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To the attn. of:

Mr Josep Borell Fontelles

EU High Representative for Foreign Affairs and Security Policy / Vice-President European External Action Service (EEAS)

Foreign Affairs Ministers of the European Union (EU) member states

20 October 2023

Dear High Representative,
Dear Ministers of Foreign Affairs,

AMNESTY INTERNATIONAL CONCERNS AHEAD OF FOREIGN AFFAIRS COUNCIL MEETING ON RECENT FIGHTING IN ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORIES

I am writing to you ahead of the Foreign Affairs Council meeting in relation to the ongoing fighting in Israel and the Occupied Palestinian Territories, in particular the humanitarian and human rights crisis unfolding in the Occupied Palestinian Territories, especially in Gaza.

We are deeply concerned about the ongoing serious violations of international humanitarian law (IHL), including war crimes committed by all parties to the conflict in the most recent round of fighting. We are concerned that to date, some EU officials and member states have failed to deliver a message of the need of all parties to respect IHL, while very few EU leaders mentioned the need for accountability for all crimes.

We are currently witnessing a desperate humanitarian crisis impacting more than 2.2 million people trapped in the Gaza Strip, which has been under Israel's illegal blockade since 2007. On 9 October, Israeli officials announced a total siege on Gaza, blocking the entry of food, fuel and humanitarian assistance, and cutting off the supply of electricity and water. The "evacuation order" issued on 13 October by the Israeli military to civilians, including hospitals in northern Gaza, may amount to forced displacement of the civilian population, a violation of IHL¹. The Israeli military has urged hospitals and international humanitarian organizations in northern Gaza to rapidly relocate people to the south. This has proven impossible, with no transportation and fuel, putting at risk civilians, particularly young children, sick and older people, pregnant women, and persons with disabilities. Orders to evacuate hospitals, already on the brink of collapse, are unacceptable.

Our investigations found that some of the Israeli attacks which caused mass civilian casualties were unlawful and must be investigated as war crimes, while Hamas and other armed groups continue to fire indiscriminate rockets towards Israeli cities, which should also be investigated as a war crime. Under IHL, all parties to the conflict must at all times distinguish between civilians and civilian objects and fighters and military objectives and direct their attacks only at fighters and military objectives. Direct attacks on civilians or civilian objects are prohibited and are war crimes. Indiscriminate attacks – those which fail to distinguish as required – are also prohibited. Where an indiscriminate attack kills or injures civilians, it amounts to a war crime. Disproportionate attacks, those where the expected harm to civilians and civilian objects is excessive in comparison with the "concrete and direct military advantage anticipated," also are prohibited. Knowingly launching a disproportionate attack is a war crime.

¹ Amnesty International, Israel/OPT: Appalling Gaza "evacuation order" must be rescinded by Israel immediately, 13 October 2023, <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-appalling-gaza-evacuation-order-must-be-rescinded-by-israel-immediately/>

We welcome EU calls denouncing IHL violations and war crimes committed by Hamas and other armed groups and emphasize the need for the EU to call for the immediate and unconditional release of all civilians abducted. However, the failure of the EU to equally condemn IHL violations and war crimes committed by Israel and to call on Israeli forces to immediately lift the illegal blockade is fuelling ongoing violations. All victims deserve justice, reparation and support and selective solidarity by the EU will severely undermine the EU's role in the region and globally. EU leaders are signalling to countries all over the world that respect for international humanitarian law is subjective, severely undermining the EU calls for holding perpetrators of crimes accountable in the future.

Since 7 October, according to Israel's Ministry of Health, at least 1,400 people have been killed and some 4,629 wounded in Israel. In the same period, according to the Palestinian Ministry of Health in the Gaza Strip at least 3,785 people have been killed and some 12,500 wounded. While less reported, in the occupied West Bank, including East Jerusalem, in the last two weeks at least 79 Palestinians have been killed and 1,434 injured by Israeli forces and settlers, according to the Palestinian Ministry of Health. Many of these victims are, once again, civilians².

The current crisis did not emerge in a vacuum. Israel has a long history of committing war crimes and crimes against humanity, including by imposing a system of apartheid on Palestinians for decades, with impunity. The many violations and war crimes committed by Hamas and other armed groups and security forces have also remained unpunished³. The pervasive climate of impunity has undermined the trust in the rules and principles of international law, foremost humanity, as shown by the unprecedented violence of the attacks of Hamas and other armed groups in Israel and the relentless Israeli attacks that have obliterated, once again, entire families in Gaza. The EU now has an important role to play in reversing the side-lining of international law.

As you consider the EU's response to this unfolding crisis, we urge you to:

- **Put pressure on the state of Israel to immediately lift its illegal blockade of the Gaza Strip⁴, including by ensuring that adequate food, water, fuel and medical supplies, as well as humanitarian aid and electricity are available to all residents:** It is vital that EU leaders make it clear to Israeli leaders that collective punishment is a war crime. They must expedite efforts, in collaboration with regional and global partners, to ensure the delivery of humanitarian aid to Gaza and to allow those in need of medical assistance to access medical care, including outside the Gaza Strip. To this end, we welcome the establishment of EU Humanitarian Air Bridge flight operations to Egypt to bring supplies to humanitarian organizations in Gaza. EU leaders should ask Israel to immediately rescind the order for all civilians in north Gaza, including medical staff and patients in hospitals to move to the southern part of the Strip. Although the President of the United States announced an agreement to allow 20 trucks of aid to enter via the Rafah border crossing, we are concerned that this falls short of the minimum amount of 100 trucks per day that the UN [indicated](#) residents in Gaza need.
- **Call on all sides to respect the rules of international humanitarian law, including the prohibition of direct attacks on civilians and on civilian objects⁵, of indiscriminate and disproportionate attacks, collective punishments, hostage-taking, and abduction of civilians,** which constitute crimes under international law. Abducted civilians must be released immediately, and the practice of hostage-taking halted. All captives must be treated humanely and granted medical treatment. The EU must apply the same IHL standards to all parties to the conflict, otherwise risk signalling that the EU values some lives over the others. EU leaders must unequivocally denounce all advocacy of violence and hatred by officials and leaders on all sides.
- **Publicly call on Israel to rescind the evacuation order issued on 13 October for civilians to leave northern Gaza:** The Israeli army ordered people in northern Gaza and Gaza city, including medical staff and patients in hospitals, to "evacuate" to the south of the Gaza Strip. This order cannot be considered an effective warning

² Amnesty International, Israel/OPT: Civilians on both sides paying the price of unprecedented escalation in hostilities between Israel and Gaza as death toll mounts, 7 October 2023, <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-civilians-on-both-sides-paying-the-price-of-unprecedented-escalation-in-hostilities-between-israel-and-gaza-as-death-toll-mounts/>

³ Amnesty International, Israel: Palestinian armed groups must be held accountable for deliberate civilian killings, abductions and indiscriminate attacks, 12 October 2023, <https://www.amnesty.org/en/latest/news/2023/10/israel-palestinian-armed-groups-must-be-held-accountable-for-deliberate-civilian-killings-abductions-and-indiscriminate-attacks/>

⁴ Amnesty International, Israel/OPT: Israel must lift illegal and inhumane blockade on Gaza as power plant runs out of fuel, 12 October 2023, <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-israel-must-lift-illegal-and-inhumane-blockade-on-gaza-as-power-plant-runs-out-of-fuel/>

⁵ Amnesty International, Israel/OPT: Identifying the Israeli army's use of white phosphorus in Gaza, 13 October 2023, <https://citizenevidence.org/2023/10/13/israel-opt-identifying-the-israeli-armys-use-of-white-phosphorus-in-gaza/>

and may amount to forced displacement of the civilian population, a violation of international humanitarian law.

- **Strongly call on all parties to the conflict to refrain from conducting military operations** that are detrimental to civilians' safe access to humanitarian assistance and medical care.
- **Unequivocally and unconditionally support the work of the International Criminal Court (ICC).** In 2021, the ICC formally opened an investigation into the situation in Palestine, concerning crimes within the Court's jurisdiction committed since June 2014. The ICC Office of the Prosecutor has confirmed that this mandate includes crimes under international law committed by all parties in the current fighting, which includes crimes committed by Israeli authorities and Palestinian armed groups. EU member states must call on the state of Israel, as the occupying power, to cooperate with and facilitate the ICC's work, including by allowing access to the OPT and Israel to conduct investigations into crimes committed by all sides to the conflict. EU member states must also ensure that the ICC has the needed resources to fully conduct its investigations. EU member states should pursue accountability at the national level for crimes under international law committed in Israel and Palestine.
- **The EU should adopt messaging that seeks to provide an alternative way out of the current episode of violence by including calls for accountability for all crimes under international law committed by all parties:** In order to avoid repeating the same policies that have led to this renewed wave of violence, EU leaders must emphasize respect for IHL, and a way forward based on accountability for crimes committed by all sides. If the EU wishes to present itself as upholding the international rule of law, it must adopt unbiased language enshrined in international law. By failing to call for accountability for all parties, the EU is indicating to all parties that they can commit crimes without consequence.
- **The EU should use the UN fora to promote full compliance with international law:** EU member states should support debates and resolutions in UN fora that promote the protection of civilians during the conflict; acknowledge the vast scope of human rights violations ongoing and the context of domination and oppression that has brought us to today; and to promote accountability, including through support for the ICC investigation. EU member states must continue to support the UN mandates that exist already and may have a role to play in investigating human rights abuses and promoting accountability, including the Human Rights Council Commission of Inquiry on Israel and the OPT; this entails providing additional resources to the COI, and calling that all parties cooperate with this mechanism and allow for its unimpeded access to Israel and the OPT.
- **Refrain from supplying arms to any party to the conflict, given that serious human rights violations amounting to crimes under international law are being committed:** EU member states must refrain from supplying Israel with arms and military materiel, including related technologies, parts and components, technical assistance, training, financial or other assistance. They should also call on states supplying arms to Hamas and other armed groups to refrain from doing so.

Immediate and principled action from the EU is urgent. Civilians will continue to pay a heavy price, as long as the violations and injustices that are the root causes of the conflict are not addressed and victims are not afforded justice and reparation. The consequences of this humanitarian crisis will not be limited to the region. Conflicts and instability in the Middle East and North Africa have forced millions to seek refuge in Europe, and the ramifications of the current military operations and humanitarian crisis are already having far reaching negative repercussions.

We stand ready to meet you anytime to discuss our concerns detailed above. In addition, we remain at your disposal to provide any further information.

Yours sincerely,



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