure of Gaza, the expansion of the colonies, and the perpetration of grave violations of International human rights law in the ongoing conflict in Gaza, or on the occasion of previous cycles of violence in 2012 and 2009. Moreover the call by the EU to "*the Palestinian leadership to use constructively its UN status*" is problematic. In addition to discriminately addressing one party, such a call can be considered as completely inaccurate under international law.

Likewise, when the EU "*reiterates its fundamental commitment to the security of Israel, including with regard to current and emerging threats in the region*", in addition to referring to other situations in ambiguous terms, the EU fails to address commitments to address the security of all civilians, including Palestinian citizens, in all situations.

- Disregard of international human rights obligations and international humanitarian obligations

The crimes committed today are a repetition of those committed in 2012 and 2009, in a cycle of violence which remains unaccounted for, and for which the EU member States have failed to uphold their international human rights obligations. Not a word in the Council conclusions refer to the victims' rights to justice and accountability, nor does the EU at any point urge that those responsible of these crimes must be brought to justice.

Over the years, the EU failed to place the fight against impunity for the crimes committed in the conflict between Israel and Palestine at the heart of its activities. Thus on July 23rd, the conclusions of the UN High Commissioner regretted "*the continued failure to properly ensure accountability on both sides following earlier escalations of hostilities in Gaza is of serious concern. The culture of impunity for alleged violations of international law invites further transgressions and the victims of the past become victims again*".⁵

In addition, in the context of the many violations of international law related to the Israeli settlement policy, that the EU regularly condemns and recognizes as prejudicial to the two-states solution, the EU has the obligation to "ensure respect" of the violated standards, to "not recognize" the illegal situation and to not "aid or provide assistance" to maintaining this situation. Accordingly for EU member States and the EU, these obligations imply placing a prohibition in EU markets on goods originating from the settlements because they are intrinsically connected to a set of serious breaches of peremptory and erga omnes norms of international law".⁶

In this context, FIDH calls on the EU and its Member States to revisit their position, with a view, notably, to:

- Call upon all parties to fully cooperate with the upcoming UN-mandated commission of Inquiry set up by the United Nations Human Rights Council on July 23rd and call on Israel to guarantee an unimpeded access including to the Gaza Strip ;
- Fully support the convening of the conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1 common to the four Geneva

⁴ An overview of the EU-Israel relations is available here :

http://www.eeas.europa.eu/delegations/israel/eu_israel/political_relations/agreements/index_en.htm

⁵ *Ibid. HCHR Statement, she further provides evidence* « According to local human rights groups, despite numerous allegations of serious international crimes, only four Israeli soldiers have been prosecuted and convicted for three incidents that occurred during Operation 'Cast Lead'. One of the convictions was for stealing a credit card. And the other three soldiers, convicted of more serious crimes, received extraordinarily light sentences. In April 2013, the Military Advocate General issued a public document indicating that it found no basis for opening criminal investigations into approximately 65 incidents involving the Israel Defense Force during the 2012 operation known as 'Pillar of Defence'. With respect to rocket and mortar attacks from Gaza, information available also indicates that no adequate measures have been taken to carry out effective investigations into alleged violations. »

⁶ See François Dubuisson, Professor of International Law Centre de droit international de l'Université libre de Bruxelles (ULB), February 2014, "The international obligations of the European Union and its members states with regard to economic relations with Israeli settlements", <http://www.madeinillegality.org/IMG/pdf/en-report-dubuisson-madeinillegality.pdf>

Conventions;

- Call upon Israel and Palestine to ratify the Rome Statute of the International Criminal Court (ICC), to ensure accountability for any international crimes that may take place on these territories;
- Refrain from applying unbalanced conditionality and to adopt measures that impede the full realization of the human rights. Consider the use of targeted individual sanctions against individuals and entities directly responsible for systematic human rights violations;
- Recognize the lack of transparency of data published on EU and member States official websites regarding the EU arms export⁷ and provide clarifications
- Recall the terms of the Common Position 2008/944/CFSP, adopted on 8 December 2008, notably when it provides that “Member States shall deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law”;
- Decide arms' embargo that prohibit the sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts, and that prohibit the provision of financing and technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types;
- Decide a ban on the importation in the EU markets of goods originating from the settlements and prohibit any investments in business entities involved in the expansion of the settlements in order to comply with the EU and member states obligations, as described above.

Thanking you for the attention and adequate response you will provide to this letter,

Sincerely yours,

Karim Lahidji

President

International Federation for Human Rights (FIDH)

Background information :

According to PCHR statistics : Victims of the Israeli Offensive on Gaza since 08 July 2014, last update 27 July 2014, Killed : total 1014, civilians 832 (82%), Children 212 (20.0% of the total number of victims, 25.4% of the total number of civilian victims), Women 118 (11.9% of the total number of victims, 14.5% of the total number of civilian victims) ; Wounded : total : 4706, mostly civilians, Children 1263, Women 939.

http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10491:statistics-victims-of-the-israeli-offensive-on-gaza-since-08-july-2014&catid=145:in-focus

According to B'Tselem's initial figures, at least 878 Palestinians have been killed in the Gaza Strip and Israel in the time between early Tuesday, 8 July 2014, when Operation Protective Edge airstrikes on Gaza began until the morning of 26 July. The fatalities include: 207 minors (one minor participated in the hostilities), 88 women (under age 60), 47 senior citizens (aged 60 and over). Initial findings indicate that 165 of the people killed participated in the hostilities. Since the operation began two Israeli civilians, one foreign national and 43 Israeli soldiers have been killed in Israel and the Gaza Strip. http://www.btselem.org/gaza_strip/20140727_preliminary_data_on_fatalities

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Among the shortcomings, one is the lack of recent data : See http://eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/docs/table_e.pdf the national websites do not provide recent informations ; the EU consolidated annual report for 2014 provide only data for 2012 with data not available for some countries. In 2012 arms have been exported to Israel. Compare also with the DG trade website http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113402.pdf