

## **Operation Protective Edge: Recalling the core principles of IHL**

(13 July 2014, East Jerusalem) - Diakonia is extremely alarmed by the current escalation in conflict between Israel and Palestinian armed groups in the Gaza Strip and calls for an immediate ceasefire. In addition to the terrible loss of life and injury, Diakonia is particularly concerned by the violations of international humanitarian law (IHL) and the ongoing lack of accountability that characterise and perpetuate the conflict in the occupied Palestinian territory (oPt). The parties to the conflict must fully respect IHL at all times, particularly bearing in mind the principles of distinction, proportionality and precaution in the conduct of hostilities.

### **Core principles of IHL**

International humanitarian law regulates the means and methods of warfare in order to minimise civilian harm.<sup>1</sup> For any attack to be lawful, it must respect all three core principles of IHL:

1. **Distinction**: Parties to the conflict must distinguish at all times between legitimate military objectives and civilians or civilian objects. There must be a lawful target of attack;<sup>2</sup>
2. **Proportionality**: Launching an attack that may be expected to cause loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited;<sup>3</sup>
3. **Precaution**: All feasible precautions must be taken to limit the harm caused to civilians. If any information comes to light changing the assessment under the first two principles and that might suggest unlawfulness, then the strike must be suspended.<sup>4</sup>

### **Military targets and the principle of distinction**

Any attacks launched must offer a definite military advantage.<sup>5</sup> Attacks not aimed at military targets do not require further discussion on proportionality or precautions that should be taken;

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<sup>1</sup> The main sources of IHL are the Hague Conventions of 1907, the Four Geneva Conventions of 1949, and customary international law, which is applicable to all States. The Hague Conventions and the Geneva Conventions are also considered to be customary international law.

<sup>2</sup> Rule 8 International Committee of the Red Cross (ICRC) Customary IHL Rules; Article 52(2) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

<sup>3</sup> Rule 14 ICRC Customary IHL Rules. See also Israel's Manual on the Rules of Warfare (2006): "Proportionality must be maintained: an act must not be performed if the damage to civilians/the environment exceeds the concomitant military benefit."

<sup>4</sup> Rule 15 ICRC Customary IHL Rules.

<sup>5</sup> Military objectives are limited to objects that make an effective contribution to military action and whose partial or total destruction offers a definite military advantage. Rule 8 ICRC Customary IHL Rules.

they are prohibited in all cases. Any intentional direct attack against civilians or civilian objects is considered a serious violation of IHL and is prosecutable as a war crime.<sup>6</sup>

There are widespread reports<sup>7</sup> of an Israeli policy of direct attacks against civilian homes in the Gaza Strip. Such attacks potentially amount to war crimes. In this regard, the UN High Commissioner for Human Rights has [expressed](#) “serious doubt about whether the Israeli strikes have been in accordance with international humanitarian law and international human rights law”. Additionally, it is likely that the indiscriminate use of rockets by Palestinian armed groups against Israeli civilians amounts to war crimes.

### Civilian status and precautionary measures

Civilians and civilian objects only lose their civilian status if they are making an effective contribution to military action.<sup>8</sup> Examples of this include storing weapons or launching attacks. Civilian objects cannot be considered legitimate military targets simply because they belong to fighters or parties to the conflict, or are nursing wounded fighters.<sup>9</sup> Nor does the policy of sometimes issuing warnings of impending attacks have any bearing on the inherent protection of civilian objects. Precautionary measures, while welcome in all situations, do not absolve warring parties from their core responsibilities, as outlined above.<sup>10</sup>

Crucially, when there is doubt as to whether an object is being used for military purposes, it should retain its civilian status and may not be attacked.<sup>11</sup> It is also important to note that violations by one party do not in any way justify abuses by another party.

### The closure of the Gaza Strip - collective punishment

The population of the Gaza Strip remains subjected to the wider separation policy that Israel implements through the closure of Gaza.<sup>12</sup> This policy, which amounts to collective punishment,<sup>13</sup> is directly responsible for the atrocious living conditions experienced by the Palestinian population in Gaza. The closure has continued since 2006 despite numerous calls from the United Nations, the European Union, the International Committee of the Red Cross, and international NGOs, for it to be lifted.<sup>14</sup> Diakonia reiterates this call. It is important to reaffirm that Israel, as the Occupying Power in the oPt, which includes the Gaza

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<sup>6</sup> Article 147, Fourth Geneva Convention.

<sup>7</sup> See, for example, ‘Bombing family homes of activists in armed Palestinian groups violates international humanitarian law’, B’Tselem (9 July 2014).

<sup>8</sup> Rule 10 ICRC Customary IHL Rules. See also, Practice relating to Rule 6 ICRC Customary IHL Rules.

<sup>9</sup> Special protection under IHL is granted to civilian hospitals. See Rule 35 ICRC Customary IHL Rules. On 9 July 2014, the Palestinian Red Crescent Society announced that Israeli shells had struck its EMS Center in the Gaza Strip. Also, Journalists are considered to be civilians and cannot be targeted.

<sup>10</sup> On 12 and 13 July, CNN reported that certain airstrikes were not accompanied by prior warning, while in other cases, civilians received very short, limited warnings.

<sup>11</sup> Rule 6 ICRC Customary IHL Rules.

<sup>12</sup> ‘Gaza: Marking seven bad years of closure’, *Haaretz* (19 June 2014).

<sup>13</sup> ICRC, ‘Gaza closure: not another year!’ (14 June 2010).

<sup>14</sup> ‘NGOs, UN agencies call on Israel to lift Gaza blockade’, *Haaretz* (14 June 2012). See also, ‘Ashton Calls on Israel to End Gaza Siege’, *Arutz Sheva* (21 June 2013). ICRC, ‘Gaza closure: not another year!’ (14 June 2010). It should be noted that the Gaza Strip was also subjected to restrictions prior to 2006.

Strip, bears the primary responsibility for ensuring the welfare of the protected Palestinian population.<sup>15</sup>

### Rule of law

Rule of law requires accountability to the law. The 2009 UN Fact-Finding Mission on the Gaza Conflict, which was fully endorsed by the UN General Assembly, urged the international community to put an end to impunity for violations of international law in Israel and the oPt. To date, these recommendations have been ignored. As such, it is of no surprise that such violations continue and that the dire situation, particularly as experienced by the occupied Palestinian population, persists. As decades of conflict and occupation demonstrate, the situation will continue to deteriorate until the current lack of accountability is addressed.

Finally, compliance with IHL is not solely the responsibility of Israel and Palestinian armed groups. Third states, as signatories to the Geneva Conventions, have a clear obligation to “respect and ensure respect” for IHL in all circumstances.

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### For further information please see:

- [Diakonia International Humanitarian Law Resource Centre](#)
- Human Rights Watch: [Palestine/Israel: Indiscriminate Palestinian Rocket Attacks](#) (9 July 2014).
- Al-Haq: [Al-Haq legal analysis of the escalation in attacks in the Gaza Strip in November 2012](#) (27 November 2012).
- B’Tselem: [Bombing family homes of activists in armed Palestinian groups violates international humanitarian law](#) (9 July 2014).

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<sup>15</sup> Article 43, Hague Regulations, 1907. See also UN OCHA Situation Report, 11 July 2014, with reference to damage to water and sewage infrastructure in Gaza Strip.