



ASSEMBLY OF STATE PARTIES OF THE INTERNATIONAL
CRIMINAL COURT

CHECK AGAINST DELIVERY

Statement by

Ms. Aviagail Frisch Ben Abraham
Legal Advisor
Embassy of Israel in the Netherlands

General Debate

7 December 2023
United Nations, New York

Thank you, Madam President,

Today marks two months since the horrific attacks perpetrated against Israel by Hamas and other terror organizations in the Gaza Strip. On Saturday, October 7th, Hamas launched a massive attack against Israel, during which thousands of terrorists infiltrated Israeli territory, and in acts of ruthless and brutal savagery, murdered over 1,200 people from different religions, including Jews, Muslims and Christians, and injured thousands more, while simultaneously firing thousands of rockets indiscriminately against Israeli civilian population centers.

Israeli communities in the south of Israel were decimated. Entire families massacred in their homes, burned alive and made to endure indescribable atrocities. Hundreds of young men and women celebrating at a music festival viciously butchered. For weeks, many civilians remained unaccounted for. Some are still missing. It is precisely such atrocities that led to the creation of the international criminal justice project, to which Israel has contributed and to which it remains committed.

The horrific events of October 7th include widespread and often pre-planned gender-based violence, rape and sexual assaults. 239 people were taken hostage by Hamas, among them babies, children, the disabled, and elderly people, and held incommunicado. At least six hostages have been executed by their captors. 138 people remain captive, without any sign of life. This includes, for example, 10-month-old Kfir Bibas and his family.

These sadistic actions – which Hamas gleefully celebrates and openly and explicitly vows to commit again and again – are something no country would tolerate and every country would act against. Israel is duty-bound to protect its citizens and to ensure that the ongoing attacks and incessant rocket fire can never occur again.

Madam President,

In responding to these atrocities Israel is committed, as it must be, to upholding the laws of armed conflict, including the principles of distinction, precaution and proportionality in accordance with international law. Israel remains committed even as it faces an enemy that has utter contempt for the law, and for human life – whether Israeli or Palestinian. Our heart goes out to the Palestinian civilians in the Gaza Strip who have been living under the brutal regime of Hamas for 16 long years. Israel is not fighting against the civilian population in Gaza. It is fighting Hamas.

Hamas has spent the last 16 years smuggling arms, and stealing aid intended for the civilian population of Gaza, in order to transform the civilian infrastructure of Gaza into the one of the most entrenched terrorist strongholds in modern history. For Hamas, civilians are to be used as expendable human shields. It views, mosques, schools, homes, UN facilities and hospitals not as civilian objects deserving of protection but as terrorist launching pads. Its vast underground tunnel network – built from concrete meant for the civilian population – with hubs under hospitals and under other civilian sites, is designed, as Hamas leaders have publicly acknowledged, to protect Hamas fighters, **not** the civilian population.

Madame President,

Any fair-minded observer must realize that the agonizing challenge we face is the obligation to operate according to the law in the face of the abhorrent strategy of an enemy that disdains the law. As Israel is seeking to minimize civilian harm in accordance with the law, Hamas is seeking to maximize it. While for Israel every civilian casualty is a tragedy, for Hamas it is merely a pawn in its propaganda.

Unless this horrible reality is appreciated, unless the brutal battlefield that Hamas has created is understood, no legal or factual analysis of this situation is serious. The outrage we have heard for civilian casualties, must be directed first and foremost at those terrorist groups who continue to deliberately endanger both Israeli and Palestinian lives, and to hold innocent people hostage.

Madam President,

We have heard the libels and charges made against Israel by some in this debate. These outrageous claims are sadly not new, but neither are they connected to the facts or to the law.

We heard the concern expressed for Palestinian civilian life. **We share it.** But we must ask: Why did we not hear the voices of these speakers all these years when Hamas was brutally oppressing and targeting the civilians of Gaza, stealing aid and turning hospitals and schools into terrorist hubs? Why have we heard nothing of the over 1600 misfired terrorist rockets that have landed in Gaza itself, causing untold civilian harm?

Why have they been unwilling, as the Palestinian Authority has been unwilling, to unequivocally condemn Hamas and the horror of October 7th?

The answer is clear. And I suspect you all know it. It is because, as opposed to the Rome Statute, that requires independent and impartial analysis based on an accurate and well-founded understanding of the law and the evidence, these speakers are acting out of a political partisan agenda that has no place in the debates regarding a criminal judicial body.

Genuine concern for the law does not begin with addressing how Israel responds to the painful dilemmas Hamas's exploitation of civilians poses, it begins by condemning Hamas and holding it accountable for creating that unforgivable dilemma in the first place.

If you are unwilling to address that, if you cannot muster a response to the blatant inhumanity and immorality of Hamas - you have told us all we need to know about your commitment to the law and the facts, and you have signaled to all of us exactly how much weight should be attributed to your accusations.

Politicization is a real obstacle to the integrity and effectiveness of the international criminal justice mechanisms and it must be addressed. When every action taken in war is immediately, deliberately and automatically labeled a war crime or crime against humanity because it serves a convenient political narrative, we not only undermine the legal integrity of the international criminal justice project; we also dishonor the victims.

If the ICC, and the organs supporting it, cannot be a place free from this kind of political manipulation and careless rhetoric - a place where real facts matter, where the law as established matters – then it will betray its judicial function.

Madam President,

While Israel is not a party to the Rome Statute and has not changed its position regarding the Court's jurisdiction, Israel takes note of the visit by the ICC Prosecutor last week, including his time in Israel at the invitation of families of Israeli victims and survivors of the October 7th attacks.

Madam President,

Israel's legal system is a testament to its commitment to the rule of law. It must, despite all the difficulties and the tragic reality of urban warfare, respond with humanity to Hamas's inhumanity. Israel has initiated extensive law enforcement efforts against those who perpetrated, planned or otherwise took part in the terrible crimes of October 7th and subsequently. Israel is fully committed to this process and no resources will be spared. It will also work with other national jurisdictions to pursue this goal.

Israel has in place independent and robust mechanisms, which include also civilian oversight and judicial review, for maintaining compliance with the law and examining allegations of violations and misconduct. As it has previously done, Israel's domestic legal system will examine and investigate any credible allegations of wrongdoing by its own forces. Israel is committed to upholding the rule of law in all aspects – including against alleged extremist violence, and will treat it with all the severity of the law.

Madam President,

Later today, the Jewish people will mark the first night of Hannukah. Hannukah is a testament to the Jewish people's deep connection to the land of Israel, as well as their ability to overcome Anti-Semitism and hate, and to find hope and light even when all seems dark. Our prayers and thoughts remain with all those that are still being held hostage by Hamas. We call for their immediate and unconditional release. We will not give up on them. Neither will we give up on a future of peace, coexistence and security for Israelis and Palestinians alike, free from the terrorism of Hamas and other terrorist organizations that endangers us both. Despite this dark time – light, justice and hope shall once again prevail.