

In the  
International Criminal Court

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SHURAT HADIN – ISRAEL LAW CENTER

*The complainant*

*v.*

MAHMOUD ABBAS (عَبَّاس مَحْمُود)

ALSO KNOWN AS

ABU MAZEN (مَازِن أَبُ)

*Accused of War Crimes*

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Communication

To the Prosecutor of the International Criminal Court  
regarding war crimes committed by Mahmoud Abbas  
(عَبَّاس مَحْمُود) also known as Abu Mazen (مَازِن أَبُ)

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November 11, 2014

## COMMUNICATION

of SHURAT HADIN – ISRAEL LAW CENTER regarding criminal activities of Mahmoud Abbas, requesting that the Prosecutor of the International Criminal Court (hereinafter the “Prosecutor”), pursuant to Article 15 of the Rome Statute<sup>1</sup>, initiate an investigation into the war crimes committed within the Court’s jurisdiction by Mahmoud Abbas (hereinafter “Abbas”), a citizen of the Hashemite Kingdom of Jordan (hereinafter “Jordan”).

### 1. Introduction:

THE COMPLAINANT submits to the Prosecutor this communication concerning Abbas’s criminality in actively promoting indiscriminate rocket attacks on Israeli civilian locations. Abbas is a citizen of Jordan. In addition to being President of the Palestinian National Authority and Chairman of the Palestinian Liberation Organization, Abbas is Chairman of the Central Committee of Fatah, a Palestinian militant faction.<sup>2</sup> Al-Aksa Martyrs’ Brigade (hereinafter AAMB) is a military group within Fatah.<sup>3</sup> Abbas therefore is in *de jure* and *de facto* control of Fatah and of AAMB. He is responsible for the war crimes of those groups, in violation of Articles 8 (2) (c) (i) and 28 (2) of the Rome Statute.

### 2. Jurisdiction *ratione personæ*:

The Court has jurisdiction *ratione personæ* because Mahmoud Abbas is a citizen of Jordan.<sup>4,5,6</sup> The Court may exercise its jurisdiction over all acts committed by the

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<sup>1</sup> The Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force on 1 July 2002)[hereinafter Rome Stat.].

<sup>2</sup> Elinor Levy, *Abbas: We will not agree to anything short of a fully autonomous Palestinian state*, YNet News, Mar. 22, 2014.

<sup>3</sup> Khaled Abu Toameh, *Fatah committed to Aksa Martyrs*, Jerusalem Post, Jun. 20, 2004.

<sup>4</sup> *Khaled Abu Toameh*, Abbas, Dahlan take out Jordanian citizenship, Jerusalem Post, Feb. 9, 2011.

<sup>5</sup> *Abbas Receives Jordanian Citizenship*, UPI, Feb. 9, 2011.

citizen of a state party to the court, wherever those acts are committed.<sup>7</sup> Jordan is a member state of the Court.<sup>8</sup> Therefore, the Court has jurisdiction *ratione personae* over Mahmoud Abbas.

### **3. Jurisdiction *ratione temporis*:**

Jordan ratified the Rome Statute on April 11, 2002.<sup>9</sup> Therefore, the Court has jurisdiction over all criminal acts committed by Jordanian nationals after July 1, 2002 when the Rome Statute entered into force.<sup>10</sup>

### **4. Jurisdiction *ratione materiae*:**

This Court has jurisdiction over the war crime of attacking civilians in a conflict not of an international nature.<sup>11</sup> A perpetrator is guilty of the war crime of attacking civilians in a conflict not of an international nature when:

1. He directs an attack.
2. The object of the attack is a civilian population as such or individual civilians not taking direct part in hostilities.
3. He intends the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.
4. The conduct takes place in the context of and is associated with an armed conflict not of an international character.
5. He was aware of factual circumstances that established the existence of an armed conflict.<sup>12</sup>

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<sup>6</sup> *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.

<sup>7</sup> Rome Stat., *supra* note 1 at art. 12(2)(b).

<sup>8</sup> Ratification of Jordan of the Rome Statute, Apr. 11, 2002, C.N.368.2002.TREATIES-19 (Depositary Notification)

<sup>9</sup> *Id.*

<sup>10</sup> Rome Stat., *supra* note 1 at art. 126(1).

<sup>11</sup> *Id.* at art. 8(2)(e)(i)

This Court has jurisdiction to impute to a civilian superior the war crimes committed by his subordinates.<sup>13</sup> A civilian superior is a person who has *de facto* or *de jure* authority empowering him to control an armed force.<sup>14</sup> A civilian superior is liable for the criminal acts of his subordinates when he:

1. Knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes.

2. The crimes concerned activities that were within the effective responsibility and control of the superior, and;

3. The superior failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

The facts clearly demonstrate that Fatah and AAMB have attacked civilians in a conflict not of an international nature and that Abbas is liable for the acts of these organizations because he is their responsible superior exercising effective command and control of them.

## **5. Facts Supporting Jurisdiction:**

### **5(a). Members of Fatah and AAMB directed attacks in the July and August, 2014 conflict with Israel:**

Members of Fatah and AAMB have directed rocket attacks in the 2014 conflict with Israel. In July and August, 2014, Fatah and AAMB fired rockets from Gaza into Israeli cities. AAMB's rocket fire was so prolific, sustained, and saturating that AAMB

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<sup>12</sup> Elements of Crimes, International Criminal Court publication, RC/11 (2011).

<sup>13</sup> *Id.* at art. 28(b)

<sup>14</sup> Roberta Arnold and Otto Triffterer, *Article 28 Responsibility of commanders and other superiors*, in *Commentary on the Rome Statute of the International Criminal Court* (Otto Triffterer, ed.) (2nd ed.) (2008).

exhausted its supply of rockets and is using the current ceasefire to re-arm.<sup>15</sup> Constituent elements of Fatah fired over 2,000 rockets at Israeli civilian targets during the 2014 conflict. AAMB fired 620 rockets over the days of the war, the Abu Nidal Brigades shot 532 rockets and mortars at “the Zionist enemy,” and the Abdul Kader Hussein Brigades fired 864 rockets and mortars at Israel.<sup>16</sup>

Fatah has not clarified the dates or targets of all of the attacks it perpetrated, although this matter is amenable to further investigation. However, Fatah spokesman publically claimed responsibility for the following specific attacks:

On July 10, 2014, a Fatah military force launched two Grad rockets and four mortar shells at Kibbutz Nir Or, another location within Israel, and fired 112 millimeter and 107 millimeter rockets at Ashkelon, Sderot, Netivot, Kibbutz Ein Hashlosha and the Sufa Crossing from Gaza.<sup>17,18</sup>

On July 25, 2014 AAMB launched 3 107 mm rockets at Nirim.<sup>19</sup>

On July 27, 2014, AAMB’s claimed credit for launching 3 model 107 rockets at Kfar Aza.<sup>20</sup>

On August 8, 2013, AAMB fired 4 N103 rockets at Ashkelon and 4 107 mm rockets.<sup>21</sup>

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<sup>15</sup> Itamar Marcus and Nan Jacques Zilberdik, *Fatah producing new rockets to replenish supplies for coming wars with "the Zionist enemy,"* Palestinian Media Watch, Sep. 22, 2014, available at [http://palwatch.org/main.aspx?fi=157&doc\\_id=12693](http://palwatch.org/main.aspx?fi=157&doc_id=12693)

<sup>16</sup> *Mahmoud Abbas's Fatah Terrorists: 'We Shot Over 2,000 Rockets at Israel,'* The Allgemeiner, Aug. 28, 2014.

<sup>17</sup> Elhanan Miller, *Fatah joins Hamas and Islamic Jihad in missile launches,* Times of Israel, Jul. 10, 2014, available at, <http://www.timesofisrael.com/moderate-fatah-joins-hamas-and-islamic-jihad-in-missile-launches/>

<sup>18</sup> *Id.*

<sup>19</sup> AAMB Communiques (Jul. 24, 2014), available at <http://www.nedal.net/ar/index.php?Action=NewsDetails&ID=18653>

<sup>20</sup> *Fatah Threatens to "Turn Tel Aviv into Ball of Fire," Glorifies Rockets Against Israel,* States News Service, Jul. 29, 2014

**5(b) The object of the attack is a civilian population as such or individual civilians not taking direct part in hostilities.**

Fatah and AAMB members have as the object of their attacks civilian population centers in Israel. Fatah and AAMB publically celebrate their targeting of civilians. Far from being an unintended collateral consequence, Fatah and AAMB jubilate at the prospect of targeted Israelis. According to an official Fatah film, the “only way” to liberate “Palestine” is through the “heroic bloodying” of Israeli civilians through rocket attacks.<sup>22</sup>

Consistent with this goal, the areas of Israel which Fatah and AAMB targeted are areas exclusively populated by civilians and of no military significance whatever. Ashkelon is a beachside resort. Although a naval base exists to it south, there is no military facility within its corporate limits.<sup>23</sup> Sderot similarly has a military facility near to it, but no military facility in the city proper.<sup>24</sup> Netivot is near to an air base, but is populated exclusively by civilians.<sup>25</sup> Kibbutz Ein Hashlosha an agricultural community of 80 families.<sup>26</sup> Sufa crossing is a facility built to allow goods and persons to flow between Israel and the Gaza Strip. It serves an important humanitarian role and is a civil law enforcement facility, not a military facility.<sup>27</sup> Kibbutz Nir Or is an agricultural settlement in which asparagi are the most threatening thing present.<sup>28</sup> Kfar Aza contains

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<sup>21</sup> AAMB Communique (Aug. 8, 2014), available at <http://www.nedal.net/ar/index.php?Action=NewsDetails&ID=18953>, <http://www.nedal.net/ar/index.php?Action=NewsDetails&ID=18952>

<sup>22</sup> *Abbas's Fatah Brags of Terror Attacks in Gaza Operation*, Israel National News, available at <http://www.israelvideonetwork.com/abbass-fatah-brags-of-terror-attacks-in-gaza-operation>

<sup>23</sup> *Israel's next step in Gaza*, Kashmir Monitor (India), Jul. 14, 2014.

<sup>24</sup> *Supplying support*, Jerusalem Post, Jul. 17, 2014.

<sup>25</sup> Ron Friedman, *Flying Around in Circles*, bmJerusalem Post, Feb. 19, 2010.

<sup>26</sup> Or Movement, *An HaShlosha*, undated, available at <http://eng.negev-net.org.il/HTMLs/article.aspx?C2004=12756>.

<sup>27</sup> *Sufa crossing opens for 'test' Gaza gravel import*, Ma'an News Agency, Sep. 9, 2011.

<sup>28</sup> Keren Kayemeth LeIsrael, *Spotlight on New Projects*, available at <http://www.kkl.org.il/eng/people-and-environment/spotlight-on-new-projects/>

a plastics factory, civilian homes, a swimming pool and dairy pastures.<sup>29</sup> Nirim is an agricultural community known for producing organic peanut and peppers.<sup>30</sup> None of these locations has any lawful military target within them. Therefore, the use of rocket fire against them targets civilian population.

**5(c) Fatah and AAMB intend the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.**

Fatah and AAMB intended that Israeli civilian populations resident in the cities referenced above to be the targets of their attacks on July 9-10. Both Fatah and AAMB spokesmen gloated publically about the terror their indiscriminate rocketry would instill in the Israeli civilian population. Abbas Zaki, a Fatah Spokesman and Fatah Central Committee Member told the independent Palestinian Press that Fatah's rocket attacks "carry a message to the Israeli enemy" which will cause "destructive anarchy" and cause Israelis to live "in the shelters and live in fear."<sup>31</sup> Zaki is a close friend and confidant of Abbas who speaks with Abbas's full approval and endorsement.<sup>32</sup> These statements indicate that Fatah and AAMB view their attacks not as targeting military installations, but as targeting civilians, whom they wish to place in fear for the accomplishment of political aims, and that Abbas is aware of this intent. Targeting of civilians is a war crime.<sup>33</sup>

Fatah and AAMB's failure to warn civilians of impending attack aggravated their launching of rockets with no legitimate military purpose. Even if the cities at which Fatah and AAMB fire rockets had legitimate military targets, which they do not, a

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<sup>29</sup> Or Movement, *Kfar Aza*, undated, available at <http://eng.negev-net.org.il/htmls/article.aspx?C2004=12736&BSP=12610>

<sup>30</sup> Lydia Aisenberg, *Feeling Gaza*. Jerusalem Post, Apr. 17, 2009.

<sup>31</sup> *Fatah official: Fatah is united with Hamas in rocket attacks on Israel*, Al-Hayat Al-Jadida, July 12, 2014.

<sup>32</sup> *Fatah Official: Allah Will Gather Israelis So We Can Kill Them*, The Jewish Press, Mar. 13, 2014.

<sup>33</sup> Rome Stat., art. 8(2)(b).

military force or paramilitary in a non-international armed conflict is required to warn a civilian population of impending attack as a matter of customary international law.<sup>34</sup> Fatah and AAMB have provided no warning of impending rocket attacks with sufficient specificity to allow Israeli civilians to react and to evacuate from the area of legitimate military targets. Fatah and AAMB have not provided warnings because their rocket attacks do not target legitimate military targets; they target Israeli civilians. According to Fatah, its rocket attacks exist to “turn Tel Aviv into (a) ball of fire.”<sup>35</sup> Far from being an unintended consequence of rocket attacks, Fatah and AAMB’s rocket attacks are designed to terrify Israeli civilians into flight as refugees. Therefore, civilians are the target of Fatah and AAMB rocket attacks.

**5(d) Fatah and AAMB’s conduct takes place in the context of and is associated with an armed conflict not of an international character.**

Fatah and AAMB’s rocket fire at Israel takes place in a conflict which is not of an international character. A conflict which is of an international nature is one which occurs between two high contracting parties to the Geneva Conventions.<sup>36</sup> Fatah and AAMB are not high contracting parties to the Geneva Conventions. Although Fatah is a constituent member of the Palestinian Liberation Organization (PLO), the Palestinian Liberation Authority is legally distinct from the Palestinian National Authority, has no sovereign authority in Gaza or in any other place, and is not a state.<sup>37</sup> The Palestinian Liberation Organization may not accede to the Geneva Conventions as a matter of law.<sup>38</sup> Therefore,

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<sup>34</sup> 1 Customary International Humanitarian Law 63-64 (Jean-Marie Henckaerts & Louise Doswald-Beck eds., 2005)

<sup>35</sup> *Supra*, note 12.

<sup>36</sup> Geneva Conventions I-IV, common art. 2, Aug. 12, 1949, 6 U.S.T. 3316 *et seq.*

<sup>37</sup> *Ungar v. Palestine Liberation Organization*, 402 F.3d 274, 290-92 (1st Cir. 2005).

<sup>38</sup> Interim Agreement on the West Bank and the Gaza Strip, Isr.-P.L.O., art. IX(5)(b), Sep. 28, 1995, 36 I.L.M. 557 [hereinafter Oslo II].



Fatah and AAMB's rocket attacks do not constitute armed conflict of an international nature.

Non-international armed conflicts are "protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory" of a high contracting party to the Geneva Conventions.<sup>39</sup> Israel is a high contracting party to the Geneva Conventions.<sup>40</sup> Fatah and AAMB's rockets land inside of the undisputed territory of Israel. Therefore, these armed groups conduct operations inside of the territory of a high contracting parties while not being themselves high contracting parties. Therefore, the Fatah and AAMB rocket attacks of July and August, 2014 constitute armed conflict not of an international character.

**5(e) Mahmoud Abbas is aware of factual circumstances that established the existence of an armed conflict.**

Mahmoud Abbas is aware of the firing of rockets from Gaza into Israel and the consequent armed conflict which this firing has engendered. He has publically spoken about the armed conflict existent from July, 2014, onward. Israel, in response to rocket fire, launched air strikes in Gaza. Mahmoud Abbas discussed the Gaza rocket launches and Israel's response and declared "It's (sic) genocide – the killing of entire families is genocide by Israel against our Palestinian people."<sup>41</sup> Although this statement is legally and factually incorrect, it proves that Mahmoud Abbas is fully informed of the existence of armed conflict between groups in Gaza and Israel.

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<sup>39</sup> Int'l Comm. of the Red Cross, *How is the Term 'Armed Conflict' Defined in International Humanitarian Law?* 5 (2008)

<sup>40</sup> 1080 U.N.T.S. 370

<sup>41</sup> Hugh Naylor, *Abbas accuses Israel of genocide as Gaza death toll rises*, The National (UAE), Jul. 9, 2014.

**5(f) Mahmoud Abbas knows that Fatah and AAMB illegally fire rockets at Israeli civilian targets.**

Mahmoud Abbas knows that Fatah and AAMB illegally fire rockets at Israeli civilian targets. He further knows that these attacks are illegal. According to Abbas's delegate to the United Nations Human Right Council, Ibrahim Khreisheh, the Palestinian Authority cannot itself apply to join the International Criminal Court (ICC) because "the missiles that are now being launched against Israel, each and every missile constitutes a crime against humanity, whether it hits or missed, because it is directed at civilian targets... Therefore, targeting civilians, be it one civilian or a thousand, is considered a crime against humanity" According to Khreisheh, ICC membership would expose Fatah officials to criminal liability because of these rocket attacks.<sup>42</sup> Khreisheh is an Abbas confidant and speaks on behalf of the Palestinian organizations with Abbas controls. Khreisheh is also a member of Fatah, serving on the Fatah Revolutionary Council.<sup>43</sup>

Abbas has publicly acknowledged rocket attacks on Israel. On July 10, 2014, he discussed at length rocket attacks on Israeli civilian areas on Palestinian television.<sup>44</sup> His open knowledge of these attacks gave rise to a duty for him to take reasonable steps to prevent and stop those unlawful attacks by forces under his control.

**5(g) Fatah and AAMB rocket attacks were within the effective responsibility and control of Mahmoud Abbas.**

Mahmoud Abbas is head of Fatah and has general control over the activities of both Fatah and AAMB. Abbas is Chairman of the Fatah Central Committee and the Fatah Revolutionary Committee, in addition to being President of the Palestinian

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<sup>42</sup> <http://www.ynetnews.com/articles/0,7340,L-4542765,00.html>

<sup>43</sup> Fatah website, <http://www.fateh.ps/>, last accessed Oct. 2, 2014.

<sup>44</sup> Fadwa Hodali and Calev Ben-David, *Abbas Slams Hamas Rocket Fire as Israel Hints at Invasion*, Bloomberg News, Jul. 10, 2014.

Authority.<sup>45</sup> AAMB is a constituent organization of Fatah and within his general control in that capacity. As head of Fatah, the Palestinian Liberation Organization, and the Palestinian Authority, Abbas has responsibility for the actions and control of Fatah and its constituent organizations. Abbas and the Fatah Revolutionary Committee have control over both the military and civilian wings of the Fatah organization.<sup>46</sup> The Revolutionary Committee, which Abbas chairs, is responsible for disciplining Fatah members<sup>47</sup> Finances and payments to Fatah militant organizations and to individual combatants are also within the control of Abbas and of persons loyal to him.<sup>48</sup>

**5(h) Abbas failed to take all necessary and reasonable measures within his power to prevent or repress Fatah and AAMB from indiscriminately firing rockets or to submit the matter to the competent authorities for investigation and prosecution.**

Abbas has failed to take any steps whatever to prevent or repress Fatah and AAMB from firing rockets indiscriminately at Israeli civilian areas. On the contrary, he has passively and actively encouraged these attacks. There is no evidence that Abbas has ever directed Fatah's internal discipline mechanisms to control Fatah and AAMB members who fire rockets at Israeli civilian areas. There is no evidence that, in his capacity as President of the Palestinian Authority, he has directed the Palestinian Authority Attorney General to open a criminal probe into the unlawful actions of Hamas and AAMB, as required by the Palestinian constitution.<sup>49</sup>

Mahmoud Abbas has instead continued to pay salaries on behalf of the Palestinian Authority to Fatah and AAMB members who are confined to prisons in other jurisdictions for war crimes. Any person involved in a war crime or terror attack "on

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<sup>45</sup> *The Return of Mohammed Dahlan*, Palestine News Network (PNN), Nov. 1, 2013.

<sup>46</sup> Fatah Constitution, Art. 48

<sup>47</sup> *Id.* art. 50(c), Fatah Charter, Art. 23(c)

<sup>48</sup> Fatah Charter, Art. 36

<sup>49</sup> Constitution of the Palestinian National Authority, Art. 107-108.

behalf of the Palestinian people” is eligible for this payment.<sup>50</sup> On his direct orders, that amount is periodically increased.<sup>51</sup> Both Abbas and Palestinian law distinguish between ordinary criminals held in custody outside of the Palestinian Authority justice system and those held for war-crimes or acts of terror – those who are ordinary criminals receive nothing, while those who have violated international law through civilian attacks receive salaries.<sup>52</sup> Fatah and AAMB members know that they will continue to receive salaries even if they are captured in another jurisdiction for war crimes or acts of terror. Imprisoned Fatah members convicted of attacks on civilian targets receive bonuses not paid to Palestinian war criminals from other factions.<sup>53</sup> This is encouragement to engage in these activities.

Abbas argues through proxies that AAMB is not within his control and that he is merely a civilian official.<sup>54</sup> He alleges that he is therefore freed of responsibility for AAMB’s actions. This is a disingenuous argument akin to alleging that the President of the United States does not bear ultimate legal responsibility for the actions of American service members because he wears a business suit and not a uniform. Assuming, *arguendo*, that it were true, it is not a defense. Civilian leaders must take the measures reasonably available to them to prevent and punish war crimes, even if they do not have the full opportunity to discipline.<sup>55</sup> Even if President Abbas were not in effective control of AAMB, which he is, he has the obligation, as President of the Palestinian Authority and head of Fatah to use those measures which are available to him to bring rogue Fatah

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<sup>50</sup> Law of Prisoners, 2004/19, Ch. 1

<sup>51</sup> *Extra 800 shekels added to PLO prisoner payments following Abbas' order*, Ma’an News Agency, Mar. 3, 2009.

<sup>52</sup> Edwin Black, *How British and American aid subsidises Palestinian terrorism*, The Guardian (UK), Nov. 11, 2013.

<sup>53</sup> Edwin Black, *How American taxpayers are funding Palestinian terrorism*, Times of Israel, Nov. 10, 2013.

<sup>54</sup> Tony Jones, *First suicide bombing in Israel for 12 months*, L.A. Times, Feb. 4, 2008.

<sup>55</sup> *Supra*. note 12.

and AAMB members within lawful control. His failure to halt even on salary of one Fatah or AAMB member convicted of war crimes or terror attacks proves that he has breach his duty to use those measures reasonably available to him to half war crimes. Therefore, he faces criminal liability under the Rome Statute.

**6. Obligation of the Prosecutor to Initiate an Investigation:**

The Prosecutor is obligated, under Article 53(1) of the Rome Statute, to initiate an investigation when the information made available to him indicates that a case is:

- a. Admissible to ICC Jurisdiction
- b. Grave, and
- c. In the interests of justice

**6(a) Admissibility of this case to ICC jurisdiction:**

This case is admissible for trial before the ICC under the criteria of Article 17 of the Rome Statute. War crimes are admissible for trial before the ICC where national courts are unwilling or unable to prosecute offenders.<sup>56</sup> A State is unwilling to begin proceedings in its national courts when it shields a persons from criminal responsibility, when it delays proceedings unjustifiably, or when the proceedings in the case are neither independent nor impartial.<sup>57</sup> A State is unable to begin proceedings in its national courts when it is unable to obtain custody of the accused.<sup>58</sup>

THE COMPLAINANTS have no knowledge of Jordan bringing a prosecution against any Fatah or AAMB official or member for war crimes. Although Jordan has wide-ranging anti-terror laws, these laws are applied in a patently unfair and politically-

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<sup>56</sup> Article 17, Rome Stat.

<sup>57</sup> Stuart Risch, *Hostile Outsider or Influential Insider? The United States and the International Criminal Court*, 2009 Army Law 61, 71 at n. 57.

<sup>58</sup> Article 17, Rome Stat.

motivated fashion.<sup>59</sup> THE COMPLAINANTS aver, to the best of their knowledge and belief, that no prosecution of any Fatah or AAMB official, including Mahmoud Abbas, is contemplated. Further, even if one were, Jordan has no means of obtaining custody of Mahmoud Abbas. Although Abbas's family is resident in Amman, Jordan, Abbas lives in Ramallah.<sup>60</sup> Abbas would simply remain in Ramallah if Jordan ever evinces a desire to apprehend him.

Israel is responsible for external security in Judea and Samaria under the terms of the Oslo Accords.<sup>61</sup> The COMPLAINANTS aver that they are unaware of any extradition treaty between Israel and Jordan by which the government of Jordan could compel the transfer of Abbas to Jordan to face prosecution for war crimes, if Jordan were to begin prosecution of Fatah and AAMB members for the same.

There is no evidence that Jordan has ever prosecuted a Fatah or AAMB member for war crimes. Jordan could not obtain custody of Abbas even if it were willing. Therefore, Jordan is both unwilling and unable to prosecute Abbas.

**6(b) Gravity of the Conduct:**

Pursuant to Articles 17 and 52 of the Rome Statute, the Prosecutor should open an investigation unless he believes that “there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice,” despite the clear evidence of a war crime.<sup>62</sup> Here, there is every reason to believe that an investigation would serve the substantial interests of justice and no reason to believe that it would not. At present, there is no method of accountability for Fatah and AAMB officials such as Abbas who

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<sup>59</sup> Areej Abuqudairi, *Jordan anti-terrorism law sparks concern*, Al-Jazeera, Apr. 25, 2014

<sup>60</sup> Khaled Abu Toameh, *Abbas's family leaves Ramallah for Jordan*, Jerusalem Post, Jul. 22, 2014.

<sup>61</sup> Oslo II, *supra* at n. 20, art. X(4)

<sup>62</sup> International Criminal Court: Situation in the Republic of Cote D'Ivoire, 51 I.L.M. 228, 255 (Pre-Trial Chamber III, 2012).

plan or condone indiscriminate rocket attacks. The ICC exists to provide justice in cases in which national courts are unwilling or are unable, as is the case here.<sup>63</sup> Therefore, the Prosecutor should open an investigation.

**6(c) A preliminary investigation is in the interests of justice:**

A preliminary inquiry in in the interests of justice. The Rome Statute directs the prosecutor to consider the interests of victims, the age or infirmity of the perpetrator, and his role in the crime in determining whether an investigation is in the interests of justice.<sup>64</sup> An investigation is in the substantial interests of justice because the hundreds of thousands of Israeli civilians whom Fatah and AAMB rockets targeted have no recourse and no means to compel Fatah and AAMB to cease their targeting of civilian targets. Additionally, the residents of Gaza who are injured by reckless discharge of poorly targeted and poorly maintained munitions also have no means to compel Fatah and AAMB to cease using their civilian areas for illegal military activities. Finally, the peace process cannot reasonably go forward while Fatah, one of the major components of the PLO, continues to fire rockets. Therefore, an investigation is in the interests of justice.

Abbas cannot claim that an investigation is not in the interests of justice because of his poor health or advanced age. Abbas is an avid traveler and maintains a vigorous schedule; and is not infirm within the meaning of the statute such that he cannot participate in his defense.<sup>65</sup> Therefore, there are not medically valid grounds for the Prosecutor to decline jurisdiction in the name of substantial justice.

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<sup>63</sup> Jann N. Kleffner, *Complementarity in the Rome Statute and National Criminal Jurisdictions* 3-4 (Ruth Mackenzie et. al eds. 2008).

<sup>64</sup> Art. 53(2)(b), Rome Stat.

<sup>65</sup> *After Abbas*, Foreign Policy Magazine (US), Dec. 13, 2012


Finally, the Prosecutor should open an inquiry to ensure that Fatah and AAMB officials particularly, and officials the world over are on-notice that the Prosecutor takes war crimes seriously, and that the era of willful blindness of leaders, and impunity for that willful blindness, is over.

**7. Conclusion:**

The information presented above is only a preliminary collection of evidence, but it gives rise to significant concerns that MAHMOUD ABBAS has engaged in a continuing course of conduct in which he has committed grave crimes falling within the jurisdiction of the Court. The available evidence provides a compelling case for an investigation in accordance with the Prosecutor's obligation under Article 53 of the Statute. Based upon the information contained herein, THE COMPLAINANTS respectfully submit that proper cause exists for the Prosecutor to initiate an investigation into the crimes committed within the Court's jurisdiction, arising from MAHMOUD ABBAS'S failure to exercise reasonable control over Fatah and AAMB combatants loyal to him.

Dated: Brooklyn, New York  
November 11, 2014

Respectfully submitted,  
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