



Al-Mezan Center for Human Rights, Gaza



The Palestinian Centre for Human Rights,
Gaza (PCHR)



Al Dameer Association for Human Rights,
Gaza



Addameer Prisoner Support and Human Rights Association



Defence for Children International – Palestine Section (DCI-PAL)

Open Letter to United Nations Secretary-General Ban Ki-Moon

Re: Failure to Uphold International Law and Decision to Allow Political Considerations to Take Precedence over the Protection of Victims

As Palestinian human rights organizations, we are writing to express our dismay at your recent comments and actions which represent a failure to uphold international law and could bring your office into disrepute. Your reaction to the United Nation's (UN) Board of Inquiry's report undermines the foundations on which the Organization was built, and damages the UN's legitimacy. It also demonstrates a disregard for the victims and principles you are mandated to protect.

As codified in its Charter, the UN was founded on the desire to “save succeeding generations from the scourge of war”, to “reaffirm faith in human rights and the dignity and worth of the human person”, and “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.” The UN is an Organization on which millions of individuals throughout the world depend, and to which countless others trust to uphold international law and to protect human rights: to act in the best interests of individuals. The legitimacy of the UN is dependent on international law. Any action which is contrary to the purpose of the law undermines the legitimacy, the credibility and the effectiveness of the Organization as a whole.

As Secretary-General you are recognized as the ‘guardian of international law’. As such, it is your duty to uphold and promote the rule of law, and to act in the best interests of the individual. Article 100(1) of the UN Charter explicitly states that the Secretary-General and the staff of the Secretariat “should refrain from any action which might affect their position as international officials responsible only to the Organization [UN]”. The Secretary-General is thus required to be neutral and impartial; to act towards the furtherance of the UN Charter and the principles of international law on which it is based. We emphasize that the protection of human dignity forms the core purpose of both international human rights law and international humanitarian law (IHL).

As Secretary-General, you commissioned a Board of Inquiry to investigate incidents relating to attacks on UN installations during Israel's 23-day military offensive on the Gaza Strip (27 December 2008 – 18 January 2009). Although the terms of the inquiry were strictly limited, it was mandated to make “Recommendations concerning any action that, in the opinion of the team, should be taken to avoid recurrence of such incidents.” The Board of Inquiry carried out extensive investigations, and its findings, as released in the abbreviated summary, were careful, concise, and impartial. They analyzed the facts from the perspective of international law, issued recommendations, and stayed within their terms of reference. Israel's scathing attacks on the inquiry – which it termed tendentious and patently biased – were baseless and unwarranted. Article 100(2) of the UN Charter prohibits Member States from seeking to influence the Secretary-General. This article guarantees to weaker nations and peoples that they will be treated fairly and equally. Israel's vociferous protests, which included consultation with yourself prior to the release of the findings, may be in violation of this obligation. The Secretary-General must be immune to such pressure, and should it occur, it must be highlighted and condemned.

The Board of Inquiry's report was submitted to the UN Security Council on 5 May 2009. Attached to this report, was your cover letter for the attention of the Security Council. We believe that this cover letter reflects the extent to which your actions have strayed from the interests of justice and the protection of human dignity, and into the realm of the political.

We wish to highlight certain aspects of this letter, and their implications. First, you expressly placed on the record your "appreciation for the cooperation provided by the Government of Israel to the Board, *including its facilitation of the repeated entry of the Board to the Gaza Strip* (emphasis added)". This comment has serious implications: it serves to legitimize the illegal Israeli closure of the Gaza Strip – a closure which constitutes a form of collective punishment in violation of, *inter alia*, article 33 of the Fourth Geneva Convention – and which has resulted in the emergence of a humanitarian crisis in the Gaza Strip. Under the terms of the 2005 Agreement on Movement and Access, Israel agreed that the crossings "will operate continuously". By explicitly thanking the Occupying Power for making an exception to its consistent violations of international law, you are legitimizing the underlying illegality, and the suffering of Gaza's 1.5 million inhabitants.

Second, you noted the "value of the cooperation between the Government of Israel's Coordination and Liaison Administration (CLA) and the United Nations, which is crucial to ensuring the provision of basic humanitarian assistance". In light of the continuing closure of the Gaza Strip, which has now been in place for 23 continuous months, this comment is an affront to the fundamental principles of human dignity, and serves to grant the State of Israel a measure of impunity for its illegal actions, and to relieve the Occupying Power of its obligations. Israel's lack of compliance in relation to access to the Gaza Strip has been extensively documented, both by human rights organizations and agencies of the United Nations. OCHA have noted that the opening of the borders is a "priority need" and further that "Import procedures remained subject to unclear and often inconsistent criteria at the crossings." In briefings to the Security Council, Israel's siege has consistently been described as an unlawful penalty. The humanitarian crisis in the Gaza Strip is a direct consequence of the illegal restrictions which the State of Israel has placed on the crossings. Today, four months after the end of the offensive, reconstruction and recovery are impossible, as Israel prevents the entry of necessary materials; thousands of civilians remain homeless, and face risks posed by unexploded ordnance. These illegal actions, implemented by the CLA, demand condemnation and accountability, not praise.

Third, in relation to the Board of Inquiry's 10th and 11th recommendations, which called for investigation into incidents "involving death or injury to UNRWA personnel ... and/or physical damage to UNRWA premises that were not included in the Board's Terms of Reference" and for an investigation into the wider allegations of IHL violations throughout the course of Israel's military offensive, you unambiguously stated that "I do not plan any further inquiry." This explicit recommendation preempted a discussion by the Security Council, effectively taking the decision out of their hands. We believe this decision to be in conflict with the protection of victims, the interests of justice, and article 100(1) of the UN Charter. It raises suspicions of political interference. Your failure to acknowledge the Human Rights Council mandated investigation, and your decision to place on the record your exclusive appreciation of the State of Israel's efforts, are a disservice to the office of the Secretary-General and the victims the Secretariat is supposed to represent.

We affirm the importance of accountability and judicial review in combating impunity and upholding the rule of law. As noted by then Secretary-General Kofi Annan, on the day after the entry into force of the Rome Statue of the International Criminal Court (ICC): "[t]here must be no relenting in the fight against impunity...It [ICC] reaffirms the centrality of the rule of law in international relations. It holds the promise of a world in which the perpetrators of genocide, crimes against humanity and war crimes are prosecuted when individual States are unable or unwilling to bring them to justice. And it gives the world a potential deterrent to future atrocities." The Board of Inquiry was explicitly mandated to make recommendations intended to avoid recurrence of the incidents it was tasked to investigate. The importance of accountability with respect to combating impunity and promoting deterrence is well known. If the rule of law is to be upheld, it must be enforced. Your decision to prevent the possibility of pursuing accountability contributes to impunity and the continuation of a cycle of violence and suffering.

Finally, we wish to highlight two further aspects of the cover letter. In addressing the death and injury of UNRWA personnel, you expressed your intention to “address these incidents on a case by case basis, where appropriate and through dialogue with the Government of Israel, in so far as such incidents relate to Israel and the United Nations.” There is no reference to the victims, and their right to an effective judicial remedy. This right is codified in article 2 of the International Covenant on Civil and Political Rights, a source of law which the United Nations is mandated to uphold. Additionally, we question the decision of the Secretariat to summarise the Board’s report. While it is accepted that the original report is not a public document, it seems appropriate that the summary should have been prepared by the Board of Inquiry, in order to remove any suspicion, or possibility, of bias and political favouritism.

We note that some of the incidents documented in the report amount to war crimes, particularly the “direct and intentional” targeting of Asma Elementary School on 5 January. The direct targeting of civilian objects is a war crime, as defined in article 8(2)(b)(ii) of the Statue of the ICC. Other incidents violate customary IHL as they relate to the prohibition of indiscriminate attacks, the precautions necessary in attack, and the choice of methods and means of warfare. In the wider context of the offensive, human rights organizations have documented numerous cases of war crimes, grave breaches of the Geneva Conventions, and potential crimes against humanity. These crimes demand effective judicial redress. Those suspected of committing war crimes must be prosecuted and tried in accordance with the requirements of international law.

As long as Israel continues to be granted impunity, Palestinian civilians will continue to suffer the consequences.

The victims of the Gaza Strip should not be made to suffer this affront, as the Secretariat which was created to serve and protect them stands aside and becomes complicit in the crimes of an ongoing illegal occupation. Your reaction undermines respect for the rule of law, contributes to impunity, and is an affront to the victims you are mandated to protect.

As Palestinian human rights organizations we wish to express our thanks and support for the Board of Inquiry, which carried out its mandate professionally and effectively under difficult circumstances. We also express our continued support for those UN organizations working on the ground in the occupied Palestinian territory to protect and promote human rights.

Signed on behalf of:

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