

The International Community Must End Israel's Collective Punishment of the Civilian Population in the Gaza Strip

As international and criminal law scholars, human rights defenders, legal experts and individuals who firmly believe in the rule of law and in the necessity for its respect in times of peace and more so in times of war, we feel the intellectual and moral duty to denounce the grave violations, mystification and disrespect of the most basic principles of the laws of armed conflict and of the fundamental human rights of the entire Palestinian population committed during the ongoing Israeli offensive on the Gaza Strip. We also condemn the launch of rockets from the Gaza Strip, as every indiscriminate attack against civilians, regardless of the identity of the perpetrators, is not only illegal under international law but also morally intolerable. However, as also implicitly noted by the UN Human Rights Council in its Resolution of the 23th July 2014, the two parties to the conflict cannot be considered equal, and their actions – once again – appear to be of incomparable magnitude.

Once again it is the unarmed civilian population, the 'protected persons' under International humanitarian law (IHL), who is in the eye of the storm. Gaza's civilian population has been victimized in the name of a falsely construed right to self-defence, in the midst of an escalation of violence provoked in the face of the entire international community. The so-called Operation Protective Edge erupted during an ongoing armed conflict, in the context of a prolonged belligerent occupation that commenced in 1967. In the course of this ongoing conflict thousands of Palestinians have been killed and injured in the Gaza Strip during recurrent and ostensible 'ceasefire' periods since 2005, after Israel's unilateral 'disengagement' from the Gaza Strip. The deaths caused by Israel's provocative actions in the Gaza Strip prior to the latest escalation of hostilities must not be ignored as well.

According to UN sources, over the last two weeks, nearly 800 Palestinians in Gaza have been killed and more than 4,000 injured, of whom the vast majority were civilians. Several independent sources indicate that only 15 per cent of the casualties were combatants. Entire families have been murdered. Hospitals, clinics, as well as a rehabilitation centre for disabled persons have been targeted and severely damaged. During one single day, on Sunday 20th July, more than 100 Palestinian civilians were killed in Shuga'iya, a residential neighbourhood of Gaza City. This was one of the bloodiest and most aggressive operations ever conducted by Israel in the Gaza Strip, a form of urban violence constituting a total disrespect of civilian innocence. Sadly, this was followed only a couple of days later by an equally destructive attack on Khuza'a, East of Khan Younis.

Additionally, the offensive has already caused widespread destruction of buildings and infrastructure: according to the UN Office for the Coordination of Humanitarian Affairs, over 3,300 houses have been targeted resulting in their destruction or severe damage.

As denounced by the UN Fact-Finding Mission (FFM) on the Gaza conflict in the aftermath of Israel's 'Operation Cast Lead' in 2008-2009: "While the Israeli Government has sought to portray its operations as essentially a response to rocket attacks in the exercise of its right to self defence, the Mission considers the plan to have been directed, at least in part, at a different target: The people of Gaza as a whole" (A/HRC/12/48, par. 1883). The same can be said for the current Israeli offensive.

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The civilian population in the Gaza Strip is under direct attack and many are forced to leave their homes. What was already a refugee and humanitarian crisis has worsened with a new wave of mass displacement of civilians: the number of IDPs has reached nearly 150,000, many of whom have obtained shelter in overcrowded UNRWA schools, which unfortunately are no safe areas as demonstrated by the repeated attacks on the UNRWA school in Beit Hanoun. Everyone in Gaza is traumatized and living in a state of constant terror. This result is intentional, as Israel is again relying on the 'Dahiya doctrine', which deliberately has recourse to disproportionate force to inflict suffering on the civilian population in order to achieve political (to exert pressure on the Hamas Government) rather than military goals.

In so doing, Israel is repeatedly and flagrantly violating the law of armed conflict, which establishes that combatants and military objectives may be targeted, *i.e.* 'those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.' Most of the recent heavy bombings in Gaza lack an acceptable military justification and, instead, appear to be designed to terrorize the civilian population. As the ICRC clarifies, deliberately causing terror is unequivocally illegal under customary international law.

In its Advisory Opinion in the Nuclear Weapons case, the ICJ stated that the principle of distinction, which requires belligerent States to distinguish between civilian and combatants, is one of the "cardinal principles" of international humanitarian law and one of the "intransgressible principles of international customary law".

The principle of distinction is codified in Articles 48, 51(2) and 52(2) of the Additional Protocol I of 1977 to the 1949 Geneva Conventions, to which no reservations have been made. According to Additional Protocol I, "attacks" refer to "acts of violence against the adversary, whether in offence or in defence" (Article 49). Under both customary international law and treaty law, the prohibition on directing attacks against the civilian population or civilian objects is absolute. There is no discretion available to invoke military necessity as a justification.

Contrary to Israel's claims, mistakes resulting in civilian casualties cannot be justified: in case of doubt as to the nature of the target, the law clearly establishes that an object which is normally dedicated to civilian purposes (such as schools, houses, places of worship and medical facilities), are presumed as not being used for military purposes. During these past weeks, UN officials and representatives have repeatedly called on Israel to strictly abide by the principle of precaution in carrying out attacks in the Gaza Strip, where risks are greatly aggravated by the very high population density, and maximum restraint must be exercised to avoid civilian casualties. HRW has noted that these rules exist to minimize mistakes "when such mistakes are repeated, it raises the concern of whether the rules are being disregarded."

Moreover, even when targeting clear military objectives, Israel consistently violates the principle of proportionality: this is particularly evident with regard to the hundreds of civilian houses destroyed by the Israeli army during the current military operation in Gaza. With the declared intention to target a single member of Hamas, Israeli forces have bombed and destroyed houses although occupied as residencies by dozens of civilians, including women, children, and entire families.

It is inherently illegal under customary international law to intentionally target civilian objects, and the violation of such a fundamental tenet of law can amount to a war crime. Issuing a 'warning' – such as Israel's so-called roof knocking technique, or sending an SMS five minutes

before the attack - does not mitigate this: it remains illegal to wilfully attack a civilian home without a demonstration of military necessity as it amounts to a violation of the principle of proportionality. Moreover, not only are these 'warnings' generally ineffective, and can even result in further fatalities, they appear to be a pre-fabricated excuse by Israel to portray people who remain in their homes as 'human shields'.

The indiscriminate and disproportionate attacks, the targeting of objectives providing no effective military advantage, and the intentional targeting of civilians and civilian houses have been persistent features of Israel's long-standing policy of punishing the entire population of the Gaza Strip, which, for over seven years, has been virtually imprisoned by Israeli imposed closure. Such a regime amounts to a form of collective punishment, which violates the unconditional prohibition set forth in Article 33 of the Fourth Geneva Convention and has been internationally condemned for its illegality. However, far from being effectively opposed international actors, Israel's illegal policy of absolute closure imposed on the Gaza Strip has relentlessly continued, under the complicit gaze of the international community of States.

As affirmed in 2009 by the UN Fact Finding Mission on the Gaza Conflict: "Justice and respect for the rule of law are the indispensable basis for peace. The prolonged situation has created a justice crisis in the Occupied Palestinian Territory that warrants action" (A/HRC/12/48, para. 1958) Indeed: "long-standing impunity has been a key factor in the perpetuation of violence in the region and in the reoccurrence of violations, as well as in the erosion of confidence among Palestinians and many Israelis concerning prospects for justice and a peaceful solution to the conflict". (A/HRC/12/48, para. 1964)

Therefore,

- We welcome the Resolution adopted on 23 July 2014 by the UN Human Rights Council, in which an independent, international commission of inquiry was established to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory.
- We call upon the United Nations, the Arab League, the European Union, individual States, in particular the United States of America, and the international community in its entirety and with its collective power to take action in the spirit of the utmost urgency to put an end to the escalation of violence against the civilian population of the Gaza Strip, and to activate procedures to hold accountable all those responsible for violations of international law, including political leaders and military commanders. In particular:
 - All regional and international actors should support the immediate conclusion of a durable, comprehensive, and mutually agreed ceasefire agreement, which must secure the rapid facilitation and access of humanitarian aid and the opening of borders to and from Gaza;
 - All High Contracting Parties to the Geneva Conventions must be urgently and unconditionally called upon to comply with their fundamental obligations, binding at all times, and to act under common Article 1, to take all measures necessary for the suppression of grave breaches, as clearly imposed by Article 146 and Article 147 of the Fourth Geneva Convention; these rules are applicable by all interested parties as well;
 - Moreover, we denounce the shameful political pressures exerted by several UN Member States and the UN on President Mahmoud Abbas, to discourage recourse to the

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International Criminal Court (ICC), and we urge the Governmental leaders of Palestine to invoke the jurisdiction of the ICC, by ratifying the ICC treaty and in the *interim* by resubmitting the declaration under Article 12(3) of the Rome Statute, in order to investigate and prosecute the serious international crimes committed on the Palestinian territory by all parties to the conflict; and

- The UN Security Council must finally exercise its responsibilities in relation to peace and justice by referring the situation in Palestine to the Prosecutor of the ICC.

Please note that institutional affiliations are for identification purposes only.

1. John Dugard, Former UN Special Rapporteur on human rights situation in the Occupied Palestinian Territory
2. Richard Falk, Former UN Special Rapporteur on human rights situation in the Occupied Palestinian Territory
3. Alain Pellet, Professor of Public International Law, University Paris Ouest, former Member of the United Nations International Law Commission, France
4. Georges Abi-Saab, Emeritus Professor of International Law, Graduate Institute of International and Development Studies, Geneva, Former Judge on the ICTY
5. Vera Gowlland-Debbas, Emeritus Professor of International Law, Graduate Institute of International and Development Studies, Geneva, Switzerland
6. Chantal Meloni, Adjunct Professor of International Criminal Law, University of Milan, Italy (Rapporteur)
7. Roy Abbott, Consultant in International Humanitarian Law and International Human Rights Law, Australia
8. Lama Abu-Odeh, Law Professor, Georgetown University Law Center, USA
9. Taris Ahmad, Solicitor at Jones Day, London, UK
10. Kasim Akbaş, Professor of Law, Anadolu Üniversitesi, Eskişehir, Turkey
11. Susan M. Akram, Clinical Professor and supervising attorney, International Human rights Program, Boston University School of Law, USA
12. Maria Anagnostaki, PhD candidate, Law School University of Athens, Greece
13. Antony Anghie, Professor of Law, University of Utah, USA
14. Fco. Javier Ansuátegui-Roig, Director, Human Rights Institute Bartolomé de las Casas, Charles III University of Madrid, Spain
15. Ayman Atef, LLM Ain Shams University, Egypt
16. Ufuk Aydın, Dean, Professor of Law, Anadolu Üniversitesi, Eskişehir, Turkey
17. Nizar Ayoub, Director, Al-Marsad, Arab Human Rights Centre in Golan Heights
18. Valentina Azarov, Lecturer in Human Rights and International Law, Al Quds Bard College, Palestine
19. Ammar Bajboj, Lecturer in Law, University of Damascus, Syria
20. Samia Bano, SOAS School of Law, London, UK
21. Asli Ü Bali, Professor of Law, UCLA School of Law, USA
22. Jakub Michał Baranowski, Phd Candidate, Università degli Studi Roma Tre, Italy
23. Frank Barat, Russell Tribunal on Palestine
24. Marzia Barbera, Professor of Law, University of Brescia, Italy
25. Emma Bell, Coordinator of the European Group for the Study of Deviance and Social Control, Université de Savoie, France

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26. Barbara Giovanna Bello, Post-doc Fellow, University of Milan, Italy
27. Brenna Bhandar, Senior lecturer in Law, SOAS School of Law, London, UK
28. George Bisharat, Professor of Law, UC Hastings College of Law, USA
29. Marta Bitorsoli, LLM, Irish Centre for Human Rights, Trial Clerk ICTY, The Hague, The Netherlands
30. Barbara Blok, LLM Candidate, University of Essex, UK
31. John Braithwaite, Professor of Criminology, Australian National University, Australia
32. Michelle Burgis-Kasthala, lecturer in international law, University of Edinburgh, UK
33. Eddie Bruce-Jones, Lecturer in Law, University of London, Birkbeck College, UK
34. Sandy Camlann, LLM Candidate, Université Paris Ouest Nanterre La Défense, France
35. Grazia Careccia, Human Rights Advocate, London, UK
36. Baris Cayli, Impact Fellow, University of Stirling, UK
37. Antonio Cavaliere, Professor of Criminal Law, University Federico II, Naples, Italy
38. Kathleen Cavanaugh, Senior Lecturer, Irish Center for Human Rights, National University of Ireland, Galway, Ireland
39. Elizabeth Chadwick, Reader in International Law, Nottingham, UK
40. Donna R. Cline, Attorney at Law, USA
41. Karen Corteen, Senior Lecturer in Criminology, University of Chester, UK
42. Andrew Dahdal, Lecturer, Faculty of Business and Economics, Macquarie University, Sydney, Australia
43. Teresa Dagenhardt, Reader in Criminology, Queen's University Belfast, Northern Ireland
44. Luigi Daniele, PhD candidate in Law, Italy
45. Alessandro De Giorgi, Professor of Justice Studies, San José State University, USA
46. Cristina de la Serna-Sandoval, lawyer and human rights consultant, Spain
47. Javier De Lucas, Professor of Law, Human Rights Institute, University of Valencia, Spain
48. Paul de Waart, Professor Emeritus of International Law, VU University, Amsterdam, The Netherlands
49. Gabriele della Morte, Senior Lecturer in International Law, University Cattolica, Milan, Italy
50. Max du Plessis, Professor of Law, University of Kwazulu-Natal, and Barrister, South Africa and London, UK
51. Isabel Düsterhöft, LL.M., Utrecht, M.A. Hamburg, Germany
52. Noura Erakat, Georgetown University, USA
53. Mohammad Fadel, Associate Professor of Law, University of Toronto Faculty of Law, Canada
54. Mireille Fanon-Mendés France, Independent Expert UNO, Frantz Fanon Foundation, France
55. Michelle Farrell, lecturer in law, School of Law and Social Justice, University of Liverpool, UK
56. Daniel Feierstein, Professor and President International Association of Genocide Scholars (IAGS), Argentina
57. Eleonor Fernández Muñoz, Costa Rica
58. J. Tenny Fernando, Attorney at Law, Sri Lanka
59. Amelia Festa, LLM Candidate, University of Naples Federico II, Italy
60. Katherine Franke, Professor of Law, Columbia Law School, USA
61. Jacques Gaillot, Bishop *in partibus of Partenia*
62. Katherine Gallagher, Vice President FIDH, senior attorney, Centre for Constitutional Rights (CCR), New York, USA
63. Avo Sevag Garabet, LLM, University of Groningen, the Netherlands
64. Jose Garcia Anon, Professor of Law, Human Rights Institute, University of Valencia, Valencia, Spain

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65. Cristina Garcia-Pascual, Professor of Law, Human Rights Institute, University of Valencia, Spain
66. Jose Antonio García-Saez, International Law Researcher, Human Rights Institute, University of Valencia, Spain
67. Andrés Gascón-Cuenca, PhD candidate, Human Rights Institute, University of Valencia, Spain
68. Irene Gasparini, PhD candidate, Università Cattolica, Milan, Italy
69. Stratos Georgoulas, Assistant Professor, University of the Aegean, Greece
70. Haluk Gerger, Professor, Turkey
71. Hedda Giersten, Professor, Universitet I Oslo, Norway
72. Javier Giraldo, Director Banco de Datos CINEP, Colombia
73. Carmen G. Gonzales, Professor of Law, Seattle University School of Law, USA
74. Penny Green, Professor of Law and Criminology, Director of the State Crime Initiative, King's College London, UK
75. Katy Hayward, Senior Lecturer in Sociology, Queen's University Belfast, Northern Ireland
76. Andrew Henley, PhD candidate, Keele University, UK
77. Christiane Hessel, Paris, France
78. Paddy Hillyard, Professor Emeritus, Queen's University Belfast, Northern Ireland
79. Ata Hindi, Institute of Law, Birzeit University, Palestine
80. Francois Houtart, Professor, National Institute of Higher Studies, Quito, Ecuador
81. Deena R. Hurwitz, Professor, General Faculty, Director International Human Rights Law Clinic, University of Virginia School of Law, USA
82. Perfecto Andrés Ibánes, Magistrado Tribunal Supremo de Espagna, Spain
83. Franco Ippolito, President of the Permanent People's Tribunal, Italy
84. Ruth Jamieson, Honorary Lecturer, School of Law, Queen's University, Belfast, Northern Ireland
85. Helen Jarvis, former member Extraordinary Chambers in the Courts of Cambodia (ECCC), member of IAGS, Cambodia
86. Ioannis Kalpouzos, Lecturer in Law, City Law School, London, UK
87. Victor Kattan, post-doctoral fellow, Law Faculty, National University of Singapore
88. Michael Kearney, PhD, Lecturer in Law, University of Sussex, UK
89. Yousuf Syed Khan, USA
90. Tarik Kochi, Senior Lecturer in Law, School of Law, Politics and Sociology, University of Sussex, UK
91. Anna Koppel, MSt Candidate in International Human Rights Law, University of Oxford, UK
92. Azra Kuci, legal advisor TRIAL (track impunity always), Bosnia and Herzegovina
93. Karim Lahidji, President of the International Federation for Human Rights (FIDH) and lawyer
94. Giulia Lanza, PhD Candidate, Università degli Studi di Verona, Italy
95. Massimo La Torre, Professor of Law, University of Hull (UK), Catanzaro University (Italy)
96. Daniel Machover, solicitor, Hickman & Rose, London, UK
97. Tayyab Mahmud, Professor of Law, Director of the Centre for Global Justice, Seattle University School of Law, USA
98. Maria C. LaHood, Senior Staff Attorney, CCR, New York, USA
99. Louise Mallinder, Reader in Human Rights and International Law, University of Ulster, UK
100. Triestino Mariniello, Lecturer in International Criminal Law, Edge Hill University, UK
101. Mazen Masri, Lecturer in Law, The City Law School, City University, London, UK
102. Siobhan McAlister, School of Sociology, Queen's University Belfast, Northern Ireland
103. Liam McCann, Principal Lecturer in Criminology, University of Lincoln, UK
104. Jude McCulloch, Professor of Criminology, Monash University, Melbourne, Australia

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105. David McQuoid-Mason, Director, Centre for Socio-Legal Studies, University of KwaZulu-Natal, Durban, South Africa
106. Yvonne McDermott Rees, Lecturer in Law, University of Bangor, UK
107. Cahal McLaughlin, Professor, School of Creative Arts, Queen's University Belfast, Northern Ireland
108. Araks Melkonyan, LLM Candidate, University of Essex, UK
109. Antonio Menna, PhD Candidate, Second University of Naples, Caserta, Italy
110. Naomi Mezey, Professor of Law, Georgetown University Law Center, USA
111. Michele Miravalle, PhD candidate, University of Torino, Italy
112. Sergio Moccia, Professor of Criminal Law, University Federico II, Naples, Italy
113. Kerry Moore, Lecturer, Cardiff University
114. Giuseppe Mosconi, Professor of Sociology, University of Padova, Italy
115. Usha Natarajan, Assistant Professor, Department of Law & Centre for Migration and Refugee Studies, The American University in Cairo, Egypt
116. Miren Odriozola Gurrutxaga, PhD Candidate, University of the Basque Country, Donostia - San Sebastián, Spain
117. Georgios Papanicolaou, Reader in Criminology, Teesside University, UK
118. Marco Pertile, Senior Lecturer in International Law, Faculty of Law, University of Trento, Italy
119. Andreas Philippopoulos-Mihalopoulos, Professor of Law and Theory, LLM, The Westminster Law and Theory Centre, UK
120. Carli Pierson, Attorney at Law, USA
121. Antoni Pigrau Solé, Universitat Rovira i Virgili de Tarragona, Spain
122. Joseph Powderly, Assistant Professor of Public International Law, Leiden University, The Netherlands
123. Tony Platt, Visiting Professor of Justice Studies, San Jose State University, USA
124. Scott Poynting, Professor in Criminology, University of Auckland, New Zealand
125. Chris Powell, Professor of Criminology, University S.Maine, USA
126. Bill Quigley, Professor, Loyola University, New Orleans College of Law, USA
127. John Quigley, Professor of Law, Ohio State University
128. Zouhair Racheha, PhD Candidate, University Jean Moulin Lyon 3, France
129. Laura Raymond, International Human Rights Advocacy Program Manager, CCR, New York, USA
130. Véronique Rocheleau-Brosseau, LLM candidate, Laval University, Canada
131. David Rodríguez Goyes, Lecturer, Antonio Nariño and Santo Tomás Universities, Colombia
132. Alessandro Rosanò, PhD Candidate, Università degli Studi di Padova, Italy
133. Jamil Salem, Director Institute of Law, Birzeit University, Palestine
134. Mahmood Salimi, LLM Candidate, Moofid University, Iran
135. Nahed Samour, doctoral fellow, Humboldt University, Faculty of Law, Berlin, Germany
136. Iain GM Scobbie, Professor of Public International Law, University of Manchester, UK
137. David Scott, Senior Lecturer in Criminology, Liverpool John Moores University, UK
138. Phil Scraton, Professor of Criminology, Belfast, Ireland
139. Rachel Seoighe, PhD Candidate, Legal Consultant, King's College London, UK
140. Tanya Serisier, School of Sociology, Queen's University Belfast, Northern Ireland
141. Mohammad Shahabuddin, PdD, Visiting researcher, Graduate School of International Social Sciences, Yokohama National University, Japan
142. Angeles Solanes-Corella, Professor of Law, Human Rights Institute, University of Valencia, Spain
143. Dean Spade, Seattle University School of Law, USA
144. Per Stadig, lawyer, Sweden

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145. Chantal Thomas, Professor of Law, Cornell University, USA
146. Kendall Thomas, Nash Professor of Law, Columbia University, USA
147. Gianni Tognoni, Lelio Basso Foundation, Rome, Italy
148. Steve Tombs, Professor of Criminology, The Open University, UK
149. Paul Troop, Barrister, Garden Court Chambers, UK
150. Valeria Verdolini, Reader in Sociology, University of Milan, Italy
151. Francesca Vianello, University of Padova, Italy
152. Lydia Vicente-Márquez, Executive Director, Rights International Spain
153. Aimilia Voulvouli, Assistant Professor of Sociology, Fatih University, Turkey
154. Namita Wahi, Fellow, Centre for Policy Research, Dharma Marg, Chanakyapuri, New Delhi, India
155. Sharon Weill, PhD, Science Po, Paris/ CERAH, Geneva, Switzerland
156. Peter Weiss, Vice President of Centre for Constitutional Rights (CCR), New York, USA
157. David Whyte, Reader in Sociology, University of Liverpool, UK
158. Jeanne M. Woods, Henry F. Bonura, Jr. Distinguished Professor of Law, Loyola University College of Law, New Orleans, USA
159. William Thomas Worster, Lecturer, International Law, The Hague University of Applied Sciences, The Netherlands
160. Maung Zarni, Judge, PPT on Sri Lanka and Visiting Fellow, London School of Economics and Political Science

After July 28th

161. Rinad Abdulla, Lecturer in Human Rights Law and International Humanitarian Law, Birzeit University, Palestine
162. Reem Al-Botmeh, Institute of Law, Birzeit University, Palestine
163. Rouba Al-Salem, PhD candidate, faculty of Law, Montreal University, Canada
164. Koorosh Ameli, Former Judge, Iran-United States Claims Tribunal
165. Alessandra Annoni, Senior Lecturer in International Law, University of Catanzaro, Italy
166. Alicia Araujo Mendonca, lawyer, London, UK
167. Huwaida Arraf, Attorney and Human Rights Advocate, New York, USA
168. Irene Baghoomians, Lecturer, Faculty of Law, University of Sydney, Australia
169. Faisal Bhabha, Assistant Professor, Osgoode Hall Law School of York University Toronto, Ontario, Canada
170. Onder Bakircioglu, Lecturer in Law, Queen's University Belfast, Northern Ireland
171. Alonso Barros, PhD, Attorney at Law, Indigenous Peoples' Human Rights Advocate, Chile
172. Asmaa Bassouri, PhD Candidate, Cadi Ayyad University, Marrakech, Morocco
173. Jinan Bastaki, Law PhD candidate, School of Oriental and African Studies, London, UK
174. Paolo Bertoli, Professor of International Law, University of Insubria, Como-Varese, Italy
175. Audrey Bomse, Co-Chair, National Lawyers Guild Palestine Subcommittee, USA
176. Marco Borraccetti, senior Lecturer in European Union Law, Alma Mater Studiorum-University of Bologna, Italy
177. Bill Bowring, Barrister, Professor, Director of the LLM/MA in Human Rights, School of Law, Birkbeck, University of London, London, UK
178. John Burroughs, Executive Director, Lawyers Committee on Nuclear Policy, New York City, USA
179. Andrea Caligiuri, Senior Lecturer in International Law, University of Macerata, Italy
180. Emanuele Cimiotta, Assistant Professor of International Law, Law Faculty, University La Sapienza, Rome, Italy
181. Maivan Clech Lam, Professor Emerita, City University of New York Graduate Center, USA
182. Ziyad Clot, Lawyer, University of Paris II Assas and Sciences Po Paris, France

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183. Marjorie Cohn, Professor of Law, Thomas Jefferson School of Law and former president, National Lawyers Guild, USA
184. Francesco Costamagna, Assistant Professor of EU Law, University of Turin, Italy
185. Jamil Dakwar, International Human Rights Lawyer, New York, USA
186. Fredrik Danelius, LL.M., former lecturer in international law, Lund University, Sweden, Oslo University, Norway, former editor-in-chief of Nordic Journal of International Law
187. Shane Darcy, lecturer, Irish Centre for Human Rights, National University of Ireland, Galway, Northern Ireland
188. Mark de Barros, Lecturer in Law, Université Paris II Panthéon, Assas/Attorney at Law, New York Bar, France/USA
189. Emanuele De Franco, Lecturer in Criminal Law, University Federico II, Solicitor, Naples, Italy
190. Fanny Declercq, LL.M., Leiden University, The Hague, The Netherlands
191. Géraud de La Pradelle, Emeritus Professor International Law, France
192. Adele Del Guercio, Researcher in International Law, University L'Orientale, Naples, Italy
193. Saverio Di Benedetto, Senior Lecturer of International Law, Università del Salento, Italy
194. Mahmoud Dodeen, Lawyer and Professor of Law, Birzeit University, Palestine
195. Pierre-Emmanuel Dupont, Member of the Hague Center for Law and Arbitration, Senior Lecturer at the Free Faculty of Law, Economics and Management, Paris, France
196. Lena El-Malak, PhD in Public International Law SOAS, Legal Counsel, UAE
197. Ali Ercan, Researcher and Intern at the OIC Mission to the United Nations, New York, USA
198. Siavash Eshghi, PhD candidate, SOAS University, London, UK
199. Marco Fasciglione, Researcher in International Law, International Institute for Legal Studies, Naples, Italian National Research Council, Italy
200. Matteo Fornari, Researcher in International Law, Faculty of Law, University of Milan-Bicocca, Italy
201. Fabrizio Forte, PhD Candidate, University Federico II, Solicitor, Naples, Italy
202. Micaela Frulli, Associate Professor of International Law, University of Florence, Italy
203. Domenico Gallo, Judge, Italian Supreme Court, Rome, Italy
204. Francesco M. Genovesi, Attorney at Law, Milan, Italy
205. Jérémie Gilbert, Reader in Law, University of East London, School of Law and Social Sciences, London, UK
206. Henning Grosse Ruse, PhD, Khan, King's College, Faculty of Law, University of Cambridge, UK
207. Kumaravadivel Guruparan, Lecturer, Department of Law, University of Jaffna, Sri Lanka.
208. Ivan Ingravallo, Associate Professor of International Law, University of Bari, Italy
209. Urfan Khaliq, Professor of International Law, Cardiff University, UK
210. Ahmed Amine Khamlichi, Investigator at the CNRS, France
211. Issaaf Ben Khalifa, Lawyer, University of Carthage, Tunisia
212. Roberto Lamacchia, Lawyer, President, Association Democratic Jurists, Turin, Italy
213. Michelle Landy, Solicitor, London, UK
214. Federico Lenzerini, Assistant Professor of International Law, University of Siena, Italy
215. Michael Lynk, Professor, Faculty of Law, Western University, London, Ontario, Canada
216. Osama Malik, Advocate, Islamabad High Court Bar Association, Pakistan
217. Marina Mancini, Senior Lecturer in International Law, Mediterranean University of Reggio Calabria, Italy
218. Fabio Marcelli, Research Director, Institute for International Legal Studies of the National Research Council, Rome, Bureau Member of IADL, Italy
219. Antonio Martínez Puñal, Professor of Public International Law, Universidade de Santiago

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- de Compostela, Spain
220. Mari Matsuda Professor, William S. Richardson School of Law, USA
 221. Maeve McMahon, Associate Professor, Law and Legal Studies, Carleton University, Ottawa, Canada
 222. Ladan Mehranvar, PhD candidate in International Law, Faculty of Law, University of Toronto, Canada
 223. Jeanne Mirer, President, International Association of Democratic Lawyers
 224. Lavinia Monti, PhD candidate in International Law and Human Rights, University La Sapienza, Rome, Italy
 225. Gloria M. Moran, Professor of Law, Religion and Public Policy, UDC, Spain/USA
 226. Giuseppe Morgese, Senior Lecturer in European Union Law, University of Bari, Italy
 227. Raymond Murphy, Professor of Law and Human Rights, Irish Centre for Human Rights, Galway, Northern Ireland
 228. Francesca Mussi, PhD candidate in International Law, University of Milan- Bicocca, Italy
 229. Egeria Nalin, Senior Lecturer in International Law, Faculty of Political Science, University of Bari Aldo Moro, Italy
 230. Mary Nazzal-Batayneh, Barrister, Palestine Legal Aid Fund, Amman, Jordan
 231. Maria Irene Papa, Senior Lecturer in International Law, Faculty of Law, University La Sapienza, Rome, Italy
Facoltà di Giurisprudenza
 232. Brad Parker, Attorney, Defence for Children International Palestine, USA
 233. Giuseppe Puma - PhD, International Law, University La Sapienza, Rome, Italy
 234. Antonio Martínez Puñal, Professor of Public International Law, University of Santiago de Compostela, Spain
 235. Micòl Savia, human rights lawyer, permanent representative of the International Association of Democratic Lawyers (IADL) at the UN, Italy
 236. Chiara Ragni, Senior Researcher and Assistant Professor of International Law, University of Milan, Italy
 237. Edel Reagan, LLM, Irish Center for Human Rights, Galway, Northern Ireland
 238. Yashvir Roopun, Barrister at Law, UK
 239. Simeon A. Sahaydachny, LL.M in International Law, New Jersey, USA
 240. Francesco Saluzzo, PhD candidate in International Law, University of Palermo, Italy
 241. Laura Salvadego, research Fellow in International Law, University of Ferrara, Italy
 242. Stephanie Schlickewei, Research Associate in Public International Law, University of Kiel, Germany
 243. Smita Shah, Barrister, Garden Court Chambers, London, UK
 244. Francesco Sindico, Reader in International Environmental Law, University of Strathclyde Law School, Glasgow, UK
 245. Pamela Spees, Senior Staff Attorney, Centre for Constitutional Rights, New York, USA
 246. Euan Sutherland, CB, Barrister and Parliamentary Draftsman, London, UK
 247. Patrice Tacita, lawyer, Member of LKP, Guadeloupe
 248. Seline Trevisanut, Assistant Professor in International Law, University of Utrecht, The Netherlands.
 249. Luisa Vierucci, Lecturer in International Law, university of Florence, Italy
 250. Burns H Weston, Bessie Dutton Murray Distinguished Professor of Law Emeritus and Senior Scholar, UI Center for Human Rights, The University of Iowa, USA
 251. Daniela Vitiello, PhD, International Law and EU Law, University La Sapienza, Rome, Italy
 252. R.B.J. Walker, Professor, University of Victoria, Canada, and PUC-Rio de Janeiro, Brazil
 253. John Whitbeck, Expert on International Law, former legal advisor, Palestinian Negotiation Team
 254. Richard Wild, Lecturer, School of Law, University of Greenwich, UK

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255. Selma Abdel Qader, LLM, SciencesPo, PSIA, Paris

- 256. Jacqueline Alsaïd, LLM, freelance writer and Human Rights Activist, UK
- 257. Soumaya Ben Dhaou, PhD, Assistant Professor Nipissing University, ON, Canada
- 258. Francisco Bernete, Universidad Complutense de Madrid, Spain
- 259. Carla Biavati, Members of the IPRI - Institute for Peace Research, Italian branch
- 260. Linda Bimbi, International Section of the Lelio and Lisli Basso Foundation, Rome
- 261. Robert Bourque, Professor of Philosophy and Political Science, College de Thetford and UMCE University, Canada
- 262. Elpidio Capasso, Member of Naples City Council and lawyer, Italy
- 263. Joseph Chiume, Barrister, Malawi
- 264. Elena Coccia, Member of Naples City Council and lawyer, Italy
- 265. Antonio Crocetta, Member of Naples City Council and lawyer, Italy
- 266. Maurizio Cucci, Member of the IPRI - Institute for Peace Research, Italian branch
- 267. Luigi De Magistris, Mayor of Naples and former Judge, Italy
- 268. Silvia De Michelis, PhD candidate, University of Bradford, Department of Peace Studies, Bradford, UK
- 269. Gennaro Esposito, Member of Naples City Council and lawyer, Italy
- 270. Roja Fazaeli, Lecturer in Islamic Studies, Department of Near and Middle Eastern Studies, Trinity College Dublin, Ireland
- 271. Andrea Florence, Master in International Law (IHEID), Brazil
- 272. Alejandro Forero, Researcher, Observatory on Penal System and Human Rights University of Barcelona, Spain
- 273. Héctor Grad, Associate Professor, Social Anthropology, University Autónoma, Madrid, Spain
- 274. Remzi Halil, LLB, UK
- 275. Naomi Head, Lecturer in Politics, University of Glasgow, UK
- 276. Carlo Iannello, Member of Naples City Council and lawyer, Italy
- 277. Mahmood M. Jaludi, Rutgers University, Newark, New Jersey, USA
- 278. Rabania Khan, LLB, UK
- 279. Ronald C. Kramer, Professor of Sociology and Criminology, Western Michigan University, USA
- 280. Charles H. Manekin, Professor of Philosophy, University of Maryland, USA
- 281. Sarah Maranlou, Independent Legal Researcher, UK
- 282. Lloyd K. Marbet, Executive Director, Oregon Conservancy Foundation, USA
- 283. Alba Nogueira López, Associate Professor of Administrative Law, University of Santiago de Compostela, Spain
- 284. Francis Oeser, Poet, London, UK
- 285. Sarah Pallesen, MA Social Anthropology of Development, School of Oriental and African Studies (SOAS), University of London, UK
- 286. Daniele Perissi, LL.M Graduate, Geneva Academy of International Humanitarian Law and Human Rights, Italy
- 287. Raffaele Porta, Professor, Chemical Sciences, University Federico II, Naples Italy
- 288. Nicola Quatrano, Judge, OSSIN - International Observatory on Human Rights, Italy
- 289. Minhaj Quazi, B.Com(Hons) M.Com, LL.B.
- 290. Jale Reshat, Solicitor, UK
- 291. Dario Rossi, Lawyer, Italy
- 292. Marco Russo, Member of Naples City Council and lawyer, Italy
- 293. Ghassan Shahrour, MD

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294. Lloyd Schneider, Retired Minister, United Church of Christ, Delegate to General Synod 2015, Tuolumne, California, USA
295. Gene, Schulman, Former senior editor, Overseas American Academy, Geneva, Switzerland
296. Mihira Sood, Human Rights Lawyer, Supreme Court of India, India
297. Jeanne Theoharis, Distinguished Professor of Political Science, Co-Founder of Educators for Civil Liberties , Brooklyn College of CUNY, New York, USA
298. Ismail Waheed, Lecturer, Institute of Islamic Studies, Maldives
299. Paul Wapner, Professor, School of International Service, American University, USA
300. Saïd Zulficar, Network for Colonial Freedom