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Dear Mr Jefferey, Mr Cree, and Ms Ford

Response to *Open Letter Concerning Gaza*

We are writing on behalf of UK Lawyers for Israel. UK Lawyers for Israel is a voluntary association of lawyers who support Israel and seek the proper application of the law in matters relating to Israel.

We write in response to the *Open Letter Concerning Gaza*, signed by 400 barristers, solicitors or legal executives and published in the Law Society Gazette on 12 November 2023. This letter asks you, as CEOs of the Law Society, the Bar Council and the Chartered Institute of Legal Executives, to issue “urgent statements” condemning Israel’s military offensive in Gaza and calling for an immediate ceasefire (inter alia).

As lawyers, our duty to uphold the rule of law encompasses the obligation to use legal concepts with the utmost care. Today, this duty requires us to assess the accusations levelled at Israel to decide whether the above “urgent statements” are justified.

In order to assist you in this exercise, we answer below each of the allegations made in the letter.

As the letter starts with a few statistics on the casualties in Gaza, we would like to start with three observations in this respect:

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- As highlighted by the Associate Press ¹, the credibility of the Hamas Ministry of Health, as the only source of information on the casualties, has been called into question on several occasions since the beginning of the hostilities. In particular, the ministry does not distinguish between civilians and combatants nor reports on how Palestinians are killed (whether by Israeli or Hamas fire).
- The casualties can also be explained by the existence of a well-documented tunnel terror networks built by Hamas under Gaza², in particular under hospitals³, using civilians as human shields⁴, and in which civilians are not allowed to take shelter⁵.
- The bulk of Hamas infrastructure is situated in North Gaza. The practice of the Israeli Defence Force of issuing warnings, so that civilians can be evacuated to the South, has been extensively reported in the media⁶, so has Hamas's practice of blocking escape routes⁷ and of firing at civilians attempting to flee⁸.

The open letter also refers to a letter to the “Prime Minister, Foreign Secretary and Defence Secretary (...) which sets out “in great detail the legal position in relation to both the Hamas attack and the Israeli response”. This letter itself refers to two letters dated 26 October 2023 and 8 November 2023. We focus below on the legal argument made in these two letters and demonstrate that the accusations of war crimes levelled at Israel are without basis.

Letter dated 26 October 2023

The letter states: “International humanitarian law is not being upheld.” It accuses Israel of not upholding the principles of distinction (between civilians and combatants), of precaution (when identifying targets) and of proportionality (in its response to the 7th October attack). Before we apply each of these principles in turn, we make one observation.

Israel is acting in self-defence, and has the right to do so, as recognised by Article 51 of the UN Charter⁹. Israel is a country the size of Wales, fighting a powerful terrorist organisation that has vowed to destroy it, and has shown what it is capable of on 7th October 2023.

¹ [Apnews.com/article/Israel-hamas-war-gaza-health-ministry-health-death-toll](https://apnews.com/article/Israel-hamas-war-gaza-health-ministry-health-death-toll)

² [Bbc.com/news/world-middle-east-67097124](https://bbc.com/news/world-middle-east-67097124) Israel targets Hamas's labyrinth of tunnels under Gaza

³ https://www.timesofisrael.com/liveblog_entry/us-confirms-israeli-claim-that-hamas-using-gaza-hospitals-including-shifa-for-military-operations/#:~:text=The%20Biden%20administration%20confirms%20long,hospitals%20for%20its%20military%20purposes.

⁴ <https://abcnews.go.com/International/wireStory/eu-nations-condemn-hamas-describe-hospitals-civilians-human-104840591>

⁵ [Youtube.com/watch?v=D4xVqsb2v9w](https://youtube.com/watch?v=D4xVqsb2v9w) IDF shares “proof” of Hamas’ tunnel network near hospitals

⁶ [Cnn.com/2023/10/16/middleeast/israel-palestinian-evacuation-order-invs/index](https://cnn.com/2023/10/16/middleeast/israel-palestinian-evacuation-order-invs/index)

⁷ [Youtube.com/watch?v=D4xVqsb2v9w](https://youtube.com/watch?v=D4xVqsb2v9w) IDF shares “proof” of Hamas’ tunnel network near hospitals

⁸ <https://nypost.com/2023/11/10/news/video-reports-to-show-hamas-firing-on-civilians-fleeing-childrens-hospital/>

⁹ [Un.org/en/about-us/un-charter/full-text](https://un.org/en/about-us/un-charter/full-text)

On 1 November 2023, Hamas official Ghazi Hamad vowed to carry out attacks against Israel “over and over again “until Israel is annihilated”¹⁰ and Hamas launched 9,500 rockets at Israeli civilians between 7 October and 8 November 2023¹¹ (this is on-going).

Israel’s declaration of war against Hamas (targeting its military infrastructure) is therefore lawful and legitimate under international law. In addition, the Israeli offensive in Gaza is conducted according to the Law of Armed Conflict (LOAC), as it has a legitimate military objective and is pursued by a democratic state with an accountable and internationally respected army.

We now take you to the principles enunciated in the 26th October letter and to their alleged breaches.

The principle of distinction

This principle is articulated in Article 48 to the Additional Protocol I of the Geneva conventions and provides (inter alia) that “the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military.”¹² This requires Israel to prevent as many civilian casualties as feasible, without compromising its military objectives.

We refer you again to the practice of the Israeli Defence Force of employing multiple methods to warn civilians before its military strikes¹³. In addition, on 10 November 2023, Israel confirmed that a four-hour daily humanitarian pause had been agreed to “facilitate a safe passage of civilians away from the areas of fighting¹⁴.”

Finally, under International Law, civilian facilities used for military purposes lose their protected status and become legitimate military targets¹⁵. Hamas combatants use civilian facilities (in particular hospitals), as now recognised by US intelligence¹⁶. These facilities therefore lose their protected status and may be targeted under international law, provided that the strikes follow the rules of proportionality and precaution.

The principle of proportionality

This principle is derived from Article 51 to the Additional Protocol I of the Geneva¹⁷ conventions which prohibits (inter alia) “an attack which would be excessive in relation to the concrete and direct military advantage anticipated”.

This principle requires Israel, as the attacker in the densely populated area of Gaza, to carry out all feasible checks to verify the nature of the targets and avoid errors. The Israeli Defence Force complies with this obligation. The Military Advocate General Corps is a group of legal advisors who sit outside the Israeli military chain of command

¹⁰ [Lbc.co.uk/news/hamas-october-7-attack-repeat-israel-annihilated-ghazi-hamad/](https://lbc.co.uk/news/hamas-october-7-attack-repeat-israel-annihilated-ghazi-hamad/)

¹¹ https://www.timesofisrael.com/liveblog_entry/idf-9500-rockets-fired-at-israel-since-oct-7-including-3000-in-1st-hours-of-onslaught/

¹² <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-48>

¹³ [Cnn.com/2023/10/16/middleeast/israel-palestinian-evacuation-order-invs/index](https://www.cnn.com/2023/10/16/middleeast/israel-palestinian-evacuation-order-invs/index)

¹⁴ <https://apnews.com/article/israel-gaza-humanitarian-pauses-b8fc613ffd8b9351c0dc37b90b6e10dd>

¹⁵ <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule10>

¹⁶ https://www.timesofisrael.com/liveblog_entry/us-confirms-israeli-claim-that-hamas-using-gaza-hospitals-including-shifa-for-military-operations/#:~:text=The%20Biden%20administration%20confirms%20long,hospitals%20for%20its%20military%20purposes.

¹⁷ <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-51?activeTab=undefined>

and conduct a legal assessment on a target-by-target basis¹⁸. The footage of the Israeli Defence Force briefing (already mentioned) is an example of the way it painstakingly collects evidence of the presence of Hamas terrorist infrastructure below civilian facilities¹⁹.

The principle of proportionality differs from symmetry. Proportionality does not mandate that the victim of an attack conducts a similar offensive (no reasonable lawyer could expect the Israeli army to repeat the atrocities committed by Hamas on 7th October on Israeli land) nor does it mean that casualties must be kept at similar levels on both sides of the conflict. In this respect, it is worth observing that Israeli civilian casualties have been kept relatively low since 7th October thanks to the Israeli anti-missile system (known as the Iron Dome), despite over 9,500 rockets fired at them (by 8th November), whilst Hamas has at best, refused entry to its tunnels to Gaza civilians (so they could seek shelter) and at worse, blocked and bombed evacuation routes.

The principle of precaution

This is articulated by Article 58 of the Additional Protocol I of the Geneva conventions²⁰ as the requirement for the parties to the conflict to take all feasible precautions to protect the civilian population and civilian objects under their control against the dangers resulting from military operations.

As highlighted above, the Israeli Defence Force takes all feasible precautions to identify military targets and evacuate civilians prior to strikes.

Letter dated 9 November 2023

This letter's key legal argument is that the UK is duty-bound to "respect and ensure respect" for international humanitarian law as set out in Common Art 1 of the 1949 Geneva Conventions).

We of course agree that the UK is bound to uphold international humanitarian law, however, as already articulated in our response to the 26 October letter, we see no basis for the accusations of breaches of humanitarian law and even war crimes levelled at Israel.

We now go back to the open letter itself.

The letter refers to "strong condemnation from the UN of the years of occupation". We observe that Israel unilaterally withdrew from Gaza in 2005, thus ending its occupation of the territory.

We are also appalled by the incendiary tone of phrases like "Israel continues to target civilian areas as well as internationally recognised safe zones treating any notion of civilisation and law with outright contempt". Such inflammatory language has no place in a document intended to set out the legal position, and signed by lawyers for this purpose.

¹⁸ https://en.wikipedia.org/wiki/Military_Advocate_General#cite_note-1

¹⁹ [Youtube.com/watch?v=D4xVqsb2v9w](https://www.youtube.com/watch?v=D4xVqsb2v9w) IDF shares "proof" of Hamas' tunnel network near hospitals

²⁰ <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-58?activeTab=undefined>

In addition, we have not been able to find any evidence corroborating the accusation that the Israel Defence Force targets “recognised safe zones”. However, it is established that many Gaza civilians have been killed by rockets misfired by Hamas²¹. In addition, mistakes made by the Israeli Defence Force cannot be discounted. Still, the notion that the Israeli Defence Force intentionally targets civilians in South Gaza (after facilitating their evacuation from the North) is spurious.

We are also appalled by the suggestion that “Senior Israeli Politicians have brazenly called for the annihilation of Palestinians as a people” and that a genocide in Gaza must be prevented. We note that genocide, as defined in Article II of the Genocide Convention²², requires “intent to destroy” an entire group. These baseless and inflammatory accusations are at odds with both the conduct of the Israeli Defence Force on the ground and with statements made by the highest-ranking Israeli officials about the future of Gaza once Hamas is defeated²³.

Perhaps the most shocking part of the open letter is the phrase “the political class remains out of touch and resolute in its defence of an illegal occupier that has set out on clear genocidal path”. It makes a mockery of International Law by misusing legally defined terms such as “occupation” and “genocide”.

The Open letter concludes with a list of “urgent statements” which the signatories are asking you to release. We do not propose to analyse the justification for each of the statements as these mainly cover alleged breaches of international law (which we have already rebutted), but we will cover the last two:

“There should be an immediate and unconditional ceasefire”.

As clearly articulated by the Prime Minister speaking in Parliament on 7 November 2023, a unilateral ceasefire would allow Hamas to “entrench its position and continue its attacks against Israel”. The Prime Minister also referred to Hamas’s threat (mentioned above) to repeat the 7 October attack “Time and again until Israel is annihilated”²⁴, he added that “no country faced with such a threat could be reasonably expected not to act”²⁵.

A suspension of the hostilities would only prolong the war and therefore the suffering of civilians in Gaza, in circumstances where requesting a complete halt to the hostilities would enable Hamas to implement its plan to eradicate Israel and would therefore amount to condoning such a genocidal plan.

²¹ <https://www.nbcnews.com/nightly-news/video/biden-blames-misfired-palestinian-rocket-for-deadly-gaza-hospital-blast-195924037769>

²² [Un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention)

²³ <https://www.nbcnews.com/meet-the-press/video/netanyahu-calls-for-different-authority-to-govern-gaza-after-war-is-over-197680197752>

²⁴ [Lbc.co.uk/news/hamas-october-7-attack-repeat-israel-annihilated-ghazi-hamad/](https://www.lbc.co.uk/news/hamas-october-7-attack-repeat-israel-annihilated-ghazi-hamad/)

²⁵ <https://www.youtube.com/watch?v=yYjz5Z8fWgw>

“There should be an immediate restoration of Water, Electricity, Fuel and unhindered Aid into Gaza”.

As part of its actions in self-defence, following the 7 October attacks, Israel did cut electricity, fuel, humanitarian and water supplies to Gaza but Israel resumed water supplies to southern Gaza on 16th October²⁶.

We note that International Humanitarian Law, in particular, Article 23 of the Fourth Geneva Convention²⁷, only requires Israel to facilitate the passage of food and medicine, not other resources such as water, if such goods can be reliably delivered without diversion to military combatants.

UNRWA, a UN refugee agency, indicated on 16 October 2023 that Hamas had stolen 24,000 units of fuel and medical supplies from a humanitarian storage unit. UNRWA subsequently deleted the statement, reportedly under pressure from Hamas. Similarly, in 2021, Hamas released a video of water pipeline excavations (funded by the international community for the provision of water to Gaza) to transform the pipelines into rockets to be launched at Israeli civilians²⁸.

In conclusion, we agree that the deaths of civilians in Gaza is a terrible tragedy, but we urge you to exercise your own judgement, applying the principles of International Law to the facts, without being influenced by an emotional and inflammatory narrative, which distorts reality and defiles these legal principles, thus displaying a worrying disrespect of the rule of law.

Yours faithfully



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²⁶ [Wsj.com/livecoverage/Israel-hamas-war-gaza-conflict/card/Israel-resumes-water-service-in-southern-gaza](https://www.wsj.com/livecoverage/Israel-hamas-war-gaza-conflict/card/Israel-resumes-water-service-in-southern-gaza)

²⁷ <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-23>

²⁸ [Telegraph.co.uk/world-news/2023/10/10/eu-funded-water-pipeline-hamas-rockets/](https://www.telegraph.co.uk/world-news/2023/10/10/eu-funded-water-pipeline-hamas-rockets/)