



AUSTRALIAN
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HUMAN RIGHTS

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The Hon. Julie Bishop
Minister for Foreign Affairs
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Via email: Julie.Bishop.MP@aph.gov.au

Dear Minister

Re: Israel's use of force and rules of engagement in Gaza

We refer to our correspondence dated 18 May 2018, in which Australian Lawyers for Human Rights (**ALHR**) wrote to commend your decision to not send an Australian representative to the opening of the embassy of the United States of America (US) in Jerusalem, Israel.

Within that letter we also raised serious concerns about the human rights impact of the US's decision to relocate its embassy and recognise Jerusalem as the capital of Israel. On 15 May 2018, the impact of this decision manifested in Gaza, and it was widely reported that the Israeli Defence Force (**IDF**) used live fire against Palestinian protestors and shot and killed 60 people and injured over 2500 people on the border between Gaza and Israel. It has also been widely reported that journalists attempting to report on the violence and Palestinian medics attempting to help the wounded were also fired upon.

In our letter ALHR stressed to you the importance of State actors' adherence to International Humanitarian Law (**IHL**). We stressed the significance of IHL in the context of the IDF's response to those protests.

ALHR advocated that *"Australia should speak out strongly against breaches of IHL when they occur and endeavor to use diplomatic pressure to ensure countries, like Israel, investigate all allegations of breaches of IHL, and minimise the harm caused to civilians during war."*

IHL applies to all actions of the IDF in armed conflict. International Human Rights Law continues to apply at all times save for the extent it is excluded by IHL.

As has been noted by Human Rights Watch:

“The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials hold that security forces shall “apply non-violent means before resorting to the use of force and firearms,” and that “whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life.” Furthermore, “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”¹

It is in this context that we write to you again to express our shock and disappointment that Australia voted against the appointment of an independent, international commission of inquiry under the auspices of the Human Rights Council (the **HRC**) to investigate the alleged violations of IHL and international human rights law on the border of Gaza and Israel since 30 March 2018.

Australia’s vote is not only out of line with the overwhelming consensus of the HRC, but it is contrary to the statements and commitments made by Australia in seeking its recent appointment to the HRC.²

Israel, as a Member State of the United Nations, has agreed to abide by the UN Charter and is accountable to the international community for its conduct. An independent inquiry into Israel’s use of force and rules of engagement in Gaza is necessary to ensure any violations of the UN Charter are appropriately dealt with by the Security Council. It would also create internationally recognised guidelines for how Israel and other state actors should deal with these situations on their borders.

The HRC, as the central organ responsible for the accountability of international human rights violations, is the appropriate international mechanism to undertake this task.

Australia, in its application to join the HRC in 2017, made representations that it would be a principled and pragmatic member of the Council, committed to working with other members to enhance the HRC’s effectiveness and respect for its decisions. ALHR calls on Australia to uphold these commitments and to support global efforts to address transgressions of international law wherever and whenever they occur.

We call on Australia to live up to the undertakings it made when seeking a seat on the HRC and support the HRC’s very clear mandate to scrutinise events such as those that have occurred in Gaza.

We request that you provide detailed reasons why Australia voted against the appointment of an independent, international commission of inquiry. We note it has been reported that,

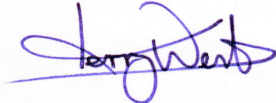
¹ See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx> and Human Rights Watch reportage <https://www.hrw.org/news/2018/04/03/israel-gaza-killings-unlawful-calculated>

² See for example, Australia’s Note Verbale dated 14 July 2017 from the Permanent Mission of Australia to the United Nations addressed to the President of the General Assembly where it made a voluntary commitment to “continue to support global efforts to promote the implementation of States’ responsibility to protect, particularly measures that facilitate the early warning of potential mass human rights abuses and appropriate preventative and *accountability mechanisms*” (emphasis added).

“Australia was of the opinion that the inquiry must also acknowledge the role of Hamas” and was very concerned that the draft resolution was not “independent and impartial.” If that is the case then we urge Australia to draft and put forward for vote its own resolution for an independent, international commission of inquiry under the auspices of the HRC. Concerns with the terms of the draft resolution should not lead to a situation whereby the HRC is prevented from performing its vital role in investigating serious human rights violations.

We thank you for considering this letter and look forward to receiving your reply.

Yours sincerely,



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ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.