

In the
International Criminal Court

SHURAT HADIN – ISRAEL LAW CENTER

Jibril Rajoub

Accused of War Crimes

Communication

To the Prosecutor of the International Criminal Court
regarding war crimes committed by Jibril Rajoub

January 5, 2015

COMMUNICATION

of SHURAT HADIN – ISRAEL LAW CENTER regarding criminal activities of Jibril Rajoub, requesting that the Prosecutor of the International Criminal Court (hereinafter the “Prosecutor”), pursuant to Article 15 of the Rome Statute¹, initiate an investigation into the war crimes committed within the Court’s jurisdiction by Jibril Rajoub (hereinafter “Rajoub”), a citizen of the Hashemite Kingdom of Jordan (hereinafter “Jordan”).

1. Introduction:

THE COMPLAINANT submits to the Prosecutor this communication concerning Rajoub’s criminality in actively promoting indiscriminate rocket attacks on Israeli civilian locations by and through Al-Aksa Martyrs’ Brigade. Rajoub is a citizen of Jordan and is deputy secretary on the Central Committee of Fatah.² Fatah is the largest faction of the Palestine Liberation Organization (hereinafter PLO). Al-Aksa Martyrs’ Brigade (hereinafter AAMB) is a military group within and controlled by the Fatah faction of the PLO.³ Rajoub knows of the criminal actions of Fatah and AAMB and personally, and in combinations with others, specifically, the Central Committee of Fatah, actively supports and renders aid to Fatah and AAMB. He is therefore responsible for the war crimes of those groups, in violation of Articles 8 (2) (c) (i) and 25 (3) (d) of the Rome Statute.

2. Jurisdiction *ratione personæ*:

The Court has jurisdiction *ratione personæ* because Rajoub is a citizen of Jordan. The Court may exercise its jurisdiction over all acts committed by the citizen of a state

¹ 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.].

² Adnan Abu Amir, *Hard-line Fatah leader in running to succeed Mahmoud Abbas*, Al-Monitor, Jul. 3, 2014.

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

party to the court, wherever those acts are committed.⁴ Jordan is a member state of the Court.⁵ Therefore, the Court has jurisdiction *ratione personae* over Rajoub.

Rajoub is a citizen of Jordan because he was born in Hebron in the West Bank, in 1953.⁶ Jordan controlled the West Bank at that time.⁷ Rajoub is a Jordanian citizen under Jordanian law because he was born in an area under Jordanian control and is not Jewish.⁸ In 1954, the Jordanian Parliament extended citizenship to all non-Jews born or resident in all areas then under Jordanian control, including the West Bank.^{9,10} The Jordanian Parliament has never repealed these statutes.¹¹

The Court thus has jurisdiction *ratione personae* over Rajoub.

3. Jurisdiction *ratione temporis*:

Jordan ratified the Rome Statute on April 11, 2002.¹² Therefore, the Court has jurisdiction over all criminal acts committed by Jordanian nationals after July 1, 2002 when the Rome Statute entered into force.¹³

4. Jurisdiction *ratione materiae*:

This Court has jurisdiction over the war crime of attacking civilians in a conflict not of an international nature.¹⁴ A perpetrator is guilty of the war crime of attacking civilians in a conflict not of an international nature when:

⁴ Rome Stat., *supra* note 1 at art. 12(2)(b).

⁵ Ratification of Jordan of the Rome Statute, Apr. 11, 2002, C.N.368.2002.TREATIES-19 (Depositary Notification)

⁶ Grant Rumley, *Middle East Watch: Keep Your Eye on Majid Faraj*, *The National Interest*, Aug. 20, 2014

⁷ Eyal Benvenisti, *The International Law of Occupation* 108 (Princeton University Press 2004).

⁸ Law No. 6 of 1954 on Nationality, Official Gazette, no. 1171, February 16, 1954, p. 105, arts. 3 and 9.

⁹ *Id.*

¹⁰ Law No. 56 of 1949 Additional to the Law of Nationality, Official Gazette, no. 1004, December 20, 1949, p. 422.

¹¹ Human Rights Watch, *Stateless Again, Palestinian-Origin Jordanians Deprived of their Nationality* [hereinafter “Stateless Again”] 17, Jan., 2010.

¹² *Id.*

¹³ Rome Stat., *supra* note 1 at art. 126(1).

¹⁴ *Id.* at art. 8(2)(e)(i)

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.¹⁵

This Court has jurisdiction to impute to a perpetrator war crimes committed by others when:

1. He contributes to the commission a war crime by a group of persons acting with a common purpose.¹⁶ Such participation must be intentional and made in the knowledge of the intention of the group to commit the crime.¹⁷

The facts clearly demonstrate that Fatah and AAMB have attacked civilians in a conflict not of an international nature and that Rajoub intentionally and voluntarily participated in the activities of Fatah and AAMB, knowing of their long-standing intent to attack civilians, specifically, to attack civilians with indiscriminate rocket attacks.

5. Facts Supporting Jurisdiction:

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

¹⁵ Elements of Crimes, International Criminal Court publication, RC/11 (2011).

¹⁶ *Supra* note 1 at art. 25(3)(d)

¹⁷ *Id.*

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 exhausted its supply of rockets and is using the current ceasefire to re-arm.¹⁸ 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 (a division of Fatah) shot 532 rockets and mortars at "the Zionist enemy," and the Abdul Kader Hussein Brigades (a division of Fatah) fired 864 rockets and mortars at Israel.¹⁹

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.^{20,21}

On July 25, 2014 AAMB launched 3 107 mm rockets at Nirim.²²

On July 27, 2014, AAMB's claimed credit for launching 3 model 107 rockets at Kfar Aza.²³

¹⁸ 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.

¹⁹ *Mahmoud Abbas's Fatah Terrorists: 'We Shot Over 2,000 Rockets at Israel,'* The Allgemeiner, Aug. 28, 2014.

²⁰ 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/>

²¹ *Id.*

²² AAMB Communiques (Jul. 24, 2014), available at <http://www.nedal.net/ar/index.php?Action=NewsDetails&ID=18653>

²³ *Fatah Threatens to "Turn Tel Aviv into Ball of Fire,"* *Glorifies Rockets Against Israel,* States News Service, Jul. 29, 2014

On August 8, 2013, AAMB fired 4 N103 rockets at Ashkelon and 4 107 mm rockets.²⁴

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 sponsored and distributed film, the “only way” to liberate “Palestine” is through the “heroic bloodying” of Israeli civilians through rocket attacks.²⁵

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 in southern Israel. There is no military facility within its corporate limits.²⁶ Sderot similarly has no military facility in its municipal borders.²⁷ Netivot is populated exclusively by civilians.²⁸ Kibbutz Ein Hashlosha an agricultural community of 80 families.²⁹ 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.³⁰ Kibbutz Nir Or is an agricultural

²⁴ 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>

²⁵ *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>

²⁶ *Israel's next step in Gaza*, Kashmir Monitor (India), Jul. 14, 2014.

²⁷ *Supplying support*, Jerusalem Post, Jul. 17, 2014.

²⁸ Ron Friedman, *Flying Around in Circles*, Jerusalem Post, Feb. 19, 2010.

²⁹ Or Movement, *An HaShlosha*, undated, *available at* <http://eng.negev-net.org.il/HTMLs/article.aspx?C2004=12756>.

³⁰ *Sufa crossing opens for 'test' Gaza gravel import*, Ma'an News Agency, Sep. 9, 2011.

settlement in which asparagi are the most threatening thing present.³¹ Kfar Aza contains a plastics factory, civilian homes, a swimming pool and diary pastures.³² Nirim is an agricultural community known for producing organic peanut and peppers.³³ None of these locations has any lawful military target within them. Therefore, the use of rocket fire against them targets the civilian population with the intent of killing and maiming innocent civilians.

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 will cause Israelis to live "in the shelters and live in fear."³⁴ Zaki is a Fatah official who speaks with the full approval of the Central Committee, of which Rajoub is a part.³⁵ 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.³⁶

³¹ Keren Kayemeth LeIsrael, Spotlight on New Projects, *available at* <http://www.kkl.org.il/eng/people-and-environment/spotlight-on-new-projects/>

³² Or Movement, *Kfar Aza*, undated, *available at* <http://eng.negev-net.org.il/htmls/article.aspx?C2004=12736&BSP=12610>

³³ Lydia Aisenberg, *Feeling Gaza*. Jerusalem Post, Apr. 17, 2009.

³⁴ *Fatah official: Fatah is united with Hamas in rocket attacks on Israel*, Al-Hayat Al-Jadida, July 12, 2014.

³⁵ *Fatah Official: Allah Will Gather Israelis So We Can Kill Them*, The Jewish Press, Mar. 13, 2014.

³⁶ Rome Stat., art. 8(2)(b).

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 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.³⁷ 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."³⁸ 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.³⁹ Fatah and AAMB are not high contracting parties to the Geneva Conventions. Although Fatah is a constituent member of the PLO, the Palestinian Liberation Authority is legally distinct from the Palestinian National Authority, has no sovereign authority in Gaza or in any other place,

³⁷ 1 Customary International Humanitarian Law 63-64 (Jean-Marie Henckaerts & Louise Doswald-Beck eds., 2005)

³⁸ *Supra*, note 12.

³⁹ Geneva Conventions I-IV, common art. 2, Aug. 12, 1949, 6 U.S.T. 3316 *et seq.*

and is not a state.⁴⁰ The PLO may not accede to the Geneva Conventions as a matter of law.⁴¹ Therefore, 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.⁴² Israel is a high contracting party to the Geneva Conventions.⁴³ 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) Rajoub is aware of factual circumstances that established the existence of an armed conflict.

Rajoub 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. Rajoub discussed the Gaza rocket launches and Israel's response and likened Israel to "Nazis" who are carrying out "mass extermination".⁴⁴

⁴⁰ *Ungar v. Palestine Liberation Organization*, 402 F.3d 274, 290-92 (1st Cir. 2005).

⁴¹ 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].

⁴² Int'l Comm. of the Red Cross, *How is the Term 'Armed Conflict' Defined in International Humanitarian Law?* 5 (2008)

⁴³ 1080 U.N.T.S. 370

⁴⁴ Jibril Rajoub, *PA leader Jibril Rajoub: Israel is carrying out "mass extermination [in Gaza] as the Nazis did in Europe in the 1940s"*, Palestinian Media Watch.

Although this statement is legally and factually incorrect, it proves that Rajoub is fully informed of the existence of armed conflict between groups in Gaza and Israel.

According to Rajoub, “(Israel is) our enemy and our battle is against them.” Rajoub stated that in the armed conflict between Israel and Palestinian irregular groups, the “resistance” should be fought by all means, and using all weapons, and that “if we had nuclear weapons, we’d be using them.”⁴⁵ Rajoub is therefore clearly aware of the armed conflict between Israel and Palestinian irregular groups because he routinely discusses, in public fora, his extremist views on the proper means by which the “resistance” should be conducted.

During the August, 2014, Rajoub called for indiscriminate attacks on Israeli civilians. According to Rajoub, “Fatah has decided that our relations with the Israelis are relations between enemies... OK, brother, here is the occupation, am I stopping you from slaughtering a settlement? No one is stopping anyone. Don’t lie and tell me: ‘the [Palestinian Authority] Security Forces and Mahmoud Abbas,’ and so on [stop you]. Drop it, OK? No one is stopping anyone. Our political decision is resistance in the occupied territories in order to bring an end to the occupation [using] **all forms of resistance** (emphasis added).”⁴⁶ Assuming, *arguendo*, that Israeli citizens resident in the West Bank are settlers, that status does not deprive individual settlers of the protections of international humanitarian law. Rather, civilians, irrespective of their status as settlers, may not be targeted.⁴⁷

5(f) Rajoub intentionally and voluntarily contributes to the commission a war crimes by Fatah and AAMB, acting with a common purpose with AAMB, and with knowledge of Fatah and AAMB’s intent to attack civilians.

⁴⁵ Elior Levy, *Rajoub: Israel should beware, we are enemies*, YNet News, May 14, 2013.

⁴⁶ Itamar Marcus, *PA leader: Slaughter Jews in "settlements,"* Palestinian Media Watch, Aug. 21, 2014.

⁴⁷ James Stewart, *The UN Commission of Inquiry on Lebanon*, 5 J Int Criminal Justice 1039, 1040 (2007).

Rajoub knows that Fatah and AAMB illegally fire rockets at Israeli civilian targets. He further knows that these attacks are illegal. According to Fatah's delegate to the United Nations Human Right Council, Ibrahim Khreisheh, the Palestinian Authority should be concerned about applying 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.⁴⁸ Khreisheh is a Fatah official and speaks on behalf of both the Fatah Central Committee, of which Rajoub is Deputy-Secretary, and the Palestinian Authority. Khreisheh is also a member of Fatah, serving on the Fatah Revolutionary Council, of which Rajoub is also a member.⁴⁹

Rajoub has publicly acknowledged rocket attacks on Israel. On September 30, 2014, immediately subsequent to the July-August war with Gaza, he openly praised the "armed resistance" of Gazan militants, who fired 4229 rockets into Israeli civilian centers that summer, and in which, with regard to Fatah and AAMB, he had a role of longstanding leadership and importance.⁵⁰

Rajoub is the Deputy-Secretary of the Fatah Central Committee and, in common purpose with the other member of the Fatah Central Committee, has general control over the activities of both Fatah and AAMB. AAMB is a constituent organization of Fatah and within the general control of the Fatah Central Committee. As a high-ranked official

⁴⁸ Aryeh Savir, *Palestinian diplomat admits Hamas war crimes*, Ynet News, Jul. 13, 2014.

⁴⁹ Fatah website, <http://www.fateh.ps/>, last accessed Oct. 2, 2014.

⁵⁰ Israel Security Agency, *Monthly Summary*, August 2014.

within Fatah, and the Palestinian Authority, Rajoub has responsibility for the actions and control of Fatah and its constituent organizations. Rajoub is also an *ex officio* member of the Fatah Revolutionary Committee, which is responsible for disciplining Fatah members.⁵¹ Finances and payments to Fatah militant organizations and to individual combatants are also within the control of the Central Committee of Fatah.⁵²

There is no evidence that Rajoub 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 *ex-officio* member of the Fatah Revolutionary Committee, he has requested that the Palestinian Authority Attorney General open a criminal probe into the unlawful actions of Hamas and AAMB, as required by the Palestinian constitution.⁵³

Rajoub, in combination with other Fatah Central Committee members, has actively encouraged attacks on civilians. Rajoub's support for AAMB is longstanding. In March, 2002, Rajoub stated that the group is the "noblest phenomenon in the history of Fatah, because they restored the movement's honour."⁵⁴ Furthermore, in reference to rocket attacks in 2012, Rajoub stated that "we will not return the sword to its sheath until there is a state."⁵⁵ Most damningly, Rajoub has stated the Fatah and AAMB have made a "political decision" to support the "slaughtering" Jews in Judea, Samaria and eastern Jerusalem.⁵⁶ These statements prove that Rajoub participation in Fatah and AAMB is

⁵¹ Fatah Constitution, Art. 23(c)

⁵² Fatah Charter, Art. 36

⁵³ Constitution of the Palestinian National Authority, Art. 107-108.

⁵⁴ Mathew Levitt, *Designating the Al-Aqsa Martyrs Brigade*, The Washington Institute, March 25, 2002.

⁵⁵ Itamar Marcus and Nan Jacques Zilberdik, *Fatah glorifies Hamas rockets from Gaza against Israel and supports armed conflict*, PMW Bulletins, Dec 13, 2012.

⁵⁶ Orly Harari, *Beitar Illit Man Barely Escapes Lynching Attempt*, Arutz Sheva, August 26, 2014.

with full knowledge and approval of its desire to commit war crimes, and that Rajoub has participated in the decision-making process to engage in the same.

Rajoub has sufficient control and authority over Fatah and AAMB that he is able to dictate operational matters to Fatah and AAMB. For example, after an incident in which a Fatah Central Committee member had a heart attack after engaging in a shoving match with Israeli soldiers, Rajoub declared that Fatah would stop “all security cooperation with Israel” until its demands were met.⁵⁷ In past, he has spoken of his ability, as Deputy Secretary, to declare general resistance “using bullets.”⁵⁸

Although Rajoub’s official role in the Palestinian security structure terminated in 2002, he continues to have “considerable influence on most of the security apparatus officers.”⁵⁹ Rajoub’s unofficial influence, with is considerable, contributes to the ability of Fatah and AAMB to launch rocket attacks. Far from using his official or unofficial authority to prevent indiscriminate rocket attacks, he condones and promotes them.

Rajoub has combined with others on the Fatah Central Committee to facilitate 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 behalf of the Palestinian people” is eligible for this payment.⁶⁰ This amount has been regularly increased.⁶¹ The Palestinian law distinguishes 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

⁵⁷ Statement of Deputy Secretary of the Fatah Central Committee Jibril Rajoub, Dec. 10, 2014, *available at* Palestinian Media Watch, http://palwatch.org/main.aspx?fi=157&doc_id=13361.

⁵⁸ Jibril Rajoub, Palestinian Authority Television, Feb 26, 2014, *available at* Palestinian Media Watch, http://palwatch.org/main.aspx?fi=981&doc_id=11125.

⁵⁹ Adna Abu Amer, *Hard-line Fatah leader in running to succeed Mahmoud Abbas*, Al-Pulse, Jul 1, 2014.

⁶⁰ Law of Prisoners, 2004/19, Ch. 1

⁶¹ *Extra 800 shekels added to PLO prisoner payments following Abbas' order*, Ma'an News Agency, Mar. 3, 2009.

nothing, while those who have violated international law through civilian attacks receive salaries.⁶² 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.⁶³ This is encouragement to engage in these activities and constitutes an unlawful combination in direct aid of the commission of war crimes.

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.⁶⁴ 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

⁶² Edwin Black, *How British and American aid subsidises Palestinian terrorism*, The Guardian (UK), Nov. 11, 2013.

⁶³ *Id.*

⁶⁴ *Supra.* at 1, Art. 17, Rome Stat.

independent nor impartial.⁶⁵ A State is unable to begin proceedings in its national courts when it is unable to obtain custody of the accused.⁶⁶

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-motivated fashion.⁶⁷ THE COMPLAINANTS aver, to the best of their knowledge and belief, that no prosecution of any Fatah or AAMB official, including Rajoub, is contemplated. Further, even if one were, Jordan has no means of obtaining custody of Rajoub. Rajoub 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.⁶⁸ 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 Rajoub 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 Rajoub even if it were willing. Therefore, Jordan is both unwilling and unable to prosecute Rajoub.

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

⁶⁵ Stuart Risch, *Hostile Outsider or Influential Insider? The United States and the International Criminal Court*, 2009 Army Law 61, 71 at n. 57.

⁶⁶ *Supra* at 1, Art. 17, Rome Stat.

⁶⁷ Areej Abuqudairi, *Jordan anti-terrorism law sparks concern*, Al-Jazeera, Apr. 25, 2014

⁶⁸ Oslo II, *supra* at n. 20, art. X(4)

that an investigation would not serve the interests of justice,” despite the clear evidence of a war crime.⁶⁹ 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 Rajoub who 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.⁷⁰ 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.⁷¹ 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.

⁶⁹ International Criminal Court: Situation in the Republic of Cote D’Ivoire, 51 I.L.M. 228, 255 (Pre-Trial Chamber III, 2012).

⁷⁰ Jann N. Kleffner, Complementarity in the Rome Statute and National Criminal Jurisdictions 3-4 (Ruth Mackenzie et. al eds. 2008).

⁷¹ Art. 53(2)(b), Rome Stat.

Rajoub cannot claim that an investigation is not in the interests of justice because of his advanced age. Rajoub has recently travelled to Iran and maintains a rigorous schedule often speaking with the media.⁷² Therefore, there are not medically valid grounds for the Prosecutor to decline jurisdiction in the name of substantial justice.

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 JIBRIL RAJOUB 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 JIBRIL RAJOUB's failure to exercise reasonable control over Fatah and AAMB combatants loyal to him.

Dated: Brooklyn, New York

January 5, 2015

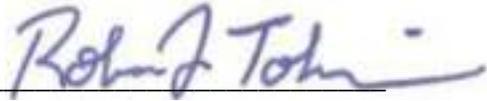
⁷² *Palestinian Official Makes Rare Visit to Iran*, Times of Israel, Jan. 28, 2014.

Respectfully submitted,

THE BERKMAN LAW OFFICE, LLC

Attorneys for Shurat Ha-Din –

Israel Law Center

by: 

Robert J. Tolchin

111 Livingston Street, Suite 1928

Brooklyn, New York 11201

718-855-3627