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The European Centre for Law and Justice (ECLJ) is a non-governmental organisation dedicated to the defence of human rights around the world. The ECLJ has Special Consultative status with the United Nations' ECOSOC and has contributed to the United Nations' work through numerous submissions before different UN bodies, as well as the International Criminal Court.

The ECLJ has a longstanding interest in the peaceful resolution of the Arab-Israeli conflict. In this regard, the ECLJ submits this communication to the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel (Commission) pursuant to its call to submit information and in response to the Commission's report of 27 May 2024 in which the Commission seemingly laid all the responsibility for Hamas's attack of 7 October 2023 on Israel.¹

The Commission stated:

*Both the 7 October attack in Israel and Israel's subsequent military operation in Gaza must be seen in context. These events were preceded by decades of violence, unlawful occupation and Israel's denial of the Palestinians' right to self-determination, manifested in continuous forced displacement, dispossession, exploitation of natural resources, blockade, settlement construction and expansion, and systematic discrimination and oppression of the Palestinian people.*²

What the Commission is implying is that Hamas's attack of 7 October 2023 was justified because of Israel's alleged conduct prior to that attack, and Israel's conduct after October 7 is simply a continuation of the decades of alleged occupation and oppression of the Palestinian people. Basically, what the Commission is saying is that Hamas's brutal abduction, rape, and slaughter of innocent civilians was justified—that Israel had it coming. The Commission's so-called "context" utterly disregards actual history, law, and facts, which stand in complete opposition to the Commission's allegations. Basing an entire report on unfounded and erroneous assumptions not only discredits the report but taints the Commission itself. By making such a statement, the Commission has not only ignored customary international law on statehood and self-defence, the Mandate for Palestine, and the Oslo Accords, but also the thousands of rockets indiscriminately fired at Israeli civilian population centres from the Gaza Strip and the West Bank and suicide bombings carried out against Israeli civilians. These violations of the Law of Armed Conflict (LOAC) have been going on for decades. The Commission's "context" further disregards the fact

¹ *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, UNHRC, 27 May 2024, <https://www.un.org/unispal/document/coi-report-a-hrc-56-26-27may24/> [hereinafter *Report*].

² *Id.* at ¶ 6 (emphasis added).

that Hamas and other terrorist organisations in the Gaza Strip have one agenda, i.e., the total annihilation of Israel and the Jewish people.

We believe that, by blaming Israel for Hamas's attack of 7 October, the Commission is not working towards a peaceful resolution of the overall Arab-Israeli conflict. In fact, such one-sided blame only encourages Hamas and other terrorist organisations in the Gaza Strip to continue their attacks against Israel and its civilian population.

As the Commission is fully aware, Israel's military response after 7 October was preceded by Hamas's largest civilian massacre in one day in Israel's history.³ Hamas terrorists fired thousands of rockets into Israel and perpetrated "a triple attack by land, air, and sea", as Hamas terrorists assailed over 20 civilian neighbourhoods in Israel.⁴ The vicious attack resulted in the deaths of whole families (including children and babies) and even elderly Holocaust survivors, as Hamas indiscriminately killed soldiers and civilians left and right.⁵ This atrocity resulted in the deaths of approximately 1,200 Israelis, and about 250 were taken hostage.⁶ Among those taken hostage was a 10-month-old baby who died at the hands of Hamas.⁷

One captured Hamas terrorist said "[t]he plan was to go from home to home, from room to room, to throw grenades and kill everyone, including women and children... Hamas ordered us to crush their heads and cut them off, [and] to cut their legs".⁸ The captured terrorist also said they were sanctioned to rape a girl's corpse.⁹ Additionally, the Israeli police have recordings of questioned Hamas members saying, "Hamas's orders were to kill young men and to 'kidnap the elderly, women and children'".¹⁰

Erroneously, the Commission addresses such brutal actions in the "context" of the Palestinians' right to self-determination and Israel's so-called "unlawful occupation".¹¹ The Commission disregards that the right to self-determination even in the face of actual unlawful occupation does not allow indiscriminately attacking, killing, raping, and mutilating civilians. As the LOAC is the controlling law applicable to all parties to a conflict, Hamas is subject to its rules and restrictions,

³ *Mother of Woman Killed at Nova Festival Says She Feels Abandoned: 'What About Our Pain?'*, THE TIMES OF ISRAEL (11 Dec. 2023), https://www.timesofisrael.com/liveblog_entry/mother-of-woman-killed-at-nova-festival-says-she-feels-abandoned-what-about-our-pain.

⁴ Rivka Tuval-Mashiach, *The Psychological Impact of the Hamas Attack in Israel*, PSYCHIATRIC TIMES (24 Oct. 2023), <https://www.psychiatrictimes.com/view/the-psychological-impact-of-the-hamas-attack-in-israel>.

⁵ *Id.*

⁶ Lauren Frayer, *Israel Revises Down its Death Toll From the Oct. 7 Hamas Attacks to About 1,200*, NPR (11 Nov. 2023), <https://www.npr.org/2023/11/11/1212458974/israel-revises-death-toll-hamas-attacks-oct-7>.

⁷ Emine Sinmaz, *Hamas Says 10-Month-Old Hostage Kfir Bibas Was Killed in Israeli Bombing*, THE GUARDIAN (29 Nov. 2023), <https://www.theguardian.com/world/2023/nov/29/hamas-says-10-month-old-hostage-kfir-bibas-was-killed-in-israeli-bombing>; Ruth Marks Eglash, *Stories of Torture, Torment Revealed by Israeli Children Kidnapped by Hamas Terrorists*, FOX NEWS (29 Nov. 2023), <https://www.foxnews.com/world/stories-torture-torment-revealed-israeli-children-kidnapped-hamas-terrorists>.

⁸ *The Times of Israel Staff, Kill, Behead, Rape: Interrogated Hamas Members Detail Atrocities Against Civilians*, THE TIMES OF ISRAEL (24 Oct. 2023), <https://www.timesofisrael.com/kill-behead-rape-interrogated-hamas-members-detail-atrocities-against-civilians/>.

⁹ *Id.*

¹⁰ *WATCH: Family of Hostages Taken in Oct. 7 Hamas Attack Hold News Briefing*, PBS (26 Oct. 2023), <https://www.pbs.org/newshour/politics/watch-live-family-of-hostages-taken-in-oct-7-hamas-attack-hold-news-briefing>.

¹¹ *Report, supra* note 1, at ¶ 6.

just like Israel. Therefore, a claim of a right to self-determination does not give Hamas a pass to violate the LOAC. The Commission disregards that Israel strives to follow the LOAC, while Hamas either completely ignores it or distorts and violates it to its advantage.

The Commission further blames Israel for prioritising identifying victims, notifying families, and allowing for burial instead of collecting evidence of Hamas's crimes.¹² Condemning Israel for decency once again strikes against the veracity of the report. Furthermore, Hamas documented its own crimes quite well, as can be seen in the horrific videos taken during the attack. Condemning Israel for not collecting more evidence of Hamas's crimes further highlights the Commission's bias, as even the Commission could no longer turn a blind eye to the heavily documented evidence of Hamas's heinous criminal actions. The Commission had no choice but to include them in its report. Therefore, any attempt to paint Israel in a bad light for not collecting more evidence is merely a smoke screen. Yet, in the face of overwhelming evidence documenting Hamas's terrorist activity, as well as many countries recognising Hamas as a terrorist organisation, the Commission once again ignores facts and calls Hamas the de-facto authority in Gaza.¹³

Moreover, the Commission makes factual allegations against Israel with little to no citations provided. For instance, the Commission claims that Israel has forced Palestinians to strip partially or completely naked, coerced them into doing physical acts such as walking while naked, and subjected them to sexual harassment.¹⁴ The Commission, however, fails to provide a single source, name, place, or any way of identifying when or where these alleged actions took place.¹⁵ In contrast, as stated above, there is clear evidence that Hamas terrorists raped and murdered numerous innocent Israelis, in addition to numerous other crimes it committed.

The Commission also continues to cite to the death toll provided by the Gaza Ministry of Health, controlled by Hamas, which does not distinguish between civilians and combatants, nor has it ever been credited as providing accurate information. The Commission, however, ignores a bigger reality. The scale and nature of brutalities Hamas and other terrorist groups from the Gaza Strip committed on 7 October, including continuing to hold hostages, clearly show that Hamas's intention was to invite a largescale armed response from Israel. By actively hiding in civilian areas and conducting operations from civilian facilities, Hamas purposefully put civilians in harm's way *to cause such casualties*. This is no longer a hidden tactic. Hamas leader, Yahya Sinwar, recently acknowledged this by stating that civilian deaths are a necessary sacrifice, and that Hamas has Israelis right where it wants them.¹⁶ Yet, the Commission blames Israel for the civilian casualties.

Further, while individual members of the Commission say that the Commission is not a legal body,¹⁷ the Commission claims to have conducted "legal analysis" of Israeli actions. Without any legal analysis provided, however, the Commission concludes that Israeli responses have violated

¹² *Id.* at ¶ 49.

¹³ *Id.* at ¶ 109.

¹⁴ *Id.* at ¶ 65-67.

¹⁵ *Id.*

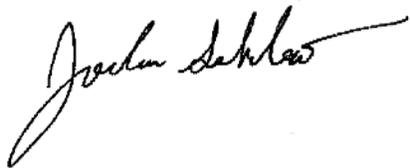
¹⁶ Mostafa Salem & Kylie Atwood, *Hamas Leader Said Civilian Death Toll Court Benefit Militant Group in Gaza War*, *WSJ Reports*, CNN (11 June 2024), <https://www.cnn.com/2024/06/11/middleeast/sinwar-hamas-israel-ceasefire-hostage-talks-intl/index.html>.

¹⁷ Jordan Sekulow, *UN Human Rights Council Targets Israel but Gives Pass to Hamas-as Usual*, *ACLJ* (11 Apr. 2024), <https://aclj.org/israel/un-human-rights-council-targets-israel-but-gives-pass-to-hamas-as-usual>.

LOAC principles of “distinction, proportionality, and precautions”.¹⁸ This is irresponsible and demonstrates why, among other reasons, the Commission lacks credibility.

Unfortunately, the Commissioners have also made anti-Israel remarks before and after being appointed to the Commission, including pre-judging Israel guilty without doing any research or legal analysis.¹⁹ The word “independent” in the Commission’s mandate means free from any outside pressure, influence, or bias. In order to be truly called an “independent” Commission, it should uphold the standards it states in its reports: “International law cannot be selectively applied; it must be implemented in its entirety”.²⁰ The Commission’s reports delegitimise it as an objective, trustworthy factfinder. By stating that Hamas’s actions of 7 October should be seen in the context of Israel’s “unlawful occupation” and the Palestinians’ right to self-determination, the Commission has ignored, law, facts, and history and has essentially endorsed Hamas’s and other terrorist organisations’ actions, displaying the Commission’s extreme bias for all to see.

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¹⁸ *Report, supra* note 1, at ¶ 79.

¹⁹ Request for Navi Pillay to Recuse Herself for Bias or the Appearance Thereof, 14 Feb. 2022, United Nations Watch, available at <https://unwatch.org/wp-content/uploads/2022/02/Request-for-Navi-Pillay-to-Recuse-Herself-on-Grounds-of-Bias.pdf>. UN “*Inquiry Greenlights Palestinian Terror*,” THE TIMES OF ISRAEL, (22 June 2023), <https://blogs.timesofisrael.com/un-inquiry-greenlights-palestinian-terror/>.

²⁰ *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, ¶ 50, UNHRC, 14 Sept. 2022, <https://documents.un.org/doc/undoc/gen/n22/591/34/pdf/n2259134.pdf?token=rSAEW4pmAOjMIWCEGX&fe=true>.