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Pénale
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**International
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PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adélaïde Sophie Alapini-Gansou

SITUATION IN THE STATE OF PALESTINE

Public

**Observation of Victims of Palestinian Terror in respect to the Court's
Territorial Jurisdiction in Palestine**

**Source: Victims of Palestinian Terror (as listed in Annex 1)
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Introduction

1. Consistent with the Pre-Trial Chamber's order of Jan 28, 2020¹, and in accordance with Rule 103 to the Rules of Procedure and Evidence (RPE), we – the undersigned – victims of Palestinian Terror (THE VICTIMS), submit this Observation in regard to the situation in the “State of Palestine.”
2. We submit this Observation *in person* and are assisted by Shurat HaDin – Israel Law Center (SHD), which has previously approached the Prosecutor on the issues presented in this observation and is our designated representative for the purpose of rule 32 to the Rules of the Court.

THE VICTIMS

3. We are victims of Palestinian terror. We have lost our loved ones – amongst them children and women – by suicide bombs, their abduction and murder, being stabbed to death in their own beds and other horrific deaths. Their deaths were neither 'collateral damage' nor were they 'mistakes'. They were deliberate acts of murder, calculated to cause grievous injury and spread fear and terror. Our family members were murdered when walking in the streets, studying in the University, sleeping in their beds or just passengers on buses.
4. Some of us hold tort judgements against the Palestinian Authority (PA) for its liability for the murder of our loved ones². These rulings hold that the deaths of our loved ones were a direct result of conduct relevant to this Observation, on which we will elaborate.
5. Our stories are brought in **annex I** to this Observation, and are an integral part of this Observation.

The Subjects of our Observation

6. This observation is focused on two issues relevant to the issue of the Prosecutor's request³ for a ruling on the territorial jurisdiction of the court:
 - a. The Prosecutor’s biased presentation of the situation in “Palestine”, upon which the Chamber is requested to make its ruling. Specifically, the complete disregard of the issue

¹ [Order setting the procedure and the schedule for the submission of observations](#), ICC-01/18-14 28 January 2020

² Case 2538-00 (Jerusalem) *Norz'its Litbac et al. vs. The Palestinian authority* (set for ruling on damages). Sokolow v. The Palestinian Liberation Organization, et al., Civil No. 04-003697, (S.D.N.Y.), Judgement overturned on the question jurisdiction in: Sokolow v. Palestine Liberation Org., No. 15-3135 (2d Cir. 2016).

³ [Prosecution request pursuant to article 19\(3\) for a ruling on the Court’s territorial jurisdiction in Palestine](#), ICC-01/18-12, 22 January 2020 (Hereinafter: "**Prosecutors' Request**" or "**The Request**")

of Palestinian terror and its direct effects on the notion of 'case-specific' application of the criteria of 'statehood', suggested by the Prosecutor. This is especially important considering the criteria of statehood, the Prosecutor uses to delineate the Court's territorial scope of jurisdiction.

- b. The *temporal* effects of a ruling on the issue of territorial Jurisdiction as set in paragraph 220 of the prosecutor's request.

Part A: The Disregard from Palestinian Terror and the 'case-specific' application of the 'statehood' criteria

7. We - who have lost our loved ones to Palestinian Terror – are compelled to share with the Court our **amazement** at the complete disregard by the Prosecutor of Palestinian Terror against innocent civilians, which has taken the lives of thousands of Israelis during the past years.
8. We are **appalled** by the fact the word '**Terror**' does not appear, not even once, in the Prosecutors 'factual and historical background' or in any other instance in the Prosecutor's request, aside from an irrelevant footnote⁴. We are further **astonished**, that the Prosecutor attempts to place the sole blame on Israel for the inability of the Palestinian Authority to achieve the necessary criteria for 'statehood', ignoring blatant Palestinian violations of the Oslo Accords and the continuous War Crimes perpetrated by the Palestinians against Israelis and Jews.
9. We will also argue, that the current status of the Palestinian Authority- which does not meet the criteria of 'statehood' - is **not** the result of Israeli conduct, but instead the result of the fact that the Palestinians "have never missed an opportunity to miss peace"⁵ and the fact that they have – and still are actively – inciting to commit War Crimes and Crimes Against Humanity against Israelis and Jews. In this respect, the Prosecutor's call for the Chamber to adopt a "specific-case" approach to the well-established principles of Interpretation of the criteria for 'Statehood'⁶ is based on a false factual presentation of the current situation and the circumstances that have led to it.

⁴ Prosecutor's request, note 273, which falsely to portray 'equality' in the Hamas terror actions against Israelis and Palestinians, ("It was also committed to the use of terror against both Israel and Palestinian Arabs who opposed its rejectionist goals").

⁵ Quote attributed to Abba Eban after the Geneva Peace Conference (December 21-29, 1973).

⁶ Prosecutor's request, art. 178.

10. We further inform the Chamber, that Palestinian Terror is not a result of 'wild weeds' nor is it grassroots violence. Instead, it is a direct outcome of the Palestinian Authority's official and calculated conduct, incitement and policies. While presenting a false image of a "peace-loving"⁷ leadership whose people is victimized - the Palestinian Authority is in fact **systematically inciting to commit War Crimes and Crimes against Humanity**. The Palestinian Authority governmental educational system demonizes Jews and Israelis and delegitimizes Israel's right to exist. It teaches hate and violence against Israelis and Jews. Moreover, the Palestinian Authority glorifies the murderers of our loved ones and officially names streets and squares to honor these terrorists. Officials – including Palestinian President Mahmoud Abbas – holds governmental receptions with murderers and even pays them monthly salaries and stipends as rewards for killing our loved ones. Imprisoned terrorists are periodically given pay increases and promotions in ranks.⁸
11. **Thus, we contend, that not only does the Prosecutor's request amount to a historical injustice, but her call for a 'case-specific' application of the Criteria of Statehood due to "illegal" Israeli actions is both a legal mistake and a crude factual one as well.** Legally, there is no basis for such application, but even if there were such – the Palestinians Terror - officially encouraged and sponsored by the Palestinian Authority and in direct violation of its bilateral and international obligations as set in the Oslo Accords - should lead the court to a conclusion that there is no Palestinian statehood, and at least counter and nullify any allegations against Israel in this context.

A1. The Biased Factual and Historical Background - Disregarding Palestinian Terror

12. The disregard of the impacts of Palestinian terror on the 'situation in Palestine', including the direct responsibility of the leadership of the Palestinians throughout the years, saturates all of the factual and historical background provided by the Prosecutor, from British Mandate times to the present date. Yet, for the purpose of this Observation, we shall focus on the period both most relevant to the issue of 'statehood', beginning with the Oslo Accords, and regrettably – relevant to our personal tragic losses.

⁷ Mahmoud Abbas, [Application of Palestine for admission to membership in the United Nations](#), September 23, 2011.

⁸ See Observation A2.

13. We note, that abundant information as to Palestinian Terror can be easily found and accessed. We can only speculate that the reasons to which the Prosecutor has completely disregarded this issue, is a result of her reliance on anti-Israeli and politically oriented bodies, such the biased UN Human Rights Council. Unfortunately, the request echoes the inherently prejudiced 'Preliminary Examination': This approach could be traced throughout the annual reports of the 'preliminary examination', the complete disregard of SHD's communications accurately informing her of the situation⁹, and the choice of alleged war crimes the Prosecutor asks to pursue¹⁰.

Acknowledging these apparent difficulties, we will try to set briefly the facts straight;

14. In his exchange of letters with Prime Minister of the State of Israel, Yitzhak Rabin, on September 9, 1993, Chairman of the Palestinian Liberation Organization (PLO), Chairman Yasser Arafat wrote, "**the PLO renounces the use of terrorism and other acts of violence and will assume responsibility over all PLO elements and personnel in order to assure their compliance, prevent violations and discipline violators.**"¹¹ The Oslo Accords further integrated this duty, as Article XXII to the Interim Agreement states "that Israel and the Palestinian Authority "**shall seek to foster mutual understanding and tolerance and shall accordingly abstain from incitement, including hostile propaganda, against each other and, without derogating from the principle of freedom of expression, shall take legal measures to prevent such incitement by any organizations, groups or individuals within their jurisdiction.**"¹²
15. But Israel's extending its hands for peace and its implementation of the Oslo Accords were answered by **clear violations** from the Palestinians side, which not only refused to comply to with their obligations under the Accords to refrain incitement and bloodshed and to collect all illegal arms and explosives, but in fact administered an official policy of terror¹³.

⁹ SHD's communications to the Prosecutor: OTP-CR-71/15, OTP-CR-72/15, OTP-CR-73/15, OTP-CR 116/18. [SHD letter to the Prosecutor, dated Jan. 8 2020](#), [SHD's letter to the Prosecutor, Dated Nov. 25 2019](#), SHD's additional letter from Jan 19 2020 (OTP-CR-79/20).

¹⁰ Prosecutor's request, para. 94-95.

¹¹ [Israel-PLO Recognition-Exchange of Letters between PM Rabin and Chairman Arafat Sept 9 1993](#)

¹² [The Interim Agreement \(Oslo 2\) of September 28, 1995](#)

¹³ IMF, [The Involvement of Arafat, PA Senior Officials and Apparatuses in Terrorism against Israel: Corruption and Crime](#), May 6, 2002.

16. Thus, Israel was struck in the mid-1990 by a massive wave of Palestinian Terror, and particularly by suicide bombing attacks at the heart of country, that killed dozens of Israeli civilians with each attack and wounded hundreds more.¹⁴ From the Oslo Accords (Sept. 1993) until September 2000 - nearly 300 Israelis were killed in terror attacks¹⁵.
17. The 'Second Intifada' was launched in September 2000. An unprecedented wave of violence spread heinously across Israel. By 2004, as Israel concluded the first parts of the security barrier (along the northern part of the West Bank) the number of Israeli victims of Palestinian Terror in the 'second Intifada' since September 2000, was approximately 1000 fatalities and more than 5000 wounded, most of them civilians (70%) who were murdered in Palestinian suicide attacks.¹⁶
18. **These brutal attacks on Israeli civilians, funded by the Palestinian Authority, which the Prosecutor chose to disregard, amounts to the perpetration of Crimes Against Humanity.** One would expect the Prosecutor will relate to these horrible events; however, the Prosecutor completely ignores the happening of the 'Second Intifada', and focuses on the building of the security barrier by the State of Israel. Incredulously the Prosecutor completely disregards the 'Second Intifada', focusing instead on Israel's building of the security barrier to defend its civilian population. "[A]ccording to Israel", writes the Prosecutor, "the barrier was built for security reasons". Anyway, the construction of the barrier has had clearly positive effects in pre-empting suicidal terror acts against Israelis and significantly reduced the toll of dead and wounded as a result of the barrier.¹⁷
19. The cycles of Palestinian violence have since continued, both in the West Bank and Jerusalem and in Gaza, and are still continuing today. Since December 2005, Palestinian terrorist attacks have claimed at least another 250 Israeli lives¹⁸. Since September 2015, and until the end of 2019, 87 innocent civilians have been killed in Palestinian terrorist attacks, and another 1,520 people have been wounded; there have been 210 stabbing attacks and 161 attempted stabbings; 239 shooting attacks; 77 vehicular (ramming) attacks; and 541 IEDs (improvised explosive devices); 9,735 rock-throwing incidents, and 2,942 arson

¹⁴ Israeli Foreign Ministry, "[Suicide and Other Bombing Attacks in Israel Since the Declaration of Principles](#)".

¹⁵ Jewish Virtual Library, "[Terrorism Against Israel: Comprehensive Listing of Fatalities](#)".

¹⁶ *Id.*

¹⁷ James Reynolds "[Israeli City Says Barrier is 'Working'](#)", *BBC News*, 14 September 2004

¹⁸ Jewish Virtual Library, note 15.

attacks (petrol bombs, grenades, arson kites & balloons). Since October 2015, over 2500 rockets and mortar bombs have been launched from the Gaza Strip towards Israeli territory¹⁹.

20. And the Palestinian terrorist crimes against Israelis continue today: On February 23 and 24, 2020, there was another significant round of escalation in the Gaza Strip. During this round of escalation 113 rocket and mortar shells were fired at the Israeli civilian communities near the Gaza border and at the southern Israeli cities of Sderot and Ashqelon.²⁰
21. We have now come to a reality, where the Palestinians, while claiming to be a "peace and loving nation", continue to conduct terror acts on a daily basis under the auspices of the Palestinian Authority. Armed groups, including FATAH – a subordinate under the direct responsibility of PLO chairmen, Mahmoud Abbas²¹, and incited individuals, continue to initiate terror on a daily basis, in all its forms, against Israelis. These groups and individuals are committing War Crimes and Crimes against Humanity, including the use of civilians as human shields, attacks against Israeli civilians, use of children in an armed conflict and other illegal attacks and methods of warfare. Meanwhile, the Palestinian Authority continue to support these acts and initiate others, *inter alia*, by:
 - a. Manipulating legitimate actions by Israel to defend its territory and civilians from terror - into political and legal achievements, **including the current proceedings**.
 - b. Fueling the wheels of terror by administrating a policy of delegitimization of the Jewish presence (both in the West Bank and in Israel) in the educational system, the incitement and demonization of Jewish settlers, the glorification of their murderers, anti-Semitic hate on their official television and radio broadcasts and the conduct of Palestinian Authority officials. This policy is complemented by the 'pay to slay' scheme, condemned by many nations,²² through which the Palestinians provide financial incentives for war crimes. Payments payed to all Palestinian imprisoned and

¹⁹ IMF, [Wave of terror 2015-2019](#), 31 Dec 2019.

²⁰ The Meir Amit Intelligence and Terrorism Information Center (ITIC), [The Tenth Round of Escalation in the Gaza Strip: What Next?](#), March 1, 2020.

²¹ [SHD, Communication to the Prosecutor of the International Criminal Court regarding War Crimes committed by Mahmoud Abbas](#). Prosecutor's references: OTP-CR-71/15, OTP-CR-72/15, OTP-CR-73/15 (Prosecutor's office Confirmation letters received on several communication and do not state which one regards Mahmoud Abbas).

²² States that either halted PA aid or expressed their concern of the 'pay to slay' scheme include: The Netherlands, Australia, the United States, Norway, Great Britain.

convicted terrorists including Hamas members offer substantial *ex-ante* financial rewards for the commission of war crimes. Furthermore, this is *de facto* financial incitement and inducement to kill Jews and Israelis, as such. This criminal scheme is regulated officially by the Palestinian Authority, on a large scale, extending over decades. Its most substantial beneficiaries and payees are the vilest of all; mass murderers of hundreds of innocent women and children. These payments revictimize the families of the victims who must watch these murderers be compensated for killing their loved ones. It inflicts further brutal emotional distress on them and precludes any measure of closure.

22. It is this reality, which the prosecutor answers by blaming Israel for the Palestinian's lack of achieving the criteria for 'statehood', calling for "case-specific" interpretation of international law²³, and in fact rewarding those who commit war crimes by an elevation of their status under International Law.

A2. The Palestinian Authority's Administration of Terrorism

23. In order to demonstrate the fact that Palestinian Terror is a direct result of the **official administered policy of the Palestinian Authority**, we will give further detailed information as to the nature of these acts and their formal administration. We note, that this information has been previously supplied to the Prosecutor by SHD²⁴.

a. The policy of glorification of terrorism

24. Official actions of Palestinian Authority are meant to create and preserve an **ethos** of glorification of terrorism. Palestinian officials, educators and the Palestinian Authority-controlled media celebrate the most sinister terrorists. Here are just some examples:
25. **Official Palestinian Authority, PLO Ceremonies and receptions commemorating 'martyrs' and inciting terrorist acts** - The Palestinian Authority systematically holds official ceremonies, celebrations and other activities in commemoration of murderers and glorifying their crimes. Examples are abundant and diverse:

²³ Prosecutor's request, para 178.

²⁴ [SHD letter to the Prosecutor, dated Nov. 25 2019](#) and mostly: in SHD's [second letter Dated Jan. 8 2020](#) (**which is the highly detailed on this subject, includes evidence and legal analysis**). SHD Additional letter from Jan 19 2020 (OTP-CR-79/20).

- a. **“Mourning Tents” in Palestinian Authority Embassies:** for example, on December 15, 2018, the Palestinian Authority Embassy in Saudi Arabia unveiled a mourning tent in a formal ceremony for terrorists who murdered two Israeli civilians on October 7, 2018. The mourners were welcomed by the **Palestinian Authority Ambassador in Saudi Arabia**, the “martyr’s” brother and the Embassy staff. The Palestinian Authority Ambassador later uploaded a video outrageously praising the “martyr’s” bravery.²⁵
- b. **Formal receptions for terrorists: Ceremonies** and formal Palestinian Authority receptions, headed by President Mahmoud Abbas and other Palestinian Authority officials, for released murderers and their families are a matter of routine in the Palestinian Authority. The official reception which Mahmoud Abbas hosted himself in 2018 for a terrorist who had murdered a Jewish civilian in Jerusalem is an example of these types of ceremonies.²⁶



Right: Gavriel Hirschberg, killed in a shooting attack in the Old City of Jerusalem, November 20, 1997 (website for the Commemoration of the Victims of Palestinian Violence and Terrorism in Israel, March 21, 2018).
 Left: The terrorist, Rajaa’i Hadad, embraced by Mahmoud Abbas during a reception held for him at Mahmoud Abbas’ office in Ramallah (Wafa, March 14, 2018).

²⁵ The Meir Amit Intelligence and Terrorism Information Center, [The Palestinian Authority continues to encourage terror: the Opening of a 'mourning Tent' in the Saudi Embassy](#) Dec 23, 2018 [Hebrew]

²⁶ The Meir Amit Intelligence and Terrorism Information Center, [Legitimizing Terrorism: Mahmoud Abbas and other senior Fatah and Palestinian Authority figures honor terrorists involved in killing Israelis](#), Nov. 22, 2018.

- c. **Parades:** for example, in 2018, the PLO celebrated its 53th anniversary across universities in the West Bank (Judea and Samaria) with parades celebrating “martyrs” and presenting “units” named after terrorists responsible for the death of Israeli civilians.²⁷
- d. **Naming of streets, squares and institutions under terrorists:** for example, in 1978, Palestinian Dalal Mughrabi and a group of terrorists murdered an American journalist, hijacked a bus and went on a deadly massacre on the coast of Israel³⁷. Mughrabi and her group took 71 civilian hostages, and the killing spree that ensued resulted in 38 dead Israeli civilians, 13 of whom were children.²⁸ In 2011, the Palestinian Authority **officially** named a **public square** in Mughrabi’s honor in Ramallah, complete with a plaque depicting Mughrabi pointing a weapon at a map of “Palestine,” which includes the West Bank, Gaza and the entire State of Israel.²⁹ According to Middle East Media Research Institute (MEMRI), the following statements were made in the ceremony:
- a. Tawfiq Tirawi, a member of the Fatah Central Committee described Mughrabi, “not [as] a terrorist,” but rather as “a fighter who fought for the liberation of her own land.” In total, two high schools, two summer camps, a soccer tournament, and a public square carry child killer Mughrabi’s name in honor.
 - b. Fatah Secretary in Tulkarm Mu'ayid Sha'aban, said that "Dalal Al-Mughrabi's self-sacrifice is still a symbol and an inspiration to Arab women in general and Palestinian women in particular. In giving her life and leading a group of men to the Coastal Road in Palestine, it was as if she was saying that heroism and sacrifice are not exclusive to a certain gender, and that the role and the national duty of the Palestinian woman cannot come down to merely raising generations who believe in the justice of the Palestinian cause or to being the mother of a prisoner or a martyr, or the sister of a fighter. She was saying that the Palestinian woman can herself be imprisoned, injured or martyred [for the cause], or can be an outstanding commander.”

²⁷ See: The Meir Amit Intelligence and Terrorism Information Center, [Yearly PLO anniversary celebrated in Universities by commemorating terrorists](#)

²⁸ Isabel Kershner, [Palestinians Honor a Figure Reviled in Israel as a Terrorist](#), NY Times, 11 Mar. 2010.

²⁹ Haaretz, [Palestinians Honor Fatah Terrorist, despite Israel's Protests](#), Jan. 11, 2018.

- c. Brigadier General Mazen 'Izz A-Din, the former head of the Palestinian Authority's Political and National Education Authority, published an article reviewing the planning and execution of the terrorist attack, while praising Dalal Al-Mughrabi. Al-Din wrote: “Dalal is the pride of Palestinian women; we place her as a badge of honor on the chests of heroes. Isn't she the keeper of the Palestinian flame?... Let us salute the souls of the martyrs on their special day, the day of the martyr Dalal Al-Mughrabi and her comrades.”³⁰

Further official actions have been made commemorating Mughrabi: in In May 2017, the Palestinian Authority via its organization Women's Affairs Technical Committee (WATC) named a **women's center in the town of Burqa after Mughrabi** and celebrated her as a role model. The center was built with the aid of the government of Norway and UN Women. Norway's Foreign Minister demanded that Norway's funding for the building be repaid and its logo removed from the building. He said that “Norway will not allow itself to be associated with institutions that take the names of terrorists in this way.”³¹

26. **Adulation and elevated social status for terrorist's families:** Terrorists guilty of war crimes and their families receive adulation and elevated social status as a result of Palestinian Authority efforts. Such is the case of Umm Nasser Hmeid; Umm Nasser Hmeid is the mother of six convicted terrorists who are members of Hamas and Fatah, and who were involved in shooting and suicide attacks against Israeli civilians. Abbas Zaki, a member of the Fatah Central Committee, has said “[s]he is ‘the Al-Khansa’ of Palestine’ She is a woman of virtues and willpower of whom we are proud as a symbol of the women of Palestine.” On June 11, 2018, Dr. Laila Ghanam, governor of Ramallah and Al-Bireh district, visited Nasser Hmeid. On June 18, 2018, in an interview on official PA TV, Dr. Ghanam stressed that “our people, on the official and popular level, will stand alongside this [i.e. Nasser Hmeid’s] fighting family.”³²

b. The indoctrination of hatred by the Palestinian Education Ministry and Media

³⁰MEMRI, [Palestinian Authority Praises Female Terrorist Dalal Al-Mughrabi](#), March 20, 2013.

³¹Norway Ministry of Foreign Affairs, [Unacceptable glorification of terrorist attacks](#), May 26 2017; Keinon, Herb ["Norway slams PA for glorifying terrorists with its money"](#), JPost.com. (27 May 2017);

³²<https://www.jns.org/fatah-and-palestinian-authority-headed-by-mahmoud-abbas-praise-terrorists-and-their-families-provide-housing-for-families-of-martyrs/>

27. The Palestinian Ministry of Education has responsibility for the provision of education and educational materials to pupils who attend Palestinian Authority schools.³³
28. The Palestinian Authority Ministry of Education’s instructional materials incite its students to violence directed specifically at Jews and Israelis. Islam is falsely presented as a deeply anti-Semitic religion. Youths in the Palestinian Authority schools are deceptively taught that Islam condemns Jews to a status of perpetual inferiority. For example a 6th grade textbook currently in use in their schools teaches that the Prophet Mohamed commanded his followers "to learn the language of the Jews in order to be safe from their cheating."³⁴ An 11th grade text in Islamic Education declares that **“God has prepared for [the Jews] and those perpetrating corruption (mufsidin) a painful torture.”**³⁵ A 12th grade textbook declares that **“the Jews” greedy ambitions in Palestine stem from their religious beliefs....**³⁶
29. This sub-human and perfidious status of Jews in Palestinian Authority textbooks is presented as a justification for acts of violence against them. According to the Palestinian Authority educational materials, *“Muslim countries today badly need Jihad and Jihad fighters in order to liberate the usurped land, evict the usurping Jews from the Muslim’s land in Palestine.”*³⁷ Far from being a spiritual struggle, “jihad is the making of an effort in fighting the unbelievers in the battlefield” that involves definite acts of violence.³⁸ Jihad is a duty of the schoolchild. *“The Muslim nation should be bent on constantly preparing for Jihad, as it is a Jihadi nation. The construction of the Muslim state’s military power is not merely for defensive preparation [purposes]. It is rather a definite matter so that it will be easier for the [Muslim] state to perform what God has imposed on it...”*³⁹
30. Recent research by Dr. Arnon Groiss and Dr. Roni Shaked on Palestinian textbooks, which includes many examples taken from these books, shows that the educational system in Palestinian Authority territories is characterized by **delegitimization, demonization and indoctrination to violent fight** instead of a call for peace. Upon these principles, a distorted

³³ [Palestinian Authority Ministry of Education website](#),

³⁴ Institute for Monitoring Peace and Cultural Education in School Education, Israel, the West, Women and the Environment in Palestinian Textbooks, 2011, *citing* History of the Arabs and Muslims, 133.

³⁵ *Id. citing* Islamic Education, Grade 11, Part 1 14-15 (2010).

³⁶ *Id. citing* *The Muslim World at Present*, 105 (1996).

³⁷ *Id. citing* *Religious Subjects for Grade 8, Unit 3: Noble Prophetic Hadith*, 12.

³⁸ *Id.*

³⁹ *Id. citing* *Islamic Systems* 183 (1996).

historical narrative is progressed, which leaves no room for peace⁴⁰. The poisoning of young minds ensures that Palestinian hatred and violence against Israelis will continue for generations to come.

31. This small sampling of materials contained in Palestinian Authority books indicates a deliberate effort to incite Jihad attacks against Jews and Israelis because of their mere status as Jews and Israelis.
32. This indoctrination for hatred further receives encouragement by religious figures in the Palestinian Authority, adding spiritual support for this indoctrination. According to Palestinian Authority Chief Cleric, Mufti Muhammad Hussein, “*Palestine in its entirety is a revolution... continuing today, and until the End of Days. The reliable Hadith... says ‘The Hour [of Resurrection] will not come until you fight the Jews. The Jew will hide behind stones or trees. Then the stones or trees will call: ‘Oh Muslim, servant of Allah, there is a Jew behind me, come and kill him.’*”⁴¹ This sort of sentiment, endorsed by the highest religious figure of the Palestinian Authority, and replete in the Palestinian Authority’s educational materials, proves that when those students and former students act to “wage jihad,” they do so with the intent of killing or injuring as many Jews, Israelis or both as possible, on the basis of their religion, ethnicity, and/or nationality and of destroying these groups as such.

c. The 'pay to slay' scheme

33. The “pay to slay” scheme is an officially administered system of payments to Palestinian jailed terrorists and their families – including Hamas members – which offer substantial *ex-ante* financial rewards for the commission of war crimes. Furthermore, this is *de facto* financial incitement to kill Jews and Israelis, as such.
34. This criminal scheme is regulated officially by the Palestinian Authority, in a large scale, extending over decades. Its most substantial beneficiaries are the vilest of all; mass murderers of hundreds of innocent civilians. **These payments revictimize the families of victims who must watch these heinous murderers receive payment for killing their loved ones.**

⁴⁰ Arnon Groiss, Roni Shaked, [Schoolbooks of the Palestinian Authority: The Attitude to Jews, to Israel and to Peace](#) (Hebrew).

⁴¹ Palestinian Authority Television, Jan. 9, 2012; see: Ministry of Foreign Affairs, [PA Mufti encourages killing of Jews](#), Jan. 9 2012.

35. The 'pay to slay' scheme is regulated, administered and conducted under the laws and policy decisions of the Palestinian Authority, including:

a) **Law No. 14 (2004) on Aid for Prisoners in Israeli Prisons**, which sets the funding for payments made to for Palestinian terrorists. Under Article 1 of this law, a “Prisoner” is anyone incarcerated in the “occupation’s prisons” **“for his participation in the struggle against the occupation.”** In practice, this term encompasses any attack against Israelis anywhere.

b) **Amended Palestinian Prisoners Law No. 19 (2004)**. Article 2 of this law establishes the financial support based upon the **legitimacy of acts of terror against Israelis** committed by individuals who are conceived as a “fighting sector” of the Palestinian society. It reads:

“The prisoners and released prisoners are a fighting sector and an integral part of the fabric of the Arab Palestinian society. The provisions of this Law guarantee them and their families a dignified life.”

Under this law, prisoners who have served a sentence of a year or more in an Israeli prison are entitled upon release to health insurance and tuition-free schooling, university and professional education. If they become civil servants, the law stipulates that the Palestinian Authority will “pay his social security and pension fees... for the years he spent in prison.” Incarcerated individuals are entitled under Articles 6 and 7 to monthly stipends “linked to the cost-of-living index.” Article 5, entitled “Preferential Treatment for Released Prisoners” exempts “any male released prisoner who was incarcerated in an occupation prison for five years or more and any female prisoner who was incarcerated for three years or more” from tuition fees at any government school or university, health insurance payments, and all fees for professional training programs.

c) **Government Decision 23 (2010)** on monthly salaries for prisoners formalizes linking payments **according to the length of incarceration**. Those sentenced to 3 years or less are granted 1,400 NIS (about 400\$) per month, while

those sentenced for 30 years or more make 12,000 NIS (about 3400\$) per month.⁴²

Thus, the more severe the crime a terrorist is convicted of, the higher monthly stipend he receives.

d) Decree Law Number 1 (2013) on the Amendment of the Prisoners and Released Prisoners Law Number 19 (2004), deals with the employment of released prisoners. According to this law, “The State will guarantee employment to released prisoners” and “Released prisoners will be given priority in all annual job placements, in all State Institutions.”⁴³

36. These laws create **an institutional “care plan” for the perpetrators of war crimes and even crimes against humanity**, covering all aspects, including guaranties for future employment, education and financial support:

“According to the laws, the PA must provide prisoners with a monthly allowance during their incarceration and salaries or jobs upon their release. They are also entitled to exemptions from payments for education, health care, and professional training. Their years of imprisonment are calculated as years of seniority of service in PA institutions. Whoever was imprisoned for five years or more is entitled to a job in a Palestinian Authority institution and the longer he is imprisoned he is entitled to a higher rank in the government apparatus and to a higher salary. Thus, the Palestinian Authority gives priority in job placement to people who were involved in terrorist activity. Palestinian President Mahmoud Abbas has stressed more than once [that] ‘the prisoners are top priority.’”⁴⁴

37. It is important to note, that according to Palestinian Authority legislation and government payments are paid to all Palestinians terrorists, including members of **Hammas, Islamic Jihad and others**, both in Judea and Samaria and Gaza. Furthermore, the PA also pays **Israeli Arab citizens** who have committed terror acts⁴⁵. Contrarily, Palestinians who

⁴² See copy of Monthly allowances for prisoners in Government Decision 23 at: Yigal Carmon, [Palestinian Authority Support for Imprisoned, Released and Wounded Terrorists and Families of 'Martyrs'](#), Written testimony submitted to the House Committee on Foreign Affairs, July 6, 2016.

⁴³ Translations for these laws can be found at: Brig.-Gen. (res.) Yossi Kuperwasser, [Incentivizing Terrorism: Palestinian Authority Allocations to Terrorists and their Families](#), Jerusalem Center for Public Affairs (2017), (Hereinafter: Kuperwasser).

⁴⁴ *id.*

⁴⁵ Lately, Israel Defense minister has signed a decree ordering the forfeit of bank accounts of 9 Israeli citizens who are on the PA 'pay to slay' payroll. See: Amir Buhbut, ["Bennet has decided to forfeit bank accounts of families of Israeli Terrorists"](#) (Hebrew), Walla news, (25 Dec. 2019).

commit other crimes and are imprisoned in Israel, such as car thefts, illegal entry or non-terrorist violence, are not rewarded with governmental stipends.

The pay to slay scheme in numbers

PA budget allocation and methods of transfer

38. According to The Meir Amit Intelligence and Terrorism Information Center:

“In its 2018 budget, the PA allocated **around NIS 1.28 billion (around USD 360 million), approximately 7% of the budget**, to two institutions that assist terrorists imprisoned in Israel, released terrorists, and families of shahids. The institutions are the **Commission of Detainees and Ex-Detainees Affairs** and the **Fund for Families of Martyrs and the Injured**, both of which are **subordinate to the PLO**. Since 2014, the amount allocated to the Commission of Detainees and Ex-Detainees Affairs **has been removed from the PA budget** (in an attempt to disguise the fact that it is the PA that finances the payments to imprisoned and released terrorists). Now, **the amount earmarked for the Commission of Detainees and Ex-Detainees Affairs has once again been openly included in the PA budget**. In the ITIC’s assessment, **this is a blatant act of defiance against the United States, which recently passed the Taylor Force Act** (which stipulates cutting back part of the American aid to the PA until it stops paying stipends to prisoners, released terrorists, and families of terrorists).”⁴⁶

39. The Palestinian Authority faces a severe budget shortfall. In 2015, the Palestinian deficit exceeded \$2 billion.⁴⁷ Despite this severe cash shortage, the government and Ministry of Finance under Minister Shukri Bishari’s leadership increased its fiscal commitment to rewarding terrorism. This was a conscious decision to prioritize rewards for terrorism above financing schools, hospitals, and other basic services.

40. Given its budget shortfall, the Palestinian Authority prefers the payments to terrorists over payments to its own non-terrorist employees. Recently, the Ministry of Finance published the following budgetary information for September, 2019, according to which Payments to

⁴⁶ The Meir Amit Intelligence and Terrorism Information Center, <https://www.terrorism-info.org.il/en/terror-funding-palestinian-authority-mahmoud-abbas-recently-approved-budget-2018-7-devoted-assisting-prisoners-released-terrorists-families-shahids/>. This report consists scanned original PA documents.

⁴⁷ Middle East Monitor, [Palestinian deficit to exceed \\$2bn in 2015](#), Jan. 14, 2015.

prisoners and families of “martyrs” will be paid in full, while Palestinian Authority's employees will be paid only 60% of their salaries⁴⁸.

41. On June 11, 2014, Fatah spokesman Ahman Asaf stated on official Palestinian TV that the Ministry of Prisoner Affairs and ex-prisoners is the **third largest ministry in the PA**, with a monthly budget of over \$12 million, most of which is paid to war criminals and their families.⁴⁹ By the direct order of the Palestinian government, approximately 25,000 people receive government salaries but perform no public duty. These people receive a sinecure solely because they or their family members committed a war crime against Israelis or Jews.⁵⁰
42. According to a report drafted by **Israeli General (Res.) Yosef Kuperwasser** (written in 2017):

“The total PA budget is \$5 billion. The amount that supports prisoners is \$155 million, out of which \$147 million are spent on transfers to the prisoners. These include salaries to 5,000 prisoners, paying Israeli fines for 1,200 prisoners, grants to 1,500 prisoners upon their discharge, grants for 1,200 unemployed released prisoners, delayed payments to 1,000 prisoners, salaries for 5,500 released prisoners, unspecified amounts to released prisoners who spent more than 10 years in jail, canteen expenditures for 6,000 prisoners, and clothing allocations for 5,000 prisoners... The salaries are currently paid based on PA Government Decision No. 23 of 2010, which specifies the prisoners’ monthly allowance according to the length of sentence. It ranges from \$364 a month for up to three years imprisonment to \$3,120 a month for 30 years and more. There is a \$78 supplement for terrorists from Jerusalem and a \$130 supplement for Arab-Israeli terrorists.... The PA also provides prisoners with a monthly allowance for canteen expenses, totaling \$780,000 per month.”⁵¹

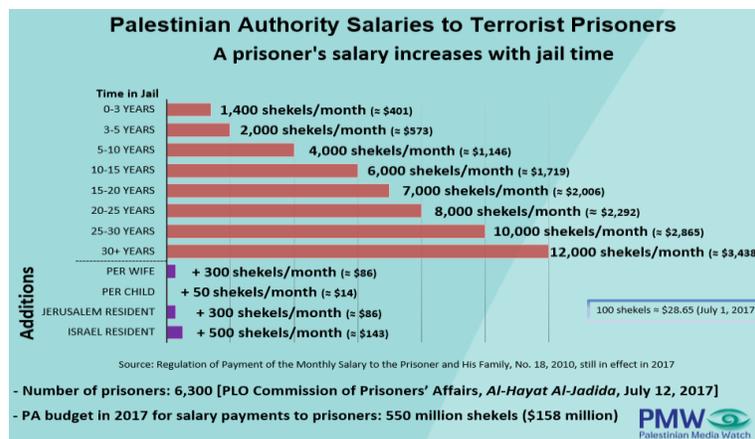
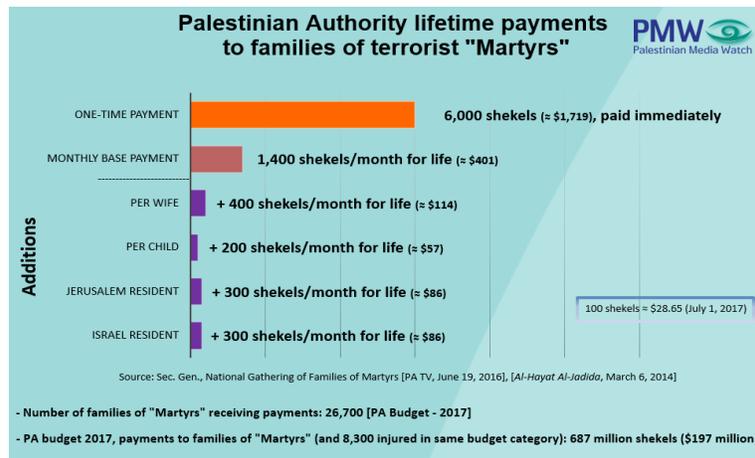
⁴⁸ *Wafa*, Oct. 1 2019. See also: The Meir Amit Intelligence and Terrorism Information Center, [News of Terror and the Israeli-Palastinan conflict](#).

⁴⁹ [PA pays prisoners over 12 million dollars a month](#), Palestinian Media Watch, Jun. 11, 2014.

⁵⁰ [PA daily: PA pays salaries to prisoners, released prisoners, prisons's families, and families of martyrs](#), Palestinian Media Watch, Oct. 8, 2014.

⁵¹ Kuperwasser, *supra* note 43. See also: *Linde et al. v. Arab Bank*, U.S. District Court for the Eastern District of New York, No. 04-2799 (“*the Arab bank case*”).

43. The compensation scheme provides additional payments to married prisoners and those who have children under the age of 18. The scheme does not limit its enticement efforts to “occupied” Palestinians. Instead, it provides extra rewards to Israeli Arabs who commit attacks on civilian targets within the entirety of Israel.⁵² Thus, its goal is clearly promoting and encouraging the murder of Israelis and Jews.
44. The following charts prepared by **Palestinian Media Watch**, present the sums which convicted terrorists receive and the annual budget for these payments:



45. Palestinian media outlets reported on October 20, 2016 that senior Palestinian official, **Intissar al-Wazir**, signed an agreement in Ramallah with **Quds Bank** for transferring pensions to the families of terrorists in the Gaza Strip. The agreement was signed with Quds Bank CEO **Akram Jrab**.⁵³ The signing of this agreement evidences that Palestinian Authority payments are transferred to Hamas terrorists, as the Palestinians publicly admit.

⁵² *Id.* (Arab Bank case).

⁵³ Al-Watan, October 20, 2016.

Actual payments to murderers

46. In a recent Israeli court ruling in *Norz'its vs. PA*,⁵⁴ Jawad Amawi, an attorney and advisor to the Palestinian Authority Ministry of Finance testified that the Palestinian Authority closed the Ministry of Prisoners in 2014 because of international outcry against the “pay to slay” scheme, but continued the payments required by the Palestinian legislation via accounts operated by the PLO. In his testimony, the witness acknowledged that the Palestinian Authority legislation is still in force and implemented.
47. Recipients of “pay to slay” payments include Amjad and Hakim Awad, who murdered five members of the Fogel Family - parents and their three children, including three-month-old Hadas and four-year-old Eldad, in March 2011. The Awad's have already received 460,800 NIS (\$132,895) from the Palestinian Authority for their murderous deeds. Abdullah Barghouti, who built six bombs used by suicide bombers, including the one detonated in the Sbarro pizza shop in Jerusalem in August 2001, murdering 15 civilians – among them two-year-old Hemda Schijveschuurder – has already received 695,200 NIS (\$200,496). Majdi Za'atri, who planned the August 2003 Jerusalem bus bombing which murdered 23 people were murdered, including one-year-olds Shmuel Zargari and Shmuel Taubenfeld, has already received 661,800 NIS (\$190,863)⁵⁵.
48. Payments are also payed to families of terrorists killed during their acts, including the family of Mohammad Tra'ayra, who stabbed to death 13-year-old Israeli Hallel Ariel in her bed. According to Associated Press, the family is eligible for \$350 a month from the Palestinian Fund for Martyrs.⁵⁶

Evidence proving the “pay to slay” scheme incentives Palestinians to commit crimes

49. The “pay to slay” scheme actually “works” in incentivizing the commission of crimes. **Husni Najjar** told Israeli Police that he planned a second terror attack in order to be captured and imprisoned by Israel a second time, so that he would receive the salaries the Palestinian Authority pays to prisoners in jail and after release. In his signed statement following his second arrest, he explains that the money he received from the Palestinian

⁵⁴ Case 2538-00 (Jerusalem) Norz'its Litbac et al. vs. The Palestinian authority.

⁵⁵ Palestinian Media Watch, [Another Baby Killer to Receive Fat Salary from Palestinian Authority](#), The JewishPress.com (January 8, 2019).

⁵⁶ Mohammed Daragmeh and Joseff Federman, [Israel puts Palestinians on defensive over 'martyrs' fund](#) (AP, July 11, 2016); Eli Lake, ["The Palestinian Incentive Program for Killing Jews"](#), 1 July 2016.

Authority as salary during his first prison term amounted to only 45,000 NIS. However, the salary he would receive following his second prison term and subsequent release would leave him with “135,000 NIS... and thus I would cover my debts.”

50. Itamar Marcus and Nan Jacques Zilberdik of the **Palestinian Media Watch** correctly noted that “the terrorist showed precise knowledge of the payments the PA gives to those arrested for terror. He explained that PA law grants terrorists imprisoned for more than five years a salary of 4,000 NIS a month, which continues for three years following their release from prison. This is in addition to monthly salary payments while in prison. The terrorist explained that because his first imprisonment for planning a suicide terror attack (which was foiled) lasted less than five years, it was not enough to prompt the 4,000 NIS monthly salary upon release. He therefore planned another attack in order to reach a total of five years in prison, which would entitle him to the additional salary upon his second release,”⁵⁷

Official's knowledge of the “pay to slay” scheme

51. The “pay to slay” scheme is executed by officials and conducted in public. These officials are not only fully aware of the recipients of these funds, but fiercely protect this scheme.
52. The Palestinian Authority is aware of the criminal nature of the “pay to slay” scheme. In order to mislead donor countries (mainly the United States) and to create the impression that aid funds are not being used to funding terrorism, *on May 29, 2014, President Mahmoud Abbas issued a presidential decree changing the name of the Palestinian Authority Ministry of Prisoner Affairs to the Commission of Detainees and Ex-Detainees Affairs* and removing it from the Palestinian government to the PLO. Following the publication of this order, **Minister Issa Karake** (formerly Minister of Prisoner) was appointed to **serve as Chairman of the Commission, with the status of Minister.**⁵⁸
53. This change was an effort to conceal the Palestinian Authority’s direct involvement in the criminal “pay to slay” scheme and to guarantee that donor funds are diverted for its continuation:

“Several high-ranking Palestinian officials have addressed this change: In June 2014, the former Deputy Minister for Prisoners’ Affairs, Ziyad Abu ‘Ayn, explained that ‘the

⁵⁷ Itamar Marcus and Nan Jacques Zilberdik, [Terrorist planned attack in order to be imprisoned and receive PA salary](#), Feb. 16, 2014. The article contains the written testimony of the terrorist.

⁵⁸ Terror funding by the Palestinian Authority, *supra* note 6, see also the testimony of Jawad Amawi.

national interest requires' this change because the donor countries 'have established dozens of investigative committees focusing on the issue of [their] funds that are transferred from the PA to the prisoners.' PA officials have admitted that the PA remains the financier and the decision-maker in all things pertaining to support for the prisoners and the martyrs' families. For example, in September 2014, the director of detainees and ex-detainees affairs in Hebron, Ibrahim Najajra, said that the change of status from a ministry to a commission 'would not detract from the prisoners' value or from their legal, moral, or political status, since the services extended to them are anchored in law.'" He added that the commission would be under the direct supervision of the Palestinian presidency and that the payments would be made directly by the PLO's National Palestinian Fund. In December 2015, PA Cabinet Secretary 'Ali Abu Diyak announced that the PA government was committed to continuing to pay allowances to fighters imprisoned for their national struggle and to the families of the martyrs, the wounded, and the prisoners."⁵⁹

54. Palestinian officials speak publicly and frequently about the importance of the pay to slay scheme. **President Mahmoud Abbas** declared that "If we had a single penny left, we would spend it on the families of the martyrs and the prisoners, and only then on the rest of the people."⁶⁰ Also, **Abbas** said in an interview with the London-based Qatari daily Al-Quds Al-Arabi that he would not give in to the American and Israeli demand to stop payments to the families of prisoners and martyrs, calling them "fighters" and underlining his obligation to them.⁶¹

⁵⁹Kuperwasser, supra note 43.

⁶⁰MEMRI, Palestinian Authority (PA) President 'Abbas: 'If We Had Only A Single Penny Left, We Would Pay It To Families Of The Martyrs And Prisoners, at: <https://www.memri.org/reports/palestinian-authority-pa-president-abbas-if-we-had-only-single-penny-left-we-would-pay-it>. More statements can be found on MEMRI: MEMRI TV Clip No. 6179, Former Chief Palestinian Negotiator Nabil Shaath: We Will Not Stop Payment To Prisoners And Their Families, August 27, 2017; MEMRI Inquiry and Analysis No. 1321, Palestinian Authority, PLO Officials: Allowances To Prisoners Will Continue; This Issue Is Not Subject To U.S.-Israeli Extortion,' June 16, 2017; MEMRI Special Dispatch No. 7070, Palestinian Media Stresses: President Mahmoud 'Abbas Refuses To Halt Payments To Prisoners, Families Of Martyrs, August 28, 2017; MEMRI Special Dispatch No. 7001, 'Abbas, PA Officials, Reaffirm Commitment To Continue Paying Allowances To Prisoners And Martyrs' Families, July 10, 2017; MEMRI Inquiry and Analysis No. 1327, 2017 Palestinian Authority Budget Shows: Salaries, Benefits For Prisoners, Released Prisoners Several Times Higher Than Welfare For Needy, August 22, 2017.

⁶¹ Al-Quds Al-Arabi (London), September 19, 2017; MEMRI Special Dispatch No. 7100, ['Abbas Ahead Of UNGA Speech: I Will Continue Payments To Families Of Prisoners And Martyrs](#), September 20, 2017

B. The temporal effects of a ruling on the issue of territorial jurisdiction as set in paragraph 220 of the Prosecutor's request

55. We contend, that for the reasons brought in the Attorney General's of the State of Israel Memorandum⁶², the Court has no Territorial Jurisdiction over the situation in “Palestine”;
56. However, **should** the Chamber answer positively on the question of jurisdiction set forth in paragraph 220 to the Prosecutor's request – then the *temporal dimension* of the Court's jurisdiction on Palestinian Authority and Hamas leaders should take effect - not from the date of the referral of the “State of Palestine” from July 13th 2014, but from the July 1st 2002⁶³.
57. This is because Palestinians in the West Bank, and specifically – the leaders of Hamas and the Palestinian Authority – are also nationals of Jordan – a member state of the Rome Statute from its first day⁶⁴, making them also subject of a *personal* based jurisdiction.
58. Thus, if the Chamber answers the question of Territorial Jurisdiction positively, then any prior policy consideration by the Prosecutor (if existent) – which previously may have prevented the investigation of these Officials on the basis of *Personal* jurisdiction – should become **irrelevant**.
59. On the contrary: once Territorial Jurisdiction has been acquired, it would be **contrary to the interest of justice** to disregard crimes which the Court has always maintained jurisdiction over, regardless of the source of its jurisdiction (i.e. whether *personal* based or *territorial* based).
60. We note, that while SHD has already provided the Prosecutor with relevant information of the Personal based jurisdiction, it has been disregarded so far. We believe, that these facts would have never been brought before the Chamber, if not by this observation.

B1 - Jordanian Nationality of Palestinian Authority and Hamas Officials

61. Available public information, which is supported by applicable principles of International Law, indicates that Officials in Hamas and the Palestinian Authority – including the leaders

⁶² [Attorney General Memorandum](#), The International Criminal Court's Lack of Jurisdiction Over the So Called “situation in Palestine”, December 20, 2019.

⁶³ Rome statute, art. 126.

⁶⁴ Jordan signed the Rome Statute on 7 October 1998 and deposited its instrument of ratification on 11 April 2002, see: Ratification of Jordan of the Rome Statute, Apr. 11, 2002, C.N.368.2002. TREATIES-19 (Depositary Notification)

President Mahmoud Abbas and senior Hamas official Khaled Mashal - hold Jordanian citizenship, a member state of the Court since July 1st 2002.

62. In some cases, available public information specifically indicates an active exercise of the prerogatives of these official's Jordanian citizenship. Such is the case of Mahmoud Abbas⁶⁵ and of Khaled Mashal⁶⁶.
63. But furthermore, Jordanian citizenship applies to Palestinians born in the West Bank, at least during its annexation by Jordan prior to 1988, if not until these days: In April 1950, after capturing the West Bank in 1948, Transjordan had annexed the territory fusing the east and west banks of the Jordan River into a single State – renamed the Hashemite Kingdom of Jordan, directly following national elections serving as a referendum on the subject⁶⁷. The Palestinians living in the Kingdom became Jordanian citizens⁶⁸. In 1954, the Jordanian Parliament extended citizenship to all non-Jews born or resident in all areas then under Jordanian control, including the West Bank.⁶⁹ The Jordanian Parliament has never repealed these statutes.⁷⁰
64. However, in 1988, in a formal address to his citizens, King Hussein announced Jordan's portentous decision to sever the legal and administrative bonds between the two banks of the Jordan River, recognizing the Palestinians' aspiration to secede from Jordan and to create an independent State in the exercise of their right to self-determination. This decree, however, was invalid under Jordanian law.⁷¹ The Jordanian Constitution does not permit the withdrawal of citizenship on the basis of place of residency and does not permit the Monarch to unilaterally amend the Constitution⁷². Further, international law prevents Jordan from withdrawing citizenship from its Palestinian citizens on the basis of their place

⁶⁵ *Khaled Abu Toameh, Abbas, Dahlan take out Jordanian citizenship*, Jerusalem Post, Feb. 9, 2011; UPI, *Abbas Receives Jordanian Citizenship*, Feb. 9, 2011; *Jordan's deputy speaker criticises Abbas and Fateh leadership over their possession of Jordanian nationality*, Middle East Monitor citing Al-Quds Al-Arabi, Feb. 8, 2011.

⁶⁶ *Hamas leader Khaled Meshaal returns for Jordan visit*, BBC News, Jan. 29, 2012 (writing: "The Hamas leader, who has Jordanian citizenship...").

⁶⁷ *Digest of International Law*, vol. II, 1165–6 (M.M. Whiteman ed., 1963),

⁶⁸ YORAM DINSTEIN, *THE LAW OF BELLIGERENT OCCUPATION* 15 (2009)

⁶⁹ Law No. 6 of 1954 on Nationality, Official Gazette, no. 1171, February 16, 1954, p. 105, arts. 3 and 9. Law No. 56 of 1949 Additional to the Law of Nationality, Official Gazette, no. 1004, December 20, 1949, p. 422.

⁷⁰ Human Rights Watch, *Stateless Again, Palestinian-Origin Jordanians Deprived of their Nationality* [hereinafter "Stateless Again"] 17, Jan., 2010.

⁷¹ *id.*

⁷² Constitution of Jordan, art. 6(i) and 9(ii).

of residency.⁷³ Customary international law further prohibits the arbitrary deprivation of citizenship, especially where that deprivation would result in statelessness.⁷⁴ Moreover, this declaration was illegal under both Jordanian and international law because it was not ratified by the Jordanian Parliament and was not reflected in any amendments to the Jordanian Constitution. Further, it is arbitrary in its nature, and, if effective, would result in the statelessness for those so deprived.⁷⁵

65. Thus, as the Court may exercise its jurisdiction over all acts committed by the citizen of a state party to the Rome Statute, wherever those acts are committed⁷⁶, it would include the Officials in Hamas and the Palestinian Authority.
66. **B2 Acquisition of Territorial Jurisdiction by the Court should Lower any Policy Barrier Previously Posed to the Exercise the Court's Jurisdiction**
67. We believe that the *indisputable* Personal Jurisdiction over Palestinian leaders holding Jordanian citizenship should have already - and independently of the issue of Territorial Jurisdiction – been the subject of an investigation against these Palestinian leaders and officials for war crimes. Contradictory to the situation in the Syrian Arab Republic, which the Prosecutor has decided not to investigate, although thousands of foreign fighters came from member states, finding that the ISIS leaders were not citizens of a member state⁷⁷, in this instance – it is the leaders of the Palestinian Authority who hold the citizenship of a member state and practice its prerogatives.
68. Nevertheless, we contend that once the Chamber recognizes the Territorial Jurisdiction over the situation in Palestine, it will lower any policy barrier, once posed, especially for *recurring* and *continues* crimes.
69. Such *continues* crimes include, for example, the administration of a 'pay to slay' scheme, the incitement to hatred and violence in the Palestinian Authority educational system and

⁷³ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 13, 15.

⁷⁴See e.g. KAY HAILBRONNER, NATIONALITY IN PUBLIC INTERNATIONAL LAW AND EUROPEAN LAW, IN 1 ACQUISITION AND LOSS OF NATIONALITY: POLICIES AND TRENDS IN 15 EUROPEAN COUNTRIES 70 (Rainer Bauböck, Eva Ersboll, Kees Groenendijk, & Harald Waldrauch eds., 2005).

⁷⁵ *Stateless again*, note 71, at 17.

⁷⁶ Rome Statute, art. 12(2)(b).

⁷⁷ [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS](#), 8 April 2015 ("The information available to the Office also indicates that ISIS is a military and political organisation primarily led by nationals of Iraq and Syria. Thus, at this stage, the prospects of my Office investigating and prosecuting those most responsible, within the leadership of ISIS, appear limited")

media against Jews and Israelis and other actions administered by the Palestine Authority, which demonize, delegitimize and incites against Jews, because of their religion and against Israelis, because of their nationality. Such *continues* crimes include, for example, the recurrent and intentional attacks by rockets and mortars against Israeli civilian population centers.

70. In these cases, the date of the shifting/addition of the basis for the Court's jurisdiction simply does not matter – if a perpetrator of a War Crime or a Crime against Humanity continues his conduct before and after that date – it would be contrary to the interest of justice to "stop" on the day of the shifting/addition of that source.
71. Thus, THE VICTIMS argue that there is no valid policy consideration which prevents the Prosecutor from utilizing any source of jurisdiction available to her, if this chamber confirms Territorial Jurisdiction.

B3 The Case of 'Three Boys' as an Illustration

72. We further refer the Chamber's attention to the fact, that the present leadership of the “State of Palestine” chose the date of it accepting the jurisdiction of the Court, retroactively, on the June 13, 2014⁷⁸. That date was not set randomly: On the day **before**, June 12, 2014, members of Hamas operating in the territory over which the Prosecutor claims jurisdiction, kidnapped and murdered teenagers Eyal Yifrach, Gilad Shaar, Naftali Fraenkel ([REDACTED]), three unarmed civilians, two of whom were minors and murdered them⁷⁹ For 18 days, their fate was unknown and the entire nation anxiously prayed and awaited their safe return⁸⁰. Following the kidnapping, Israel Defense Forces initiated 'Operation Brother's Keeper' in search of the three teenagers. Thus, the arbitrary date, set by the Palestinian Authority to accept this Court's jurisdiction was meant to divide between the military operation to rescue the boys and the operations against Hamas in the West Bank which followed from the criminal Palestinian conduct which caused this.
73. This example clearly illustrated the importance of our argument, as to the temporal application of the Court's jurisdiction, should the Court rules it has. In fact, in a larger

⁷⁸ [Declaration accepting jurisdiction of International Criminal Court – State of Palestine](#) ; the Registrar, [2015/IOR/3496/HvH](#), Jan 7, 2015.

⁷⁹ Ralph Ellis and Michael Schwartz, [Mom speaks out on 3 abducted teens as Israeli PM blames Hamas](#), CNN, June 15, 2014.

⁸⁰ MFA, [Eulogy by PM Netanyahu for Eyal Yifrach, Gilad Sha'er and Naftali Frenkel](#), Jul 1, 2014.

context, this example also demonstrates the cynical abuse of the Court by the Palestinian Authority, as a whole and also strengthens the need to refrain from a ruling in this complex situation.

Concluding Remarks

74. The complete disregard of Palestinian Terror, which has taken the lives of our loved ones and of tens of thousands of other Israelis in the Prosecutor's request is a shocking miscarriage of justice. It is a severe dereliction of her duty. Moreover, it demonstrates both the heartless and prejudicial nature of this proceeding. It seems, that the Prosecutor has circled her goals, and all means are now permitted to justify the predetermined ends, even if they include bending legal standards and factual information to serve this unjust cause.
75. If that is case, as citizens of a nation which rose from the ashes of the Holocaust, the most extreme genocidal offenses ever perpetrated against humanity, and as victims of similar Crimes against Humanity, we are deeply concerned about the actions of the Prosecutor and this proceeding. Looking 20 years in the past, it seems that the concerns over the formation of the International Criminal Court have now been proved tragically correct:
- "the government of the State of Israel signs the statute while rejecting any attempt to interpret provisions thereof in a politically motivated manner against Israel and its citizens. The government of Israel hopes that Israel's expressions of concern over any such attempt would be recorded in history as warning against the risk of politicization, that might undermine the objectives of what is intended to become a central impartial body, benefiting mankind as a whole."⁸¹
76. We contend that the Court should not and need not address the 'Situation in Palestine', because of the same risk of politicization of the Court and its ability to remain an impartial body. The disregard of our victimization and the omission of our suffering in the Prosecutor's request should serve as a wake-up call for the Pre-Trial Chamber, of the realization of these risks. Both the Israelis and the Palestinians claim very long-enduring historical ties to Jerusalem and areas in the West Bank region. The resulting dispute has produced decades of violence, terrorism and hatred, but such are not issues for this Court to resolve, as it cannot and should not deal with it.

⁸¹ See in: Daniel A. Blumenthal, *The politics of justice: Why Israel signed the International Criminal Court statute and what the signature means*, 30 GA. J. INT'L & COMP. L. 593, 601.

77. The temporal issue also presents the same problem – the setting of the date by the Palestinian Authority for the Jurisdiction of this Court, a day after the kidnapping and murdering of the three Israeli boys by Palestinians, demonstrates the seriousness of the susceptibility of manipulation of the Court for political reasons. We have suggested an alternative temporal solution, but this should only be placed in effect if the primary mistake of accepting the Prosecutor's request is made.

THE VICTIMS

LIST OF VICTIMS OMITTED FROM PUBLIC RECORD FOR REASONS CONCERNING THEIR PERSONAL SAFETY AND SECURITY



Nitsana Darshan-Leitner
President, Shurat HaDin Israel Law Center
Designated representative of the victims for the purpose
of rule 32 to the Rules of the Court

Dated: 16 March 2020, Ramat Gan, Israel

ANNEX 1

Annex I omitted from public record for reasons concerning the VICTIMS' personal safety and security