

## Position Paper

### License to Kill: Third States Disregard their International Responsibility to Act to Prevent Israel's Violation of *Jus Cogens* Norms

Date: 12 October 2023

Over the past 6 days, the Israeli Occupation Forces (“IOF”) have employed [indiscriminate](#), excessive and disproportionate force in densely populated residential areas in the Gaza Strip, resulting in at least 1200 Palestinians killed and 5000 injured, as of 10:00 p.m., on 11 October 2023. Israel, the Occupying Power is continuing its 56-year illegal occupation and aggression on the occupied Palestinian territory (OPT), imposing a settler colonial apartheid regime to both subjugate and force the transfer of the Palestinian population, having annexed Jerusalem and large swathes of the West Bank comprising ‘Area C’. In Gaza, Israel’s suffocating 16-year siege and closure of the territory, crippling the economy and infrastructure of the Gaza Strip has been condemned as [collective punishment](#). Notwithstanding, on 9 October 2023, Yoav Gallant, Israel’s Minister of Defense, declaring total warfare [stated](#): “We are imposing a complete siege on [Gaza]. No electricity, no food, no water, no fuel – everything is closed. We are fighting human animals, and we act accordingly”.

This decades long international armed conflict to colonise Palestine is clearly asymmetrical in that Israel’s military capabilities far exceed those of Hamas and other armed groups operating in the Gaza Strip. In particular, Israel is protected against Hamas’ rockets by the Iron Dome. The asymmetry is further exemplified in the alarming disparity in casualties over the decade between 2010 and 2019, where the UN Office for the Coordination of Humanitarian Affairs (OCHA) [recorded](#) 3,624 Palestinians and 203 Israelis killed, and 103,207 Palestinians and 4,642 Israelis injured.

The intention of Israel’s officials to continue to maximize the damage and casualties to Palestinians can be inferred from their statements: for instance, Prime Minister Netanyahu promised to reduce Gaza to “[rubble](#)”, while Maj. Gen. Ghassan, the Coordinator of the Government in the Territories (COGAT), announced Israel’s total blockade of the Gaza Strip [stating](#) “you wanted hell, you will get hell...no electricity, no water, just damage”.

Despite the gravity and enormity of the situation and Israel’s marked [genocidal](#) statements of intent, well implemented so far, as Israel turns back food trucks and cuts the water supply to Gaza, we are alarmed at the one-sided rhetoric and double standard that we have seen among Western countries: supporting Israel and highlighting Israel’s casualties but omitting to mention the dire plight of Palestinian civilians, killed and maimed in Israel’s indiscriminate military reprisals.

Meanwhile on 9 October 2023, the US, Britain, Germany, Italy and France issued a [Joint Statement](#) publicly condemning the Hamas attacks and pledging to “ensure Israel is able to defend itself”, effectively granting Israel, the Occupying Power a *carte blanche* to use widescale aggressive force across the Gaza Strip, with half its 2.2 million population comprising of children.

Other alarming and unprecedented pledges followed. Denmark and Austria decided to suspend their aid to Palestine. Sweden and Germany are considering suspending their funding. In particular, the German Development Minister [Svenja Schulze](#) stated that these attacks on Israel mark a “terrible fracture” and that her government “will now review our entire engagement for the Palestinian territories”. Another [German official](#) asserted that the EU “must now say: we need a new start and we will no longer finance terrorists”. Similarly, the [European Commission](#), a major donor for development aid, considered suspending its financial assistance for Palestine.

Astonishingly, almost none of these statements allude to Palestinians’ human rights and to norms of international law other than a far-reaching and preposterous extension of the right to self-defence beyond

its legal boundaries. The aforementioned Joint Statement briefly indicates “the legitimate Palestinians’ aspirations” and the support for “equal measures of justice and freedom for Israelis and Palestinians alike”. However, these considerations, from the perspective of these [States](#), are clearly negated by deference to Israel, the Occupying power’s so-called security concerns, and complicity in maintaining and prolonging the illegal occupation of Palestinian territory.

This Joint Statement is flawed on two major levels. First, it completely ignores the root causes of the conflict. Hamas and other Palestinian resistance movements are the product of Israel’s aggressive occupation that started in 1967, in breach of the UN Charter, an unlawful use of force that continues today. These movements did not exist prior to that. All the more, Israel has *de facto* and *de jure* [annexed](#) the Palestinian territory, in violation of peremptory norms of international law, including the prohibition of the use of force and in denial of the right of the Palestinian people to exercise self-determination. Moreover, the Gaza Strip is densely populated by refugees who were in fact expelled from their homes by Israel forces in 1948 in what is commonly known as the Nakba (the catastrophe) and who have been denied their [right of return](#) as refugees ever since.

Second, presenting Israeli military attack as an exercise of its right to self-defence denies the reality: Israel is already occupying the Palestinian territory in the course of an ongoing international armed conflict. Israel is advancing its settler colonial apartheid regime in the OPT, attempting to forcibly transfer Palestinians from Gaza, including through [coercive environments](#), in order to appropriate step by step more and more parts of historic Palestine. These acts breach *jus cogens* norms international law and may amount to war crimes of forcible transfer and the crimes against humanity of displacement, persecution and apartheid.

In light of the above, we urge Third States to cooperate towards ending the situation arising from Israel’s continued violation of peremptory norms of international law.<sup>1</sup> The Third State’s obligations further include the obligation to refrain from assisting in maintaining such an illegal situation,<sup>2</sup> which occurs at the moment when some of the [States](#) who took part in the joint statement are sending military equipment to Israel. States further have an obligation to cooperate to bring the illegal conduct to an end, rather than perpetuating and greenlighting protracted illegal occupation and aggressive force under the guise of “self-defence”.

Further, Third States may be providing military equipment for use in Israeli war crimes, including “wilful killings”,<sup>3</sup> “wilfully causing great suffering or serious injury to body and health”,<sup>4</sup> “extensive destruction and appropriation of property, not justified by military necessity, and carried out unlawfully and wantonly”<sup>5</sup> and “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival”.<sup>6</sup> These crimes have already been established in some detail by the Prosecutor of the International Criminal Court, who opened an investigation on the basis of “[significant evidence](#)” of crimes committed by the Israeli forces and Israeli authorities therein.

Furthermore, the criminal acts committed by the IOF constitute prohibited collective punishment as they target Palestinian innocent civilians for prior acts attributed to Hamas. Wilful killings and collective punishment violate the Fourth Geneva Convention. By failing to stop the current attack against the Gaza Strip, Third States also violate their obligation to respect and ensure respect for international

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<sup>1</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, International Law Commission (2001), Article 41(1).

<sup>2</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, International Law Commission (2001), Article 41(2).

<sup>3</sup> Rome Statute of the International Criminal Court (1998), Article 8(2)(a)(i).

<sup>4</sup> Rome Statute of the International Criminal Court (1998), Article 8(2)(a)(iii).

<sup>5</sup> Rome Statute of the International Criminal Court (1998), Article 8(2)(a)(iv).

<sup>6</sup> Rome Statute of the International Criminal Court (1998), Article 8(2)(b)(xxv).

humanitarian law, and perpetuating an aggressive war, denying the Palestinian people their collective right to exercise external self-determination and independence from Israel's occupation and settler colonial apartheid rule.

**CS organizations:**

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| Faisal Hussein foundation   | The Palestinian Non - Governmental Organizations Network - PNGO                   | Women's Studies Centre   |
| Filastiniyat  | Coalition for Integrity and Accountability- AMAN                                  | A.M. Qattan Foundation   |
| Women's Center for Legal Aid and Counselling  | The Civil Commission for the independence of Judiciary and Rule of Law (ISTIQLAL) | Sharek youth Forum   |
| MUSAWA- The Palestinian Center for the Independence of the Judiciary and the Legal Profession | The Palestinian Center for Development and Media Freedoms (MADA)                  | Human Rights and Democracy Media Center SHAMS  |
| Jerusalem Legal Aid Center- JLAC  | Center for Defence of Liberties & Civil Rights "Hurriyat"                         | Palestinian Working Woman Society for Development                                      |
| The General Union of Cultural Centres   | Union of Palestinian women committees   | The Palestinian Initiative for the Promotion of Global Dialogue and Democracy - MIFTAH |
| PYALARA   | Bisan Center for Research and Development   | Addameer prisoner support and human rights association                                 |
| Palestinian Centre for Human Rights- Gaza   | Al-Mezan Centre for Human Rights  | Al-Haq- Defending Human Rights   |
| Union of Agricultural Work Committees (UAWC)  | Arab World Democracy and Electoral Monitor (Almarsad)                             | Wattan media network   |