



The Honorable Fatou Bensouda
Chief Prosecutor
The International Criminal Court
Post Office Box 19519
2500 CM, The Hague
The Netherlands

January 17, 2019

By email

Re: PA, PLO and Fatah leaders' complicity in crimes against humanity and war crimes

Dear Madam Prosecutor,

The International Association of Jewish Lawyers and Jurists (IAJLJ), a UN-accredited NGO, was founded in 1969 to combat anti-Semitism, Holocaust denial, and racism, and to promote human rights worldwide. It is with these goals in mind that we call on the Office of the Prosecutor (OTP) to probe the responsibility of senior officials of the Palestinian Authority (PA), the Palestine Liberation Organisation (PLO), and Fatah, including Palestinian Authority President Mr. Mahmoud Abbas; Intissar al-Wazir (Umm Jihad) - head of the Fund for Families of Martyrs and the Injured; Issa Karake - the former Director of the Commission for Prisoners' Affairs; Rami Hamdallah - Prime Minister of the Palestinian Authority since 2014 and Interior Minister; Saeb Erekat - PLO Secretary General since 2015; Ramzi Khouri - CEO of the Palestine National Fund, and others,¹ for what are potentially crimes against humanity and war crimes committed against Israeli civilians.

The IAJLJ notes that the OTP's preliminary examination of the Situation in Palestine is ongoing "*without prejudice to any future determinations by the Office regarding the exercise of territorial or personal jurisdiction by the Court.*"² This letter is communicated without prejudice to those issues, including but not limited to the matters raised in our organization's letter dated February 10, 2015, a copy of which is attached as **Schedule 1** to this letter.

Our position, that the Court lacks jurisdiction in these matters, remains unchanged. However, given your statements in the Preliminary Examination Reports (following receipt of complaints submitted by the very organizations which are the subject of this letter), and most recently on December 5, 2018 at the Opening Plenary, that your office is gathering relevant information, we saw fit to draw your attention to what we, along with many others,³ view as a serious, ongoing and unconscionable criminal campaigns in the Middle-East.

¹ Additional potentially relevant Palestinian officials include Qadri Abu Bakr (the current Commission Director), Ziad Abu-Amr (the current PA Deputy Prime Minister), Muhammad Mustafa (the current PA Deputy Prime Minister of Economic Affairs), Shukri Bishara (the current PA Minister of Finance), and Khawla al-Shakhsheer (the current PA Minister of Education).

² Office of the Prosecutor, Report on Preliminary Examination Activities 2018, December 5, 2018, para. 238.

³ For examples of such widespread concern for these policies, see: The Palestinian Incentive Program for Killing Jews, *Bloomberg*, July 1, 2016 [[Hyperlink](#)]; Palestinians are Rewarding Terrorists. The U.S. Should Stop Enabling Them, *The Washington Post*, April 28,



For decades, the PA, PLO, and Fatah have developed and implemented an institutionalized system that financially rewards Palestinian perpetrators and their families for violent crimes committed specifically against Israeli civilians on the sole basis of their national affiliation, ethnicity and religion. Relying on legislation, executive orders, and policies, the PA, PLO, Fatah, and their interconnected mechanisms, have established a systematic scheme that ensures financial rewards and stipends to perpetrators of such crimes. Individuals serving prison sentences in Israel for such atrocious crimes are entitled to numerous monetary and social benefits and monthly salaries, as are the families of Palestinians who were killed as a result of such actions.

These payments increase exponentially and are determined according to the length of a perpetrator's prison sentence, so that the more heinous the crime, the higher the payment provided. Palestinians convicted of "ordinary" crimes (non-politically motivated crimes) do not receive these financial benefits. These salaries and additional benefits have come to be considered a highly desirable and stable source of income in the West Bank.

Combined with public praise and glorification by PA, PLO, and Fatah leaders (as well as official government media outlets), and a celebration of those who attain "martyr" status (*i.e.*, by killing Israelis), this comprehensive scheme incentivizes Palestinians to carry out serious crimes against Israeli civilians, and continuously feeds the ongoing cycle of Palestinian violence.

The senior leadership of the PA, PLO, and Fatah, including the officials listed above, are directly responsible for developing, implementing, and maintaining this murderous scheme. Their policies and actions incite,

2017 [\[Hyperlink\]](#); How British and American Aid Subsidises Palestinian Terrorism, *The Guardian*, November 11, 2013 [\[Hyperlink\]](#); British woman attacked by Palestinian terrorists demands probe as UK aid 'used on prisoners', *Express*, January 10, 2018 [\[Hyperlink\]](#). In the United States, the Taylor Force Act was enacted by US Congress as part of the Consolidated Appropriations Act 2018 in March 2018 (Title X of the Act). For the full text of the Act, see pgs. 796-800 of the Consolidated Appropriations Act [\[Hyperlink\]](#). While co-sponsoring the Taylor Force Act, Florida Senator Marco Rubio commented that, "*It's unacceptable that our taxpayer dollars are still being used by the Palestinian Authority to pay terrorists who have Israeli and American blood on their hands, and to brainwash young Palestinians to hate Israel and the Jewish people. The U.S. should condition assistance to the Palestinian Authority on it stopping these despicable practices.*" See the Press Release from Senator Rubio's homepage from March 1, 2017 [\[Hyperlink\]](#). See also U.S. Foreign Aid to the Palestinians, pp. 6, 8, July 3, 2014, Congressional Research Service [\[Hyperlink\]](#). In Norway, the Foreign Minister Borge Brende demanded from Mr. Abbas that the PA stop using its funds to support convicted terrorists and their families. See: Brende tar opp fangelønn med Mahmoud Abbas, *Dagen*, April 27, 2016 [\[Hyperlink\]](#). In Australia, the government ceased providing direct aid to the PA because such donations could increase the PA's capacity to pay Palestinians convicted of politically motivated violence. See Australia ends direct aid to Palestinian Authority, *ABC News*, July 2, 2018 [\[Hyperlink\]](#). During a Senate estimates hearing in Australia, Senator Eric Abetz stated that he finds it "*unacceptable we are willing to provide funding in these circumstances... The Palestinian Martyr Fund not only encourages murder and terror attacks, it is a major barrier to peace in the Middle East.*" See Julie Bishop Demands: 'Did our Aid go to Palestinian Martyrs?', *The Australian*, June 1, 2018 [\[Hyperlink\]](#). In the EU, the Parliamentary Assembly of the Council of Europe demanded in European Parliament Resolution 2202 (2018) that "all Palestinian forces... cease support for those imprisoned following convictions for terrorist acts and their relatives" (at para. 9.2) [\[Hyperlink\]](#). Germany recently admitted that the Palestinian Authority likely grants financial support to terrorists and their families, and vowed to further investigate the matter. See Deutscher Bundestag, Verzeichnis der Fragenden, 02.09.2016, Geschäftsbereich des Auswärtigen Amtes, p. 4 [\[Hyperlink\]](#); Überweist Abbas EU-Hilfsgelder an Terroristen?, *Der Tagesspiegel*, 6 October 2016 [\[Hyperlink\]](#); and In First, Germany Admits PA is Likely Paying Terrorists' Families, September 5, 2016, *Times of Israel* [\[Hyperlink\]](#). In the United Kingdom, the Department for International Development reportedly froze part of its aid to the PA over concerns the aid was being used to fund salaries for convicted Palestinian terrorists. See UK freezes \$30m in Palestinian aid over salaries for terrorists, *Times of Israel*, October 7, 2016 [\[Hyperlink\]](#).



solicit, induce, encourage, aid and abet, facilitate, contribute, and honour acts of murder committed as part of a widespread and systematic attack directed against the Israeli civilian population. As such, they are clearly complicit in crimes against humanity and war crimes, committed on an ongoing basis.

The relevant parties

The State of Israel was established in 1948, against the backdrop of a six month civil war between the Jewish and Arab residents of British mandatory Palestine.⁴ Immediately following its foundation, the fledgling state successfully defended itself against a joint attack by the combined armies of the neighbouring Arab countries. Conflicts with these States continued for several decades. In 1979 and 1994, Israel signed Treaties of Peace with both Egypt and Jordan. Since then, defending against non-state entities, such as Hizbullah, Hamas, the PLO, and the PA, has become one of Israel's primary security concerns.

Fatah is a nationalist Palestinian organization, established in 1959 with the express primary goal of empowering Palestinian Arabs to liberate Palestine (now the State of Israel) through the use of force.⁵

The Palestine Liberation Organization is a Palestinian "umbrella" organization, established in 1964 for the purpose of centralizing the leadership of various Palestinian groups that had previously operated separately and in an uncoordinated manner against Israel.

Fatah joined the PLO in 1967 (following the Six-Day War) and quickly became the dominant faction within the umbrella organization, with its leader, Yasser Arafat, replacing the PLO's founder as the organization's Chairman. Under Arafat's leadership, the PLO orchestrated and would carry out a campaign of violent attacks against Israel and Israelis through to the early 1990's.

Hamas is a militant fundamentalist Islamic organization, established in the Gaza Strip in 1987, with the express dual purpose of liberating Palestine from the Israelis through the use of force and establishing an Islamic state in the territory of Israel, the West Bank, and the Gaza Strip.⁶

⁴ The civil war started after the adoption of UN Resolution 181 in November 1947, due to the fact that the Arab residents of Palestine were vehemently opposed to the two state solution (Jewish and Arab) approved by the UN.

⁵ This goal of armed struggle for the liberation of Palestine from the Jews is reflected in Chapter 1 of Fatah's Charter which states, for example, "Armed public revolution is the inevitable method to liberating Palestine" (at Section 17), and "Armed struggle is a strategy and not a tactic, and the Palestinian Arab People's armed revolution is a decisive factor in the liberation fight and in uprooting the Zionist existence, and this struggle will not cease unless the Zionist state is demolished and Palestine is completely liberated" (at Section 19). Translations of the Charter can be found on the websites of the Ariel Center for Policy Research [[Hyperlink](#)] and Palestinian Media Watch [[Hyperlink](#)].

⁶ These goals are manifest in the Hamas Charter. For example, the Charter's Introduction states, "...[I]t joined its hands with those of all Jihad fighters for the purpose of liberating Palestine... For our struggle against the Jews is extremely wide-ranging and grave, so much so that it will need all the loyal efforts we can wield, to be followed by further steps and reinforced by successive battalions from the multifarious Arab and Islamic world, until the enemies are defeated and Allah's victory prevails." Additionally, Article 7 of the Charter states, "Hamas has been looking forward to implement Allah's promise whatever time it might take. The prophet, prayer and peace be upon him, said: 'The time will not come until Muslims will fight the Jews (and kill them); until the Jews hide behind rocks and trees, which will cry: O Muslim! there is a Jew hiding behind me, come on and kill him! This will not apply to the Gharqad, which is a Jewish tree (cited by Bukhari and Muslim).'" Article 28 of the Charter states, "Israel, by virtue of its being Jewish and of having a Jewish population, defies Islam and the Muslims." An English translation of the Hamas Charter can be found on the



The Palestinian Authority⁷ is a legal entity established under the Israeli-Palestinian agreements as part of the "Oslo Peace Process" (OPP).⁸ Its purpose was to serve as the temporary government of Palestinian controlled areas of the West Bank and the Gaza Strip, until the parties had agreed on the Permanent Status Agreement, which should have finally resolved their conflict. Today, the PA is the *de facto* ruling entity over Palestinians in the West Bank.⁹

Yasser Arafat, the founder and leader of Fatah and the Chairman of the PLO, became the first President of the PA. He held all three positions until his death in 2004.

Following Arafat's death, Mahmoud Abbas,¹⁰ another Fatah member, replaced Arafat as both PLO Chairman and president of the PA, titles which he continues to hold to this day. In 2009, he was also appointed as the leader of Fatah, bringing to an end five years of inter-Palestinian struggle between Fatah and the PLO, and once again placing all primary Palestinian organizations under one leadership.

A widespread and systematic attack directed against the Israeli civilian population

The Israeli-Palestinian conflict has been ongoing for more than 70 years and has been characterized by numerous cycles of violence. Within this context, since September 2000 (the date of the eruption of the *Second Intifada* - another period of intensified attacks against the Israeli population), Palestinian organizations and individual Palestinian attackers have been responsible for killing approximately 1,000 Israeli civilians.¹¹

website of the Ariel Center for Policy Research [[Hyperlink](#)]. Such fundamentalist purposes are further evident from Hamas' website – <http://hamas.ps/en/>.

⁷ The Palestinians usually refer to the PA as the "Palestinian National Authority", however its formal name under the founding agreements lacks the word "National".

⁸ In 1993, following months of secret negotiations, Israel and the PLO signed documents of mutual recognition and embarked on a multi-year and multi-stage peace process. Originally intended to take five years, the negotiations between the two sides have yet to reach an agreed outcome.

⁹ The Gaza Strip has been under the separate control of Hamas since 2006.

¹⁰ Mahmoud Abbas was born in Safed in 1935. He earned his degree in law from Damascus University and his doctorate in history from the Oriental College in Moscow. In his doctoral dissertation, Abbas argued that the Zionists collaborated with the Nazis in order to spur more Jewish immigration to British Mandatory Palestine. It was published under the title "The Other Side: the Secret Relationship Between Nazism and Zionism". During the 1950's Abbas became active in Palestinian politics and joined underground groups in Qatar. By 1961, Yasser Arafat recruited him to Fatah and in 1968 he joined the Palestine National Council and the PLO Executive Committee. In his 1999 autobiography, Muhammad Daoud Odeh claimed that Abbas was financially and strategically involved in Black September's 1972 Munich Massacre of Israelis in Germany (Daoud Odeh was a commander of the terrorist group "Black September" and a mastermind and architect of the 1972 Munich Massacre where the terrorist organization took eleven unarmed Israeli civilians hostage and then murdered them). In 1980, Abbas was chosen to head the PLO Department for National and International Relations. In 1988, he was elected by this committee as chairman of the portfolio on the 'Occupied Territories' and in 1996, he was elected as the committee's secretary general (which, informally, made him Arafat's deputy). In 2003, he was named the first Prime Minister of the PA and, following Arafat's death in 2004, he was elected President of the PA in 2005.

¹¹ Victims of Palestinian Violence and Terrorism since September 2000, *State of Israel, Ministry of Foreign Affairs*, last updated November 12, 2018 [[Hyperlink](#)].

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Focusing only on the last few years, more than 50 Israeli civilians have been murdered, and over 1,000 injured, in an endless chain of shootings, stabbings, bombings, and a myriad of other forms of violence which have systematically targeted Israeli civilians of all ages.

Victims of this violence include Dafna Meir, a mother of six, who was stabbed to death outside her home on January 17, 2016 by Morad Bader Abdullah Adais, a 16-year-old Palestinian.¹²

A few months after Meir's murder, on June 8, 2016, Muhammad and Khalid Muhamra - both Palestinian residents of the southern West Bank town of Yatta - arrived at the Max Brenner Cafe in the busy Sarona Market complex in Tel Aviv and opened fire on diners with automatic weapons, killing four people. The victims were Michael Feige, Ido Ben Ari, Mila Mishayev and Ilana Naveh. Another 17 civilians were also wounded in the attack.¹³

The same month, on June 30, 2016, Mohammad Nasser Tra'ayra, a 17-year-old Palestinian from Bani Na'im, climbed through a window into the house of the Ariel family, entered the children's bedroom, and repeatedly stabbed 13-year old Hallel Yaffa Ariel who was sleeping in her bed. Hallel died of her multiple wounds shortly thereafter.¹⁴

On the evening of July 21, 2017, Omar al-Abed, a 19-year-old Palestinian from Ramallah, entered the home of the Salomon family while they were sitting down for their Sabbath dinner and celebrating the birth of a new grandson. Al-Abed stabbed several members of the family, killing the head of the family, 70-year-old Yosef Salomon, and two of his children, 36-year-old Elad Salomon, and 46-year-old Chaya Salomon. Yosef's wife, Tovah, was also seriously wounded during the attack.¹⁵

On October 7, 2018, 35-year old Israelis Ziv Hajbi and 29 year-old Kim Yehezkel-Levengrond, both married with children, were brutally gunned down, and a third victim was wounded, by Ashraf Walid Saliman Neloah, a 23-year-old Palestinian from Shuwaykah in the West Bank. The victims were Neloah's co-workers at a factory. Neloah arrived at work on the morning of the attack after a two-week absence, tied Yehezkel-Levengrond's hands and then shot her twice before proceeding to shoot the other victims.¹⁶

¹² Commemoration of Dafna Meir, Israeli Prime Minister's Office, January 17, 2016 [\[Hyperlink\]](#). For further information regarding terror events that occurred since October 2015, see Wave of Terror October-November 2015, *Embassy of Israel in Georgia*, November 24, 2015 [\[Hyperlink\]](#).

¹³ Four Israelis Killed in Tel Aviv Restaurant Shooting are Named, *The Guardian*, June 9, 2016 [\[Hyperlink\]](#); Israel Says Tel Aviv Attackers were 'Inspired' by ISIS — and Planned to Dip Knives in Rat Poison, *Washington Post*, July 4, 2016 [\[Hyperlink\]](#); Terror at Sarona Market, *Ynet*, June, 8 2016 [\[Hyperlink\]](#).

¹⁴ Palestinian, 19, Stabs 13-Year-Old to Death in West Bank Settlement, June 30, 2016, *New York Times* [\[Hyperlink\]](#); On the Unity of Terror, July 4, 2016, *Wall Street Journal* [\[Hyperlink\]](#); and Kiryat Arba Attack: Palestinian Terrorist Stabs Teen Girl to Death in Bedroom, *Jerusalem Post*, June 30, 2016 [\[Hyperlink\]](#).

¹⁵ Deadly Violence Erupts in Standoff Over Mosque in Jerusalem, July 21, 2017, *New York Times* [\[Hyperlink\]](#).

¹⁶ At West Bank Factories, Keeping the Peace is a Mutual Interest, October 13, 2018, *New York Times* [\[Hyperlink\]](#); and Two Israelis Killed in West Bank Terror Attack; Manhunt for Shooter Underway, *Ha'aretz*, October 7, 2018 [\[Hyperlink\]](#). A mourning tent was opened in the Palestinian Embassy in Saudi Arabia by the PA ambassador, Basem al-Agha. See: The Palestinian Authority Continues to Encourage Terrorism, Meir Amit Intelligence and Terrorism Center, December 24, 2018 [\[Hyperlink\]](#).



These examples are only a handful of the numerous heinous crimes carried out in recent years as part of a widespread and systematic attack against Israeli civilians on the basis of their nationality and religion. Some of the perpetrators were killed by the Israeli forces, and those who were apprehended by the Israeli authorities have been tried, convicted, and sentenced to extended prison sentences (including numerous life sentences). Simultaneously, all of them are being rewarded and hailed as heroes by the PA and other Palestinian authorities for these same barbarous acts.

Such attacks, however, were not conducted in a vacuum. Militant and extremist organizations such as Hamas blatantly and publicly support such attacks under the banner of "armed resistance". The PA and its PLO/Fatah leadership, acutely aware of the necessity of maintaining international legitimacy, have adopted a more circumspect approach, usually using the more ambiguous term of "popular resistance".¹⁷ At the same time, these same Palestinian leaders and organizations have intentionally developed a systematic and comprehensive legislative and policy framework that supports "all forms of resistance to the occupation", and guarantees material reward, honour, and loyalty to 'martyrs' and prisoners detained "in the struggle against Israel", *i.e.*, those who carry out attacks against Israelis based on national and religious grounds.

In other words, while usually being careful not to publicly voice direct support for these acts of murder and violence, especially before foreign audiences, the PA/PLO and Fatah leadership, through their unambiguous legislation, public actions, and policies, intentionally encourage, incentivize, support, and glorify these same crimes.

To be clear, the ongoing widespread and systematic murderous attack against Israeli civilians is not occurring in spite of the Palestinian leadership and their public rhetoric. On the contrary, this attack is actually the direct and intended result of their legislation, actions and policies; a result for which they are both individually and collectively responsible.

PA/PLO/Fatah policies and mechanisms for financial support and reward for murder of Israelis and other acts of violence

The idea of instituting a mechanism to compensate and reward families of individuals killed while attempting to slay Israelis was originally developed by Fatah in 1964, with the establishment of the organization's 'Palestine Mujahidin and Martyrs Fund'.¹⁸ The primary focus of the fund was on supporting the families of Fatah members killed during combatant operations against Israeli citizens.¹⁹

¹⁷ The Palestinian Popular Resistance and Its Built-In Violence, Meir Amit Intelligence and Terrorism Center, June 9, 2013 [[Hyperlink](#)]; PA-Sponsored Eighth International Conference for Popular Resistance Held in Bil'in to Discuss Broadening It and Increasing Its Effectiveness, Meir Amit Intelligence and Terrorism Center, October 17, 2013 [[Hyperlink](#)]

¹⁸ RAYYAR MARRON, HUMANITARIAN RACKETS AND THEIR MORAL HAZARDS: THE CASE OF THE PALESTINIAN REFUGEE CAMPS IN LEBANON (2016). Also see the United State Department of State Country Reports on Terrorism (2017), p. 136: "*The PA and PLO continued to provide "martyr payments" to the families of Palestinian individuals killed carrying out a terrorist act. The PA and PLO also provided payments to Palestinians in Israeli prisons, including those convicted of acts of terrorism against Israelis. Israeli government officials criticized this practice as incentivizing acts of terror. These payments and separate canteen stipends that the Israeli government allows for prisoners were first initiated by the PLO in 1965 and have continued under the PA since the Oslo Accords with Israel*".

¹⁹ Eleven families were originally supported under this scheme. Today, the number of families supported by the scheme exceeds 30,000.



While the organizational structure and placement of this fund has shifted between PA and PLO institutions over the years,²⁰ the fund continues to this day, and is financed directly by the PA through its official budget. More than 600 million New Israel Shekels (NIS) has been allocated to it (roughly USD 160 million based on average exchange rates) *annually* between the years 2013 and 2018 alone. Specifically, for the 2018 fiscal year, NIS 696 million has been allocated to the Fund (approximately USD 197 million).²¹

Over the years, the PA decided to expand its support for the fight against Israel beyond those killed while committing crimes against civilians, by setting up additional mechanisms to financially support and reward Palestinian prisoners detained by Israel for conflict-related crimes. To this end, a specialized Ministry dedicated to prisoners' affairs was established by the PA (originally in 1998 by Yasser Arafat through a Presidential Order) with the specific purpose of systematically providing financial "salaries", rewards, and social benefits to imprisoned and released Palestinians following their attacks against Israel and Israeli civilians.

Following the outbreak of the *second Intifada* in 2000, institutionalized assistance to prisoners was formalized through two key PA laws - Laws 14 and 19 of 2004, later amended in 2013.²²

Under this scheme, Palestinian prisoners in Israeli jails who meet certain criteria (the offense must be related to the Israeli-Palestinian conflict and must meet a minimum severity threshold) receive a monthly "salary" and, in addition, are entitled to a long list of benefits, including priority in job placement and exemptions from payments for education, health care, and professional training. Years of imprisonment are calculated as years of seniority of service in PA institutions and those incarcerated for five years or more are entitled to an official position in a PA institution upon their release.²³

²⁰ In 1970, most of its responsibilities were transferred to the PLO's 'Palestine Martyrs Work Society' – SAMED. See How Much is the PLO Really Worth?, Ha'aretz, November 28, 1999 [[Hyperlink](#)]; Rex Brynen, *The Politics of Exile: The Palestinians in Lebanon*, 3. J. REFUGEE STUD. 204, 218-219 (1990); and MICHAEL KOMETER, THE NEW TERRORISM: THE NATURE OF THE WAR ON TERRORISM (June 2002)(unpublished thesis, Air University), p. 53 [[Hyperlink](#)].

²¹ For Example, see the 2016 Budget of the State of Palestine, Ministry of Finance and Planning, General Directorate of Public Budget (Public Finance Law 2016), chapter 44 (pp. 729-736) [[Hyperlink](#)]; the 2017 Budget of the State of Palestine, Ministry of Finance and Planning, General Directorate of Public Budget (Public Finance Law 2017), chapter 44 (pp. 622-628) [[Hyperlink](#)]; and the 2018 Budget of the State of Palestine, Ministry of Finance and Planning, General Directorate of Public Budget (Public Finance Law 2018), chapter 44 pp. 739-745 [[Hyperlink](#)]. Also see Terror Funding by the Palestinian Authority: Mahmoud Abbas Recently Approved the Budget for 2018, about 7% of which is Devoted to Assisting Prisoners, Released Terrorists, and Families of Shahids, Meir Amit Intelligence and Terrorism Information Center, March 28, 2018 [[Hyperlink](#)].

²² The Prisoners Support Law in Israeli Prisons No. 14 of 2004 [[Hyperlink](#)]; the Amended Palestinian Prisoners Law No. 19 (2004); and Decree Law No. 1 (2013) on the Amendment of the Prisoners and Released Prisoners Law No. 19 (2004) [[Hyperlink](#) for Law No. 19 and Decree Law No. 1].

²³ Decision No. 15 of the Council of Ministers (2013) on the System of Securing Jobs for Freed Prisoners (Arabic) [[Hyperlink](#)]. Also see Spotlight on the System for Securing Jobs for Prisoners, WAFA, December 12, 2013 [[Hyperlink](#)] explaining Decision No. 15 (2013). See also, Incentivizing Terrorism: Palestinian Authority Allocations to Terrorists and their Families, Jerusalem Center for Public Affairs, 2016 [[Hyperlink](#)]. This latter report includes appendixes with monthly salaries based on length of prison sentences, key for promotion in employee grade and military rank, monthly allocations to the families of the Martyrs and wounded, translations of relevant PA legislation and data regarding the PA's annual 2013-2016 budgets.



Program rewards and benefits increase, the more serious the crime committed. Cynically, the PA appears willing to accept Israeli judgment as to the severity of the offense, as the PA prisoner entitlement tables published under the program use the sentences laid down by Israeli courts as their primary metric.

To exemplify this methodology in action, under the official PA legislation, Palestinians incarcerated for nationalistic or religiously motivated crimes against Israelis are automatically awarded a monthly stipend starting at NIS 1,400 (approximately USD 400) for the less serious offences and reaching up to NIS 12,000 per month (approximately USD 3,429) for those serving a sentence of more than 30 years.²⁴ Additionally, upon their release, they are entitled to one-time "lump sum" bonuses which can reach USD 25,000 (and sometimes even more).²⁵

By contrast, minimum wage in the West Bank and Gaza Strip is NIS 1,450 per month (approximately USD 440).²⁶ Given that more than a fifth of wage employees in the private sector in the West Bank receive less than the minimum monthly wage (as of 2014),²⁷ with numbers in the Gaza Strip being substantially higher, the promise of a steady and competitive monthly salary provided by government-affiliated institutions, along with a myriad of additional benefits, is highly appealing. There are even indications that individuals convicted of "light" offenses have decided to commit additional and more serious crimes, in an effort to increase their and their families' entitlement to benefits and rewards.²⁸

PA legislation provides that payments will be made "without discrimination" to prisoners (*i.e. "anyone imprisoned in the occupation's [Israel's] prisons as a result of his participation in the struggle against the occupation"*). Accordingly, the PA does not limit its support only to PLO and Fatah members, but also commonly provides financial rewards to members of other organizations, such as Hamas (despite the political tensions and power struggle between the factions), as well as to non-affiliated perpetrators of serious crimes.²⁹

²⁴ See PA Government Resolution #23 of 2010 (section 12) for list of increasing salaries based upon years imprisoned in Israeli jails, Arabic [\[Hyperlink\]](#).

²⁵ Section 15 of the Decision No. 15 of the Council of Ministers (2013), *supra*. Also see Spotlight on the System for Securing Jobs for Prisoners, WAFA, 2013, *supra*. In addition see: Palestinians are Rewarding Terrorists. The U.S. Should Stop Enabling Them, Washington Post, April 28, 2017 [\[Hyperlink\]](#); Palestinian Authority Funds Terrorists: PA Grants and Salaries for Palestinian Terrorists, Israeli Ministry of Foreign Affairs, June 25, 2014, referencing an article from the daily *Al Hayyat al Jadida* from April 15, 2011 [\[Hyperlink\]](#).

²⁶ Press Release on the Results of the Labour Force Survey, Palestinian Central Bureau of Statistics (October-December 2014), February 12, 2015 [\[Hyperlink\]](#).

²⁷ *Id.*

²⁸ Translation of official confessions from Palestinians Hussni Negar (18/8/13) and Halad Ragub (2/2/14) before Israeli Police (Terrorist Planned Attack in Order to be Imprisoned and Receive PA Salary, *Palestinian Media Watch*, February 16, 2014 [\[Hyperlink\]](#)).

²⁹ MEMRI President Yigal Carmon's Testimony To House Committee On Foreign Affairs, July 6, 2016: Palestinian Authority Support For Imprisoned, Released, And Wounded Terrorists And Families Of 'Martyrs', MEMRI, July 6, 2016 [\[Hyperlink\]](#). Carmon notes that in December 2015, monthly allowances were cut from USD 338 to USD 208 for released prisoners who are members of Hamas and the Islamic Jihad, and, subsequently, for members of the PFLP as well, following political tension between these organizations and the PA.



To be clear, "regular" Palestinian criminals interned in Israel (e.g. robbers, thieves and other forms of non-politically motivated crimes) are ineligible for support under this program.³⁰

The fact that these financial rewards distinguish between perpetrators of nationalistic or religiously motivated crimes against Israelis and other "ordinary" criminals, rewarding only the former and not the latter, and are evidently not needs-based, makes it unequivocally clear that the payment scheme for prisoners and their families, as well as families of 'martyrs', is not 'welfare payments',³¹ as has been claimed by some Palestinian leaders.³²

In 2014, following increased international criticism, organizational changes were made in an attempt to create the perception of distance of the PA from those bodies directly responsible for providing financial support to prisoners.³³ The PA's Ministry for Prisoners' Affairs was replaced with the 'Commission of Detainees and Ex-Detainees Affairs' (the Commission). Between 2014 and 2018, the Commission was made institutionally subordinate to the PLO (rather than the PA), and its funding was allocated by the National Palestinian Fund (NPF), a PLO body which functions as a form of PLO finance ministry. This change, however, was artificial in nature. Issa Karake, who had headed the Ministry for Prisoner Affairs, remained in charge of the Commission, maintained his formal status as a Minister, and continued to report to PA Chairman Abbas.³⁴

³⁰ The PA law defines those entitled to a salary as "anyone imprisoned in the occupation's [Israel's] prisons as a result of his participation in the struggle against the occupation." In December 2015, against the backdrop of an internal dispute within the PA regarding the halting of payment to certain Palestinian prisoners in the correctional system, the PA Government's Secretary-General, Ali Abu Diyak, explained that the government was obligated under Palestinian law to pay the needs of Martyrs' families and the needs and salaries of prisoners in the Israeli occupation's prisons, and released prisoners. He further emphasized that the government would "not pay public funds to people who are not entitled to them...the prisoners' salaries are paid to the fighter prisoners, who are arrested due to their national struggle, and not to others...it [the government] will not pay allowances and salaries to criminal prisoners and others that are not included in the framework of the law." See Submission to U.S. Department of the Treasury, Evidence Regarding Issa Karake, Director of PLO Commission of Prisoners Affairs' Connections to Terror, Terrorists and Terror Financing, April 16, 2018 [\[Hyperlink\]](#).

³¹ World Bank, West Bank and Gaza Public Expenditure Review: From Crisis to Greater Fiscal Independence (March 2007), Report No. 38207-WBG, Vol. II, pp. 169-170 [\[Hyperlink\]](#). The report notes with respect to the Fund for Families of Martyrs and the Injured that "[w]hile some assistance should be directed to this population, the level of resources devoted to the Fund for Martyrs and the Injured does not seem justified from a welfare or fiscal perspective." (emphasis added). The Report concludes the section stating: "Together with the Fund for Martyrs and the Injured, the programs for detainees and ex-detainees are clearly areas for considering future rationalization and streamlining of services. These two programs alone absorbed more than 1 percent of GDP in 2004, and may have accounted for as much as 1.3 percent in 2005. Yet collectively they provide benefits to fewer than 20,000 families. Certainly from efficiency and fiscal considerations, if not equity considerations, some of these resources could be better targeted."

³² Israel Penalizes Palestinians for Payments to Prisoners and 'Martyrs', New York Times, July 3, 2018 [\[Hyperlink\]](#).

³³ The PA's Billion Dollar Fraud, *Palestinian Media Watch*, April 27, 2016 [\[Hyperlink\]](#).

³⁴ In September 2014, the PA Director for Detainees and Ex-Detainees Affairs in Hebron, Ibrahim Najajra, said that the Commission's then-change of status from ministry to commission "would not detract from the prisoners' value or from their legal, moral, or political status, since the services extended to them are anchored in law." He added that the Commission would be under the direct supervision of the Palestinian presidency, Mr. Abbas, and that the payments would be made directly by the PLO's National Palestinian Fund. Yigal Carmon's Testimony To House Committee On Foreign Affairs, *supra*, referencing original source as the Arabic website, www.hr.ps/ar, entry date September 1, 2014.



Similarly, the amount previously allotted in the PA budget to the Ministry for Prisoners' Affairs was instead transferred to the NPF (the PLO entity put in charge of the Commission).³⁵ More importantly, in practice, the PA continued to make the policy decisions and announcements pertaining to the payment of salaries to prisoners and martyrs. In other words, in reality, the PA's responsibility for funding and policy related to prisoners' salaries remained unchanged following this formal organizational restructuring.

In 2018, following the designation of the NPF as a terrorist organization by Israel in 2017³⁶ (a designation which imposes financial sanctions on the organization), the Commission reappeared in the PA budget with an allocation of NIS 582 million (approximately USD 165 million).³⁷

When one combines the 2018 PA budget for the 'Martyrs Fund' (almost USD 200 million) with the equivalent budget for the Commission (USD 165 million), it becomes clear that a significant portion of the overall PA budget (over 7%) is dedicated to payments for these murderers and their families.

Despite international concern and criticism regarding the continued payment to such convicted criminals by the PA and its interrelated institutions, as noted above, PA and PLO leaders have repeatedly expressed their unwavering commitment to ensuring that perpetrators of violent crimes against Israelis continue to be financially rewarded. On July 23, 2018, PA President Abbas declared, *"Even if we have only a penny left, we will give it to the martyrs, the prisoners and their families."* He further stated, *"We view the prisoners and the martyrs as planets and stars in the skies of the Palestinian struggle, and they have priority in everything."*³⁸

PA Minister of Finance, Shukri Bishara, was quoted by a Palestinian media outlet on July 6, 2018 as confirming his continued authority to pay the salaries of families of martyrs and prisoners,³⁹ reinforcing the PA's direct involvement and complicity in ensuring these payments are made. Similarly, the Director of the Commission, Qadri Abu Bakr, emphasized on September 21, 2018 the continued support by the Palestinian establishment of prisoners and martyrs, noting that the PA would not succumb to international pressure calling to stop these payments.⁴⁰

³⁵ The PA's Billion Dollar Fraud, *supra*.

³⁶ Defense Minister Declares Palestinian National Fund a Terrorist Organization, *Jerusalem Post*, March 16, 2017 [[Hyperlink](#)].

³⁷ Making it the third largest PA agency.

³⁸ Abbas Vows to Continue Stipends to Terrorists even with PA's 'Last Penny', *Times of Israel*, July 24, 2018 [[Hyperlink](#)]. Also see Salaries Rewarding Terrorists Won't be Stopped, says Director of PLO Commission of Prisoners, *PMW*, October 2, 2018 [[Hyperlink](#)].

³⁹ Has the PA Responded to Israel to Stop the Allocation of Prisoners and Martyrs?, *Arabi21*, July 8, 2018 [[Hyperlink](#)] (original in Arabic).

⁴⁰ Salaries Rewarding Terrorists Won't be Stopped, says Director of PLO Commission of Prisoners, *supra*, referring to a quote in the official PA daily *Al-Hayat Al-Jadida*. Similar statements were made in December 2015 by PA Cabinet Secretary Ali Abu Diyak who announced that the PA government is committed to paying allowances to fighters imprisoned for their national struggle and to the families of the martyrs, the wounded, and the prisoners, Yigal Carmon, *supra*, referencing the original source as www.Feneeqnews.com (entry dated December 9, 2015).



Glorification of murderers by PA leadership and institutions

In parallel with the financial and social reward programs discussed above, the same Palestinian leadership is also responsible for institutionalising a culture through which perpetrators of the most horrific attacks on Israeli civilians are glorified. Palestinian murderers are exalted in public spaces, and in traditional and social media as martyrs, heroes and heroines. Such glorification has recently been criticized by Nickolay Mladenov, the UN Special Coordinator for the Middle East Peace Process, when he briefed the UN Security Council on December 18, 2018. During this briefing, he commented that:

*"Fatah, including on its official social media accounts, also commemorated and celebrated the perpetrators of the recent attacks, as well as past terror attacks in which Israeli civilians have been killed. In a radio interview, a senior member of the party glorified the perpetrators of stabbing attacks in Jerusalem. In addition, senior Palestinian religious leaders made a series of inflammatory speeches alleging Israeli intentions to destroy the al-Aqsa mosque or change the status quo at the Holy Sites in Jerusalem."*⁴¹

As described above, thirteen-year old Hallel Yaffa Ariel was sleeping peacefully in her bed on the morning of June 30, 2016, when 17 year old Palestinian Muhammad Tarairah quietly entered her bedroom and brutally and repeatedly stabbed her to death.

Immediately following the attack, the PA controlled Palestinian Television aired interviews with both the mother and sister of Muhammed Tarairah,⁴² who praised the attack and called on other Palestinian youths to follow in his footsteps. Both WAFA, the official PA news agency, and Fatah, through its official Facebook page, honoured Muhammed by declaring him a "*shahid*" (martyr), the highest distinction attainable in Islam.

Calling on Palestinian youth to pursue martyrdom, giving it a higher status and making it preferable over graduation or academic achievement, is a common phenomenon. For instance, on November 17, 2017, the PA's official newspaper, Al-Hayat Al-Jadida, described an address made by the director of the Qalqilya district Directorate of Education (a branch of the PA Ministry of Education) to Palestinian teenage girls, where he celebrated the blood of martyrs who die in resistance to the Israeli occupation.⁴³

Additional examples of glorification and support of heinous crimes by PA and PLO/Fatah leadership are readily available.⁴⁴ On January 9, 2018, Palestinian Ahmed Nassar Jarrar murdered Rabbi Raziell Shevach in a

⁴¹ Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, Briefing to the Security Council on the Situation in the Middle East, Reporting on UNSCR 2334 (2016), December 18, 2018 at pp. 4-5 [[Hyperlink](#)].

⁴² Mother of Terrorist who Stabbed the 13 year old Girl to Death while she was Sleeping in her Bed: "My Son is a Hero, he made me Proud", PMW, September 14, 2016 [[Hyperlink-Video](#)].

⁴³ Schools of the Motherland Celebrate "Keffiyeh Day", Al-Hayat Al-Jadida, November 17, 2017 (Arabic) [[Hyperlink](#)].

⁴⁴ This is not a recent phenomenon. On 11 March 1978, 38 civilians were killed, including 13 children, and 71 wounded when a public bus was hijacked by 13 armed attackers. Ms. Dalal Mughrabi was one of those attackers, who carried out a killing spree armed with Kalashnikov rifles, rocket-propelled grenades, light mortars and high explosives. Today, Dalal Mughrabi has schools, summer camps, events and public spaces named after her in PA controlled areas, and her name and 'heritage' are promoted as an



drive-by shooting. Only a few hours after the murder, Fatah glorified Ahmed Nassar Jarrar in a post on Facebook, which described the attack as a successful "operation".⁴⁵

In another attack that took place on July 27, 2018, Muhammad Tareq Dar Yusuf murdered an Israeli civilian, father of two, Yotam Ovadia, and injured two more Israelis, before he was shot and killed. The official PA daily newspaper reported: *"A young man from Kubar died as a Martyr after stabbing three settlers north of occupied Jerusalem."*⁴⁶

On September 9, 2018, Mahmoud Abbas chose to honor Nasser Awais, a Palestinian serving fourteen life sentences for his involvement in the murder of fourteen Israeli civilians in three separate attacks in a Tel Aviv restaurant, a banquet hall in the city of Hadera, and a hotel in the city of Netanya. As posted on the official Fatah Facebook page, Abbas decided to raise Awais to the rank of "major general", one of the highest military ranks, as *"a sign of appreciation for his struggle and sacrifice for the homeland"*.⁴⁷

These heinous crimes, just a handful of many committed as part of the abovementioned widespread attack against Israel and its civilians, as well as the PA's and PLO's organized policy and culture of support and reward for such criminal acts, demonstrate the culpability of those individuals who have abused the machinery of Palestinian government to incentivize, reward, and glorify the killing of civilians on account of their religion or nationality.

The PA, PLO, and Fatah leadership have put in place, and are adamant to preserve, a multi-faceted operational program which idealizes and motivates murderous crimes against Israeli civilians. Murders, attempted murders, and other abhorrent violent crimes are rewarded with financial and social benefits – the more heinous the crime, the greater the benefits. Minimum severity thresholds for support, combined with escalating benefits, motivate Palestinians to commit ever more serious crimes. In parallel, public glorification of these attacks and idolization of their perpetrators in Palestinian society, further incentivize such crimes.

As a result of these policies and actions of the Palestinian leadership, Palestinians today well understand that attempting to kill Israeli civilians is a clear path toward upward financial and social mobility; that succeeding to kill Israeli civilians guarantees lifelong financial security; and that successfully carrying out mass murder will also result (in addition to the significant monetary and other benefits) in the perpetrator's name being venerated in Palestinian society for perpetuity.

inspiration and aspiration for the Palestinian youth. See: Nickolay Mladenov, Briefing to the Security Council on the Situation in the Middle East, Report on UNSCR 2334 (2016), June 20, 2017 [[Hyperlink](#)]; From Terrorists to Role Models: The Palestinian Authority's Institutionalization of Incitement, *Palestinian Media Watch*, May 6, 2010 [[Hyperlink](#)].

⁴⁵ Fatah Celebrates "a Killed Settler," Glorifies Drive by Murder Yesterday of Israeli Father of Six, *Palestinian Media Watch*, January 10, 2018 [[Hyperlink](#)].

⁴⁶ Official PA daily Al-Hayat Al-Jadida, July 27, 2018; Murderer of Young Father Declared a "Martyr" by the PA and Fatah, *Palestinian Media Watch*, July 29, 2018 [[Hyperlink](#)].

⁴⁷ Abbas - a World Leader in Supporting Terrorists, *Palestinian Media Watch*, September 27, 2018 [[Hyperlink](#)].



These policies and actions feed a perpetual cycle of violence and death. This cycle begins with the promise of financial reward in return for deadly acts of violence against Israeli civilians, promising a bonus for the most serious crimes, while glorifying others' murderous outcomes. The policies culminate in the murder of civilians, who are targeted on a discriminatory basis simply because they are Israelis or Jews. Instead of condemning these acts as heinous crimes, PA, PLO, and Fatah policies promise perpetrators a hefty reward. The perpetrators' "esteemed" status, in turn, encourages future attacks, and so the violent cycle continues.

The PA's simple message is clear to all Palestinians – 'we will pay you, and honour you, if you kill Israeli civilians'. In addition to being a gross breach of basic principles of human rights and dignity, this message, and the mechanisms developed to implement it, are also egregious violations of international law, which are now being brought to the attention of the OTP.

The offences committed

On the basis of the factual situation, as outlined above, the IAJLJ is convinced that numerous crimes within the subject-matter jurisdiction of the Court have been, and continue to be, committed. The following are the main crimes we have identified in the situation under discussion.

- **Crimes against humanity⁴⁸**
 - **Contextual background**

Under the Rome Statute, the contextual elements of crimes against humanity require that any of the specific crimes listed in Article 7(1) must be "*committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*"⁴⁹ and that such attack, namely, a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, must further be conducted "*pursuant to or in furtherance of a State or organizational policy to commit such attack.*"⁵⁰

As explained above, there has been, for many years, an undeniable ongoing widespread and systematic attack directed against the Israeli civilian population pursuant to and in furtherance of longstanding policies of Palestinian organizations (PA, PLO, and Fatah), which are opposed to the very existence of the State of Israel and to the possibility of reconciliation between the two peoples. These organizations undoubtedly meet the definition of "organization" in Article 7(2), as interpreted in the Court's jurisprudence.⁵¹

⁴⁸ Rome Statute of the International Criminal Court, art. 5(b), July 17, 1998, 2187 U.N.T.S. 90.

⁴⁹ *Id.*, at art. 7(1).

⁵⁰ *Id.*, at art. 7(2)(a).

⁵¹ Prosecutor v. Germain Katanga, Trial Chamber Judgment, ICC-01/04-01/07, 7 March 2014, paras. 1117-1120; Situation in the Republic of Kenya, ICC-01/09, 31 March 2010, para. 84.



As for the temporal dimension of the attack, this letter refers to a continuous, widespread and systematic attack directed against the Israeli civilian population, the origins of which can be traced at least to the outbreak of the Second *Intifada* in 2000, but which continues unabated to this day. Thus, while the core of this complaint refers to the crimes committed during the last few years (and certainly since the date that the Palestinians unilaterally purported to recognize the Court's jurisdiction), we call upon the OTP to also take into consideration, for the purpose of determining the contextual components of criminal responsibility, including criminal intent, the fact that this murderous campaign against a civilian population has been ongoing for many years.⁵²

Furthermore, it is clear that the individual perpetrators knew and/or intended that their specific actions would constitute part of this widespread and systematic attack.

○ **Specific crimes against humanity**

Without prejudice to other crimes under the Rome Statute applicable to the situation presented in this letter, we would like to refer you to two particular crimes within the scope of crimes against humanity: murder and persecution.

Article 7(1)(a) of the Rome Statute criminalizes the crime against humanity of murder. According to the Elements of Crimes, this crime requires that "[t]he perpetrator killed one or more persons"⁵³ as part of, and in the knowledge of, a widespread or systematic attack against the civilian population as described above.

As elaborated above, hundreds of Israeli civilians have been murdered as part of the attack by Palestinian organizations and armed groups. Consequently, it is incontrovertible that all the elements of the crime against humanity of murder have been fulfilled.

Furthermore, Article 7(1)(h) of the Rome Statute describes the crime against humanity of persecution as the "[p]ersecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the court". Clarifying the scope of this offense, Article 7(2)(g) of the Rome Statute further states that, "[p]ersecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."

⁵² Ferdinand Nahimana, et. al., v. Prosecutor, ICTR-99-52-A, 28 November 2007, paras. 317-318; Prosecutor v. Simon Bikindi, ICTR-01-72-T, 2 December 2008, paras. 26-28; Prosecutor v. Edouard Karemera, et. al., ICTR-98-44-T, 2 February 2012, paras. 13-14; and Prosecutor v. Edouard Karemera, et. al. (Decision on Joseph Nzirorera's and Mathieu Ndirumpaste motion to strike 1993 incitement allegation from the Indictment), ICTR-98-44-T, 16 July 2008, para. 7.

⁵³ INTERNATIONAL CRIMINAL COURT (ICC), ELEMENTS OF CRIMES 5, ft. 7 (2011), which states that the term "killed" within the crime of murder is interchangeable with the term "caused death".



With this in mind, the Court's Elements of Crimes explains that the crime of persecution is comprised of four specific elements, in addition to the two general elements abovementioned for all crimes against humanity (acts committed as part of, and in the knowledge of, a widespread or systematic attack against the civilian population):

- "1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.*
- 2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.*
- 3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.*
- 4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court."*

As previously discussed, Israeli civilians have been consistently and repeatedly murdered as part of an ongoing widespread and systematic attack directed against them (element 4). As a result of this attack, numerous Israelis have been deprived of their most fundamental right – the right to life (element 1). The attack has solely focused on civilians meeting two specific identifying elements – their being members of the Jewish faith and Israeli citizens (elements 2 and 3). Consequently, it appears incontrovertible that all the elements of the crime against humanity of persecution have also been fulfilled.

- **War Crimes⁵⁴**

Additionally, should the Court find that an armed conflict exists between Israel and the Palestinians, regardless of whether it deems it to be an international or non-international conflict, these acts would also constitute war crimes under the Rome Statute. Without prejudice to other possibly relevant crimes, we have identified the following relevant Rome Statute Articles: 8(2)(a)(i) (wilful killing), 8(2)(a)(iii) (wilfully causing great suffering, or serious injury to body or health), 8(2)(b)(i) (intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities), 8(2)(c)(i) (violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture), and 8(2)(e)(i) (intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities). These crimes are intimately connected to the ongoing conflict and they target civilians, in breach of the principle of distinction.

⁵⁴ Rome Statute, *supra*, at art. 5(c).



Furthermore, the fact that these crimes are committed within the context of a widespread and systematic attack more than addresses the language of Article 8(1) which provides that "[t]he Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes".

Individual criminal responsibility

The modes of liability under the Rome Statute are set forth in Article 25(3). As demonstrated above, the senior leadership of the PA, PLO, and Fatah, through their intentional and institutional policies and actions, have created, developed, and administered a mechanism which incentivizes, rewards and glorifies the murder of Israeli civilians. They have made it clear, in flagrant breach of the PLO's international obligations and undertakings,⁵⁵ that such attacks are to be applauded and repeated, and have created an atmosphere in which the perpetrators of such heinous attacks are viewed as popular heroes and heroines. By so doing, these senior Palestinian leaders have solicited (Article 25(3)(b)); aided, abetted, and otherwise assisted, including provided the means for (Article 25(3)(c)); and in any other way contributed to (Article 25(3)(d)) the commission of the abovementioned crimes.

It is noted that the fact that the payments are made (and honours bestowed) after each individual attack (and not before them), does not detract from the psychological and moral contribution that their promise provides⁵⁶. Nor does it detract from the culpability of the payer for the commission of the unlawful acts on the basis of the promise of payment.

Furthermore, the continued refusal by the Palestinian leadership to cease their ongoing support for the murderers of Jews and Israeli civilians, and their obstinate rejection of calls for the dissolution of this organized criminal program, in spite of increasing international condemnation,⁵⁷ is clearly a "*deliberate failure to take action, which is consciously aimed at encouraging such attack*."⁵⁸ Accordingly, it is respectfully submitted that senior Palestinian leaders are undeniably responsible for the perpetration of these most serious international crimes.

⁵⁵ Article XXII, Chapter 4 of the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (Washington, D.C., 28 September 1995).

⁵⁶ See, e.g. Prosecutor v Tadić, Trial Chamber Judgment, IT-94-1-T, 7 May 1997, para. 687; Prosecutor v. Aleksovski, Trial Chamber Judgment, IT-95-14/1-A, 25 June 1999; Prosecutor v Blaškić, IT-95-14-A, 29 July 2001, para. 48; Prosecutor v. Callixte Mbarushimana, Pre-Trial Chamber Decision on the Confirmation of Charges, ICC-01/04-01/10, 16 December 2011, para. 286.

⁵⁷ *Supra*, at 2.

⁵⁸ ELEMENTS OF CRIMES, Introduction to Article 7, ft. 6.



Admissibility

- **Gravity**

We understand that gravity is the predominant case selection criterion and is embedded into considerations of both the degree of responsibility of alleged perpetrators and charging. According to the Regulations of the Office of the Prosecutor, as well as the Court's jurisprudence, gravity is assessed in light of "various factors including their scale, nature, manner of commission, and impact."⁵⁹ The OTP further elaborated on these criteria in its Policy Paper on Preliminary Examinations.

Considering the sheer scale of the crimes, reflected by the number of direct and indirect victims, including both their geographical and temporal spread; the lethal nature of the crimes committed; the organisational policies planned and executed by senior Palestinian leadership which underpin, encourage and finance the crimes against vulnerable victims; the discrimination specifically against Jewish and Israeli civilians; and the impact of the crimes on the affected communities including the sufferings endured by the victims, their families and communities, including ongoing social, physiological and economic damage - it is respectfully submitted that the crimes described in this letter unequivocally satisfy the requisite criteria of the OTP's gravity assessment.

- **Complementarity**

The PA, PLO, and Fatah leadership's complicity in crimes whose subject matter falls within the Court's jurisdiction is not being investigated or prosecuted at any national level, thus the crimes described in this letter are admissible before the Court.

Conclusion

We reiterate our Association's position that the Court lacks jurisdiction in this matter, and that, consequently, there is a real possibility that the OTP's preliminary examination would be *ultra vires*. However, we are mindful that others are of a different view.

Therefore, we are compelled to bring to your attention crimes which perpetuate the cycles of violence which have spurred on the Israeli-Palestinian conflict for decades. These crimes are an affront to fundamental rights to life and freedom from discrimination, and to an international criminal law which exists to protect victims' human rights from those who abuse the machinery of government in order to violate them.

⁵⁹ International Criminal Court, *Regulations of the Office of the Prosecutor*, Regulation 29, ICC-BD/05-01-09 (23 April 2009).



If the OTP continues with its preliminary examination of the *Situation in Palestine*, we believe the crimes addressed in this letter should be at the forefront of any such effort, and that it would be a perversion of justice for cases of lesser gravity to take precedence.

We wish to inform you that we are continuing our investigations and research into the issues outlined above. Our organization stands ready to assist with respect to any matter of law, fact, or expert opinion which may arise as a result of the OTP's examination of the legal and factual matters communicated herein.

In keeping with the past practice of the OTP, and in recognition of the crucial importance of mutual cooperation and support in such matters, we further propose that a meeting be convened between the OTP and the relevant members of our organization's leadership, so that we can more effectively share with you our detailed legal and factual findings and jointly discuss the matters raised in this letter in greater depth. To arrange such a meeting, please contact IAJLJ's CEO, Ms. Ronit Gidron Zemach - Office@iajlj.org

We look forward to hearing back from you at your earliest convenience.

Yours faithfully,

Meir Linzen, Adv.
President, IAJLJ

Daniel Reisner, Adv.
Vice President & Secretary General, IAJLJ



Schedule 1

Without prejudice letter, IAJLJ to the ICC Prosecutor - 10 February 2015



הארגון הבינלאומי של עורכי-דין ומשפטנים יהודים (ע"ר)
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

The Honorable Fatou Bensouda
Chief Prosecutor
The International Criminal Court
Post Office Box 19519
2500 CM, The Hague
The Netherlands

February 10, 2015

By email

Re: The Palestinian Attempt to Grant the Court Jurisdiction

Dear Madam Prosecutor:

I am writing to you concerning your announcement dated January 16, 2015, on the commencement of "a preliminary examination into the situation in Palestine". I wish to address a number of serious concerns regarding this announcement.

Considering the complexity of certain issues surrounding the Palestinian attempt to accept the ICC's jurisdiction, the rapidity with which the announcement regarding the Preliminary Examination appeared was unexpected. Even more surprising was the fact that your announcement included statements that prejudice the crucial issues of Palestinian eligibility to grant the Court jurisdiction, and of the temporal scope of the Court's jurisdiction. The decision to open a Preliminary Examination and to decide these critical issues based on what is described in the announcement as "previous extensive analysis... and consultations" within your Office, without giving the concerned parties an opportunity to present their opinions, diverges from the practice established by your predecessor, Prosecutor Ocampo, and raises serious due process concerns.

It is our position that any steps advancing this Preliminary Examination would be undertaken *ultra vires*, since "Palestine" does not fulfill the criteria for statehood under international law and is therefore unable to grant the Court jurisdiction. We draw the Court's attention to Article 1 of the Montevideo Convention on the Rights and Duties of States (1933): "The state as a person of international law should possess the following qualifications: a) permanent population; b) a defined territory, c) government, and d) capacity to enter into relations with other states.

An international judicial body cannot proceed on the basis of determinations which are essentially political in nature. This is especially true in the case of a body responsible for dealing with criminal cases, with the authority to determine the fate of accused persons, such as the ICC.

It is my firm view that the statement contained in your announcement according to which UN Secretary-General Ban Ki-Moon "accepted Palestine's accession to the Rome Statute", is incorrect. The Secretary General is not authorized to reach a legal determination regarding Palestinian eligibility to grant the ICC jurisdiction. Moreover, he never purported to make a determination on this matter. In his Note to Correspondents dated January 7, 2015, made specifically in the context of the Palestinian request to join the Rome Statute, the



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THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

Secretary General stressed the purely administrative nature of his role as depositary, stating explicitly: "It is important to emphasize that it is for States to make their own determination

with respect to any legal issues raised by instruments circulated by the Secretary-General." Since the Secretary-General may not make any substantive legal determinations regarding the instruments circulated by him as depositary, this act cannot be the legal basis for any action by the OTP.

Your reliance on a decision adopted by majority in the UNGA, a political body, which merely granted the PLO the procedural designation of a non-member observer state in the UN, as signifying the decisive date for Palestinian statehood, is not merely erroneous. It also endangers the standing of the Court as an independent, non-political judicial institution.

The text of Resolution 67/19 makes it absolutely clear that it was never intended to establish a Palestinian state; on the contrary, under the Resolution a negotiated settlement is the only means of establishing a Palestinian state. The Resolution stresses the urgent need for the resumption and acceleration of negotiations within the peace process, with the goal of reaching a resolution on a number of critical matters including borders and the issue of settlements.

Your January 16th announcement gives no indication that any of the aforementioned issues were considered prior to its publication. In light of this, and in order that the OTP may remain untainted by any suspicion of actions taken *ultra vires* or of succumbing to political pressure, the preliminary examination should first and foremost conduct a thorough examination of the issue of the Palestinian Authority's eligibility to grant the Court jurisdiction.

Of course, it is critical at this early stage that the OTP refrain from making any determinations regarding the status of the disputed territories over which the Palestinians presume to grant the Court jurisdiction.

It is to be hoped that the Court will guard itself carefully against any attempts to misuse it as a means to achieve narrow political goals. Instead of allowing itself to be pulled into these issues, the Court should focus on the important tasks for which it was founded, and which it has consistently striven to achieve since its establishment - combating the mass atrocities which regrettably still occur in many places worldwide.

Yours sincerely,

Adv. Irit Kohn
President



הארגון הבינלאומי של עורכי-דין ומשפטים יהודים (ע"ר)
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

Mr. Emeric Rogier
Office of the Prosecutor
The International Criminal Court
Post Office Box 19519
2500 CM, The Hague
The Netherlands

March 7, 2019

By email

Re: PA, PLO and Fatah leaders' complicity in crimes against humanity and war crimes

Dear Mr. Rogier,

We write to you with respect to our communication dated January 17, 2019, written on behalf of the International Association of Jewish Lawyers and Jurists (IAJLJ) (attached). This communication concerns the PA, PLO and Fatah leaders' complicity in crimes against humanity and war crimes.

During a follow up call with the Information & Evidence Unit of the Office of the Prosecutor on January 22, 2019, we were informed that our communication was received and would be reviewed within the following three months. This point was later confirmed in written correspondence, dated January 28, 2019 (reference number OTP-CR-24/19).

We understand that you are intimately involved in the preliminary examination of complaints at the Court, and therefore turn to you with respect to our request for a meeting with Madame Prosecutor, which, as yet, has gone unanswered. We sent our communication with grave concern and urgency, after extensive research, and believe strongly that a meeting would be of significant importance to enable the ICC Prosecutor's office to best assess the gravity and immediacy of the matter.

In light of the above, we would greatly appreciate your assistance with scheduling a meeting with Madame Prosecutor. Alternatively, we would be grateful if you could provide a point of contact with whom we can schedule such a meeting. From our side – our designated point of contact for coordination is IAJLJ's CEO, Ms. Ronit Gidron Zemach, at office@iajlj.org or by phone at +972 3 691 0673.

Thank you,

Meir Linzen, Adv.

President, IAJLJ

Daniel Reisner, Adv.

Vice President & Secretary General, IAJLJ