

# **Submission by StandWithUs to UNHRC’s “Commission of Inquiry” Based on the Commission’s “Five Permissible Submission Topics”**

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## **Topic 1. “Underlying root causes of recurrent tensions, instability and protraction of conflict in and between the Occupied Palestinian Territory, including East Jerusalem, and Israel; as well as systematic discrimination and repression based on national, ethnic, racial or religious identity;”**

### ***Palestinian Rejectionism: A Root Cause of the Conflict and its Protraction***

A central underlying root cause, “of recurrent tensions, instability and protraction of conflict” is the historic and ongoing refusal of the Palestinian national movement (PNM), in its various manifestations before and since 1948, to accept compromise proposals for two-states for two-peoples. This includes rejection of the right of the Jewish people to national self-determination in any part of their historic, ancestral homeland, as well as denial that Jews are a people at all.

Despite numerous efforts to partition the territory of the former British Mandate for Palestine into “Arab and Jewish States”<sup>1</sup> the PNM has rejected all proposals for compromise. These included the 1937 Peel Commission, 1947 UNGA Partition Plan, the 2000 Camp David II proposals for full and independent Palestinian statehood, and the 2008 Proposal for full and independent statehood by Israeli Prime Minister Ehud Olmert to Palestinian President Mahmoud Abbas. This pattern continued in 2010 when Israel froze all settlement construction for nearly a year as the Palestinian leadership avoided entering negotiations. The pattern repeated again in 2014, when Israel reportedly said yes to U.S. Secretary of State John Kerry’s framework for peace negotiations, while the Palestinian leadership said no.<sup>2</sup> Additionally, in response to a UN Security Council resolution condemning Israeli settlements and a related speech by Kerry criticizing Israel in December 2016, the Palestinian Foreign Minister once again rejected Kerry’s ideas and reaffirmed the PNM’s refusal to recognize Israel as a Jewish state.<sup>3</sup>

The roots of this perpetual rejectionism by the PNM are found in the early history of the conflict. “For the Palestinians, from the start, the clash with the Zionists was a zero-sum game. The PNM’s leader during the 1920s, 1930s, and 1940s, Grand Mufti Hajj Amin al-Husseini, consistently rejected territorial compromise...”<sup>4</sup> This extremism was a key factor that led to the 1948 War. From 1922 until 1950, the acknowledged political and religious leader of the Palestinian Arabs was al-Husseini, the Grand Mufti of Jerusalem and considered by some to be, “the most popular figure in the Arab-Islamic world of the time.”<sup>5</sup> He promoted violent opposition to Zionism, preached overt antisemitism, and supported the mass murder of the Jews in the British Mandate for Palestine.<sup>6</sup>

### ***The PNM’s Alliance with Nazi Germany***

In the 1930s, Nazi Germany began cultivating radical Arab nationalists and Islamists, many of whom were already antisemitic.<sup>7</sup> A number of these Arab nationalists came to support Hitler and dedicated

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<sup>1</sup> UNGA Resolution 181 (II). Future government of Palestine, adopted November 29, 1947, <https://unispal.un.org/dpa/dpr/unispal.nsf/0/7f0af2bd897689b785256c330061d253>

<sup>2</sup> Ben Birnbaum, Amir Tibon, ‘The Explosive, Inside Story of How John Kerry Built an Israel-Palestine Peace Plan—and Watched It Crumble,’ *The New Republic*, July 20, 2014, at <https://newrepublic.com/article/118751/how-israel-palestine-peace-deal-died>

<sup>3</sup> Khaled Abu Toameh, ‘Palestinian FM Riad Malki: Kerry did not bring anything new. No to recognition of Israel as Jewish state. <https://t.co/bOLHnGveo0>’ *Twitter*, December 28<sup>th</sup>, 2016, at <https://twitter.com/KhaledAbuToameh/status/814208273561878528>

<sup>4</sup> Karsh, Efraim, *The Palestine War 1948*, Bloomsbury Publishing (2006), p. 408

<sup>5</sup> Kuntzel, Matthias, ‘National Socialism and Anti-Semitism in the Arab World’, *Jewish Political Studies Review* 17:1–2 (Spring 2005), <http://www.jcpa.org/phas/phas-kuntzel-s05.htm>.

<sup>6</sup> Mallmann, Klaus-Michael and Cüppers, Martin, *Nazi Palestine: The Plans for the Extermination of the Jews of Palestine*, Enigma Books in association with the United States Holocaust Memorial Museum. (2010)

<sup>7</sup> Herf, Jeffrey, *Nazi Propaganda for the Arab World*, Yale University Press, 2009.

themselves to his cause.<sup>8</sup> “Throughout the Arab world, National Socialism often met with sympathy and not infrequently with enthusiasm. ‘We were racists, admiring Nazism, reading its books and the sour of its thought...’ wrote Sami al-Jundi, a leader of the Syrian Baath party, about the mood of many Arabs in the 1930s.”<sup>9</sup> Chief among them was al-Husseini whose violent opposition to Zionism was so extreme that he found common cause with Nazi Germany before and during World War II.<sup>10</sup>

For instance, the al-Husseini-led Great Arab Revolt of 1936-39 received finances and arms from Berlin. “The Mufti himself acknowledged that at that time it was only due to the German funds he received that it had been possible to carry through the uprising in Palestine. From the outset, he made high financial demands which the Nazis to a great extent met.”<sup>11</sup> Germany also provided weapons “through secret channels to the insurgents. Admiral Canaris, head of German military intelligence, later revealed that shortly before the start of the war he met with the Mufti’s secretary ‘several times in order personally to discuss the issue of transporting weapons to the Arab insurgents.’”<sup>12</sup>

While in service to the Third Reich, he “lived for the most part in Berlin as a guest of the German government. The Nazis provided office space, vehicles and money, so that the Mufti and his entire entourage could stay active. In return, the Mufti used his influence in the Middle East on the Nazis’ behalf and recruited Muslims for the Nazi war effort. On the airwaves of Nazi Germany’s Arab language radio service, he called for a Holy War, a jihad, against the Allies and the Jews.”<sup>13</sup>

Al-Husseini also recruited a Bosnian Muslim Waffen SS division to fight anti-fascist partisans in Yugoslavia. In a speech during a visit to Nazi-occupied Bosnia, al-Husseini said, “Many common interests exist between the Islamic world and Greater Germany, and those make cooperation a matter of course. The Reich is fighting against the same enemies... Germany battles world Jewry, Islam’s principal enemy.”<sup>14</sup>

For that, he was a wanted war criminal after the war and listed as such with the United Nations War Crimes Commission.<sup>15</sup> He also supported the aims of the Nazi anti-Jewish genocide and called on all Arabs to join that cause. In a speech carried over Radio Berlin on November 2, 1943, he said, “National Socialist Germany knows the Jews well and has decided to find a final solution for the Jewish danger which will end the evil in the world.”<sup>16</sup> He also said in a German radio broadcast to the Arab world: “Arabs, rise as one man and fight for your sacred rights. Kill the Jews wherever you find them. This pleases God, history, and religion. This saves your honor. God is with you.”<sup>17</sup>

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<sup>8</sup> Mallmann, Klaus-Michael and Cüppers, Martin, *Nazi Palestine...* op. cit., p. 29.

<sup>9</sup> Küntzel, Matthias, *Jihad and Jew-Hatred*, Telos Press Publishing, (2007), p. 26.

<sup>10</sup> Schwanitz, Wolfgang G.; Rubin, Barry. *Nazis, Islamists, and the Making of the Modern Middle East*. Yale University Press, (2014)

<sup>11</sup> Klaus, Gensicke, *Der Mufti von Jerusalem Amin al-Husseini und die Nationalsozialisten* (Frankfurt-am-Main: Peter Lange, 1988) cited in Küntzel, Matthias, *Jihad and Jew-Hatred*, p. 31.

<sup>12</sup> Gesicke, op. cit. p. 94, cited in Küntzel, Matthias, *Jihad and Jew-Hatred*, p. 31.

<sup>13</sup> Schwanitz, Wolfgang G., ‘Amin al-Husaini and the Holocaust. What Did the Grand Mufti Know?’, *World Politics Review*, May 8, 2008, <https://www.worldpoliticsreview.com/articles/2082/amin-al-husaini-and-the-holocaust-what-did-the-grand-mufti-know>

<sup>14</sup> Bonney, Richard, *Jihad: From Qur’an to bin Laden*, New York: Palgrave Macmillan, 2004, p. 275-276

<sup>15</sup> ‘Ex-mufti of Jerusalem Placed on War Criminals List; Indicted by Yugoslav Government,’ *Jewish Telegraphic Agency*, July 19, 1945, archived at [http://pdfs.jta.org/1945/1945-07-20\\_165.pdf](http://pdfs.jta.org/1945/1945-07-20_165.pdf)

<sup>16</sup> Text of Amin el-Hussein’s speech of 2 November, 1943, National Archives, Washington, D.C. T60/2576066-9.

<sup>17</sup> Radio Berlin, March 1, 1944; quoted in Stillman, Norman. ‘Frenchman, Jews, or Arabs? Jews of the Arab World between European Colonialism, Zionism, and Arab Nationalism’. In Hary, Benjamin H.; Hayeseds, John Lewis; Astren, Fred. *Judaism and Islam: Boundaries, Communications, and Interaction: Essays in Honor of William M. Brinner*. Brill. (2000) pp. 123–138.

At a meeting between Hitler and al-Husseini on November 28, 1941, Hitler promised the Mufti: “Germany’s only remaining objective in the region would be limited to the annihilation of the Jews living under British protection in Arab lands.”<sup>18</sup> After the meeting al-Husseini wrote in his diary, “Our fundamental condition for cooperating with Germany was a free hand to eradicate every last Jew from Palestine and the Arab world. I asked Hitler for an explicit undertaking to allow us to solve the Jewish problem in a manner befitting our national and racial aspirations and according to the scientific methods innovated by Germany in the handling of its Jews. The answer I got was, ‘The Jews are yours.’”<sup>19</sup>

Soon thereafter, Nazi Germany’s Foreign Minister, Joachim von Ribbentrop wrote a letter to al-Husseini promising “Germany is consequently ready to give all her support to the oppressed Arab countries in their fight against British domination... and for the destruction of the Jewish National Home in Palestine.”<sup>20</sup>

After the war, al-Husseini was held as a Nazi war criminal but escaped French custody and flew to Cairo from where he continuously pushed the Arab world to go to war against the emerging Jewish state.<sup>21</sup> He regained control of the Arab Higher Committee and rejected the UN partition plan of November 29, 1947. The role al-Husseini played in spreading Nazi antisemitism in the Middle East has had lasting effects to the present. He, and other pro-Nazi Arab nationalists of that era, introduced racist anti-Jewish propaganda from Europe into the Muslim world – hateful ideas which remain prevalent in the region to this day.<sup>22</sup> For example, the annihilationist and antisemitic ideology of Hamas and other Islamist extremists is a major “underlying root cause of recurrent tensions, instability and protraction of conflict” between Israel and the PNM.

### ***Hamas, the Muslim Brotherhood and Injection of Nazi-style Antisemitism into the Conflict***

Hamas is a violent terrorist organization driven by a radical Islamist ideology that explicitly calls for killing Jews, destroying the State of Israel, and replacing it with an Islamic state. Its ideology echoes blatant Nazi-style antisemitism. Hamas has launched countless attacks against Israelis, targeting civilians intentionally in the vast majority of cases. It is notorious for its suicide bombings, which began in the 1990s, to disrupt and derail the Oslo peace process, and its rocket and missile attacks from Gaza. More Israelis, overwhelmingly civilians, were targeted and killed between 1993 and 2000 – the “Oslo years” – than in the 15 years prior. During the Second Intifada (2000-2005) Hamas and other Palestinian terrorist groups were responsible for killing over 1,100 Israelis – mostly civilians – in a wave of terrorist attacks. Thousands more Israeli civilians were maimed for life.

In 2005, the same year the Second Intifada ended, Israel unilaterally removed every soldier, civilian, and settlement community from Gaza, without a peace agreement in place. Israel hoped this would advance the peace process; but in 2006, the Palestinian Authority held legislative elections in which Hamas won a majority of the seats. The victory of a terrorist organization dedicated to Israel’s destruction created an international crisis. A year later, Hamas violently overthrew its rival Fatah, took control over Gaza, and began dramatically increasing rocket attacks against non-combatant Israelis. Hamas also spent many millions of dollars to dig military tunnels into Israeli territory in

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<sup>18</sup> Fleming, Gerald, *Hitler and the Final Solution*, citing notes taken at the November 28, 1941 meeting, University of California Press, (1988). pp. 101-105

<sup>19</sup> Amin al-Husaini, *Muzakkirat al-Hajj Muhammad Amin al-Husaini* [The Memoirs of al-Hajj Muhammad Amin al-Husaini], edited by Abd al-Karim al-Umar (Al-Ahali: Damascus 1999) [Arabic].

<sup>20</sup> Letter from Joachim von Ribbentrop to Hajj Amin al-Husseini, 28 April, 1942, cited in Dalin, David G. and Rothmann, John F., *Icon of Evil: Hitler’s Mufti and the Rise of Radical Islam*, New York: Random House, (2008), p. 165.

<sup>21</sup> Hershco, Tsilla, ‘Le grand mufti de Jérusalem en France: Histoire d’une évasion’, *Revue Controverses*, (March 2006).

<sup>22</sup> Herf, Jeffrey, *Nazi Propaganda...* op. cit.

order to murder and kidnap Israelis. Since then, the situation has been frozen, with Fatah and Hamas governing nearly all Palestinians in the West Bank and Gaza, respectively.

In addition to Hamas' violent record as a terrorist organization, it is driven by a radical Islamist ideology that explicitly calls for the killing of Jews.<sup>23</sup> Hamas unambiguously calls for destroying the State of Israel<sup>24</sup> home to nearly half the world's Jewish population. This ideology is based on an underpinning of blatant antisemitism adopted from one of Europe's darkest periods (the Holocaust) and embedded deeply in Hamas' foundational ideology.

Hamas is a branch of the Muslim Brotherhood, a militant Islamist movement founded in Egypt in 1928 by Hassan al Banna. Hajj Amin al-Husseini was the Brotherhood's official representative in British Mandatory Palestine.<sup>25</sup> By the late 1930s, Nazi Germany, seeking to undermine the British, established contacts with the Muslim Brotherhood, which in turn saw in Germany an ally that could further their cause.

Al Banna's successor, Sayyid Qutb, is described in the *Journal of Palestine Studies* as "a true symbol of revolutionary Islam" who serves as an "important model for Palestinian Islamists."<sup>26</sup> Qutb wrote a manifesto called *Our Struggle with the Jews*.<sup>27</sup> The book has more than a passing similarity to Hitler's *Mein Kampf*, which in German means "My Struggle" and whose main subject is the battle between "Aryans" and "the Jews." Qutb adapted and transformed Hitler's formulation of "the Jews" as "eternal enemies" of the "Aryan race" to "the Jews" as the "eternal enemies" of Islam.<sup>28</sup>

As the Palestinian arm of the Muslim Brotherhood, Hamas fully adapted Qutb's Judeophobic imagery. Its Covenant replicates antisemitic tropes of Jewish conspiracies to rule the world, stating the Jews "have been scheming for a long time ... and have accumulated huge and influential material wealth. With their money, they took control of the world media... With their money they formed secret organizations... They stood behind World War I ... and formed the League of Nations through which they could rule the world... Zionist scheming has no end, and after Palestine, they will covet expansion from the Nile to the Euphrates River... Their scheme has been laid out in the 'Protocols of the Elders of Zion.'"<sup>29</sup>

Hamas' long-term strategic goal remains Israel's destruction, even if it takes generations. Its core ideology remains permeated with antisemitism. On September 30th, Hamas held a conference where they made clear that "the full liberation of Palestine from the sea to the river" is "the heart of Hamas's strategic vision." For Jews, that vision entails eliminating Israel, killing all IDF soldiers, detaining and prosecuting some who try to flee for their "crimes", and forcing "educated Jews and

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<sup>23</sup> Hamas Charter, Article 7: 'The Day of Judgment will not come about until Muslims fight Jews and kill them. Then, the Jews will hide behind rocks and trees, and the rocks and trees will cry out: 'O Muslim, there is a Jew hiding behind me, come and kill him.'"

<sup>24</sup> Hamas Charter Preamble: 'Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it.'

<sup>25</sup> Dalin, David G. and Rothmann, John F., *Icon of Evil*, p. 34.

<sup>26</sup> Ziad Abu-Amr, 'Hamas: A Historical and Political Background.' *Journal of Palestine Studies* 22, no. 4 (1993): 5-19. doi:10.2307/2538077.

<sup>27</sup> Tibi, Bassam, 'The Islamist Venture of the Politicization of Islam to an Ideology of Islamism: A Critique of the Dominating Narrative in Western Islamic Studies.' *Soundings: An Interdisciplinary Journal* 96, no. 4 (2013): 431-49. doi:10.5325/soundings.96.4.0431.

<sup>28</sup> Ronald L. Nettle, *Past Trials and Present Tribulations: A Muslim Fundamentalist's View of the Jews* (Oxford: Pergamon Press, 1987)

<sup>29</sup> Hamas Covenant, Articles 22 and 32. See: <http://www.yale.edu/lawweb/avalon/mideast/hamas.htm>

experts” to stay and serve their new masters.<sup>30</sup> Hamas is allied with the most antisemitic regime today, the Iranian government. As such, so long as Hamas remains a major force in Palestinian politics, the organization is a major “underlying root cause of recurrent tensions, instability and protraction of conflict.”

### ***The Palestinian Authority's Martyrs' Fund: Incentivizing Terrorism***

Fueling the ongoing conflict are the incentives provided by the Palestinian Authority through its Martyrs Fund, colloquially known as “pay to slay.” The PA pays monthly cash stipends to the families of Palestinians killed, injured, or imprisoned while carrying out terror attacks against Israeli civilians. The PA allocated \$157 million (3.25% of the PA’s annual budget) for “salaries” for terrorists held in Israeli prisons and to families of Palestinians killed while committing acts of terrorism.<sup>31</sup>

*This amounts to an officially sanctioned PA government incentive system to kill Israelis. The salary payments to terrorists from all Palestinian terror organizations, including Hamas as well as those who carried out terror attacks after the Oslo agreements came into effect, are made according to Palestinian Authority legislation that refers to the terrorists specifically as “fighters.”<sup>32</sup>*

### ***Artificial Perpetuation of the Conflict: Multi-Generational Palestinian Refugee Crisis***

In 1947, the UN proposed a compromise two-state solution, calling for the creation of a Jewish state and an Arab state. Jewish leaders accepted the compromise, despite misgivings. While the UN plan allotted fifty-five percent of Mandatory Palestine to the Jewish state, about sixty percent of that was the Negev desert. The Partition Plan allotted most of the agricultural land to the Arab state.<sup>33</sup> Arab leaders rejected the UN’s compromise plan outright and launched a civil war to prevent the establishment of a Jewish state. Outside forces, including the Arab Liberation Army (ALA), entered the Mandate and attacked Jewish communities, laying siege to Jerusalem’s 100,000 Jews, who nearly starved to death. The ALA was led by Fawzi al-Qawuqji, who had been a colonel in Nazi Germany’s army during World War II.<sup>34</sup>

“For the Palestinians, from the start, the clash with the Zionists was a zero-sum game. The Palestinian national movement’s leader during the 1920s, 1930s, and 1940s, Haj Amin al-Husseini, consistently rejected territorial compromise...”<sup>35</sup> This extremism was a key component that led to the 1948 War. In March 1948, Hajj Amin al-Husseini said the Arabs did not intend merely to prevent partition but “would continue fighting until the Zionists were annihilated and the whole of Palestine became a purely Arab state.”<sup>36</sup> On April 16, 1948, Jamal al-Husseini, the Palestinian Arab representative to the UN and a cousin of the Grand Mufti,<sup>37</sup> told the UN Security Council: “The

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<sup>30</sup> MEMRI, ‘Hamas-sponsored conference examines ‘post-liberation’ Israel,’ *Jewish News Syndicate*, October 5, 2021, at <https://www.jns.org/hamas-sponsored-conference-examines-post-liberation-israel/>

<sup>31</sup> “Palestinian Authority paid terrorist salaries of more than \$150 million in 2020,” i24 News, February 22, 2021, <https://www.i24news.tv/en/news/middle-east/1614005480-palestinian-authority-paid-terrorist-salaries-of-more-than-150-million-in-2020>

<sup>32</sup> Kuperwasser, Yossi, “Incentivizing Terrorism: Palestinian Authority Allocations to Terrorists and their Families,” Jerusalem Center for Public Affairs, <https://jcpa.org/paying-salaries-terrorists-contradicts-palestinian-vows-peaceful-intentions/#summary>

<sup>33</sup> Cohen, Aharon, *Israel and the Arab World* (Boston: Beacon Press, 1976), 238.

<sup>34</sup> “Ruhmloses Zwischenspiel: Fawzi al-Qawuqji in Deutschland, 1941–1947,” by Gerhard Höpp in Peter Heine, ed., *Al-Rafidayn: Jahrbuch zu Geschichte und Kultur des modernen Iraq* (Würzburg: Ergon Verlag, 1995)

<sup>35</sup> Efraim Karsh, op. cit., p. 408

<sup>36</sup> Efraim Karsh, op. cit., p. 409

<sup>37</sup> <https://www.encyclopedia.com/politics/dictionaries-thesauruses-pictures-and-press-releases/husayni-jamal-al-1892-1982>



representative of the Jewish Agency told us yesterday that they were not the attackers, that the Arabs had begun the fighting. We did not deny this. We told the whole world that we were going to fight.”<sup>38</sup>

The decision by Arab and Palestinian leaders to launch this war of aggression led to catastrophe for Israelis and Palestinians alike. It left thousands of dead on both sides and led to between 500,000 to 750,000 Palestinian Arabs and over 850,000 Jews from Arab states becoming refugees.<sup>39</sup> Jerusalem became a divided city, its ancient Jewish Quarter was depopulated by the Transjordanian Arab Legion, which deliberately destroyed every synagogue in the quarter.<sup>40</sup>

UN Secretary General Trygve Lie said, “The invasion of Palestine by the Arab States was the first armed aggression which the world had seen since the end of [World War Two].”<sup>41</sup>

The standard Palestinian nationalist narrative falsely claims that once the UN voted for the compromise partition plan, “Zionist gangs” immediately began expelling Palestinians in a premeditated plan.<sup>42</sup> Reality, however, is far more complex. According to historian Benny Morris, “... transfer or expulsion was never adopted by the Zionist movement or its main political groupings as official policy at any stage of the movement’s evolution – not even in the 1948 War.”<sup>43</sup> Indeed, 165,000 Palestinian Arabs chose to remain in Israel and became citizens. The rest became refugees due to a variety of factors. Morris further writes, “[T]he Palestine refugee problem was born of war, not by design, Jewish or Arab. It was largely a byproduct of Jewish and Arab fears and of the protracted, bitter fighting that characterized the first Israeli-Arab war; in smaller part it was the deliberate creation of Jewish and Arab military commanders and politicians.”<sup>44</sup>

The main reasons Palestinian Arabs fled:

- 1) **Palestinian Arab leaders were among the first to flee – even before the war:** “Just at the time when they were needed most, many of the local mayors, judges, communal and religious officials fled... once the landlords and other leaders had made good their own escape – as they did from Haifa, Jaffa, Safed, and elsewhere – the Arab townspeople, villagers, and peasants were left helpless.”<sup>45</sup>
- 2) **Refugees fled heavy fighting in populated areas.** This was a civil war, and combat occurred everywhere. Palestinian Arabs were able to flee to safety in Arab territories. Israeli Jews, on the other hand, literally had their backs to the sea with no place to take refuge.
- 3) **Arab radio stations broadcast exaggerated accounts and false rumors of Jewish atrocities:** According to Hazem Nusseibeh, an editor at the Palestine Broadcasting Service in 1948, “We weren’t sure the Arab armies for all their talk were really going to come. We thought to shock the

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<sup>38</sup> Security Council Official Records, S/Agenda/58, (April 16, 1948), p. 19.

<sup>39</sup> JTA, ‘Jewish refugees bill being considered by U.S. House of Representatives,’ *Haaretz*, August 2, 2012, at <http://www.haaretz.com/jewish-world/jewish-world-news/jewish-refugees-bill-being-considered-by-u-s-house-of-representatives-1.455503>; Benny Morris, *Righteous Victims*, 2001 pp. 252-258; Yoav Gelber, *Palestine 1948*, 2001 pp. 74-84

<sup>40</sup> Ruth Kark and Michal Oren-Nordheim, *Jerusalem and its Environs: Quarters, Neighborhoods, Villages, 1800-1948*, Wayne State University Press, (2001) p. 28.

<sup>41</sup> Lie, Trygve, *In the Cause of Peace*, (New York: Macmillan Company, 1954), p. 174.

<sup>42</sup> For one example, see the official Palestinian Authority newspaper *Al-Hayat Al-Jadida* of May 7, 2014 as quoted in *The Times of Israel*, ‘PA paper: Creation of Israel ‘Greatest Crime in History’’, May 16, 2014.

<sup>43</sup> Morris, Benny, *1948: The First Arab-Israeli War*, Yale University Press, (New Haven, London, 2009), p. 407.

<sup>44</sup> Benny Morris, ‘The Birth of the Palestinian Refugee Problem,’ 1947-1949 (1998). p. 286.

<sup>45</sup> Bickerton, Ian J. and Klausner, Carla L., *A Concise History of the Arab-Israeli Conflict*, Prentice Hall, NJ, 1991, p. 101

population of the Arab countries to stir pressures against their governments.”<sup>46</sup> The broadcasts however, had the opposite effect. Nusseibeh explained to the BBC fifty years later, “This was our biggest mistake. We did not realize how our people would react... Palestinians fled in terror.”<sup>47</sup> This is corroborated by another source, refugee Yunes Ahmed Assad who told a Jordanian newspaper in 1953, “The Arab exodus from other villages was not caused by the actual battle, but by the exaggerated description spread by Arab leaders to incite them to fight the Jews.”<sup>48</sup>

A minority of the refugees left for two reasons:

- 1) **Overconfident Arab leaders encouraged them to leave.** The then-Syrian Prime Minister Haled al Azm (1948-49) observed, “Since 1948 we have been demanding the return of the refugees to their homes. But we ourselves are the ones who encouraged them to leave. Only a few months separated our call to them to leave and our appeal to the United Nations to resolve on their return.”<sup>49</sup>
- 2) **Israeli troops encouraged or forced people to leave,** particularly from areas that were being used for attacks by Arab forces. For example, the tragic case of Deir Yassin occurred in the context of an Israeli effort to break the Arab siege of Jerusalem, which was putting 100,000 Jews at risk of starvation. “Israeli forces did on occasion expel Palestinians. But this accounted for only a small fraction of the total exodus, occurred not within the framework of a premeditated plan but in the heat of battle, and was dictated predominantly by ad hoc military considerations (notably the need to deny strategic sites to the enemy if there were no available Jewish forces to hold them).”<sup>50</sup>

Arab forces during the 1948 war committed atrocities against Jews as well, including massacres and expulsions. “Palestinian militiamen who fought alongside the Arab Legion consistently expelled Jewish inhabitants and razed conquered sites... All the Jewish settlements conquered by the invading Jordanian, Syrian, and Egyptian armies... were razed after their inhabitants had fled or been incarcerated or expelled.”<sup>51</sup>

Furthermore, in the aftermath of the 1948 war an estimated 850,000 Jews living in Arab states fled or were expelled. Arab governments engaged in brutal retaliation against these Jewish communities after Israel’s victory in 1948, even though their Jewish citizens lived far from the war zone and had no involvement in the fighting. Today some 99.5% of the Jewish communities in Arab states *no longer exist*. By the 1980s most Jews were gone from Iran as well.

### ***Two Middle East Refugees Populations, Two Stark Differences***

The key difference between the Jewish refugees from across the MENA region and Palestinian refugees is that today the Jewish refugees are *no longer refugees*. This is because all have been *resettled* (mostly in Israel) and *granted citizenship* legally ending their refugee status generations ago. This stands in stark contrast to the plight of four generations, and counting, of Palestinians still designated as “refugees” by the United Nations Relief and Works Agency (UNRWA).

Unlike countless others that were displaced in the aftermath of World War II and other conflicts since, Palestinian refugees *and their descendants* remain unsettled, permanent wards of the

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<sup>46</sup> Interview with [Hazem Nusseibeh], May 1968, Larry Collins Papers, Georgetown University Library, cited in Morris, Benny, *1948: The First Arab-Israeli War*, Yale University Press, (New Haven, London, 2009), p. 443

<sup>47</sup> See clip from PBS program ‘The 50 Years War Israel And The Arabs,’ <https://youtu.be/72Ata-hY9WQ>.

<sup>48</sup> Al Urdun, April 9, 1953

<sup>49</sup> The Memoirs of Haled al Azm, (Beirut, 1973), Part 1, pp. 386-387

<sup>50</sup> Karsh, Efraim, *The Palestine War 1948*, p. 127

<sup>51</sup> Morris, Benny, *1948*, p. 409.



international community. They are refused citizenship in almost all Arab countries, where they face systematic discrimination in employment, housing, health care and more.<sup>52, 53</sup> Jordan is an exception, as 1.6 million Palestinians there hold Jordanian citizenship. They live alongside millions of other Palestinians, making up most of Jordan's population. Yet they are *still* defined as "refugees" by the UN<sup>54</sup> and suffer systemic discrimination.<sup>55</sup>

### ***Demand for a mass 'right of return' perpetuates the conflict***

The widespread belief held by most Palestinians that they are entitled to a mass "right of return" to Israel, rather than a Palestinian state alongside Israel, is one the largest obstacles to successful diplomacy and lasting peace between Israelis and Palestinians. It is sustained by generations of false, misleading and impossible to fulfill promises by the PNM. Further maintaining this belief in a "right of return" is UNRWA, which was founded to find a solution for the 1948 refugees but instead has been coopted by the PNM and international political pressure to keep the millions of descendants of the 1948 refugees in a condition of permanent refugee status.

### ***Two UN Refugee Agencies, Two Definitions of Refugee Status: One for Palestinians the other for the rest of the world***

The UN maintains two refugee agencies. The UNHCR, established in 1950, whose "primary purpose is to safeguard the rights and well-being of refugees" is "mandated by the United Nations to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems."<sup>56</sup> According to UNHRC rules, once a refugee gains citizenship in another country, he or she loses refugee status.<sup>57</sup> Further, according to UNHCR rules, while children of refugees are eligible for refugee status they must meet a set of strict guidelines that do not speak of multi-generational inheritance of such status.<sup>58</sup>

In stark contrast is UNRWA, established in 1949 specifically to assist the estimated 500,000 - 750,000 refugees displaced in the 1947-9 Arab-Israeli war. Unlike the UNHCR, UNRWA uses a definition unique to Palestinians: "Palestine refugees are defined as 'persons whose regular place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict...'" Further, UNRWA confers an automatic inherited refugee status. UNRWA's web site states: "The descendants of Palestine refugee *males, including adopted children*, are also eligible for registration as refugees."<sup>59</sup> (emphasis added)

James G. Lindsay, UNRWA General Counsel (2000-07), who oversaw all UNRWA legal activities, wrote,

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<sup>52</sup> Hanafi, Sari, Jad Chaaban, and Karin Seyfert. "Social Exclusion of Palestinian Refugees in Lebanon: Reflections on the Mechanisms That Cement Their Persistent Poverty." *Refugee Survey Quarterly* 31, no. 1 (2012): 34–53. <http://www.jstor.org/stable/45054713>.

<sup>53</sup> "Palestinian refugees from Syria: On Going Nakba, On Going Discrimination," *Al Majdal*, BADIL Resource Center for Palestinian Residency and Refugee Rights, Issue No.56 (Autumn 2014), <https://reliefweb.int/sites/reliefweb.int/files/resources/al-majdal-56.pdf>

<sup>54</sup> "Where We Work-Jordan," UNRWA, <https://www.unrwa.org/where-we-work/jordan>, accessed April 24, 2018.

<sup>55</sup> Soh, Changrok, Yoonjeong You, and Youngsoo Yu. "Once Resolved, Stay Resolved? The Refuse Policy of Jordan toward Palestinian Refugees." *Journal of International and Area Studies* 23, no. 1 (2016): 1–16. <http://www.jstor.org/stable/43918288>.

<sup>56</sup> Mission Statement, UNHCR, <http://www.unhcr.org/4847b7832.pdf>, accessed April 22, 2018

<sup>57</sup> Note on the Cessation Clauses, EC/47/SC/CRP.30, UNHCR Standing Committee, Section II.4 (General Principles), May, 30, 1997.

<sup>58</sup> Procedural Standards for Refugee Status Determination under UNHCR's Mandate, available at <http://www.unhcr.org/4317223c9.pdf>

<sup>59</sup> 'Palestine Refugees,' UNRWA, <https://www.unrwa.org/palestine-refugees>, accessed April 22, 2018

*The scandal, then, is... through inaction, refugee status is allowed to persist from generation to generation. For UNRWA refugees, refugee status persists solely because UNRWA pretends persons who are protected by a state (the oxymoronic 'citizen refugees') are still refugees and, for those who really are refugees, refuses to make any effort to end their refugee status, as (in the absence of the possibility of repatriation) by resettlement or local integration.<sup>60</sup>*

Today, UNRWA has 5.4 million Palestinians registered as “refugees.” Some 2.2 million of them live in Jordan, and 1.6 million of them hold Jordanian citizenship. Moreover, unlike other refugee populations, most Palestinians defined by UNRWA as refugees are *third, fourth and even fifth generation descendants* of those who fled during the 1948 war. So, someone born today can be a refugee from a war that took place 75 years ago.

Unlike the UNHCR, UNRWA does not have an active program for “local integration” of refugees where they now reside nor “resettlement” in third countries, which leaves Palestinians in an unacceptable state of permanent limbo. Furthermore, there is a major disparity in the per capita expenditures by the UN’s two separate agencies. The UNHCR services about 70 million refugees worldwide<sup>61</sup> while UNRWA services about 5.4 million Palestinians.<sup>62</sup> Yet, UNRWA’s budget for 2018 was \$1.19 billion,<sup>63</sup> or \$220 per capita, while UNHCR’s budget for 2019 was \$8.6 billion, or \$121 per capita for all the world’s other refugees. UNRWA employs a staff of 30,000, or one staff person for every 180 refugees. In comparison, UNHCR employs a total staff of 16,803, or one staff person for every 4,213 refugees.

Another key difference is the UNHCR ends refugee status for refugees resettled and granted citizenship in a third-party country. UNRWA, in contrast, continues to count as a “refugee” Palestinians holding citizenship in a third country, as is the case in Jordan where 1.6 million Palestinians living there are Jordanian citizens. Yet the UN *still* defines them as “refugees.”<sup>64</sup>

Although some Palestinians have a comfortable standard of living under Palestinian Authority jurisdiction in the West Bank, Palestinian leaders have neglected the refugee camps under their control, leaving many of their people impoverished for generations. While there are no more tents, the “camps” essentially became urban slums. This has helped fuel hatred and violence, instead of building toward a sustainable Palestinian state living side-by-side in peace with Israel. In Hamas-ruled Gaza, Palestinians in refugee areas live under the terror group’s brutally oppressive regime. They suffer immensely from frequent outbreaks of violence provoked by Hamas (and other terrorist groups), as Israel tries to stop deadly rocket and other attacks against its civilian population.

Inasmuch as the demand for a “right to return to the homes from which they were displaced” is a central demand of the PNM, it has taken on the aura of a “sacred right that can never be given up.”<sup>65</sup> The permanent refugee status conferred onto Palestinians by the UN is a major obstacle to peace that is an “underlying root causes of recurrent tensions, instability and protraction of conflict.”

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<sup>60</sup> Lindsay, James G., ‘UNRWA: Still UN-Fixed,’ Justice Magazine, No. 55, Winter 2014-2015. P. 19

<sup>61</sup> UNHCR, ‘Figures at a Glance,’ <http://www.unhcr.org/figures-at-a-glance.html> (retrieved July 16, 2019)

<sup>62</sup> UNRWA, ‘Where We Work,’ <https://www.unrwa.org/where-we-work> (retrieved July 16, 2019)

<sup>63</sup> UNRWA, ‘Annual Operational Report 2018,’ [https://www.unrwa.org/sites/default/files/content/resources/unrwa\\_annual\\_operational\\_report\\_2018\\_final\\_3.pdf](https://www.unrwa.org/sites/default/files/content/resources/unrwa_annual_operational_report_2018_final_3.pdf) (retrieved July 16, 2019)

<sup>64</sup> ‘Where We Work-Jordan,’ UNRWA, <https://www.unrwa.org/where-we-work/jordan>, accessed April 24, 2018.

<sup>65</sup> Results of PSR Refugees’ Polls in the West Bank/Gaza Strip, Jordan and Lebanon, PSR, 18 July 2003.

The UN itself has the power to remove this major obstacle to peace by reforming its policy toward Palestinian descendants of refugees from a war that happened three-fourths of a century ago. The exceptionalism the UN confers upon Palestinian refugees and their four generations of descendants forced to live their lives as permanent refugees must come to an end.

## **Topic 2. “Facts and circumstances regarding alleged violations of international humanitarian law and alleged violations and abuses of international human rights law leading up to and since 13 April 2021;”**

### ***War crimes against Israeli Non-Combatants: An Injustice Unrecognized***

For virtually the entire period of Israel’s existence as an independent state, Israeli civilian non-combatants have been the victims of mass murder terrorist attacks by various Palestinian and other terror organizations. These groups deliberately targeted Israeli non-combatants in direct violation international humanitarian law. These groups include but not limited to:

- Abu Nidal organization (ANO) (aka Fatah - Revolutionary Council)
- Black September
- Democratic Front for the Liberation of Palestine (DFLP)
- Fatah and associated groups (Tanzim, Force-17, Al Aqsa Martyrs Brigade)
- Fedayeen
- Hamas
- Hezbollah (Lebanon)
- Palestine Liberation Front (PLF)
- Palestine Liberation Organization (PLO)
- Palestinian Islamic Jihad (PIJ)
- Popular Front for the Liberation of Palestine – General Command (PFLP-GC)
- Popular Front for the Liberation of Palestine (PFLP)

Collectively these groups carried out hundreds of indiscriminate attacks specifically targeting civilian non-combatants resulting in 3,500 Israelis having been killed and 25,000 wounded as a result of terrorism since the establishment of the state of Israel in 1948.<sup>66, 67, 68</sup> These attacks took the form of bombings (including suicide bombings), mass shootings, stone and improvised weapon throwing, improvised explosive device (IED), knifings, rocket/missile attacks, car ramming, hostage taking, plane and boat hijackings.

The primary targets are civilian areas including schools, markets, hospitals, restaurants, public transportation, airports, synagogues, holy sites, private homes. These attacks occurred primarily in Israel, but also in other parts of the world, including attacks on non-Israeli Jews and non-Jewish citizens of other states.<sup>69</sup>

Since 2001 an estimated 25,000 rockets and mortar bombs have been fired into Israel, mostly since Israel fully and unilaterally withdrew from Gaza in 2005.<sup>70</sup> The attacks are war crimes because civilians are the primary targets and because the weapons’ inaccuracy would disproportionately endanger civilians even if military targets were chosen. Human rights groups have condemned Hamas for firing from residential areas, thus putting Palestinian civilians at unnecessary risk. The

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<sup>66</sup> ‘Which Came First – Terrorism or ‘Occupation’? Israeli Ministry of Foreign Affairs.

<http://www.mfa.gov.il/MFA/Terrorism-+Obstacle-to+Peace/Palestinian+terror+before+2000/Which+Came+First-+Terrorism+or+Occupation+-+Major.htm>

<sup>67</sup> ‘Number of Terrorism Fatalities in Israel,’ Jewish Virtual Library, <https://www.jewishvirtuallibrary.org/number-of-terrorism-fatalities-in-israel>

<sup>68</sup> [Palestinian terrorism since Sept 2000 Archived](#) March 3, 2019, at the [Wayback Machine](#). Mfa.gov.il.

<sup>69</sup>

<sup>70</sup> ‘[Operation Protective Edge in numbers](#),’ Ynet. 27 August 2014.

same human rights groups have condemned Hamas and other terror groups for other kinds of terror attacks: suicide bombings, shootings, knifings, car ramming, etc.<sup>71</sup>

*Palestinian groups have also argued that they are engaged in a 'liberation war' against Israel's continuing occupation, and so are somehow exempt from the obligation to respect international humanitarian law. This claim of exemption is also false. Additional Protocol I to the Geneva Conventions, which by its terms governs wars of national self-determination, states that the 'civilian population as such, as well as individual civilians, shall not be the object of attack,' and that '[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.' That is, the first treaty to recognize wars of national liberation also reaffirms the prohibition of attacks on civilians. That is, the first treaty to recognize wars of national liberation also reaffirms the prohibition of attacks on civilians. In addition, the core principles of the Geneva Conventions and their protocols are part of international customary law, indicating that they have achieved the highest degree of international consensus regardless of treaty ratifications. These include the principle requiring attacking forces to distinguish between civilians and military objects, the principle of granting civilian immunity from deliberate attack, and the prohibition against targeting civilians. All parties to a conflict are obliged unconditionally to respect these principles.*

*The arguments put forward to justify or excuse suicide bombings and other Palestinian attacks on civilians are without foundation. Those who articulate them either fail to understand or have decided to ignore their obligations under international humanitarian law. There can be no doubt that such attacks are grave crimes. In most, if not all cases, they are crimes against humanity. International law defines those who perpetrate these atrocities as criminals. So are those who incite, plan, and assist them. They should be brought to justice.<sup>72</sup>*

According to IHL, non-state actors also have clear legal responsibilities. Many customary rules of IHL apply to all parties to a conflict, including non-state actors. Article 3 common to the four Geneva Conventions of August 12, 1949 (Common Article 3), accepted as customary law, has wide scope. The authoritative commentary of the ICRC to the Fourth Geneva Convention justifies applying the provision to non-state actors, saying "[t]here can be no drawbacks in this, since the Article in its reduced form, contrary to what might be thought, does not in any way limit the right of a State to put down rebellion, nor does it increase in the slightest the authority of the rebel party. It merely demands respect for certain rules, which were already recognized as essential in all civilized countries, and embodied in the municipal law of the States in question, long before the Convention was signed."<sup>73</sup>

### ***Israel's right to self-defense supported by international law***

Conversely, the State of Israel has the right, and duty to its citizens, to protect its civilian population from the indiscriminate attacks launched by the terror groups listed above. This right flows from international law.

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<sup>71</sup> 'Indiscriminate Fire'. Human Rights Watch. 30 June 2007.

<sup>72</sup> "Erased In A Moment: Suicide Bombing Attacks Against Israeli Civilians," Human Rights Watch, October 2002, p. 4.

<sup>73</sup> ICRC, "Commentary: Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949" at <https://ihl-databases.icrc.org/ihl/COM/380-600006?OpenDocument>.

*Self-defense in international law refers to the inherent right of a State to use of force in response to an armed attack. Self-defense is one of the exceptions to the prohibition against use of force under article 2(4) of the UN Charter and customary international law. However, whether the armed attack that gives rise to self-defence should originate from another state (as opposed to an armed group) and whether the attack should actually materialize to lawfully invoke self-defense are ongoing conundrums for scholars.<sup>74</sup>*

The United Nations Charter in Article 51 states:

*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.<sup>75</sup>*

International law also prohibits the use of human shields.

*The obligation to maintain the distinction between combatants and civilians is a cornerstone of the laws of war. Article 28 of the Fourth Geneva Convention mandates that “[t]he presence of a protected person [e.g., civilians] may not be used to render certain points or areas immune from military operations.” Article 51(7) of Additional Protocol I further elaborates that “the presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations.”<sup>76</sup>*

Yet, Hamas and other terror groups have been documented firing rockets from civilian neighborhoods in Gaza, using their own population as human shields:

- A source in Hamas told a *New York Times* reporter: “They fired rockets in between the houses and covered the alleys with sheets so they could set the rockets up in five minutes without the planes seeing them. The moment they fired, they escaped, and they are very quick.”<sup>77</sup>
- Videos released by Hamas show Qassam rockets being fired from residential areas and mosques.<sup>78</sup>
- Hamas has placed weapons and missile launchers in densely populated areas.<sup>79</sup>
- Human Rights Watch issued a report condemning the firing of Kassam rockets as “war crimes,” stating, “None of these rockets can be reliably aimed... Such weapons are inherently indiscriminate when directed towards densely populated areas. The absence of Israeli military forces in the areas struck by the rockets, as well as statements from the leaders of

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<sup>74</sup> “Self-Defence,” Casebook: How Does Law Protect in War?, International Committee of the Red Cross, <https://casebook.icrc.org/glossary/self-defence>

<sup>75</sup> <https://legal.un.org/repertory/art51.shtml>

<sup>76</sup> Steinberg, Gerald M. and Herzberg, Anne, “Filling in the Blanks: Documenting Missing Dimensions in UN and NGO Investigations of the Gaza Conflict,” NGO Monitor and UNWatch, 2014.

<sup>77</sup> Ethan Bronner, Parsing Gains of Gaza War, *New York Times* 18 January 2009

<sup>78</sup> [Video: Gaza rockets fired from civilian centers Archived](#) 14 April 2011 at the [Wayback Machine](#), *Israel News* 1204-2011

<sup>79</sup> Erlanger, Steven, and Fares Akram (8 July 2014). [“Israel Warns Gaza Targets by Phone and Leaflet”](#). *The New York Times*.

Hamas and other armed groups, indicate that many of these attacks are deliberately intended to strike Israeli civilians and civilian structures... Hamas and other Palestinian armed groups have frequently violated the laws of war by firing rockets from within populated areas...<sup>80</sup>

The UN Glossary of Peacekeeping Terms interprets the prohibition against use of human shields as follows:

*Human shield [any person who, under the laws of war is considered a non-combatant [sic] and as such protected from deliberate attack (civilians, POWs, etc.) but who is used by one side as a hostage to deter the other side from striking a particular military target and risking killing the hostages; the side using "human shields" gambles on the other side's reluctance to violate the laws of war and on its fear of the moral and political opprobrium usually attached to such violations; the use of human shields can take the form of a) placing civilians or prisoners in or near legitimate military targets (bases, bunkers, weapons factories, etc.) or b) placing artillery batteries and other offensive weapons in the midst of the civilian population, particularly such buildings as hospitals, schools, churches, etc., or residential neighborhoods, or c) for non-uniformed armed groups, firing at their adversary from among a crowd of civilians.*<sup>81</sup>

Hamas, with the assistance of UNRWA, has also used UN facilities for military purposes. For instance, during the 2014 Protective Edge war between Israel and Hamas forces in Gaza:

*Hamas rockets were found in at least three UNRWA schools. Upon discovery, UNRWA reportedly handed the weapons back to Hamas. Other reports detailed UN materials located in attack tunnels and tunnel entrances in UN facilities. Rockets were launched from within or near UN installations. In one of the few existing media photos of Hamas combat activity, a rocket launcher is shown right outside an UNRWA building. The Secretary General's Board of Inquiry report on the Gaza fighting revealed gross incompetence on the part of UNRWA employees and officials and possibly even complicity in attacks on IDF soldiers and Israeli civilians from UN facilities.*<sup>82</sup>

### **Summary**

Hamas, PIJ and other terror groups operating in Gaza have committed innumerable war crimes, crimes against humanity and other violations of International Humanitarian Law against Israeli and Palestinian civilians alike. These groups have also violated international law regarding the use of their own population as human shields. As such, the political and military leaders of these terrorist organizations should be investigated by the UN, the International Criminal Court and other international bodies. Failure to do so amounts to a denial of justice to the victims of Hamas and other terrorist groups. Failure to act only encourages them to continue their attacks on Israeli civilians, inviting retaliation by Israel exercising its right to self-defense sanctioned by international law.

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<sup>80</sup> "[Gaza: Palestinian Rockets Unlawfully Targeted Israeli Civilians](http://www.hrw.org/news/2014/07/23/gaza-palestinian-rockets-unlawfully-targeted-israeli-civilians)". [hrw.org/news/](http://www.hrw.org/news/). Human Rights Watch.

<sup>81</sup> UN, "Glossary of UN Peacekeeping Terms: 'H'," <http://www.un.org/en/peacekeeping/sites/glossary/h.htm>.

<sup>82</sup> United Nations, "Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July 2014 and 26 August 2014," April 27, 2015, <https://www.documentcloud.org/documents/2068300-gaza-board-of-inquiry-report-and-cover-letter.html>



### **Topic 3. “Identification of those responsible;”**

The political and military leadership of various terrorist groups operating in the Gaza Strip, West Bank and the broader region, are responsible for planning and giving the orders to carry out terror operations against Israeli non-combatants. These individuals include:

#### ***Hamas***

Political leadership:

- Yahya Sinwar
- Ismail Haniyeh
- Mousa Abu Marzouq
- Khaled Mashal
- Fathi Hamad

Leadership of Hamas’s military wing Izz ad-Din al-Qassam Brigades:

- Mohammed Deif
- Marwan Issa

#### ***Palestinian Islamic Jihad***

- Ziyad al-Nakhalah, Secretary General
- Akram al-Ajouri
- Khaled al-Batsh

Additional responsibility lies with the governments of Iran, Qatar, and Turkey, which have all provided various forms of support to terrorist groups committing war crimes against Israeli and Palestinian civilians alike. Similarly, the Palestinian Authority is responsible due to its policy of institutionally promoting and financially rewarding violence against Israelis.

**Topic 4. “Recommendations on accountability measures, with a view to avoiding and ending impunity and ensuring legal accountability, including individual criminal and command responsibility;”**

***Applying the Principal of Universal Jurisdiction***

1. The principal of universal jurisdiction enables all UN member states to fulfill their duty to prosecute and punish the perpetrators of war crimes.<sup>83</sup> Universal jurisdiction should be applied to the leaderships – political and military – of Hamas, Palestinian Islamic Jihad, Tanzim, Al Aqsa Martyrs Brigade, PFLP, and other terrorist organizations.<sup>84</sup>
2. Sanctions against the political and military leaders of the Islamic Republic of Iran for pursuing policies of supplying military armaments (missiles, anti-tank weapons, RPGs, assault weapons) to Hamas, PIJ and other terror groups who have used these weapons in the commission of war crimes against Israeli and Palestinian non-combatants.
3. Sanctions against the governments of Turkey and Qatar, until they cease providing any form of support to terrorist organizations such as Hamas.
4. Sanctions against the Palestinian Authority, until it ceases institutional incitement to hatred and violence, and ends its financial rewards for terrorism against Israelis.
5. An end to the systemic discrimination Israel faces in bodies such as the UNHRC, where Israel is disproportionately condemned while Palestinian leaders and terrorist groups are shielded from accountability.

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<sup>83</sup> <https://casebook.icrc.org/glossary/universal-jurisdiction>

<sup>84</sup> Fry, James D. “Terrorism As A Crime Against Humanity and Genocide: The Backdoor to Universal Jurisdiction.” *UCLA Journal of International Law and Foreign Affairs* 7, no. 1 (2002): 169–99. <http://www.jstor.org/stable/45302167>.

## **Topic 5. “Recommendations on measures to be taken by third States to ensure respect for international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem.”**

It is up to Israelis, Palestinians, and their leaders to resolve their differences and achieve a peace agreement that ensures respect for international humanitarian law. However, governments around the world can and do influence the situation in either a constructive or a destructive way.

To be a part of the solution, the United Nations and its member states have a responsibility to avoid fanning the flames of hatred and conflict by stopping the systemic discrimination Israel faces at the hands of bodies such as the UNHRC. According to Palestinian negotiators Hussein Agha and Ahmad Samih Khalidi, “the Palestinians’ readiness to take the negotiating path to its logical conclusions was restrained by a perception that they were winning the moral and psychological high ground. The paradoxical effect was to make it harder to progress toward an agreement with Israel because it seemed that other influential parties might do the job.”<sup>85</sup>

In other words, applying one-sided pressure and condemnation against Israel while doing nothing to hold Palestinian leaders and terrorist groups accountable harms Israelis and Palestinians alike, making it harder for them to achieve a just peace.

The international community must take seriously the terrorism of Hamas, PIJ and other non-state actors. Furthermore, since these groups are armed, trained, and financed by United Nations member states, most prominently the Islamic Republic of Iran, the UN and the UNHRC should hold accountable those third-party states that enable terrorists to commit war crimes. Inasmuch as the terror groups and Iran pursue an ideological agenda that calls for the destruction of the State of Israel, a UN member state, this gives Hamas, PIJ, Iran *et al* a veto over any negotiated compromise solutions of the conflict between Palestinians and Israelis.

Finally, recognizing that it is up to Israelis and Palestinians to resolve their conflict and that trust between the two communities is at a low point, third states should focus their efforts and resources on fostering cooperation, trust, and mutual respect between both peoples. They should also actively fight against any attempt to prevent healthy cooperation between Israelis and Palestinians, such as the global Boycott, Divestment, and Sanctions campaign and other efforts that tear the two peoples apart under the guise of “anti-normalization”.

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<sup>85</sup> Hussein Agha and Ahmad Samih Khalidi, ‘The End of This Road: The Decline of the Palestinian National Movement,’ *The New Yorker*, August 6, 2017, at <https://www.newyorker.com/news/news-desk/the-end-of-this-road-the-decline-of-the-palestinian-national-movement>

## Final Comment: Critique of the “Independent International Commission of Inquiry, et al”

The permanent “Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel” [created](#) by the UN Human Rights Council (UNHRC) on May 27, 2021<sup>86</sup> is neither independent, nor is it interested in pursuing an impartial inquiry. It is led by [officials](#) with long records of anti-Israel bias<sup>87</sup> and as such is yet another exercise in targeting Israel by the UNHRC, which is supposed to be “responsible for the promotion and protection of all human rights around the globe.”<sup>88</sup> In reality, the majority (68%) of UNHRC members are authoritarian undemocratic governments,<sup>89</sup> including regimes responsible for some of the worst human rights violations today. As such, the UNHRC is a corrupted and politicized institution that relentlessly abuses its power and resources.

The commission of inquiry’s [proposed](#) budget and staff for this commission are roughly [twice the size](#) of a similar commission focusing on the Syrian Civil War. While the Israeli-Palestinian conflict is a tragedy that must end, the [UN’s own estimates](#) show that at least 120 times fewer people in the Israeli-Palestinian conflict have been killed on both sides since 2011 (4,133), compared to the Syrian Civil War in that same time period (over 500,000).<sup>90</sup>

Several UN Secretaries General have harshly criticized the UN’s institutionalized anti-Israel bias. UN Secretary-General António Guterres [said](#) in 2017, “Israel needs to be considered as a state [that is] the same as all the others ... without any form of discrimination.”<sup>91</sup> In 2007 UN Secretary-General Ban Ki-Moon [stated](#), “[I am] disappointed at the council’s decision to single out only one specific regional item given the range and scope of the allegations of human rights violations throughout the world.”<sup>92</sup> And, in 2006 UN Secretary-General Kofi Annan [said](#), “Supporters of Israel feel that it is harshly judged by standards that are not applied to its enemies – and too often this is true, particularly in some UN bodies.”<sup>93</sup>

The UNHRC’s politicization, abuse of power and [systemic discrimination](#) manifests as follows:

- Israel, the sole proven [democracy](#) in the Middle East,<sup>94</sup> is the only state whose human rights record is routinely examined under a permanent special agenda item (No. 7) while all other countries’ records are scrutinized in the general debate.
- The UNHRC has condemned and investigated the Jewish state [more than all other governments](#) in the world combined.<sup>95</sup>
- Israel has been [subjected to more UNHRC special sessions](#) (9) than any other state. The UNHRC has failed to call special sessions on serial human rights abusers North Korea, China, Russia, Iran or Venezuela.<sup>96</sup>

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<sup>86</sup> <https://www.ohchr.org/EN/HRBodies/HRC/CoIOPT-Israel/Pages/Index.aspx>

<sup>87</sup> <https://www.jpost.com/arab-israeli-conflict/navi-pillay-to-head-unhracs-permanent-war-crimes-probe-against-israel-674632>

<sup>88</sup> <https://www.ohchr.org/en/hrbodies/hrc/pages/home.aspx>

<sup>89</sup> <https://unwatch.org/database/>

<sup>90</sup> <https://www.ochaopt.org/data/casualties>

<sup>91</sup> <https://www.worldjewishcongress.org/en/news/un-secretary-general-guterres-israel-needs-to-be-treated-like-any-other-member-state-4-1-2017>

<sup>92</sup> [www.un.org/News/Press/docs/2007/sgsm11053.doc.htm](http://www.un.org/News/Press/docs/2007/sgsm11053.doc.htm)

<sup>93</sup> <https://www.un.org/sg/en/content/sg/speeches/2006-09-19/10-years-after-%E2%80%93-farewell-statement-general-assembly>

<sup>94</sup> <https://www.eiu.com/n/campaigns/democracy-index-2020/>

<sup>95</sup> <https://unwatch.org/database/problems/unhrc/>

<sup>96</sup> <https://unwatch.org/database/problems/unhrc/>

- The UNHRC has subjected Israel to more [commissions of inquiry](#) (9) than any other state.
- The UNHRC has failed to hold accountable serial human rights offenders including Algeria, China, Cuba, Egypt, Hamas in Gaza, Iraq, Nicaragua, Pakistan, Palestinian Authority, Russia, Turkey, Zimbabwe.

There is no justification for targeting Israel while ignoring or using dramatically fewer resources to address the worst human rights abuses around the world. While the UN has disproportionately focused on issues related to the Palestinian-Israeli conflict, it has largely ignored millions of deaths and human rights abuses in recent conflicts around the world.

In this manner, has the UNHRC failed to protect human rights and is not living up to its mandate.

The goal of this politicized and discriminatory UNHRC “commission of inquiry” is to put the world's only Jewish state on trial, as part of a larger campaign to eliminate Israel and strip away Jewish rights to self-determination and self-defense. Instead of contributing to any form of progress, the UNHRC is fueling more division, hatred, and conflict.

Anyone who is employed by this commission of inquiry and genuinely wants to promote human rights, justice, and peace between Israelis and Palestinians should resign. Anything less would mean contributing to an effort that will only fan the flames of hatred, division, and conflict, while further discrediting the UNHRC.