



13 OCTOBER 2023

**REQUESTING THAT THE COMMISSION OF INQUIRY
CONDEMN WAR CRIMES COMMITTED BY HAMAS AND
ITS ALLIES IN THE RECENT ATTACK ON ISRAEL**

I. INTRODUCTION

The European Centre for Law and Justice (ECLJ) submits this appeal to the Commission in response to the unprecedented and unprovoked attack by Hamas on Israel's civilian population and the Commission's recent statement regarding that attack.¹ The ECLJ is a non-governmental organisation dedicated to the defence of human rights around the world. The ECLJ has Special Consultative status with the United Nations' ECOSOC and has contributed to the United Nations' work through numerous submissions before different UN bodies, as well as the International Criminal Court. The ECLJ has a longstanding interest in the peaceful resolution of the Arab-Israeli conflict, but this situation is not about the greater conflict; it is about a terrorist organisation with an openly genocidal agenda massacring innocent men, women, and children. We consider it imperative that the international community, including this Commission, unconditionally condemn Hamas' actions for what they are—war crimes—and hold Hamas and its allies responsible for what they alone have wrought. Absent such clear statements of accountability at critical moments such as these, there can be no realistic hope for peace in the region.

II. HAMAS AND ITS ALLIES HAVE VIOLATED EVERY LAW OF ARMED CONFLICT

On Saturday morning, 7 October 2023, one day after the fiftieth anniversary of the Yom Kippur War, Hamas, a terrorist organisation whose charter calls for the genocidal extinction of Jews worldwide, commenced a premeditated attack on the Israeli civilian population. The Hamas terrorists (often referred to as the “de facto authorities in Gaza” by this Commission²),

¹*Commission of Inquiry Collecting Evidence of War Crimes Committed by All Sides in Israel and Occupied Palestinian Territories Since 7 October 2023*, UNHRC, 10 Oct. 2023, <https://www.ohchr.org/en/press-releases/2023/10/commission-inquiry-collecting-evidence-war-crimes-committed-all-sides-israel?sub-site=HRC>.

²*See Rep. of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, U.N. Doc. A/HRC/50/21 (9 May 2022); *Rep. of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, U.N. Doc. A/77/328 (14 Sept. 2022).

launched thousands of rockets indiscriminately aimed at civilian population centers in southern and central Israel. One missile struck a hospital in Ashkelon. Simultaneous with the barrage of rockets, Hamas terrorists breached the border fence and executed a barbaric and bloody rampage, indiscriminately murdering and maiming Israeli civilians in their streets, communities, and homes. There was no military objective to the slaughter. These were not unintended collateral casualties. They were shameless acts of violence intentionally inflicted on innocents.

The Hamas assault on Israel was unprecedented in its brutality and absence of mercy. More than 1300 Israelis have been killed to date. Men, women, and children were shot at point blank range. Others were burned alive. Babies were mercilessly butchered. Women were raped. Dead bodies were desecrated. Beyond the ruthless slaughter, the Hamas terrorists abducted more than 150 Israelis—including children and a Holocaust survivor—hauling them back to the Gaza Strip as hostages and threatening to murder them, ISIS-style, on camera.

This was a surprise and unprovoked attack, a clear violation of Article 2(4) of the UN Charter and the whole host of Laws of Armed Conflict (LOAC). Every single one of these acts—indiscriminate firing of rockets, indiscriminate killing of civilians, abducting civilians as hostages, raping of women, and desecrating bodies of the dead—constitutes a distinct war crime under international law.³ Beheading innocent babies goes far beyond a war crime. It is pure unadulterated evil.

As this Commission has recognized, the LOAC, as codified in the Geneva Conventions, applies to Israel and the disputed territories, i.e., the Gaza Strip and Judea and Samaria (the so-called “West Bank”). And it goes without saying that the LOAC applies to *all* parties to the conflict. Inexcusably, however, Hamas and its terrorist allies have been given a pass for far too long. The UN’s persistent intransigence in this regard has emboldened Hamas to carry out ever more egregious attacks, comfortable in the knowledge that most in the international community, including the international legal bodies, will turn a blind eye to its war crimes and instead condemn Israel for responding and defending itself and its citizens.

Sadly, the Commission’s statement in response to the recent attack echoes the UN’s usual stance.⁴ It accuses “all sides” of committing war crimes since 7 October 2023. It fails to call Hamas attacks indiscriminate. Instead, the Commission is “gravely concerned with Israel’s

³Murder, cruel treatment, hostage-taking, and humiliating and degrading treatment and outrages upon personal dignity constitute war crimes regardless of whether they occur during an international or a non-international armed conflict. Common Article 3, Geneva Conventions of 12 August 1949. Willful killing, inhuman treatment, and hostage-taking are all grave war crimes subject to penalty under Article 147 of the Fourth Geneva Convention. The UN has condemned instances of hostage-taking in armed conflicts elsewhere. In addition to being war crimes, willful killing and hostage-taking are also prohibited by virtue of non-derogable human rights law as they amount to arbitrary deprivation of life and liberty, respectively. Rule 89, Violence to Life, ICRC, *available at* <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule89>. Rule 96, Hostage-Taking, ICRC. Moreover, outrages upon personal dignity by humiliating and degrading treatment, rape, or indecent assault also constitute war crimes and are specifically prohibited under Article 4(2) of the Additional Protocol II. Further, each rocket indiscriminately fired by Hamas toward Israel’s civilian population centres constitutes a distinct, individual war crime in violation of Article 51 of Additional Protocol I as the attack does not distinguish between a military target and a civilian object.

⁴*Commission of Inquiry Collecting Evidence of War Crimes Committed by All Sides in Israel and Occupied Palestinian Territories Since 7 October 2023*, *supra* note 1.

latest attack on Gaza,”⁵ yet entirely ignores Israel’s clear right to self-defence recognised under international law. It calls on “*the parties* involved to cease *all forms of violence*,” without distinguishing unlawful violent aggression and terror from the lawful use of defensive force. The Commission’s drawing moral and legal equivalency between the intentional targeting of Israeli civilians by Hamas and Israel’s measures to minimize civilian casualties in Gaza is despicable and indefensible.

III. REQUEST

This Commission must unequivocally condemn Hamas for its war crimes against Israel and affirm Israel’s inherent right, recognised under the UN Charter, to defend itself. The recent statement addressed to the Hamas attack on Israel is woefully inadequate to the ‘Independent’ Commission’s moral and legal responsibility to forego favouritism, political opinions, or bias in addressing the singular subject matter of its mandate.

First, the Commission’s “call[] for the unconditional and safe release of all individuals who have been taken hostage by *Palestinian armed groups*,”⁶ wrongly places Hamas’ unprovoked aggression and Israel’s defensive response on an equivalent moral and legal footing. The Commission’s statement that “all sides” are committing war crimes likewise fails to distinguish unlawful violent aggression from the lawful use of defensive force.

Second, the Commission must apply international law in its entirety. This includes the inherent right to self-defence, recognised by Article 51 of the UN Charter—a right, nay a duty, as applicable to Israel as it is to any other state. The Commission’s total omission of this fundamental principle from the analysis when *Israel* is the one defending against acts of terrorism and aggression, is both immoral and legally indefensible.

Third, the Commission’s statement that it is “addressing the root causes of the conflict including through ending the illegal occupation of Palestinian territory”⁷ can only be read as providing justification for Hamas’ despicable attacks. Such statements do not advance the cause of peace; they simply encourage Hamas and other terrorist groups to continue their unlawful actions. The entire world has witnessed the barbarous crimes Hamas and its allies have committed. Indeed, far from concealing the depravity of its actions, Hamas has claimed credit for and livestreamed its atrocities on social media. The Commission must respond with an equally fervent denunciation of these undeniable war crimes.⁸

Finally, it is well known that Hamas uses funds it receives from the international community to commit war crimes against Israel. Instead of feeding the people of Gaza, Hamas builds tunnels to infiltrate Israel. Instead of building shelters for the people of Gaza, Hamas launches indiscriminate attacks against the people of Israel. In short, Hamas hijacks humanitarian funds to finance its terrorist agenda—the annihilation of Israel. This is a root

⁵*Id.*

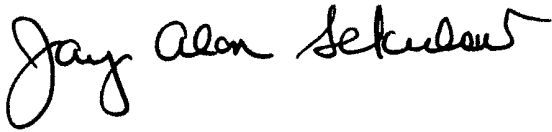
⁶*Id.*

⁷*Id.*

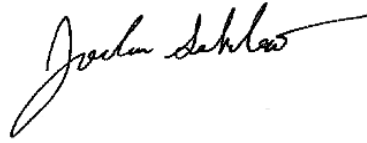
⁸Tramazzo, Coble, Schmitt, *Israel – Hamas 2023 Symposium – Hostage-Taking and the Law of Armed Conflict, ARTICLES OF WAR, LEIBER INSTITUTE*, (10, Oct. 2023), <https://lieber.westpoint.edu/hostage-taking-law-armed-conflict/> (providing an analysis of the international law on hostage-taking and stating that “Hamas has violated the law of armed conflict *without the slightest doubt*. It is equally clear that those involved are subject to worldwide prosecution as war criminals under international criminal law.” (emphasis added)).

cause of the conflict. Accordingly, the Commission has a responsibility to investigate the use of funds provided by the UN for Gaza and recommend that such funding cease.

Respectfully submitted,



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