

22 July 2014

Attention:

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**Re: Preventing damage and danger to hospitals, medical teams, evacuation teams, and patients in the course of the current military operation in the Gaza Strip**

We, Physicians for Human Rights - Israel (PHR-IL), an organization that unites more than 3,000 people active in medicine, health, and human rights, address you in the name of universal moral, ethical, and legal principles, against the background of the IDF's actions in the Gaza Strip, which damage and put in harm's way medical facilities, hospitals, medical teams, and patients (hereinafter to be referred to jointly as "medical personnel and facilities.")

We address you in light of many, too many, events of damage in body and spirit to medical personnel and facilities in the Gaza Strip. We demand that the army immediately cease to take actions that unlawfully endanger medical personnel and facilities. Furthermore, we appeal to you, so that an immediate rethinking be effected, and that the army plan its actions in a manner that reduces to a minimum the possibility of such damage in future, and that it perform a retroactive review and system-wide lesson learning, also taking into account the damage that has already been inflicted.

This letter is further to and in continuation of our letter of 16 July 2014 about the bombing of the vicinity of Al-Wafa hospital in the city of Gaza, of additional communications in writing and orally, and of the human rights organizations letter dated 21 July 2014 on the subject of "*Offense policy in Gaza within the framework of Operation Protective Edge.*"

#### **The background for this communication**

1. Since 8 July 2014, Israel has engaged in an expansive military battle against the Gaza Strip, initially mostly through aerial bombing, and after 17 July 2014, also through significant

ground-based operations. The operations that started on 8 July 2014 were given the name “Operation Protective Edge.”

2. There is no dispute over the fact that many civilians in the Gaza Strip were hurt in the course of the operation, and that much damage was suffered in property. The information as of the writing of this letter refers to nearly 600 people killed and thousands of wounded, many of whom are young children and women.
3. This communication does not deal with the legality or the proportionality of the fighting in the Gaza Strip in general, but will rather focus on aspects of damaging medical personnel in the course of the fighting. There is no dispute that the targeting of medical personnel is *prima facie* an immoral and illegal action, and cannot possibly be one of the goals of the campaign.
4. According to information obtained by PHR-IL from various sources, including the emergency section of the Palestinian Ministry of Health in Ramallah, which acts in cooperation with the World Health Organization, as of 21 July 2014, the damage inflicted on medical personnel and facilities includes (among others):

<b>Location of the damage</b>	<b>Bodily harm</b>	<b>Property damage</b>
The Khan Younis European Hospital	17 persons injured	ICU, Pediatric Department, additional departments, the fence. The damage led to the evacuation of the Pediatric Department and the closure of the outpatient clinics.
Beit Hanoun Medical Center		Damage to windows
Gaza European Hospital	A nurse was injured	The Pediatric ICU was damaged
Fukhairi Clinic in Rafah		The clinic suffered damage that necessitated its closure
The Red Crescent Emergency Medical Center in the Jabaliya Refugee Camp	15 medics, paramedics, and emergency workers were injured	The center was damaged and 3 ambulances were incapacitated
An ambulance in Deir al-Balah		An ambulance was damaged.
The Jamil Alashi Clinic in Gaza		Blast damage to the clinic

<b>Location of the damage</b>	<b>Bodily harm</b>	<b>Property damage</b>
The Al-Wafa Hospital		The new building and the fourth floor were damaged. 14 patients were evacuated.
The Medical Relief Center for Non-communicable Diseases in Gaza		Damage to windows, doors, medical equipment, and furniture that led to the closure of the center.
The Jamil Al-Ashi Wabish Clinics of the Palestinian Ministry of Health		Damage to windows, doors, and furniture
15 UNRWA Clinics		2 clinics closed, the activity of 13 others
The Al-Awda UHWC Hospital		Damage to windows, doors, medical equipment, and furniture, ventilation systems, and the Radiology Department
UNRWA Medical Center in Al-Bureij		The center was damaged
Beit Hanoun Hospital		The roof of the administrative building was partially damaged by direct bombing
The Shuhadat Al-Aqsa hospital in Deir Al-Balah and the field hospital near it	5 people killed, approximately 70 wounded	Direct tank hit that damaged two floors of the hospital, also damaged two ambulances that were evacuating wounded persons.
A home for people with disabilities in Beit Lahiya	Two female inmates killed, three inmates and one female employee were wounded.	

5. The many cases of damage described above, which constitute only part of the damage inflicted on medical personnel and facilities, raise grave concerns that the army is not operating according to international law, whether intentionally and due to 'orders from above' or due to the fact that guidelines and directives relating to the legal manner of operation with regard to medical infrastructure are not integrated or applied on the ground.

## The legal situation

6. Articles 19, 20, and 24-26 of the First Geneva Convention (for the Amelioration of the Condition of the Wounded in Armies in the Field) and Articles 18, 20, and 63 of the Fourth Geneva Convention grant immunity to medical facilities and teams, including those of the Red Crescent and the Red Cross, when they are discharging their duty. Also see Yoram Dinstein, *The Law of War* (5743-1983), pp. 145-144, 153. These obligations are acknowledged and mentioned, among other places, in High Court of Justice 2117/02, **Physicians for Human Rights vs. Commander of the IDF Forces in the West Bank**, PD 65(3) 26.
7. Violation of these laws may be deemed to be a war crime. In this matter, see the Constitution of the International Criminal Court, Article 8(2)(b)(xxiv) & (e)(ii).
8. Article 21 of the First Geneva Convention states that the protection of medical facilities shall not cease if they are used “to commit, outside their humanitarian duties, acts harmful to the enemy.” This is **on condition that “a due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.”** It should be recalled that in the case of patients, there is frequently no practical possibility of evacuating them from the place where they currently are, which comes in addition to the difficulty of civilians in the Gaza Strip who are sometimes prevented from evacuating by Hamas or by the circumstances of war. Moreover, it must be established that the medical facility has effectively contributed to the military activity, and that there was an immediate military necessity to damage it.
9. Even if there is a true and well-founded concern that medical facilities are being misused, this fact “in and of itself does not permit a sweeping violation of the humanitarian laws... This position derives not only from international law... But also from the values of the State of Israel...” (High Court of Justice 201/09 **Physicians for Human Rights vs. the Prime Minister** (19 January 2009)).
10. The rules of international law with regard to the protection of medical teams and facilities constitute part of Israeli law and have been recognized as binding even during hostilities, as noted in High Court of Justice 358/88 **Association of Civil Rights in Israel vs. the Head of the Central Command**, PD XLIII(2) 529, 536:

“The rules of Israeli law have indeed not been applied to the region, but an Israeli officer on the ground is subject to the obligation to conduct

himself under the additional requirements that derive from his being an Israeli authority, in whichever location it operates. The officer is therefore required to live up to an additional and cumulative obligation, as the obligation to conduct himself according to the norms of Israeli law does not exempt him from the obligation to uphold the laws of war. He cannot rely on the norms of Israeli administrative law in order to refrain from meeting an obligation or honoring a prohibition that applies to him under the customs of the laws of war. As far as this court is concerned, the officer does not generally meet his obligations if he has fulfilled only the norms of international law, because as an Israeli authority he is subject to additional requirements, in particular, that even in the region under military rule he conduct himself pursuant to the rules of proper and equitable administrative conduct.

11. Also see High Court of Justice 4764/04 **Physicians for Human Rights vs. Commander of IDF Forces in Gaza**, PD LVIII(5) 385, which refers to the obligations during hostilities:

Indeed, all combat operations of any army during hostilities are subject to the rules of International Law that deal with such operations. I have considered this in one of the cases, when I stated that “even in times of hostilities the laws of war must be upheld. Even in times of hostilities, everything must be done to protect the civilian population...”

12. In attacking medical personnel and facilities, Israel violates and breaches the “rule to distinguish”, which is the basic, foundational rule of the laws of war. In every war, as has been written as early as in the St. Petersburg Declaration in the 19<sup>th</sup> century, the only legitimate goal of war is to weaken the enemy’s fighting forces. Article 3 of the Geneva Convention prohibits the harming of noncombatants and also of combatants that have already been injured. This principle has also found clear and explicit expression in Article 48 of the First Protocol to the Geneva Conventions of 1977.
13. When attacking medical personnel and facilities, Israel breaches and violates the “rule of proportionality”, which also prohibits the harming of military targets, if the attack is expected to lead to disproportional harm to the lives of civilians. This follows, among others, from Article 51(5)(b) of the first Protocol of the Geneva Convention.
14. The combat operations in the Gaza Strip are performed within a densely populated area, in which also many medical personnel and facilities are located which, due to the combat operations, are obviously operating at full capacity and at the highest degree of readiness. These facts are known to the army in advance. Actions must therefore be planned in a manner that will harm medical personnel and facilities as little possible, within the framework of the positive obligations of the army towards civilian residents. In this

matter, the words of the Honorable Justice Beinisch in the aforementioned High Court of Justice 4764/04, are apt:

Even if it is not possible to foresee any development that could occur in the course of hostilities, there is no doubt that the basic needs of a civilian population, which during hostilities is subject to a real danger of suffering harm to property, life, and basic needs, are known and can be anticipated. Therefore, in the framework of the operative planning of a military operation, it is necessary to take into account also that part that guarantees the upholding of the humanitarian obligations toward the civilian population, which is squeezed between its cynical abuse by ruthless terrorists on the one hand, and its exposure to the activity of a military force acting against terrorist infrastructure on the other... Putting in place detailed guidelines, preparing a logistic system in advance, and defining the rules of conduct by the combat forces toward the affected population, as well as the creation of a direct mechanism for communication with the various entities acting on behalf of the civilian population and for its benefit - can ensure an improvement of the situation...

15. International law, as was also acknowledged in High Court of Justice decisions, requires the investigation of suspected cases of violation of international law. This follows from Article 146 of the Fourth Geneva Convention, General Note No. 31 of the United Nations Human Rights Committee from 2004, and the consistent rulings of courts around the world. This also follows from Article 2(3)(a) of the International Covenant on Civil and Political Rights (1966), that was ratified by the State of Israel in 1966, which states:

[A]ny person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

16. The proliferation of cases of bodily and property harm to medical personnel and facilities in the course of this round of hostilities as well as in previous rounds requires a systemic review of the practices and manners of combat that lead to this situation.

### **Summary**

17. In light of all the above, and to prevent additional, grievous damage to patients and medical personnel and facilities, we request that you take all measures to stop this damage immediately. Within this framework we demand that instructions and orders be given to all persons, including a refresher of existing guidelines relating to the prohibitions and limitations governing the use of force even during hostilities, with special attention to the limitations applying to the harming of medical personnel and facilities.

18. We also demand that a rethinking and system-wide examination be held immediately, also taking into account the circumstances and events that have already damaged medical facilities and teams in the course of the recent hostilities and during previous rounds of hostilities. Such a systemic examination should lead to the framing of guidelines, procedures, and orders, and also to operational plans which will prevent, or at least significantly reduce, the risk of harming medical personnel and facilities.

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