

FROM INTENT TO ACTION: LEGAL PERSPECTIVES ON HAMAS' GENOCIDE

MARCH, 2024



CONTENT WARNING: THIS REPORT CONTAINS EXPLICIT GRAPHIC CONTENT, INCLUDING IMAGES AND DESCRIPTIONS OF KILLINGS, SEXUAL VIOLENCE, AND OTHER FORMS OF EXTREME VIOLENCE, WHICH MAY BE DISTURBING OR TRIGGERING TO SOME READERS



Jerusalem
Institute of Justice

Table of Contents

Executive Summary	2
Introduction	2
The Crime of Genocide	3
Genocide Committed on October 7, 2023	4
<i>Background</i>	4
<i>Entities Involved</i>	5
Hamas	5
Palestinian Islamic Jihad.....	6
Palestinian Authority - “State of Palestine”	7
<i>Facts of and from October 7</i>	8
<i>Elements of the Crime of Genocide in relation to October 7</i>	9
Actus reus.....	9
• Killing members of the group (art. II(a) of the Genocide Convention)	9
• Causing serious bodily or mental harm to members of the group (art. II(b) of the Genocide Convention)	10
• Imposing measures intended to prevent births within the group (art. II(d) of the Genocide Convention)	13
Dolus Specialis (Genocidal intent)	15
• Speeches or projects laying the groundwork for and justifying the acts:.....	16
• Deliberately and systematically targeting victims on account of their membership of a particular group.....	18
• Massive scale of the destructive effect of the acts	19
• Context.....	20
<i>Incitement to commit Genocide</i>	22
<i>State and Individual Responsibility</i>	23
Individual Responsibility	23
Universal Jurisdiction over Crimes of Genocide	27
State Responsibility	28
Conclusion	30
Annexes	31
<i>Testimony of Yuval Raphael, survivor of the Nova Festival</i>	31
<i>Testimony of Nachman and Valerie Dykztein (ZAKA)</i>	41
<i>“Swords of Iron” – The Findings of Operational Orders for Nuhba Militants to Murder and Kidnap Civilians Population in Israel, and Confirmation of Execution of Civilian Population by Hamas Field Commander</i>	46

From Intent to Action: Legal Perspectives on Hamas' Genocide

Executive Summary

The undersigned report is presented by the Jerusalem Institute of Justice (JIJ), a non-profit organization holding Special Consultative Status under the Economic and Social Council of the United Nations.

JIJ, established in 2004, is a legal and research institute headquartered in Israel. It is dedicated to promoting and safeguarding human and civil rights on both local and international fronts, with a particular focus on investigating and reporting human rights violations in the Middle East.

This report provides a comprehensive analysis of the October 7, 2023, attacks perpetrated by Hamas and other terrorist organizations, arguing that these acts fulfill the criteria to be considered genocide under international law. The document outlines the historical context of the Genocide Convention of 1948, emphasizing the legal definition of genocide and its codification in international law, particularly under the Rome Statute of the International Criminal Court (ICC).

The report meticulously details the background, entities involved, and the horrifying acts of October 7, focusing on the systematic attacks by Hamas and other Palestinian armed groups against Israeli nationals, resulting in over 1,200 deaths and numerous acts of violence, including rape, mutilation, and kidnapping. It argues that these acts satisfy the physical element (*actus reus*) of genocide, including killing members of a group, causing serious harm, and imposing measures intended to prevent births within the group.

Furthermore, it elaborates on the mental component (*dolus specialis*) required for genocide, highlighting how speeches and actions by Hamas' most influential leaders before and after the attacks evidence genocidal intent. The report discusses individual and state responsibility for genocide, noting the role of the ICC, the International Court of Justice (ICJ), and the application of universal jurisdiction in prosecuting such crimes. It also addresses the Palestinian Authority's complicity through financial incentives for terrorists (the "Pay for Slay" policy) and public endorsements of the attacks.

The report concludes by underscoring the necessity of recognizing and naming the crime committed on October 7 as genocide in accordance with legal standards and the evidence presented. It calls for accountability through international legal mechanisms to address and prevent such atrocities in the future.

Introduction

In 1941, UK Prime Minister Winston Churchill said, "We are in the presence of a crime without a name," referring to the Nazi plan to destroy the Jewish people. In 1944, Raphael Lemkin, a Jewish-Polish lawyer who had escaped the clutches of the Nazi regime, introduced the term 'genocide.'

Lemkin, personally affected by the atrocities, sought a term that would encapsulate the systematic extermination of his family, the Jewish people, and other targeted groups. He aimed to create a word that would reflect both the intent behind such crimes—often rooted in racial, national, or religious prejudices—and the acts of biological destruction they entailed.¹ Thus, the term 'genocide' was conceived, focusing on the safeguarding of specific groups from such calculated attempts to erase their existence.

On October 7, 2023, a series of actions perpetrated by Hamas constituted what can be argued as a clear case of genocide, yet the acknowledgment of these acts as such remains limited. Through a thorough legal examination of the acts committed on October 7, this paper aims to demonstrate that these acts fulfill the criteria to be considered genocide.

The Crime of Genocide

In the aftermath of the Nuremberg Trials, the crime of Genocide was codified under international law in 1948 when the United Nations General Assembly approved the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention).² The negotiations and compromises reached among the UN Member States at the time of drafting the Convention provided the official definition stated in Article II:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;*
- b) Causing serious bodily or mental harm to members of the group;*
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- d) Imposing measures intended to prevent births within the group;*
- e) Forcibly transferring children of the group to another group.*

In order for the crime of genocide to be considered to have taken place, the actual extermination of the protected group is not required.³ The crime of genocide can be deemed to have been committed once

¹ Raphael Lemkin, *Genocide*, 15 THE AMERICAN SCHOLAR, 15(2), 227–230, 227 (1946)

² Convention on the Prevention and Punishment of the Crime of Genocide, Jan. 12, 1951, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

³ Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment ¶ 497 (Sept. 2, 1998) [hereinafter Akayesu case].

any of the acts mentioned above are committed with the specific intent to destroy “in whole or in part” a national, ethnic, racial, or religious group.

The Genocide Convention was the first human rights treaty adopted by the newly established organization, and as such, it influenced the future of International Human Rights Law (IHRL) and International Criminal Law (ICL). The most prominent example is the Rome Statute of the International Criminal Court (the Rome Statute).⁴ Genocide is one of the crimes within the jurisdiction of the ICC, together with crimes against humanity, war crimes, and the crime of aggression. Article 6 of the Rome Statute incorporates the same definition of genocide provided by the Genocide Convention. Finally, the prohibition of genocide is a preemptory norm, or *jus cogens*, binding all states, even if they are not signatories of the Genocide Convention or the Rome Statute, and no derogation from such prohibition is allowed.⁵

In addition to the commission of genocide, other behaviors are also subject to punishment. These include conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide, and complicity in genocide, as outlined under Article III of the Genocide Convention. According to article 25 of the Rome Statute, a person can be criminally responsible for the crime of genocide not only for the commission of such crime but also for ordering, soliciting, inducing, facilitating, aiding, abetting, assisting, contributing in any way or attempting to commit the crime. Moreover, specifically with respect to the crime of genocide, the Rome Statute holds that a person can be criminally responsible and liable for punishment for directly and publicly inciting others to commit genocide.⁶ Additionally, according to the Elements of Crimes of the ICC, for an act to qualify as genocide, it must have taken place “in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction [of the group].”

Genocide Committed on October 7, 2023

Background

The Gaza Strip is a small coastal territory bordered by Israel and Egypt. In the aftermath of the 1948 Arab-Israeli War, or Independence War, the Gaza Strip came under Egyptian administration, and a significant number of Palestinians settled there. The territory changed hands again during the Six-Day War in 1967 when Israel captured Gaza from Egypt. In 2005, Israel unilaterally withdrew its residents

⁴ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

⁵ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15 (May. 28); Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgment ¶ 88 (May 21, 1999) [hereinafter Kayishema case].

⁶ Rome Statute, art. 25(3)(e).

and military from Gaza. After the Israeli disengagement from Gaza, Hamas won the elections in that area and, in 2007, took entire military and administrative control of the Gaza Strip.

Entities Involved

Hamas

Hamas (acronym of Islamic Resistance Movement) is a Palestinian armed group and the de facto governing authority in the Gaza Strip. It was established in 1987 as an offshoot of the Muslim Brotherhood in the wake of the First Intifada. Hamas is a nationalist Islamist movement with political, military (Izz al-Din al-Qassam Brigades) and social branches. The armed group carried out several terror attacks and was eventually listed as a terrorist organization by several states and institutions, including the United States,⁷ the European Union,⁸ and the United Kingdom.⁹ In 2005, after Israel unilaterally withdrew from the Gaza Strip, Hamas won the elections in that area and, in 2007, took entire military and administrative control of the Gaza Strip.

The main objective of the organization, as expressed in its Charter of 1988, is the establishment of an Islamic Palestinian state in place of Israel, declaring themselves explicitly against what they call “Zionist occupation.”¹⁰ To achieve this goal, they call for violent resistance, which has previously included large-scale bombings, rocket attacks, roadside explosives, suicide bombings, and small-arms attacks against Israeli civilians. Although their charter was amended in 2017, the strategies, actions, and declarations made by its leadership and supporters have only become more radical, as the latest attack of October 7 on Israel shows.

The political wing of Hamas is headed by Ismail Haniyeh, who operates from Qatar. Saleh al-Arouri was the deputy chairman of the Hamas political bureau. He was killed on January 2, 2024. Yahya Sinwar was the previous leader of Hamas’ military wing and is currently the leader of Hamas in Gaza. The Izz al-Din al-Qassam Brigades, which contains aerial units, naval commandos, the Nukhba special forces, and the al-Majd internal security force, are led by Mohamad Deif and his deputy, Marwan Issa. The Hamas leadership also includes a consultative Shura Council and a Politburo, the decision-making bodies.¹¹ Although Hamas’s strength resides in Gaza, it has gained popularity and support within the

⁷ U.S. Dep’t of State, Bureau of Counterterrorism, Individuals and Entities Designated by the State Department under E.O. 13224.

⁸ Council Implementing Regulation (EU) 2022/147 of 3 February 2022 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2021/1188.

⁹ U.K. Proscribed terrorist groups or organisations.

¹⁰ Muhammad Maqdsi, *Charter of the Islamic Resistance Movement (Hamas) of Palestine*, 22(4) JPS 122 (1993).

¹¹ *Mapping Palestinian Politics: Hamas*, EUROPEAN COUNCIL ON FOREIGN RELATIONS, https://ecfr.eu/special/mapping_palestinian_politics/hamas/.

West Bank, where the tensions with the ruling party of the Palestinian Authority (PA) -Fatah- have significantly risen.

Palestinian Islamic Jihad

The Palestinian Islamic Jihad (PIJ) is a terrorist organization that operates both in the Gaza Strip and in the West Bank. It was founded in 1981 by Fathi Abd al-Aziz al-Shikaki, a physician from Gaza, and Shayk Abd al-Aziz Awda. Despite rising from the Muslim Brotherhood and being a Sunni Islamist group, it soon developed into a distinct entity, different from its predecessors, as a consequence of its increasing radical militarism and relations with Iran.

The PIJ operates as an elite-led movement with the primary goal of establishing a sovereign Islamist state within the pre-1948 borders. Thus, it completely opposes any kind of political engagement with Israel and is committed to its destruction. To achieve these objectives, it counts on the support of a leadership council and a military armed wing, the al-Quds Brigades, which have perpetuated attacks against Israeli soldiers and civilians, including suicide bombings, since its establishment.¹²

Being the second-largest Palestinian militant group, it receives support from Syria, Hezbollah in Lebanon, and Iran, the latter acting as its primary source of funding. Although coordination with Hamas has sometimes become necessary, there is a generally tense relationship between the two groups, principally due to disagreements on the strategy chosen to confront Israel. Nevertheless, during the May 2021 conflict between Israel and Hamas in Gaza, the PIJ participated by launching more than 4,000 rockets toward Israeli territory.¹³

The two key leaders are Ziyad al-Nakhalah, Secretary General since 2018, and Muhammad al-Hindi, Deputy Secretary General and head of the political department. Other important members of the organization are Akram al-Ajouri, the second most voted member of the political bureau after al-Nakhala and leader of its militant wing, the al-Quds Brigades; Khaled al-Batsh, leader of the PIJ Politburo in Gaza, and Nafiz Azzam, its secretary.¹⁴

The PIJ has been considered a Foreign Terrorist Organization by the United States since 1997.¹⁵ Moreover, it was again listed, along with most of its leaders, as part of the Designated Individuals and

¹² *Mapping Palestinian Politics: Palestinian Islamic Jihad*, EUROPEAN COUNCIL ON FOREIGN RELATIONS, https://ecfr.eu/special/mapping_palestinian_politics/palestinian_islamic_jihad/.

¹³ Office of the Director of National Intelligence, *Foreign Terrorist Organizations: Palestine Islamic Jihad (PIJ)*, <https://www.dni.gov/nctc/index.html>.

¹⁴ Press Release, Antony J. Blinken, Secretary of State, Designating Additional Hamas and Palestinian Islamic Jihad Officials and Supporters (Nov. 14, 2023), <https://www.state.gov/designating-additional-hamas-and-palestinian-islamic-jihad-officials-and-supporters/>.

¹⁵ U.S. Dep't of State, Bureau of Counterterrorism, Foreign Terrorist Organizations.

Entities that commit or pose a significant risk of committing acts of terrorism.¹⁶ Similar measures have been adopted by countries such as Australia,¹⁷ Canada,¹⁸ the United Kingdom,¹⁹ and the European Union.²⁰

Palestinian Authority - “State of Palestine”

The Palestinian Authority (PA), previously known as the Palestinian National Authority, became the governing body of Gaza and the West Bank in 1994 as part of the Oslo Peace process. It is controlled by the Fatah political party, nowadays under the leadership of Mahmoud Abbas. In 2006, after losing the elections to Hamas, the PA struggled to maintain control of the Gaza Strip, and its leaders were forcibly removed from power by Hamas in 2007.

The territories that are part of the regional governance of the PA are divided into three types of administration. Area A, with PA administration and security; Area B, with PA administration but Israeli-Palestinian security; and Area C, with Israeli administration and security. There are 11 governorates in the West Bank and 5 in the Gaza Strip. In Gaza, Hamas has developed its own institutions, ministries, judicial systems, and municipalities, but with increasing opposition from a population that is becoming more disenchanted with its governing power. In the West Bank, the PA has also had decreasing popular legitimacy but increasing international support and state institutions.

The PA’s Basic Law, as amended in 2005, acts as an interim constitution. Within the executive branch, there is a council of ministers but no parliamentary oversight. Consequently, although the PA also includes the Palestinian Legislative Council (PLC) and justice system, it is the Council of Ministers, together with the prime minister, that holds primary executive authority. The president, elected to a four-year term with a limit of two terms, is the head of the executive branch, the commander in chief of the security forces, manages foreign relations and appoints the prime minister. Additionally, it may veto legislation and issue decrees when it sees fit. The current president, Mahmoud Abbas, the successor of President Yasser Arafat, has ruled by decree since 2007, when he declared a state of emergency and dismissed the government. This decision was made after the 2006 elections, which resulted in Hamas winning 74 out of the 132 seats at the PLC and having 44% of the votes, while the ruling group of Pres. Mahmoud Abbas, Fatah, won only 41%. The two parties formed a coalition government with Hamas

¹⁶ U.S. Dep’t of State, Bureau of Counterterrorism, Individuals and Entities Designated by the State Department under E.O. 13224.

¹⁷ Parliament of Australia, Appendix G – Statement of Reasons – Palestinian Islamic Jihad.

¹⁸ Government of Canada, National Security, Current Listed Entities.

¹⁹ U.K. Proscribed terrorist groups or organisations.

²⁰ Council Implementing Regulation (EU) 2022/147 of 3 February 2022 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2021/1188.

legislator Ismail Haniyeh as prime minister. Soon after, however, Hamas broke this coalition when it tried and indeed succeeded in taking total control over Gaza.

The current government of the PA is composed of Mahmoud Abbas as president, Mohammad Shtayyeh as prime minister, who was appointed by Abbas, and the 132 members of the PLC. Even if there have not been elections for the PLC since 2006, some of its then-elected ministers from Fatah are Azzam al-Ahmad, Mahmoud Aloul, Marwan Barghouti, and Ahmad Abu Houli. Regarding the PA's security forces, some of their members were formerly part of the al-Aqsa Martyrs Brigades (AMB), an armed military group similar to Hamas' Izz al-Din al-Qassam Brigade or the PIJ' al-Quds Brigades. Although their origins are somewhat tied to Fatah, the PA has never officially recognized or backed the group but has instead carried out several security campaigns against it.

Facts of and from October 7

On October 7, 2023, at 6:30 am, coinciding with the observance of Shabbat and Simchat Torah, sacred Jewish holidays, Hamas, together with other terrorist groups, including the PIJ, executed a deliberate and indiscriminate series of rocket attacks on Israel. On this single day, Hamas launched more than 2,000 rockets²¹ directed toward civilians all over Israel.

This rocket offensive not only served to target civilians but also functioned as a strategic diversion, providing cover for the infiltration of approximately 3,000 terrorists into Israeli territory.²² Using drones, tractors, paragliders, scuba gear, rocket-propelled grenades, and anti-tank charges, the assailants breached the Gaza security fence and attacked multiple towns and music festivals in the southern region of Israel: Alumim, Ashkelon, Be'eri, Erez, Holit, Kerem Shalom, Kisufim, Kfar Aza, Magen, Mefalsim, Nahal Oz, Netivot, Netiv HaAsara, Nirim, Nir Oz, Nir Yitzak, Nova (music festival) Ofakim, Psyduck (music festival), Re'im, Sderot, Sufa, Yahini, and Zikim.

Upon infiltration, the terrorists perpetrated numerous heinous acts, including murder (via shooting, beheading, mutilating, and burning individuals alive), rape, and kidnapping. On the single day of October 7, Hamas murdered over 1,200 Israelis and foreign nationals,²³ took over 250 hostages back to Gaza (including children, women, and the elderly), with 133 still being held captive, and forced the

²¹ Press Briefing, Daniel Hagari, Israel Defense Forces Rear Admiral (Oct. 7, 2023).

²² Emanuel Fabian and Gianluca Pacchiani, *IDF estimates 3,000 Hamas terrorists invaded Israel in Oct. 7 onslaught*, TIMES OF ISRAEL (Nov. 1, 2023). <https://www.timesofisrael.com/idf-estimates-3000-hamas-terrorists-invaded-israel-in-oct-7-onslaught/>.

²³ S.C. Briefing on the Situation in the Middle East, as delivered by Special Coordinator Tor Wennesland (Feb. 22, 2024).

evacuation of more than 70,000 civilians from southern Israel.²⁴ Currently, the identification process for those murdered in the October 7 massacre is still ongoing.

After October 7, Hamas has continued to indiscriminately launch rockets toward the Israeli population. So far, there have been more than 11,000 rockets launched at Israel from the Gaza Strip.²⁵ To this date, approximately 112 hostages have been released as part of different agreements between Israel and Hamas and also as a result of rescue operations carried out by Israel's army. There are still 134 hostages being held captive by Hamas in the Gaza Strip.

Elements of the Crime of Genocide in relation to October 7

The crime of genocide encompasses both a physical and a mental component. This section will delve into how jurisprudence has interpreted these elements and apply that understanding to the acts perpetrated on October 7.

Actus reus

The physical element, or *actus reus*, refers to the five enumerated acts that constitute the crime. This document examines subparagraphs (a), (b), and (d) of Article II of the Genocide Convention, as the claims of genocide in the case of October 7 will focus on those specific acts.

The *actus reus* of genocide does not necessitate the complete annihilation of a significant portion of the group. Committing any one of the specified prohibited actions can suffice, provided there is a genuine intent by the perpetrator to eliminate a substantial part of the group through that act.²⁶

- *Killing members of the group (art. II(a) of the Genocide Convention)*

The *actus reus* consists of intentionally killing members of the group. The victims are targeted not because of their individual identity but because of their membership in a national, ethnic, racial, or religious group.²⁷ The ICJ concluded in *Croatia v. Serbia* that the act of killing members of the group in connection to genocide was also established in a case where the majority of the victims were members of a protected group.²⁸

²⁴ Yuval Nisani, *An unprecedented event: 130 thousand people were evacuated from their homes*, GLOBES (Oct. 22, 2023) <https://www.globes.co.il/news/article.aspx?did=1001460723>.

²⁵ Emanuel Fabian, *The war in numbers: 9,000 Hamas members killed, 11,000+ rockets fired into Israel*, TIMES OF ISRAEL (Jan. 14, 2024) <https://www.timesofisrael.com/the-war-in-numbers-9000-hamas-members-killed-11000-rockets-fired-into-israel/>.

²⁶ Prosecutor v. Mparambara, Case No. ICTR-01-65-T, Judgment ¶ 8 (Sept. 11, 2006).

²⁷ Akayesu case ¶ 521.

²⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croat. v. Serb.*), Judgment, 2015 I.C.J. 1077, ¶ 295 (Feb. 3) [hereinafter I.C.J. *Croat. v. Serb. case*].

On October 7, terrorists from Hamas and other Palestinian armed groups perpetrated the deadliest terrorist attack by the number of fatalities per capita, with over 1,200 individuals murdered, meaning 1.19 per 10,000.²⁹ Additionally, this was also the third-deadliest terrorist attack since 1970.

It has still not been possible to assess the identity of all those murdered on October 7. With the data publicly available at the moment, it has been possible to identify 1,120 of the victims of October 7. According to that information, more than 1,000 of the 1,120 identified victims murdered on October 7 were Jewish or Israeli nationals. Per the information available to this date, the following table shows the breakdown of 1,120 of the victims that were possible to identify, according to the ages and genders of those murdered on October 7:³⁰

	0-18 years old	19-59 years old	+60 years old	N/A
Female	20	235	71	0
Male	28	640	88	38
TOTAL	48	875	159	38

The group targeted by Hamas on October 7 was predominantly Israeli citizens; therefore, it was a national group protected under the Genocide Convention. Moreover, most victims were Jewish, a religious group also protected by the Genocide Convention. In the attacks of October 7, some of those killed by the perpetrators were Muslim Arabs and foreign workers and students, including Thai and Nepalese nationals. However, this does not in itself remove the genocidal intent of the perpetrators in targeting Israeli nationals and Jewish people.³¹ Moreover, the non-Israeli victims could have also been targeted because of their perceived association with Jews or for being considered by the perpetrators as part of the Israeli national group.³²

- *Causing serious bodily or mental harm to members of the group (art. II(b) of the Genocide Convention)*

The concept of "causing serious bodily or mental harm to members of the group" is another act that, together with the other requirements of the crime, constitutes the *actus reus* of the crime

²⁹ *Hamas's October 7 Attack: Visualizing the Data*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (Dec. 19, 2023) <https://www.csis.org/analysis/hamass-october-7-attack-visualizing-data#:~:text=Hamas's%20October%207%20terrorist%20attack,years%20of%20the%20Second%20Intifada>.

³⁰ *The murdered in the terrorist attack and the war in Gaza*, YNET, <https://www.ynet.co.il/news/category/51693>.

³¹ *Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Judgment ¶¶ 496-497 (Sept. 11, 2006), and *I.C.J. Croat. v. Serb.* case ¶ 295.

³² Sigall Horovitz, *Israel-Hamas War: The Genocide Question*, (2024) <https://www.alma-ihl.org/opeds/israel-hamas-war-the-genocide-question> [hereinafter Horovitz].

of genocide. It is not necessary to prove that the harm is permanent and irremediable.³³ Instead, it must be of such a nature that it contributes to the physical or biological destruction of the group.³⁴ This encompasses a wide array of actions, including acts of sexual violence and rape, which fall under this category.³⁵ Serious bodily or mental harm also includes torture, inhumane or degrading treatment, and persecution.³⁶

Our assessment of the extent of harm caused by the actions on October 7 relies on testimonies from first responders and survivors, as well as evidence gathered at the scenes of the incidents. A paramedic from the elite 669 Special Tactics Rescue Unit described the horrors encountered while moving from house to house in Kibbutz Be'eri, where he found two young teenage girls in a bedroom under distressing conditions. This testimony is among many evidencing a pattern of conduct aimed at inflicting severe harm.³⁷ Numerous bodies of young women were discovered with pants and underwear either removed, torn, or stained with blood, and similar treatment was evident in the mutilation of sexual organs of both male and female victims, showcasing a general pattern of dehumanizing violence.

Many bodies of young women were found naked from the waist down, with their legs spread, their faces burnt or shot. Other bodies of both male and female victims were shot in intimate parts, showing a general pattern of conduct in which sexual organs were mutilated with bullets, axes, nails, and even scissors.

Other examples of torture and inhumane treatment have been documented, highlighting the brutality of the assault. A male, approximately 23 years old, was found outside a mobile shelter on road 232, displaying a pose that suggested he was embracing something, perhaps in his final moments. He had sustained a fatal gunshot wound to the head, with evidence suggesting he was dragged by his shirt. His clothing, especially around the groin area, showed signs of severe burns, indicating a deliberate act of cruelty.

Another body with signs of torture was found on October 12 under the ruins of a residence in Be'eri. The body, presumed to be male, showed clear signs of having been bound, with ropes found around the hands and even within the mouth. The presence of gunshot wounds on the arm and the dismemberment of the body, with a leg found 10 meters away, further attest to the savage treatment the victims endured. (See **Annex II**).

³³ Akayesu case ¶ 502.

³⁴ I.C.J. Croat. v. Serb. case ¶ 157.

³⁵ *Id.* ¶ 158.

³⁶ Akayesu case ¶ 503.

³⁷ Jake Tapper, *Israel investigates sexual violence committed by Hamas as part of October 7 horror*, CNN (Nov. 19, 2023) <https://edition.cnn.com/2023/11/17/world/israel-investigates-sexual-violence-hamas/index.html>.

In addition, both ZAKA³⁸ testimonies and accounts from survivors highlight further instances of serious harm within roadside bomb shelters. The attack of October 7 began with a barrage of rockets, prompting many individuals to seek refuge in available shelters, including mobile units positioned along the roads. As victims took shelter, the assailants entered these confined spaces, where they executed a series of violent acts. This included shooting the occupants, throwing grenades and other explosives into the shelters, and setting fires, directly targeting those seeking safety inside. (See **Annex I**).

Survivors have experienced not only physical harm but also trauma and mental harm. According to a study carried out by the Israeli Pediatric Association, 83% of Israeli children suffer from emotional distress since October 7.³⁹ Another study described the development of PTSD, depression, and generalized anxiety disorder as a result of the attack of October 7.⁴⁰ According to this study, the prevalence of probable PTSD, depression, and anxiety were found to be high: 29% for PTSD, 42% for depression, and 44% for generalized anxiety disorder. Additionally, it has also been reported that several individuals who were in the locations of the attack have been hospitalized in psychiatric institutions,⁴¹ and many others have been in therapy since the attack.

Moreover, the families of those being held hostage in the Gaza Strip since October 7 can also themselves be considered victims of torture and inhuman treatment. In *Çakici v. Turkey*,⁴² the European Court of Human Rights clarified that a family member of a disappeared person might be deemed a victim of torture and inhuman treatment based on specific criteria. These criteria include the proximity of the family tie, the extent of the family member's witness to the events, efforts to obtain information about the disappeared person, and the authorities' response to those inquiries.

The refusal by the perpetrators to provide relatives of individuals who disappeared in the context of an alleged genocide, when such information is in their possession, and which would enable the relatives to know whether their family members are alive or dead, can also cause psychological harm under this article if it contributes to the destruction of the group.⁴³ As part

³⁸ ZAKA, founded in 1995, is Israel's primary non-governmental rescue organization with over 3,000 volunteers. They respond immediately to terror attacks, disasters, and accidents, working closely with emergency services and security forces to address incidents of unnatural death.

³⁹ Shlomo Maital, *Nation in trauma: Israelis battle PTSD following October 7 massacre*, THE JERUSALEM POST (Feb. 23, 2023) https://www.jpost.com/health-and-wellness/mind-and-spirit/article-788282#google_vignette.

⁴⁰ Yossi Levi-Belz et al., *PTSD, depression and anxiety after the October 7, 2023 attack in Israel: a nationwide prospective study*, ECLINICAL MEDICINE (Jan. 5, 2024).

⁴¹ *Several survivors of rave massacre involuntarily committed to psychiatric hospitals*, TIMES OF ISRAEL (Nov. 14, 2023) <https://www.timesofisrael.com/several-survivors-of-rave-massacre-involuntarily-committed-to-psychiatric-hospitals/>.

⁴² *Çakici v. Turkey* App. No. 23657/94 Eu. Ct. H. R. (July 8, 1999), para. 98.

⁴³ I.C.J. *Croat. v. Serb.* case ¶ 160.

of the continued mental harm that Hamas intends to cause to the Jewish citizens of Israel, they have not provided any information regarding the status of the hostages, not even their names. They have neither allowed any visit from the ICRC nor the provision of medicine to the hostages. Instead, Hamas periodically publishes humiliating video footage of hostages in its custody and switches between threats to execute them or claims that IDF airstrikes killed them. This constitutes a clear practice of intentionally causing mental harm to the members of the protected group.

- *Imposing measures intended to prevent births within the group (art. II(d) of the Genocide Convention)*

Imposing measures intended to prevent births within a group represents a grievous act that can potentially constitute genocide. These measures, which can be both physical and mental,⁴⁴ encompass a range of actions, including rape and other forms of sexual violence, particularly when executed in a manner that discourages or prevents births within the targeted group.⁴⁵ For instance, rape may serve as a measure intended to prevent births if, as a result of the trauma, victims choose not to procreate, similar to how members of a group might be coerced or traumatized into foregoing procreation.⁴⁶

Understanding the full impact of sexual violence becomes particularly challenging when the majority of the victims, who were raped or sexually assaulted, were also killed. Additionally, sexual violence in conflict zones is often a significantly underreported offense, primarily due to the trauma, stigma, and fear experienced by survivors.⁴⁷ Nonetheless, a substantial body of evidence has been amassed by the Police Investigations Unit, Lahav 433, including over 50,000 visual documents and 1,500 testimonies from witnesses. A young woman, survivor of the Nova music festival, witnessed how a large group of Hamas gunmen raped and killed at least five women. She recalls how one was “passed on” from man to man while they were laughing and playing with her body, how another woman was “shredded to pieces,” and how another was “repeatedly stabbed in the back while she was being raped.”⁴⁸

Forensic evidence and interrogations of suspects also serve to document these cases and have helped to determine that more than 30 murdered women and girls showed signs of abuse on

⁴⁴ Akayesu case ¶ 508.

⁴⁵ I.C.J. *Croat. v. Serb.* case ¶ 166.

⁴⁶ Akayesu case ¶ 508.

⁴⁷ U.N. Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Official visit of the Office of the SRSG-SVC to Israel and the occupied West Bank 29 January – 14 February 2024* ¶ 56 (Mar. 4, 2024) [hereinafter U.N. SRSG-SVC Report].

⁴⁸ Bethan McKernan, *Evidence points to systematic use of rape and sexual violence by Hamas in 7 October attacks*, THE GUARDIAN (Jan. 18, 2024) <https://www.theguardian.com/world/2024/jan/18/evidence-points-to-systematic-use-of-rape-by-hamas-in-7-october-attacks>.

their bodies. Reservist Shari Mendes at the Shura military base in central Israel, who was in charge of washing the bodies of female soldiers and preparing them for burial, reported seeing women who had been raped, many of them with bloody shrouded rags with just their underwear, often very bloody as well. Forensic evidence also provided evidence of genital mutilation, finding female bodies with broken pelvis, with their legs split wide apart, shot in intimate parts, burnt or butchered.

The recent report drafted by the UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict has also recognized that there are reasonable grounds to believe that conflict-related sexual violence took place during October 7 attacks, including rape and gang rape.⁴⁹ There has also been reported that there were at least two incidents of rape of corpses of women.⁵⁰

In addition to these horrific acts, sexual assaults were also reported during the captivity of hostages taken by the perpetrators. Released hostages recounted that both women and men suffered sexual assault or abuse while being held captive in Gaza.⁵¹ Moreover, it has been confirmed that three women and a man who survived the attack of October 7 have been sexually assaulted, and another was gang raped.⁵² Information has also been found regarding cases of sexualized torture and other acts of sexual violence committed against women and children while they were being held hostage in Gaza.⁵³

Interrogations of captured Hamas members revealed that raping as many women and children as possible was a deliberate objective. Documents found among their possessions included instructions in Arabic on how to command victims in Hebrew to disrobe and expose themselves, indicating premeditation in their acts of sexual violence.⁵⁴

As explained above, rape and other acts of sexual violence can fall under this category if they are of a kind that prevents births in the group. The pattern of rapes and other forms of sexual violence committed on and after October 7 by the perpetrators forms a clear pattern of gender-based violence, implemented systematically and with cruel intentionality. While it is currently challenging to assess the direct impact of these acts on birth prevention within the group or

⁴⁹ U.N. SRSG-SVC Report ¶ 12 (Mar. 4, 2023).

⁵⁰ U.N. SRSG-SVC Report ¶ 58.

⁵¹ *At least 10 freed hostages were sexually abused in Hamas captivity, doctor says*, TIMES OF ISRAEL (Dec. 6, 2023) <https://www.timesofisrael.com/at-least-10-freed-hostages-were-sexually-abused-by-hamas-in-captivity-doctor-says/>.

⁵² Jeffrey Gettleman, Anat Schwarts and Adam Sella, *'Screams Without Words': How Hamas Weaponized Sexual Violence on Oct. 7*, NEW YORK TIMES (Dec. 28, 2023) <https://www.nytimes.com/2023/12/28/world/middleeast/oct-7-attacks-hamas-israel-sexual-violence.html>.

⁵³ U.N. SRSG-SVC Report ¶ 71.

⁵⁴ Anna Schecter, *Their bodies tell their stories. They are not alive to speak for themselves*, NBC NEWS (Dec. 6, 2023) <https://www.nbcnews.com/news/world/hamas-rape-israeli-women-oct-7-rcna128221>.

whether the trauma inflicted will lead to a decision not to procreate, the systematic and intentional nature of the sexual violence committed highlights the severity and potential genocidal intent behind these acts.

Dolus Specialis (Genocidal intent)

The acts themselves included in the definition of genocide include mental elements and the deliberate intention to commit each act.⁵⁵ In addition to this mental element, the crime of genocide is characterized by the requirement of a further mental element of committing the act with the specific intent of destroying, in whole or in part, a group (*dolus specialis*). The essence of the crime of genocide lies in intent.

To establish genocide, there must be proven intent on the part of perpetrators to physically destroy a national, ethnic, racial, or religious group (*dolus specialis*). A national group is a collection of people perceived to share a legal bond based on common citizenship and reciprocity of rights and duties;⁵⁶ an ethnic group is a collection of people who share a common language or culture;⁵⁷ a group of people is considered to be part of a racial group based on their hereditary physical traits,⁵⁸ and a religious group is the one whose members share the same religion, denomination or mode of worship.⁵⁹

Genocide can occur when the perpetrator of the crime intends to destroy a group in whole or in part. “Destruction of a group” encompasses acts not only with the intent to cause death⁶⁰ but also rape and acts of sexual violence.⁶¹ Moreover, causing mental harm to members of the group, even though they don’t directly destroy the group physically or biologically, can be carried out with the intent to achieve such destruction and can, therefore, be rendered as genocide.⁶²

While establishing the existence of the *dolus specialis* is not straightforward because, in general, perpetrators of this crime do not announce or document their genocidal intent, international courts have assessed that the genocidal intent can be inferred from certain facts surrounding the acts. While genocidal intent was clearly voiced by the perpetrators of the attack of October 7, this section will analyze some of the criteria used in the case law to infer the genocidal intent.

⁵⁵ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. and Montenegro), Judgment, 2007 I.C.J. 921, ¶ 168, 179 and 186 (Feb. 26) [hereinafter Genocide case].

⁵⁶ Akayesu case ¶ 512.

⁵⁷ *Id.* ¶ 513.

⁵⁸ *Id.* ¶ 514.

⁵⁹ *Id.* ¶ 515.

⁶⁰ Kayishema case ¶ 95.

⁶¹ Akayesu ¶ 731.

⁶² I.C.J. Croat. v. Serb. case ¶ 136.

- *Speeches or projects laying the groundwork for and justifying the acts:*

Numerous statements related to the October 7 attack specifically show the intent to annihilate Israel by physically destroying its population. As listed below, Hamas' leaders have repeatedly and publicly called for the killing of Jews and the destruction of Israel.

- Head of Hamas in the Gaza Strip **Yahya Sinwar**, during a speech in Gaza, 2017, "Gone is the time in which Hamas discussed recognition of Israel. The discussion now is about when we will wipe out Israel."⁶³
- Former Interior Minister in the Gaza Strip **Fathi Hamad**, 2019, "attack every Jew possible in all the world and kill them."
- Head of Hamas in the Gaza Strip **Yahya Sinwar**, on December 14, 2022, during the 35th anniversary of Hamas, proclaimed, "We are coming in a roaring flood ... One day we will meet in the squares of Jerusalem and Al-Aqsa clean of the Zionist invaders, and there will be no remnants of them in this holy land." Notably, the attackers named the October 7th assault the "Al-Aqsa Flood Operation."⁶⁴
- Hamas Official **Sheikh Hamad Al-Regeb**, Al-Abrar Mosque on YouTube, April 7, 2023, "According to the tradition, [the Jews] killed 70 of the Israelite prophets in one hour during the daytime, and they did not even close their markets." "[Allah] transformed them into filthy, ugly animals like apes and pigs because of the injustice and evil they had brought about." "How can we defeat the enemy? Unfortunately, some beloved preachers in different corners of the Earth, do not understand what defeating the enemy means for us." "We will defeat the enemy with weapons, oh esteemed people. We will defeat the enemy by inflicting fear and terror upon it. We will defeat the enemy by training men. All the Palestinians and Muslims should make preparations. They should prepare for a day when they will heed a call to arms." "Oh Allah, bring annihilation upon the Jews. Oh Allah, bring annihilation upon the Jews. Paralyze them, destroy their entity, tear them apart, bring upon them a terrible punishment. Oh Allah, enable us to get to the necks of the Jews. Oh Allah, enable us to get to the necks of the Jews. Oh Allah, enable us to get to the necks of the Jews."
- Hamas' Military commander of Izz ad-Din al-Qassam Brigades **Mohammed Deif**, speaking to Al-Jazeera Network, October 2023, incited Palestinians living in the West

⁶³ Elior Levy, *Hamas leader Sinwar: Hamas will never recognize Israel*, YNET (Oct. 19, 2017) <https://www.ynetnews.com/articles/0,7340,L-5031078,00.html>.

⁶⁴ Dotan Gabay, *"The writing is on the wall": Sinwar's speech a year ago that revealed what was about to happen*, HADASHOT MIVZAK LIVE, (Nov. 27, 2023), <https://www.mivzaklive.co.il/archives/747806>.

Bank to join in the October 7th massacre: “(the Quran says:) ‘kill them wherever you may find them.’” “I say to the young people in the West Bank, from the various organizations: today is your day to sweep out the occupiers and their settlements from all our land in the West Bank and to make them pay the price for their crimes, over the lean years. Organize your attacks on the settlements with all the means at your disposal.”⁶⁵

- Former Chairman of the Hamas Political Bureau **Khaled Mashal**, speaking to TRT network, October 31, 2023, “October 7 paved a wide highway towards the removal of Israel, towards liberation and towards saving Jerusalem and Al- Aqsa Mosque.”⁶⁶
- Senior Hamas Leader **Osama Hamdan**, speaking to Al-Jadeed TV, 2023, “Hamas has just one ‘no’ - no to the existence of Israel.”⁶⁷
- Senior Hamas leader **Ghazi Hamad**, speaking to LBC TV, October 24, 2023, “Israel is a country that has no place on our land. We must remove that country.” “We must teach Israel a lesson, and we will do this again and again.” “The Al-Aqsa Flood is just the first time, and there will be a second, a third, a fourth.” “The occupation must come to an end.”

Interviewer: “Occupation where? In the Gaza Strip?”

Hamad: “No, I am talking about all the Palestinian lands.”

Interviewer: “Does that mean the annihilation of Israel?”

Hamad: “Yes, of course.”

Hamad: “On October 7, October 10, October 1,000,000 – everything we do is justified.”⁶⁸

- Head of the Hamas Political Bureau **Ismail Haniyeh**, speaking at a rally in Tunisia, 2012, “We promise you that we will not cede a single part of Palestine, we will not cede Jerusalem, we will continue to fight, and we will not lay down our arms.”⁶⁹

⁶⁵ *Hamas Military Commander Mohammed Deif Announces Launch of Operation Al-Aqsa Deluge, Calls on Palestinians in West Bank, Jerusalem and Israel Proper to Attacks with Guns, Knives, Vehicles*, MEMRI (Oct. 7, 2023) <https://www.memri.org/tv/hamas-military-commander-deif-operation-aqsa-deluge-calls-palestinian-carry-out-attacks>.

⁶⁶ *Hamas in Their Own Words Since October 7th*, MEMRI (Jan 12, 2024) <https://www.memri.org/tv/hamas-their-own-words-october-7th>.

⁶⁷ *Supra* note 60.

⁶⁸ *Id.*

⁶⁹ *Id.*

In addition to the numerous statements and speeches, the basic documents of Hamas also laid the ground for the attack of October 7. On August 18, 1988, the Hamas Charter was officially signed and published as the group's founding document. The preamble of the text reads as follows: “Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it.” This reflects their desire to establish an Islamic state throughout all of Palestine, from the Mediterranean Sea to the Jordan River. In other words, it rejects the UN Partition Plan, a two-state solution, and the existence of the entire State of Israel, an entity that it promises to destroy.

The Hamas charter uses violent language to describe Israelis as an eternal enemy and all Jews around the world as “infidels,” the source of all evil and something that must be annihilated through Jihad (Islamic Holy War). Article 13 of the charter states that there is “no solution for the Palestinian problem except by Jihad,” while Art. 15 says “in the face of the Jew’s usurpation, it is compulsory that the banner of Jihad be raised.” Most outstanding is the quote that appears under Art. 7, “The Day of Judgement will not come about until Muslims fight Jews and kill them. Then, the Jews will hide behind rocks and trees, and the rocks and trees will cry out; ‘O Muslim, there is a Jew hiding behind me, come and kill him.’” All of this makes the charter deeply anti-Semitic and even genocidal, making direct reference to the “warmongering Jews” and their central role in a global plot to control the world as laid out in the fake Russian conspiracy pamphlet titled the “Protocols of the Elders of Zion” (art. 32).

A revised charter was published in May 2017 under the title “A Document of General Principles and Policies.” Although it still does not recognize Israel, it accepts a Palestinian state in the 1967 borders. In an attempt to seem more moderate, this charter clarifies that Hamas’ fight is only against “Zionists,” not the Jewish people. Nevertheless, “Zionism” is described as the enemy of all Muslims everywhere in the world, and armed resistance to occupation continues to play a central role in the text as a justified means to recover what they claim is theirs.

- *Deliberately and systematically targeting victims on account of their membership of a particular group*

Hamas' actions on October 7 were marked by a deliberate strategy aimed directly at targeting the Jewish people and Israeli nationals. This attack was distinguished by its systematic preparation and execution, with the perpetrators selectively focusing their violence on specific communities, notably the kibbutzim, which are densely populated by Israeli nationals. The comprehensive planning of the assault, which is deduced from the complexity and *modus*

operandi of the attacks,⁷⁰ coupled with the significant quantities of weapons,⁷¹ food, and water used to infiltrate Israel, underscores their intent to target the entire Israeli population if possible (see **Annex II**).

Recoveries made by the Israel Defense Forces (IDF) further substantiate this intent through documents found with the terrorists. These documents contain explicit orders for "causing maximum fatalities and taking hostages" and to "take over the area of responsibility and intimidate and instill fear while taking hostages," delineating a clear strategy to target civilian populations (see **Annex III**).

Moreover, incriminating evidence, including maps of the kibbutzim with detailed instructions to "kill as many people as possible,"⁷² indicate premeditated plans to attack, with a specific focus on women and children. This documentation reveals Hamas's plans for each kibbutz, highlighting the systematic approach to their targeting strategy.

The strategy extended to undermining the security infrastructure of these communities. In Kibbutz Kfar Aza, for example, attackers used maps to identify and target the individuals responsible for security, aiming to hinder the community's defense mechanisms. This methodical approach not only left the population exposed and defenseless but also demonstrated the genocidal intent of the attacks, with a clear focus on eliminating the capacity of these communities to protect themselves and instilling widespread fear among the civilian population. It was clear that the killing of those responsible for the security as well as IDF soldiers was not made in order to eliminate them as a military threat but to allow them to proceed unhindered to their true goal: the harm and killing of civilians.

- *Massive scale of the destructive effect of the acts*

In assessing the genocidal intent behind the October 7th attack, the scale and systematic nature of the acts committed are pivotal. The attack was marked by egregious forms of torture, killing, and inhumane and degrading treatment, culminating in the death of 1,200 individuals, injuries to more than 5,000, the taking of over 250 hostages, and the destruction of approximately 20 towns. Such a devastating toll underscores the massive scale of the destructive effect, with the day recording the highest number of Jewish casualties since the Holocaust.

Critical to understanding this intent are several factors: the magnitude and systematic execution of the attack; the excessive casualties and damage, which surpassed any justifiable military

⁷⁰ U.N. SRSG-SVC Report ¶ 5.

⁷¹ *Id.* ¶ 42.

⁷² Ben Yaniv et al., *First publication: Hamas' battle procedural document – they were ordered to kill civilians*, KAN (Oct. 14, 2023) <https://www.kan.org.il/content/kan-news/defense/566768/>.

necessity; the deliberate targeting of Israeli civilians and Jewish people; and the severe nature and extent of injuries inflicted upon the Israeli population.⁷³ These elements collectively reveal a deliberate aim not only to cause immediate harm but to inflict long-term psychological distress on survivors and the entire nation.

Moreover, considering the geographic area of the perpetrators' activities and their control is essential, as it suggests that the scope of their actions was constrained by the opportunities available to them.⁷⁴ Despite these limitations, the deliberate and targeted nature of their violence points towards a clear intent to destroy, in part or in whole, the protected group.

- *Did the victims constitute a substantial part of the protected group?*

Per the ICJ's case law,⁷⁵ and in relation to the analysis of whether the victims constitute a substantial part of the protected group, not only the quantitative element but also the geographic location and prominence of the targeted group are relevant. In the areas targeted by the perpetrators, the Israeli population living in that area numbered 2022 approximately 278,478. Additionally, there were 3,500 attendees at the Nova Festival and 100 more at the Psyduck Festival; therefore, around 282,078 people were in the attacked area (although it can be assumed that the perpetrators were targeting the entire population).⁷⁶

Moreover, the geographic location of the attacked places is characterized by being extremely close to the Gaza Strip, making it the most accessible for the perpetrators as an initial target. It is clear, by the rest of the elements analyzed in this section, that the intent was to attack the entire population of Israel, and specifically the Jewish people.

- *Context*

The contextual characteristics of the genocidal acts have served as a parameter for analyzing the aims of the perpetrators.⁷⁷ According to the Elements of Crimes of the ICC, for an act to be considered genocide under the Rome Statute, it has to have taken place “in the context of a manifest pattern of similar conduct directed against that group” or amounts to “conduct that could itself effect” the group’s destruction.⁷⁸ Per the latter, it can be argued that had the attackers

⁷³ I.C.J. Croat. v. Serb. case ¶ 413.

⁷⁴ Genocide case ¶ 199.

⁷⁵ Genocide case ¶ 198-200.

⁷⁶ Alumim (531), Ashkelon (153,138), Be’eri (1,071), Erez (616), Holit (210), Kerem Shalom (220), Kisufim (294), Kfar Aza (787), Magen (540), Mefalsim (1,057), Nahal Oz (479), Netivot (46,347), Netiv HaAsara (948), Nirim (416), Nir Oz (380), Nir Yitzak (633), Ofakim (35,506), Psyduck (FESTIVAL: 100 participants), Re’im (422), Sderot (33,002), Sufa (233), Yahini (730), and Zikim (918), Nova (3,500 approximately).

⁷⁷ I.C.J. Croat. v. Serb. case ¶ 419.

⁷⁸ I.C.C., Elements of Crimes ICC-PIOS-LT-03-002/15_Eng (2013).

extended their operations to other regions of Israel with the same intensity and actions as they did in the targeted areas, it could have led to the annihilation of the group in question.

The contextual element, a crucial aspect for analyzing genocidal intent, includes initial actions that signal the emergence of a pattern aimed at destroying a specific group. This involves recognizing early indicators of systematic attempts by Hamas to annihilate Israeli nationals or Jewish people. The formation of Hamas in 1987 during the First Intifada marked the beginning of its campaign against Israeli targets, including abductions, car bombings, and suicide attacks aimed at civilians and military personnel alike.

The year 1987 saw the creation of Hamas at the start of the First Intifada. In this context, they began carrying out attacks on Israeli targets, such as the abduction and murder of soldiers,⁷⁹ the use of car bombs, and other suicide attacks.⁸⁰

The scale of Hamas' attacks escalated significantly during the Second Intifada in the early 2000s under the guise of "armed resistance" against what they termed as "the terrorism of occupation." This period witnessed a surge in suicide bombings in public spaces, stone-throwing, and rocket attacks, with particularly devastating incidents such as the 2001 Dolphinarium discotheque massacre and the 2002 Park Hotel Massacre during the Passover holiday, both resulting in the killing of more than 50 Israeli civilians.

Since the end of the Second Intifada, Hamas gained exponential support from various sectors of the Palestinian society, winning the 2006 elections to the Palestinian National Council and acquiring total control of Gaza the following year. Consequently, their capacity to conduct more extensive and more damaging attacks against Israel increased. Abductions - such as the kidnapping of Israeli soldier Gilad Shalit in 2006 and the kidnapping and killing of three Israeli teenagers in 2014, tunnel digging, shooting, stabbing, and car-ramming attacks have continued to be common practice for the terrorist group until today. Among them, rocket attacks can be said to be the most used and the most disruptive to Israeli civilian life. For instance, in May 2021, Hamas fired thousands of rockets in constant barrages, hitting schools, homes, and other civilian targets. Between these significant outbreaks of violence, Hamas continued orchestrating constant terrorist attacks at any place and time, most of them targeting civilian areas and civilian populations.

The October 7th attack constitutes a manifest pattern of similar conduct, as the attack included multiple crimes in several locations, committed by thousands of perpetrators over several

⁷⁹ 1989: Avi Sasportas and Ilan Saadon; 1992: Nissim Toledano.

⁸⁰ The first suicide attack was on April 16, 1993.

hours.⁸¹ The attacks took place in 22 different locations, and a similar pattern of conduct was observed in all of them. This means that they had similar instructions and training, and, most of all, they shared the same goal.

The crime of genocide reaches completion when the conduct poses a concrete threat to the existence, or a part thereof, of the targeted group.⁸² The October 7 attacks, within their broader historical and operational context, manifestly fit this criterion, demonstrating a clear intent towards the genocide of Israeli nationals or Jewish people.

Considering all of the above, and as required by the case law,⁸³ it can be determined that the only reasonable inference to be drawn from the elements mentioned above and the pattern of conduct is the intent of the perpetrators of the attacks of October 7 to destroy the protected group.

Incitement to commit Genocide

Individuals can be held criminally liable for directly and publicly inciting genocide, a principle that holds even if the genocide itself does not occur.⁸⁴ The criminality lies in the act of incitement, which is considered a prosecutable offense. Thus, any speech or publication that unequivocally calls for the extermination of a protected group establishes grounds for criminal responsibility for incitement to commit genocide.⁸⁵ In this context, Hamas officials have been documented making explicit calls for the destruction of Israel and its population, thereby engaging in public and direct incitement of genocide against a protected group. The significance of these incitements is amplified by the stature of the individuals involved, who hold positions in the de facto government and possess substantial influence, and the mediums through which these messages were disseminated, including television, radio, and during prayer times in mosques, all of which significantly increased the potential for these statements to catalyze genocidal actions.

Historically, Hamas has perpetuated suspicion and animosity towards Israel and the Jewish people, blaming them for the suffering and challenges faced by Palestinians. This narrative, as noted by the Polish delegate during the drafting of the Genocide Convention, can foster an environment conducive to the commission of genocide. The *mens rea*, or criminal intent, required for incitement to genocide is characterized by the desire to directly encourage or instigate another party to commit genocide, necessitating that the individual promoting genocide harbors the specific intent to see it realized.

⁸¹ Horovitz.

⁸² Prosecutor v. Omar Hassan Ahmad al Bashir, Case ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir ¶ 124 (Mar. 4, 2009).

⁸³ I.C.J. Croat. v. Serb. case ¶ 148.

⁸⁴ Rome Statute art. 25(3)(e).

⁸⁵ RICHARD ASHBY WILSON, *Direct and Public Incitement to Commit Genocide*, in INCITEMENT OF TRIAL 25 (2017).

The precedent set by the Holocaust illustrates the necessity of incitement for the execution of genocidal acts; similarly, the scale and coordination of the October 7 attack, involving approximately 3,500 attackers, underline the role of incitement. The intricacy of the attack reveals a level of meticulous planning and organization, underscoring its premeditated nature and the influence of incitement, highlighting the crucial link between the act of inciting genocide and the execution of genocidal acts.

State and Individual Responsibility

Historically, international law has only focused on state responsibility. Still, after the Cold War and World War II, there has been a shift, and individual responsibility has been added and even became the focus when establishing responsibility for grievous atrocities and mass violations of IHRL and IHL.⁸⁶ When it comes to the crime of genocide, it can trigger two types of responsibility: individual criminal responsibility and international state responsibility. These two responsibilities can coexist at the same time,⁸⁷ and a State responsibility can also arise even if no individual is convicted for the crime of genocide.⁸⁸

Individual Responsibility

The Genocide Convention defines genocide as a crime committed by individuals. In connection with this, perpetrators of the crime of genocide have been prosecuted by international courts, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Today, the ICC is the international court tasked with prosecuting and judging individuals who commit crimes within the jurisdiction of the court (including genocide).

In 2015, the State of Palestine lodged a declaration under the Rome Statute accepting the ICC jurisdiction over crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014.” Three years later, in 2018, the State of Palestine referred to the ICC Prosecutor the situation since 13 June 2014. The investigation phase on the Situation in Palestine was initiated in 2021. The Office of the Prosecutor has already confirmed that the ICC has jurisdiction over Palestinians who have committed crimes foreseen in the Rome Statute, including the crime of genocide. Consequently, the abovementioned individuals who have committed both incitement to genocide and the crime of genocide itself fall under the jurisdiction of the ICC.

The Rome Statute provides the ICC with jurisdiction over natural persons. According to Article 25 of the Rome Statute, a person may be held criminally responsible for a crime under the jurisdiction of the court if the person commits or attempts to commit the crime; orders, solicits, or induces the commission

⁸⁶ Marko Milanovic, *State Responsibility for Genocide*, 17 EUR. J. INT'L L. 553 (2006).

⁸⁷ Rome Statute art. 25(4), and Rafael Leme, *Individual Criminal Liability and State Responsibility for Genocide: Boundaries and Intersections*, 34 AM. U. INT'L L. REV. 89 (2018).

⁸⁸ Genocide case ¶ 182.

of the crime; aids, abets, or assists in the commission or attempted commission of the crime, or intentionally contributes to further the criminal activity or purpose of the group.

The ICC prosecutes those who “bear the greatest responsibility,” including leaders of the State or organization responsible for the alleged crimes.⁸⁹ Consequently, Hamas leaders who planned the attack on October 7, including the following, should be held criminally liable for the genocide committed on October 7:

- **Yahya Sinwar** (Head of Hamas in the Gaza Strip)

Yahya Sinwar was born in the Khan Younis refugee camp in southern Gaza. He was among those who established Hamas in 1987 after the first Palestinian uprising (intifada). He is the founder of the Hamas security service known as Majd, which manages internal security matters, investigates suspected Israeli agents, and tracks down Israeli intelligence and security services officers. Sinwar has been arrested three times, and after his third arrest in 1988, he was sentenced to four life terms in prison for the murder of “collaborators” with Israel. However, he was among 1,027 Palestinian and Israeli Arab prisoners released by Israel in exchange for Gilad Shalit, an Israeli soldier held captive in Gaza for over five years by Hamas.⁹⁰

In April 2012, just months after his release, Sinwar was elected to Hamas’s political bureau in the Gaza Strip. He made calls for militants to capture Israelis, prompting the United States to add Sinwar to its list of specially designated global terrorists in 2015.⁹¹ In 2017, Sinwar was appointed head of the group's political bureau in the Gaza Strip. In the days after the October 7th attacks, Sinwar is leading negotiations for prisoner-hostage swaps and directing military operations, possibly from bunkers beneath Gaza.⁹² At the end of October 2023, Sinwar proposed the release of all Palestinian prisoners in Israeli military and criminal detention in exchange for the release of all of the Israeli civilian hostages kidnapped in the conflict.⁹³

- **Mohammed Deif** (militant and supreme military commander of Izz ad-Din al-Qassam Brigades)

⁸⁹ OFFICE OF THE PROSECUTOR OF THE ICC, Paper on some policy issues before the Office of the Prosecutor (Sept. 1, 2003).

⁹⁰ Ivana Kottasová and David Shortell, *Who Is Yahya Sinwar, the Hamas Leader Israel Has Called a ‘Dead Man Walking.’* CNN (Dec. 8, 2023) <https://edition.cnn.com/2023/12/07/middleeast/yahya-sinwar-profile-intl/index.html>.

⁹¹ U.S. Dep’t of State, Terrorist Designations of Yahya Sinwar, Rawhi Mushtaha, and Muhammed Deif (2015).

⁹² Stephen Farrell and Samia Nakhoul, *Hamas leader Sinwar plotted Israel's most deadly day in plain sight*, REUTERS (Dec. 7, 2023) <https://www.reuters.com/world/middle-east/hiding-plain-sight-hamas-leader-sinwar-plotted-destruction-2023-12-01/>.

⁹³ *Hamas chief in Gaza says ready for ‘immediate’ prisoner swap with Israel*, AL ARABIYA ENGLISH (Oct. 28, 2023) <https://english.alarabiya.net/News/middle-east/2023/10/28/Hamas-demands-Israel-free-all-Palestinian-prisoners-in-exchange-for-hostages>.

Born as Mohammad Masri in 1965 in the Khan Yunis Refugee Camp, the militant leader became known as Mohammed Deif after joining Hamas during the first Intifada. Israeli authorities imprisoned him in 1989, after which he formed the al-Qassam Brigades with the aim of capturing Israeli soldiers. Mohammed Deif leads the Izz al-Din al-Qassam Brigades, which is the military arm of the Hamas movement. Along with Sinwar, he was designated as a global terrorist in 2015.⁹⁴

Deif is accused of planning and supervising bus bombings that killed 50 Israelis in 1996 and of involvement in the capture and killing of three Israeli soldiers in the mid-1990s. Israel imprisoned him in 2000, but he escaped at the beginning of the second Palestinian uprising. He helped engineer the construction of tunnels that have allowed Hamas fighters to infiltrate Israel from Gaza.⁹⁵ The source close to Hamas said the decision to prepare the attack on October 7th was taken jointly by Deif, who commands Hamas's Al Qassam Brigades, along with Yahya Sinwar, the leader of Hamas in Gaza.⁹⁶

- **Marwan Issa** (deputy commander of Hamaw's Izz ad-Din al-Qassam Brigades),

Marwan Issa, Mohammed Deif's right-hand man, is the Deputy Commander-in-Chief of the Izz al-Din al-Qassam Brigades. He also serves as a representative for the Brigades in Hamas's political bureau.⁹⁷ Marwan Issa does not frequently appear in public. However, in 2015, he said Hamas was not currently seeking a military confrontation with Israel but preparing to double its force for a future confrontation by manufacturing its own rockets. He said Hamas was also seeking alliances with anyone who would contribute weapons, but without its having to owe anything to the donor.⁹⁸

He was placed on the terror watchlist of the United States in 2019⁹⁹ and the European Union in 2023.¹⁰⁰ Issa is accused of helping plan Hamas's October 7, 2023, attack. According to Hamas sources, he has been involved in many of Hamas' major decisions of recent years and would replace Sinwar or Deif if they are killed or captured.

- **Ismail Haniyeh** (Head of the Hamas Political Bureau)

⁹⁴ *Supra* 84.

⁹⁵ Samia Nakhoul and Laila Bassam, *Who is Mohammed Deif, the Hamas commander behind the attack on Israel?*, REUTERS (Oct. 11, 2023) <https://www.reuters.com/world/middle-east/how-secretive-hamas-commander-masterminded-attack-israel-2023-10-10/>.

⁹⁶ *Id.*

⁹⁷ *Marwan Issa*, COUNTEREXTREMISM, <https://www.counterextremism.com/extremists/marwan-issa>.

⁹⁸ *Elections to the Hamas Political Bureau in the Gaza Strip: Overview and Significance*, INTELLIGENCE AND TERRORISM INFORMATION CENTER (Feb. 22, 2017).

⁹⁹ U.S. Dep't of State, Designation of Marwan Issa as Specially Designated Global Terrorist (Sept. 19, 2019).

¹⁰⁰ European Council Press Release, Fight against terrorism: Council adds two individuals to the EU terrorist list in response to the 7 October attacks (Dec. 8, 2023).

Ismail Haniyeh rose to prominence within Hamas in the 1990s through his close relationship with the organization's co-founder, Sheikh Yassin.¹⁰¹ As noted above, following Hamas' victory in the 2006 elections, Haniyeh was appointed Prime Minister of the PA.¹⁰² In 2007, during the Fatah-Hamas clashes for control, Abbas attempted to remove Haniyeh from that position. However, Haniyeh ignored that order and continued acting as the Prime Minister of the Hamas-controlled Gaza.¹⁰³ Since then, Haniyeh has been a leading public representative of Hamas from within Gaza.

On May 6, 2017, Haniyeh was elected as the head of Hamas's political wing.¹⁰⁴ Haniyeh himself has said that Hamas makes no distinction between its political and military wings and has even gone so far as to vow to "take payments intended for government employees and funnel them to 'military personnel.'"¹⁰⁵ In January 2018, the US State Department designated Haniyeh a Specially Designated Global Terrorist,¹⁰⁶ noting that Haniyeh has close links with Hamas' military wing and has been a proponent of armed struggle, including against civilians.¹⁰⁷

- **Khalil al-Hayya**

Khalil al-Hayya is a senior Hamas politician who was elected deputy leader of the group's Gaza politburo in internal elections in February 2017.¹⁰⁸ Al-Hayya has held several positions in student and workers' unions and was elected to the Palestinian Legislative Council (PLC) in 2006. He played a crucial role in negotiating a ceasefire with Israel during the 2014 Gaza war. Khalil al-Hayya often makes speeches at Hamas rallies and demonstrations and speaks to the media. He invariably calls for increasing terrorism ("the resistance") against Israel. At a rally held in Gaza City in 2016 to mark the 29th anniversary of the founding of Hamas, he called on the PA to support the "resistance" in the West Bank to defend the Palestinian people.

In November 2023, Hayya stated that Hamas's objective was to fundamentally alter the status quo, rather than merely engaging in a conflict. Hayya acknowledged in the interview that

¹⁰¹ *Profile: Hamas PM Ismail Haniya*, BBC NEWS (Dec. 14, 2006) http://news.bbc.co.uk/2/hi/middle_east/4655146.stm.

¹⁰² *Id.*

¹⁰³ *Ismail Haniyeh*, COUNTEREXTREMISM, <https://www.counterextremism.com/extremists/ismail-haniyeh>.

¹⁰⁴ Nidal al-Mughrabi, *Hamas Elects Former Deputy Haniyeh as New Political Chief*, REUTERS (May 6, 2017) <https://www.reuters.com/article/idUSKBN1820DT/>.

¹⁰⁵ *Haniyeh: There's No Distinction Between Hamas' Military, Civilian Wings*, THE TOWER (August 2, 2016) <https://www.thetower.org/3727-haniyeh-theres-no-distinction-between-hamas-military-civilian-wings/>.

¹⁰⁶ Under Exec. Order No. 13224.

¹⁰⁷ U.S. Dep't of State, State Department Terrorist Designations of Ismail Haniyeh, Harakat al-Sabireen, Liwa al-Thawra, and Harakat Sawa'd Misr (HASM) (Jan. 31, 2018).

¹⁰⁸ *Khalil al-Hayya*, COUNTEREXTREMISM, <https://www.counterextremism.com/extremists/khalil-al-hayya>.

governing Gaza or enhancing the living standards of its residents was not Hamas's aim. The organization's goal, he elaborated, is “to completely overthrow the situation.”¹⁰⁹

- **Khaled Mashaal** (former Chairman of the Hamas Political Bureau).

Khaled Mashaal, born in the West Bank in 1956, is considered one of the founders of Hamas.¹¹⁰ Despite Hamas’s control of Gaza, Meshaal has never lived there. He resides in Qatar, from where he has acted as the public face of Hamas for more than a decade. Meshaal visited the Gaza Strip for the first time in 2012.

Hamas elected Ismail Haniyeh to succeed Meshaal as head of its political bureau in 2017, and Meshaal became head of the group's political bureau abroad. Since the October 7th attack, Meshaal has been vocal in international media, defending Hamas and calling for the Muslim world to join Hamas in its fight against Israel. On October 11, Meshaal called for a Muslim uprising across the world against Israel on October 13, particularly in countries bordering Israel. He called on Muslims and all those who teach jihad to turn theory into violent practice.¹¹¹

Universal Jurisdiction over Crimes of Genocide

Perpetrators of the crime of genocide can be prosecuted in national courts based on two principles. Firstly, on the nationality of the victims, since states can claim the applicability of their jurisdiction on the basis that their nationals were victims of the attack. Secondly, under the principle of universal jurisdiction, all states have not only the authority but also the duty of prosecuting the perpetrators who committed the crime of genocide on October 7.

Article VI of the Genocide Convention establishes that “persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.” The Genocide Convention does not directly address the exercise of universal jurisdiction. However, Article VI has been interpreted as non-exclusive,¹¹² therefore potentially allowing for the application of universal jurisdiction to the crimes contained in the Genocide Convention.

¹⁰⁹ Ben Hubbard and Maria Abi-Habib, *Behind Hamas’s Bloody Gambit to Create a ‘Permanent’ State of War*, THE NEW YORK TIMES (Nov. 8, 2023) <https://www.nytimes.com/2023/11/08/world/middleeast/hamas-israel-gaza-war.html>.

¹¹⁰ BBC News, *Hamas: Who are the group's most prominent leaders?* (Oct 17, 2023) ; available at: <https://www.bbc.com/news/world-middle-east-67103298>

¹¹¹ Former Hamas chief calls for protests, neighbours to join war against Israel, Reuters (Oct 11, 2023); available at: <https://www.reuters.com/world/middle-east/former-hamas-chief-calls-protests-neighbours-join-war-against-israel-2023-10-11/>

¹¹² Hans W. Baade, *The Eichmann Trial: Some Legal Aspects*, 1961(3) DUKE LAW J. 400 (1961).

The principle of universal jurisdiction allows states to exercise jurisdiction over certain crimes, even if they occurred outside of the state's territory, and neither the victim nor the perpetrator are nationals of that state. Genocide has been recognized as one of the crimes that are subjected to universal jurisdiction. In the 1996 Draft Code of Crimes against the Peace and Security of Mankind, the International Law Commission established that states “shall take measures as may be necessary to establish its jurisdiction over the crimes set out in articles 17 [Crime of genocide] [...] irrespective of where or by whom those crimes were committed.”¹¹³

Moreover, state practice regarding the exercise of universal jurisdiction in respect of genocide also supports this position. For instance, in 2019, based on the principle of universal jurisdiction, Belgium convicted a former Rwandan officer for committing the crime of Genocide in 1994. In 2020, Argentina opened an investigation against Myanmar's leader, Aung San Suu Kyi, for the genocide committed in Myanmar against the Rohingya people.¹¹⁴ In 2022, two Rwandan nationals (Pierre Basabose and Séraphin Twahirwa) were charged with the crime of genocide in Belgian courts based on the principle of universal jurisdiction.¹¹⁵

Considering the above, any nation has the authority to launch investigations, pursue legal action and request extradition for Hamas officials and against anyone implicated in the genocide that occurred on October 7.

State Responsibility

Per the state's responsibility, it is essential to address what are the obligations of the state concerning the crime of genocide. The state parties to the Genocide Convention have a direct obligation to prevent and punish the crime of genocide.¹¹⁶ Moreover, article IX of the Genocide Convention makes reference to the fact that disputes in relation to the Genocide Convention, including those relating to the responsibility of a state for genocide, shall be submitted to the ICJ. This article entails two things: first, that states can be themselves responsible for the commission of genocide, and secondly, that the jurisdiction over such cases is of the ICJ.

The ICJ further confirmed that states are bound by the Genocide Convention not to commit “through their organs or person or groups whose conduct is attributable to them” genocide or any of the acts enumerated in Article III of the Genocide Convention.¹¹⁷ Consequently, a State could be rendered

¹¹³ Draft Code of Crimes against the Peace and Security of Mankind, [1996] 2 Y.B. Int'l L. Comm'n, arts. 8 and 17.

¹¹⁴ *2021 Highlights in the Universal Jurisdiction Annual Review (UJAR)*, TRIAL INTERNATIONAL (Apr. 4, 2022).

¹¹⁵ *2023 Highlights in the Universal Jurisdiction Annual Review (UJAR)*, TRIAL INTERNATIONAL.

¹¹⁶ Genocide Convention, art. I.

¹¹⁷ Genocide case ¶ 168 and 179

responsible for the commission of genocide if it is committed by individuals who design or implement State policies and whose actions can be attributed to the state.¹¹⁸

The State of Palestine, represented by the Palestinian Authority, acceded and ratified the Genocide Convention in 2014. Therefore, the State of Palestine must also comply with the obligations outlined in the Genocide Convention. These, as highlighted above, do not only include the prohibition of committing genocide but also to prevent and punish the crime of genocide.

The Palestinian Authority not only did not prevent or punish the genocide committed on October 7, but it even provided stipends to terrorists who perpetrated the genocide on October 7.¹¹⁹ The basis for this is Law No.14 (2004) on Aid for Prisoners in Israeli Prisons and its amendment, the Palestinian Prisoners Law No.19, which provides the legal basis for the allocation of monthly salaries and grants for health insurance and tuition fees at schools, among other things, to which Palestinians and Israeli Arabs are entitled when they commit or are involved in terror attacks in Israel. Those who are imprisoned, as well as those who die as “Martyrs,” are rewarded for participating in the “struggle against the occupation” with stipends, subsidies, and benefits enjoyed by them and/or their families.

Thus, anyone in Israeli prison as a result of committing acts of terror is on the PA payroll from the day of the arrest, and they continue to be for however long the sentence is. In the case of martyrs, the beneficiaries of these reward payments are the deceased terrorist’s family members, including parents, spouse, children, and any other dependent member of the household. They constitute the so-called “Prisoner’s Fund” and “Martyrs Fund”, respectively. Under this institutionalized campaign for violence, the deadlier and more damaging the attack is, the longer the prison sentence and, thus, the bigger the amount of money received.

The interrogation of various Hamas detainees revealed that not only were they instructed to kidnap women, children, and the elderly, but they were told that a reward of \$10,000 and an apartment would be given to those who did it.¹²⁰ These testimonies prove that the policy of “Pay for Slay” was, once again, a significant motivating factor that encouraged the perpetuation of the vicious attacks witnessed on October 7, a phenomenon present in both Gaza and the West Bank.

Moreover, Palestinian officials from the Palestinian Authority have also expressed their support for the attack on October 7. Fatah official **Jibril Rajoub**, whose name has come up as a possible successor to

¹¹⁸ Horovitz.

¹¹⁹ Sveta Listratov, *661 terrorists tied to Oct. 7 to get PA ‘pay for slay’ financial stipends*, JEWISH NEWS SYNDICATE (Jan. 12, 2024) [HTTPS://WWW.JNS.ORG/661-terrorists-tied-to-oct-7-to-get-pa-pay-for-slay-stipends/](https://www.jns.org/661-terrorists-tied-to-oct-7-to-get-pa-pay-for-slay-stipends/).

¹²⁰ Maya Zanger-Nadis, *Hamas terrorists: We were told “whoever brings a hostage gets \$10,000”*, THE JERUSALEM POST (Oct. 23, 2023) <https://www.jpost.com/israel-news/article-769825>.

Abbas, President of the Palestinian Authority, has justified the attack of October 7, even warning that it the attack was “the first of many.”¹²¹

According to Article IX of the Genocide Convention and as stated above, “Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the ICJ at the request of any of the parties to the dispute.” If any state considers that the State of Palestine has violated its obligations under the Genocide Convention, and there is a dispute between them, the ICJ could potentially review such dispute and assess whether the State of Palestine has breached the provisions of the Convention. As stated by the ICJ in the recent *South Africa v. Israel* case, the ICJ could evaluate a case in which two parties (the State of Palestine and another state) hold “opposite views as to whether certain acts or omissions” amount to violations of the obligations contained in the Genocide Convention.¹²²

Conclusion

This report comprehensively examines the devastating events of October 7, 2023, presenting a detailed analysis that underscores the actions by Hamas and other terrorist organizations as constituting genocide under international law. By meticulously detailing the historical context, entities involved, and the heinous acts committed, the report not only sheds light on the systematic nature of the atrocities but also highlights the failure of the international community to adequately address and prevent such crimes. Moreover, the report also emphasizes the crucial role of international legal mechanisms in ensuring justice for the victims and preventing future occurrences of such egregious violations of human rights.

This document serves as a compelling call to action, urging the global community to confront and acknowledge the atrocities of October 7 as genocide in order to honor the victims and prevent future atrocities. Through its rigorous analysis and presentation of facts, the report reinforces the critical importance of international recognition and response to acts of genocide, highlighting the fundamental role of truth and accountability in the path toward justice and healing. As rightly stated by the Appeals Chamber of the ICTY, where the requirements are satisfied, the law must not shy away from referring to the crime committed by its proper name.¹²³ We call the massacre of October 7 by its proper name: genocide.

¹²¹ *Palestinian Officials Justify Hamas' October 7 Massacre: It Was Not Terror But A Natural Reaction To Occupation; 'The Next Explosion, Even More Violent, Will Be In The West Bank'; Hamas Is And Will Remain Part Of The Palestinian Fabric*, MEMRI (Dec. 6, 2023) <https://www.memri.org/reports/palestinian-officials-justify-hamas-october-7-massacre-it-was-not-terror-natural-reaction>.

¹²² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.)*, Judgment, 2015 I.C.J.

¹²³ *Prosecutor v. Radislav Krstic*, Case No. IT-98-33-A, Judgment ¶ 37 (Apr. 19, 2004).

Annexes

Testimony of Yuval Raphael, survivor of the Nova Festival

I went to the party with four friends. It is a little confusing because two have the same name, so it is me, my friend, Adar, Bar M., Bar G. and Shirel. Adar was the one driving the car. We picked one of the girls (Bar. M) from Or haNer, 15 minutes from where the party is located - she lives there. The ride was actually amazing, we heard trance music on the way we were in a super good mood. We arrived there at the party parking lot at around 1:30 am. The parking lot is huge; all cars are parked in lines. We drank a few cups of alcohol next to the car listening to some music before going inside the party because it wasn't allowed to bring drinks inside.

Around 3 am we went inside the party. That's where we established our camp. There is a side part where you can put your camp stuff, and it was pretty close to the stage so we used to go back and forth. Around 6:15 we went back to our camp, except for Shirel. In Israel, because you do the military and have the big trip right after (South America/East), you know people from all around Israel. So usually you'd know a lot of people on occasions like these. And so we did meet a lot of friends at the party, and Shirel saw and went with some of them.

All of a sudden 6:30 am the music stops. We are at the camp, I look at my phone which is going crazy, and I see 40 updates "red alerts." Adar immediately wants to go; she gets really scared by these things. I was calm, my thoughts were. It was 6:30, and the party was not supposed to end until 3 pm. We were in Otef Gaza - missiles are common there, and there is the Iron Dome so there isn't really anything to be worried about. So I thought we could wait until the missiles stopped and the party would continue, but that wasn't the case; the party was announced closed, and if it wasn't, Adar refused to stay. She screamed to take the stuff quickly and get out of there.

Another friend that was there - Gon, helped us pick everything up and we ran to the car. We could see so many people start running into the parking lot. The whole party area, especially the parking lot was an open field so I could see missiles, covering the entire sky. I took my phone when we got to the car and started filming, Adar screamed at me to turn it off immediately and get in the car. We started driving towards the exit of the parking lot. The problem was there were tons of cars there trying to get out as well, Adar couldn't stop crying. And then we realized Shirel wasn't with us we called her non-stop until we got reach of her. As I said there were a lot of cars and the place was huge. It was really hard to find each other. During the conversation we saw this big pink fabric We asked Shirel to get to it, and one of us would come to pick her up from there and lead her to the car back to us.

When we were five again, the plan was to get to Or haNer - Bar's house at the kibbutz, 15 min away from the party, and wait there. We turned left and connected to road 232, the main road where

everything happened. We started driving for about 5 minutes. It is a small road, with only 2 pathways, one was completely empty (direction to the party) and the other was completely packed.

All of a sudden we saw cars returning and didn't understand we asked who returned to explain the reason, and they said that they were saying there was a terrorist shooting the cars. I looked straight ahead and I saw someone on the road. I didn't know if I could fully believe that because everyone was hysterical, but we couldn't take any chances, so we turned back 200-300 meters we saw two little bomb shelters, a square meter shelter, located next to a bus station. It is right on the road. On the sidewalk, we saw tons of people there waiting outside the shelters. We decided to park the car and go inside.

When we exited the car, I called my dad. I have all the recordings from the conversations with him. I remember staying outside, and during the phone call, two girls came out, holding another girl who fainted. I tried to find some water for her, then I went back inside to be with Adar. She was with Shirel. Adar was very much hysterical. I was trying to calm her down. While doing that I kind of was processing this. I had the thought that if there was a terrorist on the road, we just went back 200 meters. There is the military and the police but who knows if they are coming on time, and I am the best target because I am between four walls, and if they get inside I am done.

(Still with my dad on the phone) I was trying to explain to Adar my thoughts, but unfortunately, while I was doing that Adar yelled at me to stop. She freaked out when I mentioned terrorists. I understood that we were not going anywhere since it was Adar's car so I did my best to calm her down. I see that the two Bars are not in the bomb shelter. At that time all the people outside the shelter started to come inside, so it was very crowded.

Asking for Adar and Shirel to call them, I made my way between the people to the entrance of the bomb shelter to call the two Bars back inside. Turning back, Adar is sitting at the very end of the bomb shelter, in the right corner. I went to her and sat next to her. Then Bar G. came and sat next to us. A few minutes later a guy named Ben sits between me and Bar. So it was me, Ben, Bar and then Adar.

While I was calming down Adar, a girl I didn't know sitting to my left grabbed my hand crying. I talked to both girls, trying to tell them. It will be all over soon. At that point, almost everyone is inside the bomb shelter. Our two other friends Shirel and Bar M. were sitting down close to the entrance of the shelter. A few minutes later, we start hearing gunshots.

Since we were on the road, we heard everything that was going on (cars, conversations outside...). We started hearing gunshots, and the people in the front of the shelter - which has no door - could see the outside. They started screaming that it was the military handling the situation. I was still on the phone with my dad telling him everything is ok and that there is military. Two seconds later someone screams that there is an injured person outside on the road. I told my dad we have an injured one, I am starting

to process everything. Everyone starts hashing. He is asking me - "wait, you have an injured person?" I tell him to be quiet for a second understanding that there might be terrorists outside.

And that's when they found us, around 7:15 am, terrorists came inside our bomb shelter and started shooting everyone, I dropped my phone, and I lost contact with my dad. Because I was sitting down and at the very end, the 50 people came back and started falling on top of us. I just remember covering my head with my hands, and waiting for the sound of gunshots to be over. When it was done, we could hear them slamming the car door and driving away.

Before I took my head back up, I could hear Bar's voice whispering Adar's name, "I'm here" back to her, then mine, I did the same, then Ben's. When I picked my head up, I immediately looked forward toward Bar and Shirel, Bar looked back at me, not saying a word. Then I realized all the dead bodies. I looked to my left and saw that same girl who was holding my hand dead on my left shoulder. I was probably in complete shock because I don't remember emotions, just seeing her and turning back. I felt my right leg hurting a lot. When I looked, I saw it was covered with another dead body, my leg was completely twisted under her.

Because the bomb shelter was so small, and the dead bodies were so heavy, plus being almost 50 people in total, the way we were positioned after the first shooting was the way we're gonna stay for the entire eight hours. There is no way to move.

Ben, the guy who sat next to me started screaming a name - "Lotan." He was calling over and over again. Lotan was his best friend, we tried to hush him but he wouldn't listen, Lotan never answered him, Ben started screaming No! He tries to stand up. He had his legs very close to him so he could sort of stand up by leaning on the wall. Me and Bar freaked out because if the terrorists came back, he is not protected and would be immediately killed, we pulled him down from both sides. We talked to him, and told him that we're here with him. He has to stay calm. He was crying, saying his 2 friends' names, Lotan and May are dead.

There was this huge guy that was on top of everyone from the left corner. His legs reached my face, he kept kicking me and pushing my head down putting his leg on top of my head. From where Bar was sitting, she saw that he had a big gunshot wound between the butt and thigh area. The leg was like putting so much pressure on my head that I couldn't breathe. I kept asking him to take off his leg because he was hurting me. This was on and off for like 5 hours. Sometimes Ben would pick up his leg and try to prevent them from kicking my face. That was the first shooting - I called my dad after getting it a little tighter.

To be honest I thought it took us 5-10 minutes until everyone started talking again. I thought I called my dad right after. But talking to my dad about the 7th a week after he said I lost contact for an hour.

We had no sense of time there. This next phone call went viral a week after the 7th. In that phone call, I ask my dad, crying, to immediately call the police. The conversation goes like this

Me: Dad you have to call the police we have many deaths you have to call the police.

My dad: deaths!?

Me: (crying) Dad you have to send the police here now!! Dad, I'm begging crushed I can't breathe.

Dad: stay crushed honey, stay crushed you have to calm down, are there still terrorists there?

Me: they are patrolling the area.

Dad: Hang up the phone!!! Hang up the phone, play dead!!

This conversation switched me. I had my survival mode now. It was a small instruction but that could maybe save my life. So I said okay bye, hung up the phone, and told everyone the same instruction: whenever the terrorists come, we need to play dead.

The next time I heard the cars coming I used the dead body that was on my leg to protect me. Because I had the dead girl on my left shoulder, I couldn't lean to the left. My back was glued to the wall, to my right the dead body was down on my leg, so I could lean down towards her face. What I would do is I'd grab her hair with my two hands slide my head under her, put her cheek on my cheek, and protect my face.

I can't explain how heavy a body turns when it is dead. It took all my strength to pull her head up. I did that every single time they came in. The position twisted my entire body, because I was leaning down and to the side but it was the only way to protect the head. Every time I was doing that It would leave my back exposed.

At one point, somewhere around the fourth or fifth time they came in, the terrorists started throwing grenades inside the shelter as well. When the grenades exploded, I don't know what it was, but it felt like flakes they were boiling hot, sometimes they fell on my exposed back, they glued to my skin, and burned so bad but I wouldn't move. I played dead.

My dad's instruction made me focus. I would use it every time the terrorists leave after another shooting to call the police and send our location. Most of the time it was very hard to do because there was poor service inside the shelter. Sometimes the conversation would hang up in the middle, or sometimes it would take them a long time to answer the phone.

After four hours, I reached my breaking point. I called the police dozens of times and every time they told me there was a unit coming to us. They told me that in every conversation but it has been four hours

and about 20 phone calls. Every time I heard a car coming I was hoping it is the police, but then it was another shooting.

I remember thinking - I have no idea why, but no one is coming. I had one last conversation with the police that time I was screaming I was so angry I was calling so many times and been told the same exact thing. I was explaining that in those four hours that I've been calling them and then telling me that there is police coming the terrorists came back around five times each time more people die next time it could be me I've got the same answer. A unit is coming.

I hung up the phone, and all I could think about is the pain in my leg, I could feel my bones cracking for hours and there was nothing I could do about it. I couldn't change the way I was sitting, and even trying to adjust it made it worse. I started crying loudly and complaining, and my friends kept hushing me. But I couldn't. I was going crazy; I couldn't stand feeling the pain anymore. I tried to calm myself down. I closed my eyes and started breathing to myself.

I remember having a vivid image of me looking at myself in my bedroom, in my mom's house, I'm looking from the ceiling and seeing myself lying on my bed, in a baby position. When I closed my eyes, I could see either this or a picture of my right leg bone cracking. I was talking to myself, telling myself that I was okay and that it wasn't hurting. But it was a lie that did not help.

From the beginning, I kept moving my toes, so I had blood flow. But at one point it started hurting so much even to do that. I could feel my foot swallowing inside the boot. But it was the only thing I could do to save the leg. So I kept doing it, and then with all these thoughts in my head and knowing that it was a matter of time that terrorists come back inside and shoot again. No police are coming. I would die eventually; it is going to happen at one point, so why not now and just stop with this pain? I thought I was done, I didn't want to feel that pain anymore so next time the terrorists come, I thought, I will open my eyes so they see I am still alive and well shoot directly at me.

I made my decision, and so I waited. But when they came back, I couldn't. I wanted to fight more.

After the four-hour breakdown, I stopped calling with my phone. It was always a shooting and then immediately after they would throw one or two grenades. In total, I think there were around 8 grenades thrown inside the shelter. The first one, we had a family there with us, and the father of the family jumped on that grenade and saved the people around him. Some of them died after, in the shootings to come.

It's the scariest sound I've heard in my life. Gunshots made my heart race, the grenades made my heart stop. My first thought was "Oh my G-d, my friends. What is the first thing I will see when I look?"

We whispered every time before we look. And the beeping sound in the ears is very strong. I looked up at Shirel and Bar every time. Every time I lifted up after a grenade, I didn't understand why at the time, but there was more room in the shelter. Later, I realized it was because people exploded. Every time we picked out heads up, we couldn't understand why there were less and less people. We thought they were taking dead bodies. We didn't realize that it was because of the grenades.

And at one point I thought I felt a bullet through my leg. It wasn't a bullet, though it was tiny grenade pieces and gunpowder glued to my skin.

Because there was more room, I thought maybe I could manage to move the dead body and take it off my leg. I tried to do it alone at first, but it didn't work. So I asked Ben, Bar, and Adar to help me each one grabbing her from a different side and trying to pull her up, and I was pulling her head up from her hair and my other hand was grabbing to the wall. We barely moved her, but I still tried to take my leg out even tried to break it in order to slide it out but it was too painful and I was making too much noise so we had to stop.

Bar G. had her phone the entire time. She was in contact with her mum and my dad via WhatsApp. I asked her to send my dad a recording in the recording I said "dad I am still alive, I have a dead body on my leg, I think I am going to have it amputated if I come out of here."

All of a sudden, we smelled burns, they burned all of the cars that we parked on the sidewalk. And I think they burnt the field around the road, including behind our shelter. So a lot of smoke started to come inside. Bar wrote my dad what was happening; he told us to take a fabric and fill it with blood and put it on our faces so we could breathe. I didn't read that message.

We spoke between all the people alive in the shelter. And we said we have to get out, because we are going to die if we stay inside, we weren't able to breathe anymore. After a few words everyone was like "okay, we are going out." But no one could get up, and I was excited because I was going to be relieved from the body on my leg, but people just couldn't get up. So that was another breaking moment for me.

All of a sudden, the smoke started to get out. There were a couple of minutes that we couldn't breathe. We didn't drink water for 6 hours at that point. But then all of a sudden the smoke started to go out. The terrorists came back inside again. I didn't care about the gunshots anymore, I was used to it at that point, for me gunshots were the preparation for the grenade.

The grenade exploded and I felt myself getting wet from top to bottom as if I had a shower. And I didn't understand if it was mine or not and I opened my eyes and I could see a lot of blood spilling all over my body. It wasn't mine.

I also remember between the time the terrorists came in and out there was this girl that kept saying “look at me, look at me” and so I looked at her. She was at the entrance of the bomb shelter. I could see her face so clearly. Her eyes were so swollen. She couldn’t open them. And the entire face was five times the size of a normal face, she just kept saying “look at me” because she was feeling it but couldn’t see. And I am pretty sure she couldn’t hear anything at that point because they came back, again, and all of us were quiet but she couldn’t stop crying. Not hysterically but constantly weeping.

That was the first time I heard a terrorist speak inside the shelter. Until that point, it was only the gun shots, grenades, cars, and conversations outside. But the sound of the voice is very different inside the bomb shelter, there’s an echo and the sound is very loud. He started shouting at her “shut up” my heart stopped when I heard him, I remember trying to hold my breath so he wouldn’t hear it. He didn’t shoot her. But then I heard a strong clap sound. And I thought it was the sound of a strike to her head. When I opened my eyes, she wasn’t sitting anymore.

After that we had more time between the “sessions” of the terrorists coming inside. People who had their phones saw on the news updates the terrorists in the area are being attacked by the military. Dan, the man who before had his legs kicking my head decided to run out. I believe he had taken drugs before and also his wounds were really bad. We were telling him not to go out because they will kill him and also they will know that there are still people alive inside and they would come again. He was not answering us. And he didn’t listen.

That also made a lot more space. Ben, who was sitting on my right side, and Bar, that was glued to the right side of Ben, both decided to move to the left corner where Dan left. When they did, I had a lot more space. It allowed me to take my hand and put it under the dead body’s head, because the head wasn’t on my body, so there was space between her head and the floor. So that way I could alleviate a bit of weight from my leg. But because I was on the corner, my elbow, when I put my hand down, was stuck in the corner. So this also started to hurt really badly

I was moving from pain to pain, when it was too much for my leg, I put my hand under her head when it was too much for my elbow I leaned back on the dead body's head. It was like that for what felt like a long time.

I remember thinking I have to sleep. I can’t explain it but I had a big feeling that it would be fine if I fell asleep. I don’t know if it was the smartest thing but I think it saved me. I knowingly made myself sleep and when I woke up I was as if I hadn’t been there for the past six hours, with much more strength, like feeling that it was the end and that we survive this.

When I felt that, I turned a bit to the side, and put my hand through the bodies on the ground and I found phones and I couldn't find mine. I did another twist and I saw my phone on the back of the body that

was on my shoulder. So I pulled my hand, took my phone and called my dad. He told me there was a unit coming to 232 road, that there is a military father looking for his daughter with his unit. He said he was sending me the contact number of this man. I called his number and he told me to count how many people were still alive. I counted 11 and he said to send the location, but it wouldn't send, and the second the location was sent, my phone died. And he was able to tell me that they would be in the shelter in 30 minutes. I knew I didn't have a good sense of time there, but it hasn't been 30 minutes, and someone was screaming on the road asking if there was anyone who needed rescue.

During the entire time, I was thinking about the rescue a lot. How it is going to look like, to sound like. I imagined helicopters coming down. Until today I think that there was a helicopter that landed on the road. Leaving that out, which I don't know if it happened, I imagined the sirens of the police and the soldiers coming. But I didn't picture someone screaming if someone needed rescue. There was no option for that, the road was full of terrorists. There is no sense in that. But then, when I looked at my friends, Bar was thinking the same and that we shouldn't get up. All of the other people, 6 or 7 people were screaming "yes, we need rescue!" and then he came inside. I saw his face, he looked very scary. He was holding a gun and screaming at everyone to get up. Everyone was in shock. People slowly started to get up. He was standing on top of dead bodies leaning on the wall with one hand and the other one with the gun pointing at the entrance of the shelter. People started going to him. And then I hear that every time someone went out there were gunshots. So I thought that every time someone would leave they were killing them. And at one point he started screaming "Nitzan, Nitzan!" and Nitzan, who was one of the girls who was still alive in the shelter, she got up after she saw his face. And then we knew it was a rescue.

My friends started to get up. I couldn't get up because of the body on my leg, I couldn't move it. Adar was in front of me standing up, I was screaming at her with instructions to take the body off. She was in complete shock, not understanding what I was saying. I took the body's hand and pulled up so Adar would understand what I need. She is looking at me, not talking not doing anything. Motti, the man rescuing us, was screaming at her, saying "what are you doing just standing there? Get out!" and she turned around and left.

Then I saw Ben, and the exact same thing. I was screaming at him and he was in shock and not answering. So I showed him the same as I did to adar, I started pulling the hand up and then he helped me, he managed to pull her a little, then he completely let go. I yelled "you have to take her again" and eventually, he did it, and she was off of me.

I got up my leg was shaking. I took my boots off and I started walking towards the entrance, towards Motti, he was on top of all the bodies in the entrance. I had to step and walk on top of them to in order to get out. There were two girls that were completely broken. One had her leg on top of the head, and her hand was disconnected, and she had holes inside. And I had to step on that to leave.

I was leaning with both of my hands on both sides of the walls and walked slowly towards the exit. Then I could see light. And my eyes were hurting. I could see the truck, and from the side of the bomb shelter I could see two soldiers with the guns, and the reason for the shotguns is because there were shooting so no one would come near while they rescued us.

There were two cars, one with a huge trunk. The guys pulled me up to the trunk, And I was laying on them. It was basically people laying on each other. Bar and Shirel, because they were at the entrance, they had gunshot wounds. Bar had 5 shots, one bullet is still inside to this date. Shirel had one bullet through the knee that came out from the back of the leg. They had to be carried out because they couldn't move. I was last to get into the trunk before Bar and Shirel. Because of their gun wounds, they had to put both of Bar and Shirel legs on to of mine so it won't hurt them during the ride.

The first thing we shouted to get was water. We wouldn't stop drinking water. We started taking pictures, our noses were all black because of breathing the air of the gunshots and the fire and the grenades. Then they instructed us not to look outside because the entire road was a disaster, and I thought "what is there to see that I didn't already see for the past 8 hours," but I remember sending a message to my dad saying that they were rescuing us. I just lied down with my head on top of someones chest and looked at the sky and breathed.

They brought us to a big gas station. And when we got there I was shocked about how many forces were there. So much police and military, and I was thinking "what are they doing here and not inside?" Now I know it is because we were I think the only survivors there. No one thought that on 232 road there were survivors. Only Motti knew. When we got there they looked at us like we were dead bodies walking. And I can't blame them, we were covered in blood from head to toes, and gunshots everywhere.

Everyone went out from the trunk but I couldn't because Shirel and Bar's legs were on my leg. So I had to wait until they did turnstiles on Bar and Shirel. After they did that they separated us. From the gas station we had to be taken to different hospitals depending on the wounds.

Since Shirel and Bar M. were more wounded, they had to be taken elsewhere. And we yelled that they couldn't separate us, but they assured us they were going to take them somewhere safe. So me, Bar and Adar stayed together and then at one point also Bar G. got separated from us. Adar and I were taken to the Ofakim police station. There were so many people there, I think like 200 or 300 people. It was all kids from the party.

We are taken out of the car and going towards the people. All of a sudden, a guy comes out from the group of people and looks at me "Yuval?" It was a friend that I had traveled with in South America.

The look on his face made me feel so uncomfortable. It seemed like he wasn't sure if it was me. I remember seeing him and I ran towards him.

Then I kind of realized something and I started crying and he was with me there. After thinking of the look on his face, I went to the bathroom, and there was no mirror there but there was a shower with shampoo and conditioner. So I just wanted to wash my hair. I had a hair bun, and I put my head down and with the shower head I started putting water on and the water falling was all black. I washed with the shampoo and I felt the pieces falling from my head. Then I saw it was humans' chunks of skin. That's when I had the realization that people exploded inside the shelter. As if it wasn't obvious.

Me and Adar were taken together to Soroka's hospital. I went again to the bathroom to make sure my dad sees me in the least terrifying way possible. My dad met us there with my cousin and my sister. We started telling the story and kind of laughing about it, like about the fact that we had to pee on each other.

My dad wanted to take us to my grandma's home so we could shower and then he could take us to another hospital that wasn't so busy. So we did that, I stayed in the hospital one night. I had bone fractures in my leg, and my muscles spreaded, and when that happens, protein gets into the blood. So the kidneys try to clean it, unfortunately kidneys cannot do it, so it leads to kidney failure. They had to put intravenous, and I had that for a week. They didn't want me to stay in the hospital so I got hospitalized at home, and a doctor came twice a day.

Today, I get treated mentally on a weekly basis.

Testimony of Nachman and Valerie Dyksztein (ZAKA)

Saturday, October 7 - We were in Israel for the Jewish holidays since we don't live in Israel, and our official position is the following: Nachman is the Commander of Zaka Europe and Ukraine, and Valerie is the Deputy Commander, and we belong to the international unit of Zaka, not to the Israeli one.

At 6:30 in the morning, the sirens started, and a few hours later, around 9-10, we understood that it wasn't just sirens. At around 16:00, we joined the Zaka rescue unit. We called Chaim Veignerten, Chief of Operations at Zaka, and asked him what I could do and where I could help. Chaim told me to go to the Brazilya Hospital (Ashkelon). We got there around 17-17:30 and already saw dozens of dead bodies. We were there until around 21:30. We were collecting fingerprints from the soldiers, and then we put the bodies in bags.

Around 21:30, we went on an ambulance together with three other Zaka volunteers. We drove through road 34, where we saw a lot of RPGs, weapons, Kalashnikovs, and grenades. There were bodies on that road. As we approached the Nova festival location, the scenes got worse. That was the first time that we grasped the scale of the atrocities committed. On that we we spotted the mobile shelters, but we weren't able to stop and assist and show our last respect because we didn't have enough bags and manpower since we didn't know the amount of bodies would be so high.



Then we went on the route 232 and it was very dark. We saw the bodies in the way. Cars looked as if they were burnt by RPGs, and bodies around and inside the cars. The bodies were of civilians. They had signs of shootings. We also saw the mobile shelters, we went inside and saw the bodies but we came back to check it after we went to Re'eim.

From what we remember, it was around midnight when we started to put the bodies on the side of the road so the road would be accessible. We then got to the area of the Nova Party in Re'eim, after Be'eri. On the right side it was where the party took place. On the left side, there was a tree that was set on fire,

and next to it we found several burnt bodies. We tried to put them in bags but they melted because of the bodies' heat. We spilled water and put them in the trunk of a big truck. There were dozens of bodies in the area of the burning tree. Then we went to the right side, where we saw hundreds of bodies (and as it turned out later, more than 300 bodies). There were dead bodies all around.



There were still terrorists in the area that were shooting, and also rockets and missiles coming from the Gaza Strip. Every time that a terrorist was attacking, they told us to lie on the floor.

Among the bodies, I (Nachman) found girls who were without tops uncovered. That was already around 4 in the morning. Then, there was a warning that more terrorists were coming, so they told us to leave Re'eim and go further inside the country (Ashkelon).

On the way back, we went from road 232. And then we stopped in 2 mobile shelters. In each shelter, there were between 12-19 bodies. There were bodies stacked on top of each other. There were still grenades inside that didn't explode. The faces of the people were shattered and twisted. There was one man that was burnt in the groin part. There were naked women inside the shelters.



We went back home and arrived around 8 in the morning.

Sunday, October 8 - Around 10:00, I (Nachman) returned to the area of the Nova party while there were still terrorists there shooting. I (Nachman) started to collect bodies and put them in bags. I (Nachman) traveled around the area and found more and more bodies everywhere.

Monday, October 9 – On Monday, around 10:30, I (Nachman) went to Kibbutz Be’eri, where there were still terrorists inside the houses. IDF soldiers entered and checked that there weren’t explosives inside the houses. I (Nachman) saw dozens of bodies there too. I (Nachman) saw entire families that were butchered. There was a woman around 60 years old who was found in the shower with a meat hammer in her hand. She was shot in the head. The houses were completely destroyed. The bodies showed clear indications of gunshots. There were several houses with dead children. What I saw is that in the houses where the terrorists couldn’t enter, they burned them down. From the holes I saw, it seems they used RPGs for that purpose.

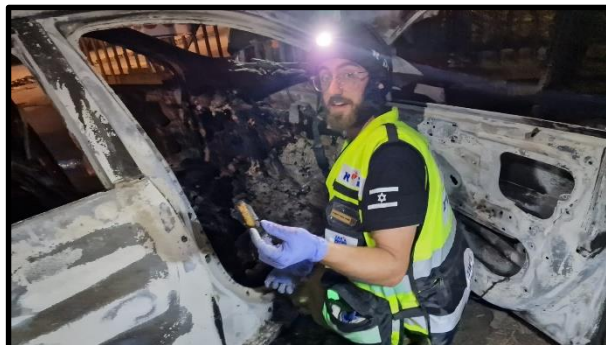
There were bodies everywhere. Under the bed, on the bed, inside closets, under the tables, on the couches. People were murdered wherever they could be found. They were all killed, all of them. There was only a line of houses that was not attacked. The rest of the kibbutz was all attacked.

Tuesday, October 10 – Around 11 in the morning I arrived to the area surrounding Re’eim. I (Nachman) started the day by collecting bodies of civilians, including foreign workers. In front, there was a white tender that belonged to the terrorists, and on the tender, we found water, food (halva and dates mainly), and first aid kits. The vehicles were full of supplies, perhaps showing an intent to stay for a long period of time in Israel.

I (Nachman) went to the Zaka administrative command and control center that was brought to the area in order to receive further instructions. There, Chaim Otmasgin (Commander of the Zaka Special Units) and Deri (Commander of the Zaka Southern region) instructed me to go to some locations. It turned out that some parents had managed to talk with their sons and daughters from the Nova music festival, so they sent us the locations where it was the last time they communicated, and I (Nachman) went to these places. We arrived at a grove and I saw a few vehicles, and at least in one of them, there were dead bodies inside. In that car, there were two bodies. All we could find there were bodies, only bodies.

Wednesday, October 11 - We started the day in Kfar Azza around 10:30. We went straight to the administrative command and control center of Zaka. There was one in every kibbutz where Zaka was, where the information was gathered, and from there, they gave assignments to Zaka volunteers and workers. We saw the volunteers bringing a lot of bodies in bags. We stayed there for around an hour, and we saw all the bodies that were being brought. There were bodies of children too (we could know because of the size of the bags). There, we were instructed to go to a location where they found a person

on a bike in an open area near Be'eri. It took a long time to find because it was inside a valley. The body was already rotten. We brought the body to the Zaka station. Then, at the entrance of Be'eri, there was a car, and inside, there were bones and knives. This was already at night. We brought the bones also to the Zaka station.



Thursday, October 12 - Around 10:30 we went to the area of Be'eri. Most of the day we collected the bodies of the terrorists. On the terrorist's bodies, we found Quran's and maps of the kibbutzim. We also found civilians between the ruins of the houses. One of the bodies was under the ruins of a residence in Be'eri. The body, presumed to be that of a male, had signs consistent with being tied, particularly by the hands, with several ropes. The remains were extensively distorted. The body had a rope within the mouth, and two gunshot wounds were on the arm. The leg of the body was located approximately 10 meters away from the main body. We also found the remains of a woman amidst the ruins of a house in Be'eri. The entire body was burned.



Friday, October 13 - On this day we continued collecting bodies of the terrorists and also of civilians, including children. We found the body of a woman beneath the ruins of a house in Be'eri. The body was naked, with indications of multiple stab wounds in her uterus, along with similar signs on her buttocks. We saw something that looked like a pair of scissors lodged in the groin area. She was bound by both her arms and legs.



We also found a body without a head, with multiple injuries, and very visible in the elbow region. She was tied with a rope.

On this day we also found the bodies of children inside a children and youth community center. One of the boys was completely burned, and the head was detached from the body. We found another child in the same children and youth community center in Be'eri. The skull had a big hole, which seemed the result of an impact with an object such as a hammer. A hammer was found adjacent to the body, along with a knife embedded in the body tissues.

One of the volunteers also found internal organs and body parts.

“Swords of Iron” – The Findings of Operational Orders for Nuhba Militants to Murder and Kidnap Civilians Population in Israel, and Confirmation of Execution of Civilian Population by Hamas Field Commander



"Swords of Iron" – The Findings of Operational Orders for Nuhba Militants to Murder and Kidnap Civilian Population in Israel, and Confirmation of Execution of Civilian Population by Hamas Field Commander

October 14th, 2023

Background

During Hamas's attack on Israel on 7 October, an extremely cruel massacre was carried out by the attackers, who viciously killed Israeli civilians (babies, children, elderly people, men, women and disabled people) in towns and kibbutzim near the Gaza border.

After the massacre, over 100 Israelis and foreign nationals were abducted and taken into the Gaza Strip, where they are being held hostage.

Attached are documents seized from Hamas commando militants, "Nuhba", who infiltrated Israel.

These documents show evidence that the massacre of civilian population and the abduction of civilians by Hamas were pre-planned, and were part of the Hamas leadership's orders to its militants.

Operational Orders for Hamas' Nuhba Militants to Murder and Kidnap Civilian Population in Israel

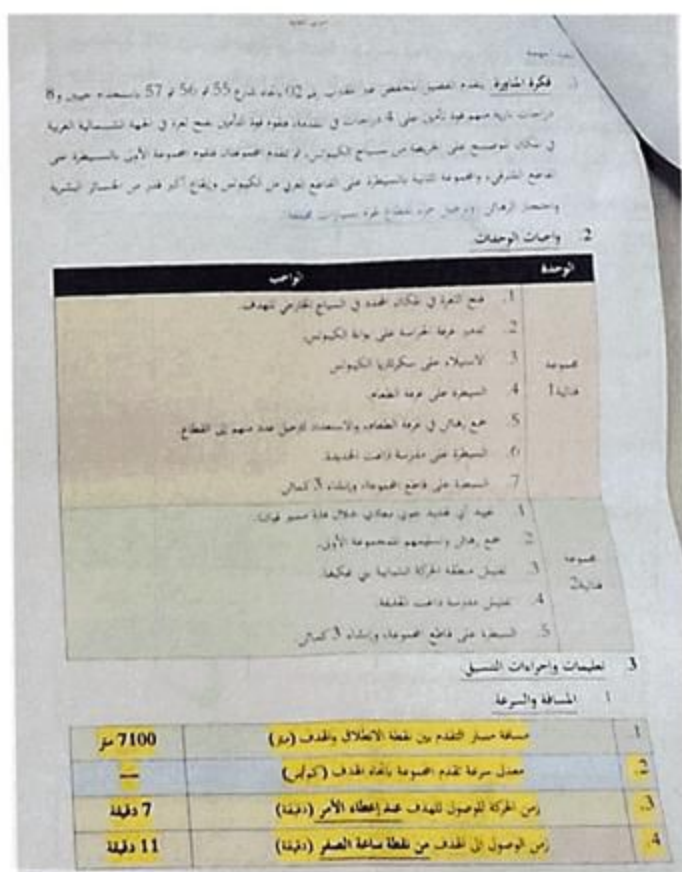
"302 Plan" – The Command for the Nuhba Force to Attack Kibbutz Sa'ad

Part of Hamas's '302 plan' for the attack on Kibbutz Sa'ad, printed on: 6 October 2023 (pages 28-33):

"The mission: reduced reserve duty Unit 2 of reserve duty Company 2 from Battalion 3 will attack Kibbutz Sa'ad on D-Day with the aim of taking over the kibbutz, **causing maximum fatalities, and taking hostages**".

Instructions concerning the hostages:

"Some of them should be taken into the Gaza Strip in cars."



"304 Plan" - The Command for the Nuhba Force to Attack Sderot

Part of Hamas's '304 plan' to attack the city of Sderot. This document clearly states (page 2, paragraph 5) that one of the missions of combat teams 1 and 2 is to:

"Take over the area of responsibility and intimidate and instill fear while taking hostages."

التظيم القتالي

الوحدة	التفصيل	العدد	إجمالي العتيد	ملاحظات
الفصيل الأول	قائد الفصيل	1	37	من ضمنه طاقم هاون 60 + طاقم رشاش متوسط + قناص 12.7
	مجموعة قتالية 1	18		
	مجموعة قتالية 2	18		
				من ضمنهم طاقم رشاش متوسط + قناص نانو + قناص فراخوف + مصور إعلاني

المهمة

1. يهاجم الفصيل الأول من سربة الاحباط الثانية ضمن هجوم السرية مدينة سفروت بغرض تأمين طريق 232 لعبور القنات الصديفة وكذلك السيطرة على مركز الشرطة ومكتب منسق الأمن الحجازي واحتجاز رهائن.

فكرة المأورة

2. يتم الهجوم باستخدام جيات ودراجات نارية بعد وصول زبرا تأمين السرية والمركزة على مفارق 232 مع مفلسيم، فيقوم الفصيل الأول بالتقدم على نفس مسار الهجوم على الهدف بحيث تقوم المجموعة الأولى بالتقدم من طريق 232 وإنشاء 3 كمائن على طول الطريق لتأمينه، وتقدم المجموعة الثانية للسيطرة على مركز الشرطة ومكتب منسق الأمن الحجازي من تمام طريق 34، والاستعداد للسيطرة على ملحقاً 37 عند الطلب.

واجبات الوحدات

الواجبات	الوحدة
1. إنشاء 3 كمائن على طريق 232.	المجموعة الأولى
2. السيطرة على محطة القطار.	
3. السيطرة على اللول التجاري 7.	
4. احتجاز رهائن في مكان محدد.	
5. السيطرة على منطقة المسولية، وإثارة الرعب داخلها.	
1. السيطرة على مركز الشرطة.	المجموعة الثانية
2. السيطرة على مكتب منسق الأمن الحجازي.	
3. السيطرة على مركز الصمود.	
4. السيطرة على مول بولس.	

5. احتجاز رهائن في مكان محدد.
6. السيطرة على منطقة المسولية، وإثارة الرعب داخلها.
7. الاستعداد للسيطرة على ملحقاً 37 عند الطلب.

المجموعة	مكان التجمع	وسائل النقل	أسماء السائقين	اسم الملاح	اسم الاعلاني
1	طه	2 حيب + 3 دراجات			
2	اسحاق	2 حيب + 3 دراجات			

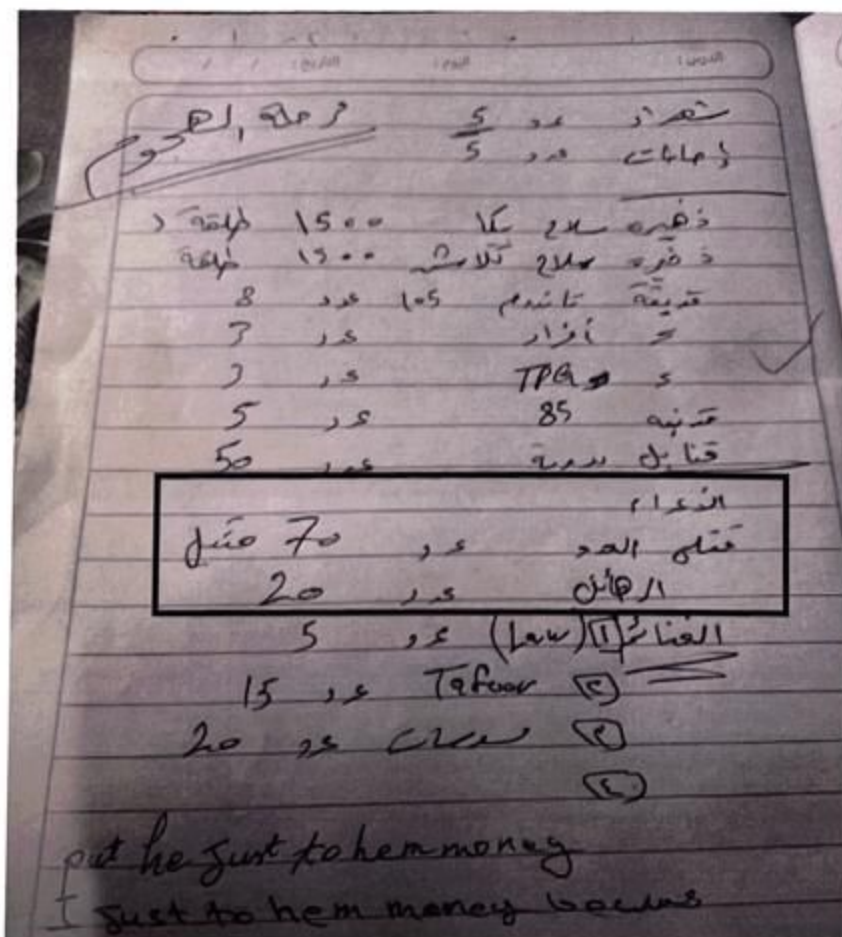
Hamas Field Commander Confirmation of Executing Civilian Population

Muhammad Na'im Nu'man Reefi's Note

A summary of an attack and its outcome. This note belonged to and was seized from Muhammad Na'im Nu'man Reefi, b. 1982, from Tuffah (Gaza Strip), a Hamas military operative and a Deputy platoon commander. The document lists, among other things, includes the following horrifying data:

"Shaheeds – 5, Injured – 5, PK machine gun ammunition – 1500, Kalashnikov ammunition – 1500, Tandom shells 105 – 8, Anti-aircraft shells – 3, TPQ shells – 3, Shells type 85 – 5, Grenades – 50...

Executions: Enemy executions - 70, Hostages – 20...
 Weapons looted: Tafoor – 15, Pistols – 20".



Identification - Muhammad Na'im Nu'man Reefi

Attached below is Muhammad Na'im Nu'man Reefi's driver's license:

"ID: 931527212, Address: Al'Tafha – Gaza"



Submitted by the Jerusalem Institute of Justice (JIJ) on March, 2024



Jerusalem Institute of Justice
King George 16,
9101301 Jerusalem, Israel
Tel: +972 5375545
jij.org

