



General Assembly

Distr.: General
27 February 2013

English only

Human Rights Council

Twenty-second session

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by Amnesty International, 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.

[21 February 2013]

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

Accountability for alleged war crimes and other serious violations of international humanitarian and human rights law committed during the eight-day conflict in Gaza and southern Israel in November 2012

Amnesty International wishes to address the issue of justice, truth and reparation for human rights violations, including war crimes and other crimes under international law, committed by both parties during the eight-day military escalation of the conflict in Gaza and southern Israel in November 2012.

These violations took place after the failure of both the Israeli government and the Hamas de facto administration to conduct investigations in conformity with international law into war crimes and possible crimes against humanity committed by both Israeli forces and Palestinian armed groups during the 2008-2009 armed conflict in Gaza and southern Israel. Despite the submission of several authoritative reports to the Human Rights Council, the UN Secretary General, and the General Assembly, the UN Security Council has not referred the Gaza situation to the Prosecutor of the ICC. Lack of accountability for crimes under international law, including war crimes, in 2008-2009 is fuelling a cycle of impunity and violations.

Israeli forces launched a major military operation, code-named "Pillar of Defense", on Gaza on 14 November 2012, beginning with an airstrike that killed the leader of the military wing of Hamas. In the following eight days, before a ceasefire was reached on 21 November with Egyptian mediation, some 150 Palestinians, including more than 30 children and approximately 70 other civilians, and six Israelis, including four civilians, were killed. Israeli forces, Hamas' military wing and other Palestinian armed groups committed war crimes. The Israeli air force carried out bomb and missile strikes on residential areas, including strikes that were disproportionate and caused heavy civilian casualties. In some cases, Israel does not appear to have complied with its obligation to distinguish at all times between civilian objects and military objectives, launching some indiscriminate strikes which damaged or destroyed civilian property, media facilities, government buildings and police stations. The Israeli navy also shelled populated coastal areas with artillery in indiscriminate attacks.

On 18 November 2012, 10 members of the al-Dalu family, including four children under the age of eight, a teenage girl, and four women, and two of the family's neighbours were killed when their home was struck in an Israeli air strike on Gaza City. Israeli military spokespersons stated variously that the strike was an accident, or was intended to hit a militant, but gave different names for the target without providing evidence to support their claims.

On 19 November 2012, five-year-old Mohammed Abu Zur and two of his aunts were killed and dozens of persons were wounded when their neighbour's house was targeted in an Israeli air strike.

During the November 2012 Gaza conflict, the military wing of Hamas and other Palestinian armed groups fired over 1,500 rockets and mortar shells into Israel, killing civilians and damaging civilian property.

Both before and during the November military escalation of the conflict, Palestinian armed groups associated with Hamas, Fatah, Islamic Jihad, the Popular Front for the Liberation of Palestine and Salafist groups committed war crimes by firing indiscriminate rockets and mortar shells into Israel. Some fell short in Gaza, killing at least two Palestinians. Others struck homes and other buildings in Israel killing four Israeli civilians, injuring scores and

damaging civilian property. Those suspected of criminal responsibility have not been held to account by the Hamas authorities.

Two-year-old Hadeel Ahmad Haddad was killed and her eight-year-old cousin was severely injured when a rocket fired by a Palestinian armed group hit their home in al-Zeitoun neighbourhood in Gaza City on 19 June 2012.

On 15 November 2012, three Israeli civilians, Mirah Scharf, Itzik Amsalem and Aharon Smadja, were killed and other civilians were injured when an indiscriminate rocket fired by a Palestinian armed group in Gaza hit their house in Kiryat Malachi.

The ceasefire established on 21 November 2012 has largely held, although Israeli soldiers have fired into Gaza at Palestinians within the perimeter zone that Israel considers a no-go area adjacent to Israel. Some four Palestinians have been killed in such incidents, and scores have been injured, including children as young as two.

On 6 February 2013, according to media reports, the Israeli Military Advocate General, Major General Danny Efroni, announced that the Israeli military had launched an inquiry into 70 cases in which Palestinian civilians were killed during the November 2012 military operation. Details of the inquiry are not known, but Amnesty International is concerned that following the pattern of previous Israeli military investigations, the initial process might consist of an operational de-briefing conducted by and for military personnel. This process does not satisfy international law and other standards for investigations, which require that the investigative authority be independent of the military, competent to conduct investigations with the aim of assessing criminal responsibility, and mandated to question all relevant actors, including government officials and superior officers who give orders. In sum, persons alleged to be responsible for crimes under international law must be investigated only in the competent jurisdiction of ordinary civilian courts, to the exclusion of all other special jurisdictions, particularly military jurisdictions.

Likewise, the Hamas de facto administration is not known to have initiated any investigations or even to have considered a change in policy regarding the firing of indiscriminate rockets.

Amnesty International notes that since the end of the November 2012 Gaza conflict, Palestine gained non-member state recognition at the UN General Assembly. If Palestine were to become a party to the Rome Statute of the ICC, the prospects of enforcing individual criminal responsibility for crimes under international law would be greatly enhanced.

Justice, truth and reparation are the best guards against impunity and future violations. Amnesty International calls on the Human Rights Council to pursue justice, truth and reparation in relation to crimes committed by both parties to the Gaza conflict in November 2012 and in December 2008 - January 2009.

Amnesty International urges the Human Rights Council to call on Israel and the Hamas de facto administration of Gaza to conduct prompt, thorough, independent and impartial investigations into reports of crimes under international law and other human rights violations in November 2012.

Amnesty International also urges the Human Rights Council to call on the international community to send appropriately qualified expert monitors to investigate crimes under international law to the Gaza Strip and Israel. Until such investigations have taken place and anyone suspected of criminal responsibility has been brought to justice, the Security Council should impose an arms embargo on all parties to the conflict. Pending such an embargo, all states should immediately suspend transfers of weapons, munitions and related equipment to Israel, the Hamas de facto administration, and Palestinian armed groups in Gaza.

Amnesty International asks the Human Rights Council to urge the international community to keep all avenues for justice, truth and reparation open at the international level, including through universal jurisdiction and the International Criminal Court (ICC).

Amnesty International requests the Human Rights Council to encourage Palestine to promptly become party to the Rome Statute and to all relevant human rights and international humanitarian law treaties, without making any reservation or declaration amounting to a reservation.
