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January 8, 2020

Mrs. Fatou Bensouda, Chief Prosecutor
Office of the Prosecutor
International Criminal Court
The Hague, Kingdom of the Netherlands

Dear Mrs. Bensouda,

I write to you on behalf of the parents of Hallel Ariel, a 13-years old girl, murdered in her bed in 2016 by a Palestinian terrorist, in response to your statement of 20 December 2019, in which you indicated that you intend to open an investigation into the situation in "Palestine". This statement was followed by your request before the Pre-Trial Chamber in which you have also described the issues you intend to investigate.

We strongly contest your perceived jurisdiction over the matters which the Palestinian Authority (PA) has referred to you on a *territorial basis* because the State of Israel is not a member state of the court and the PA is not a state. We have already drawn your attention to the fact that you have indisputable jurisdiction *in personem* over Mahmoud Abbas and most PA officials on the basis of the Jordanian citizenship they hold, as Jordan is a member state. This jurisdiction began in July, 2002, well before the date of the PA's referral.

Our office has repeatedly submitted before you evidence of serious crimes committed by persons, many of whom are PA officials, who are both subject to your jurisdiction by reason of nationality, and come within your perceived jurisdiction of the

court.¹ You have not included any of these crimes, over which you do have jurisdiction, in proposed your investigation, and have not indicated that you will investigate the crime of any PA official. The grant of immunity you have apparently given to PA officials is clear. Even as you chose to investigate rocket attacks on Israeli towns in 2014, you ignored PA responsibility for a large portion of those attacks. Fatah, an armed a component of the Palestinian Liberation Organization (PLO), directly under PA President Mahmoud Abbas's command, was responsible for these attacks. You apparently are limiting your investigation only to "members of Hamas and Palestinian armed groups".

To make matters worse, within your own perceived jurisdiction, you have chosen to disregard other PA criminal conduct, **condemned by many nations**,² such as the “pay to slay” scheme, through which the PA provides financial incentives for war crimes. These payments – paid to all Palestinian terrorists including Hamas members – offer substantial *ex-ante* financial rewards for the commission of war crimes and are therefore a part of the commission of these crimes. Furthermore, this is *de facto* financial incitement to kill Jews and Israelis, as such.

This criminal scheme is regulated officially by the PA, in a large scale, extending over decades. Its most substantial beneficiaries are the vilest of all; mass murderers of hundreds of innocent women and children. These payments revictimize the families of victims who must watch these murderers **receive payment for killing their loved ones**.

The “pay to slay” scheme – although independently a crime – is part of a larger PA scheme, laying the groundwork for further violence. It includes the administering of a curriculum which includes the demonization of Jews and Israelis in PA schools, the delegitimization of the right of Israel to exist and the public praise by the PA and its officials of the murderers of innocent civilians.

¹ Your references: OTP-CR-71/15, OTP-CR-72/15, OTP-CR-73/15, OTP-CR 116/18, and our recent letter from Nov. 25 2019.

² States that either halted PA aid of expressed their concern on this issue include: The Netherlands, Australia, the United States, Norway, Great Britain.

We have written to you on this issue in our letter of Nov. 25 2019, and welcomed the fact that three weeks prior to your announcement, in your latest annual report, **you indicated that this is an issue of concern, subject to your office's review.** We find it disturbing that only shortly afterwards you omitted it from your proposed investigation.

I therefore present the attached information to you concerning the PA's "pay to slay" scheme:

- a. **Annex I** contains evidence about the "pay to slay" scheme and includes the following information and evidence:
 - 1) Evidence about the scheme itself, including the direct correlation between the severity of crimes committed by Palestinian terrorists and the payments made by the PA under this scheme, the sums of money which the PA pays under the scheme and the criteria for payments.
 - 2) Evidence about the actual implementation of the scheme – the actual payments made by the PA to terrorists.
 - 3) Evidence that "pay to slay" scheme incentives crimes.
 - 4) Information about the PA Ministries and officials in charge of the scheme.
 - 5) Information about the scheme's intent and the intent of those administering it.
 - 6) Information about the correlation between the "pay to slay" scheme and the PA ethos of glorification of terrorists and incitement to violence in the PA educational system.

- b. **Annex II** explains the criminal nature of the scheme described in Annex I. It analyzes the elements of the relevant crimes contained in the Rome Statute, focusing on the criminal responsibility of the administrators of the "pay to slay" scheme for inciting and abetting crimes under the court jurisdiction.

The PA officials who administer this scheme are criminally responsible for the commission of these crimes under Article 25(3) of the Rome Statute, and they include (amongst others):

- a) **Mahmoud Abbas** (Abu-Mazen), President of the Palestinian Authority.
- b) **Dr. Shukri Bishara**, Minister of Finance.
- c) **Issa Karake** (until 2018) and **Qadri abu-Baker** (from 2018), Head of The Commission of Detainees and Ex-Detainee Affairs/Office of Prisoner Affairs and their Families.
- d) **Intissar al-Wazir** (Umm Jihad), Head of The Fund for Families of Martyrs and the Injured.
- e) **Akram Jrab**, CEO, the Quds Bank.

I protest the patently biased nature of your announcement and request that your investigation shift to proper matters, within your jurisdiction, which our organization has repeatedly placed before you, without response. **With all due respect, “blood money” and incitement to murder come within the core reasons for the existence of the court, surely more than some of the political issues upon which you choose instead to focus.**

After five years, I look forward to finally receiving a reply from you. Believe me, I am.

Yours Very Truly,



Nitsana Darshan-Leitner
President, Shurat HaDin Israel Law Center

Annex I - Evidence

1. The Palestinian Authority's (PA's) "pay to slay" scheme is formally regulated by PA legislation, conducted by PA government officials and is publicly portrayed as a matter of national pride. Therefore, as shown below, abundant information and literature on the PA's "pay to slay" scheme is available, both in Arabic and in English.

2. The PA treats every person who commits acts of violence against Israelis as a "hero," and if killed – as a "martyr" whose acts of terrorism entitle him or his family to gratuities. **These perpetrators have killed and injured civilians, including women and children, committing acts that amount to international crimes.** The PA's policies financially support these perpetrators and their families and increase the reward in direct correlation with the severity of the offense.

3. This theme is deeply embedded in all PA policies and actions, exceeding the financial issue – it is included in the PA formal education system, in official declarations and speeches and even finds its effect in the naming of streets, institutions and facilities by the names of "martyrs", thus encouraging further violence. In other words, **there is a culture of idolizing murderers, which the PA administers.**

4. The PA's financial support of terrorists increases based upon the length of a terrorist's sentence. Perpetrators of the gravest crimes – such as mass murderers of innocent women and children receive the biggest gratuity.

A. Palestinian legislation and government decisions

5. The "pay to slay" scheme is administered and conducted under the laws and policy decisions of the PA, including:

- a) **Law No. 14 (2004) on Aid for Prisoners in Israeli Prisons**, which sets the funding for payments made to for Palestinian terrorists. Under Art. 1 of this law, a “Prisoner” is anyone incarcerated in the “occupation’s prisons” **“for his participation in the struggle against the occupation.”** In practice, this term encompasses any attack against Israelis anywhere. Art. 2 governs the administration of these payments – “Under this Law a ‘special account’ will be opened as part of the fund, dedicated to supporting the steadfastness of the prisoners and their families.” Under Art. 5, “[t]he government will determine the regulations necessary to implement the provisions of this law.”
- b) **Amended Palestinian Prisoners Law No. 19 (2004)**. Art. 2 of this law establishes the financial support based upon the **legitimacy of acts of terror against Israelis** committed by individuals who are conceived as a “fighting sector” of the Palestinian society. It reads:

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

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

- c) **Government Decision 23 (2010)** on monthly salaries for prisoners formalizes linking payments **according to the length of incarceration**. Those sentenced to 3 years or less are granted 1,400 NIS per month, while those sentenced for 30 years or more make 12,000 NIS per month.³
- d) **Decree Law No. 1 (2013) on the Amendment of the Prisoners and Released Prisoners Law No. 19 (2004)**, deals with the employment of released prisoners. According to this law, “The State will guarantee employment to released prisoners” and “Released prisoners will be given priority in all annual job placements, in all State Institutions.”⁴
6. These laws create **an institutional “care plan” for the perpetrators of war crimes and even crimes against humanity**, covering all aspects, including guaranties for future employment, education and financial support:
- “According to the laws, the PA must provide prisoners with a monthly allowance during their incarceration and salaries or jobs upon their release. They are also entitled to exemptions from payments for education, health care, and professional training. Their years of imprisonment are calculated as years of seniority of service in PA institutions. Whoever was imprisoned for five years or more is entitled to a job in a PA institution and the longer he is imprisoned he is entitled to a higher rank in the government apparatus and to a higher salary. Thus, the PA gives priority in job placement to people who were involved in

³ See copy of Monthly allowances for prisoners in Government Decision 23 at: Yigal Carmon, Palestinian Authority Support for Imprisoned, Released and Wounded Terrorists and Families of 'Martyrs', Written testimony submitted to the House Committee on Foreign Affairs, for "Financially Rewarding Terrorism in the West Bank," July 6, 2016 at: <https://docs.house.gov/meetings/FA/FA00/20160706/105161/HHRG-114-FA00-Wstate-CarmonY-20160706.pdf>

⁴ Translations for these laws can be found at: Brig.-Gen. (res.) Yossi Kuperwasser, *Incentivizing Terrorism: Palestinian Authority Allocations to Terrorists and their Families*, Jerusalem Center for Public Affairs (2017), available at <https://jcpa.org/paying-salaries-terrorists-contradicts-palestinian-vows-peaceful-intentions/#appendix-5>. (Hereinafter: Kuperwasser).

terrorist activity. Palestinian President Mahmoud Abbas has stressed more than once [that] ‘the prisoners are top priority.’”⁵

7. It is important to note, that according to PA legislation and government payments are payed to all Palestinians terrorists, including members of **Hamas, Islamic Jihad and others**, both in Judea and Samaria and Gaza. Furthermore, the PA also pays **Israeli Arab citizens** who have committed terror acts⁶.

B. The pay to slay scheme in numbers

B.1 PA budget allocation and methods of transfer

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

⁵ *id.*

⁶ Lately, Israel Defense minister has signed a decree ordering the forfeit of bank accounts of 9 Israeli citizens who are on the PA 'pay to slay' payroll. See: Amir Buhbut, "Bennet has decided to forfeit bank accounts of families of Israeli Terrorists" (Hebrew), Walla news, (25 Dec. 2019), at: <https://news.walla.co.il/item/3331325>

to the PA until it stops paying stipends to prisoners, released terrorists, and families of terrorists).”⁷

9. The PA faces a severe budget shortfall. In 2015, the PA deficit exceeded \$2 billion.⁸ Despite this severe cash shortage, the PA government and Ministry of Finance under Bishari’s leadership increased its fiscal commitment to rewarding terrorism. This was a conscious decision to prioritize rewards for terrorism above financing schools, hospitals, and other basic services.
10. Given its budget shortfall, the PA prefers the payments to terrorists over payments to its own employees. Recently, the Ministry of Finance published the following budgetary information for September, 2019:
 - a. Payments to prisoners, families of “martyrs” and of the wounded – received full payment.
 - b. Employees received only 60% of their salaries⁹.
11. On June 11, 2014, Fatah spokesman Ahman Asaf stated on official Palestinian TV that the Ministry of Prisoner Affairs and ex-prisoners is the **third largest ministry in the PA**, with a monthly budget of over \$12 million, most of which is paid to war criminals and their families.¹⁰ By the direct order of the PA government, including Bishari, approximately 25,000 people receive government salaries but

⁷ The Meir Amit Intelligence and Terrorism Information Center, *Terror funding by the Palestinian Authority: Mahmoud Abbas recently approved the budget for 2018, about 7% of which is devoted to assisting prisoners, released terrorists, and families of shahids* available at: <https://www.terrorism-info.org.il/en/terror-funding-palestinian-authority-mahmoud-abbas-recently-approved-budget-2018-7-devoted-assisting-prisoners-released-terrorists-families-shahids/>. This report consists scanned original PA documents.

⁸ *Palestinian deficit to exceed \$2bn in 2015*, Middle East Monitor, Jan. 14, 2015.

⁹ *Wafa*, Oct. 1 2019. See also: <https://www.terrorism-info.org.il/he/-/דשות-הטרור-והסכסוך-הישראלי-פלסטיני-25-2/>.

¹⁰ *PA pays prisoners over 12 million dollars a month*, Palestinian Media Watch, Jun. 11, 2014.

perform no public duty. These people receive a sinecure solely because they or their family members committed a war crime.¹¹

12. According to **Kuperwasser** (written in 2017):

“The total PA budget is \$5 billion. The amount that supports prisoners is \$155 million, out of which \$147 million are spent on transfers to the prisoners. These include salaries to 5,000 prisoners, paying Israeli fines for 1,200 prisoners, grants to 1,500 prisoners upon their discharge, grants for 1,200 unemployed released prisoners, delayed payments to 1,000 prisoners, salaries for 5,500 released prisoners, unspecified amounts to released prisoners who spent more than 10 years in jail, canteen expenditures for 6,000 prisoners, and clothing allocations for 5,000 prisoners...The salaries are currently paid based on PA Government Decision No. 23 of 2010, which specifies the prisoners’ monthly allowance according to the length of sentence. It ranges from \$364 a month for up to three years imprisonment to \$3,120 a month for 30 years and more. There is a \$78 supplement for terrorists from Jerusalem and a \$130 supplement for Arab-Israeli terrorists.... The PA also provides prisoners with a monthly allowance for canteen expenses, totaling \$780,000 per month.”¹²

13. The scheme provides additional payments to married prisoners and those who have children under the age of 18. The scheme does not limit its enticement efforts to “occupied” Palestinians. Instead, it provides extra rewards to Israeli Arabs who commit attacks on civilian targets within the entirety of Israel.¹³

¹¹*PA daily: PA pays salaries to prisoners, released prisoners, prisons's families, and families of martyrs, Palestinian Media Watch, Oct. 8, 2014.*

¹² Kuperwasser, *supra* note 4. See also: *Linde et al. v. Arab Bank*, U.S. District Court for the Eastern District of New York, No. 04-2799 (“*the Arab bank case*”).

¹³ *Id.* (*Arab Bank case*).

14. The following charts prepared by **Palestinian Media Watch** present the sums which convicted terrorists receive and the annual budget for these payments:



15. Palestinian media outlets reported on October 20, 2016 that **Intissar al-Wazir** signed in Ramallah an agreement with **Quds Bank** for transferring pensions to the families of terrorists in the Gaza Strip. The agreement was signed with Quds Bank CEO **Akram Jrab**.¹⁴ The signing of this agreement proves that PA payments are transferred to Hamas terrorists, as the PA publicly admits.

¹⁴ Al-Watan, October 20, 2016.

B.2 Actual payments to murderers

16. For more than a decade, we have represented victims of Palestinian terrorism in numerous cases, both in US and Israeli courts. In these cases, we proved Palestinian financial support for the murderers of innocent civilians. **Attached** to this communication are original PA documents concerning payments, judgments of Israeli courts against the recipients of those payments and other documents in this regard.

These documents clearly portray the allocation of substantial funds to the vilest murderers because of their crimes.

17. In a recent Israeli court ruling in *Norz'its vs. PA*,¹⁵ Jawad Amawi, an attorney and advisor to the PA Ministry of Finance testified that the Palestinian authority closed the Ministry of Prisoners in 2014 because of international outcry against the “pay to slay” scheme, but continued the payments required by the PA legislation via accounts operated by the PLO. In his testimony, the witness acknowledged that the PA legislation is still in force and implemented.
18. Recipients of “pay to slay” payments include Amjad and Hakim Awad, who murdered five members of the Fogel Family - parents and their three children, including three-month-old Hadas and four-year-old Eldad, in March 2011. The Awads have already received 460,800 shekels (\$132,895) from the PA. Abdullah Barghouti, who built six bombs used by suicide bombers, including the one detonated in the Sbarro pizza shop in Jerusalem in August 2001, murdering 15 people – among them two-year-old Hemda Schijveschuurder – has already received 695,200 shekels (\$200,496). Majdi Za’atri, who planned the August 2003 Jerusalem bus bombing which murdered 23 people were murdered,

¹⁵ Case 2538-00 (Jerusalem) Norz'its Litbac et al. vs. The Palestinian authority.

including one-year-olds Shmuel Zargari and Shmuel Taubenfeld, has already received 661,800 shekels (\$190,863)¹⁶.

19. Payments are also paid to families of terrorists killed during their acts, including the family of Mohammad Tra'ayra, who stabbed to death Hallel Ariel in her bed. According to AP, the family is eligible for \$350 a month from the Palestinian fund for martyrs.¹⁷

C. Evidence proving the “pay to slay” scheme incentivizes Palestinians to commit crimes

20. The “pay to slay” scheme actually “works” in incentivizing the commission of crimes. **Husni Najjar** told Israeli Police that he planned a second terror attack in order to be captured and imprisoned by Israel a second time, so that he would receive the salaries the Palestinian Authority pays to prisoners in jail and after release. In his signed statement following his second arrest, he explains that the money he received from the PA as salary during his first prison term amounted to only 45,000 shekels. However, the salary he would receive following his second prison term and subsequent release would leave him with “135,000 shekel...and thus I would cover my debts.”
21. Itamar Marcus and Nan Jacques Zilberdik from **Palestinian Media Watch** correctly note that “the terrorist showed precise knowledge of the payments the PA gives to those arrested for terror. He explained that PA law grants terrorists imprisoned for more than five years a salary of 4,000 shekels a month, which

¹⁶ Palestinian Media Watch, *Another Baby Killer to Receive Fat Salary from Palestinian Authority*, The JewishPress.com (January 8, 2019), at: <https://www.jewishpress.com/news/eye-on-palestine/another-baby-killer-to-receive-fat-salary-from-palestinian-authority/2019/01/08/>

¹⁷ Mohammed Daragmeh and Joseff Federman, *Israel puts Palestinians on defensive over 'martyrs' fund'* (AP, July 11, 2016), at: <https://apnews.com/11f6ce1ed78943a0afc947e81334cef9/Israel-puts-Palestinians-on-defensive-over-%27martyrs%27-fund%27> ; Eli Lake, *"The Palestinian Incentive Program for Killing Jews"* (1 July 2016).. Bloomberg. Retrieved 25 July 2016.

continues for three years following their release from prison. This is in addition to monthly salary payments while in prison. The terrorist explained that because his first imprisonment for planning a suicide terror attack (which was foiled) lasted less than five years, it was not enough to prompt the 4,000 shekels monthly salary upon release. He therefore planned another attack in order to reach a total of five years in prison, which would entitle him to the additional salary upon his second release,”¹⁸

D. Palestinian officials and institutions involved in the “pay to slay” scheme

22. In accordance with the PA legislation the following officials, ministries and organizations are involved in the “pay to slay” scheme:
- a) **The government, headed by President Mahmoud Abbas** (Abu Mazen). The PA government is responsible for the decrees linking the severity of the crime to the amount of the payment. President Abbas also approves the PA annual budget which designates millions of dollars to be spent for these payments.
 - b) **The Ministry of Finance**, headed by **Dr. Shukri Bishara** prepares the annual budget and allocates the sums necessary for the funding of the scheme.
 - c) **The Ministry of Education**, headed by **Dr. Khawla Shakhshir**, is in charge of the educational aspects of the incitement.
 - d) **The Commission of Detainees' and Ex-Detainees' Affairs**, headed by **Issa Karake** (until 2018) and **Qadri abu-Baker** (from 2018) **and its employees**.

¹⁸ Itamar Marcus and Nan Jacques Zilberdik, *Terrorist planned attack in order to be imprisoned and receive PA salary* (Feb. 16, 2014), at: <https://palwatch.org/page/5919>. **The article contains the written testimony of the terrorist.**

This institution was made subordinate to the PLO, in order to mislead donor countries (mainly the United States) and to create the impression that their aid funds were not being used for terrorism. In practice, however, the funds for the Commission of Detainees' and Ex-Detainees' Affairs derive from the PA budget and are transferred to the PLO as part of the PA's commitment to supporting terrorists taking part in the "struggle against Israel."¹⁹

e) **The Fund for Families of Martyrs and the Injured**, headed by **Intissar al-Wazir (Umm Jihad)**.

The Fund for Families of Martyrs and the Injured is a PLO institution that takes care of the families of "shahids" (i.e., terrorists who were killed) and the wounded. This institution receives its budget from the PA.

f) The Quds Bank, headed by CEO **Akram Jrab**, through which "pay to slay" payments are transferred to Gaza.

E. Official knowledge of the "pay to slay" scheme

23. The "pay to slay" scheme is executed by officials and conducted in public. These officials are not only fully aware of the recipients of these funds, but fiercely protect this scheme.
24. The PA is aware of the criminal nature of the "pay to slay" scheme. In order to mislead donor countries (mainly the United States) and to create the impression that aid funds are not being used to funding terrorism, **on May 29, 2014, Mahmoud Abbas issued a presidential decree changing the name of the PA Ministry of Prisoner Affairs to the Commission of Detainees and Ex-Detainees Affairs** and moving it from the PA government to the PLO. Following the publication of this order, **Minister Issa Karake** (formerly Minister of Prisoner

¹⁹Terror funding by the Palestinian Authority, *supra* note 6.

Affairs in the PA) was appointed to **serve as Chairman of the Commission, with the status of Minister.**²⁰

25. This change was an effort to conceal the PA direct involvement in the criminal “pay to slay” scheme and to guarantee that donor funds are diverted for its continuation.

“Several high-ranking Palestinian officials have addressed this change: In June 2014, the former Deputy Minister for Prisoners’ Affairs, Ziyad Abu ‘Ayn, explained that ‘the national interest requires’ this change because the donor countries ‘have established dozens of investigative committees focusing on the issue of [their] funds that are transferred from the PA to the prisoners.’ PA officials have admitted that the PA remains the financier and the decision-maker in all things pertaining to support for the prisoners and the martyrs’ families. For example, in September 2014, the director of detainees and ex-detainees affairs in Hebron, Ibrahim Najajra, said that the change of status from a ministry to a commission ‘would not detract from the prisoners’ value or from their legal, moral, or political status, since the services extended to them are anchored in law.’” He added that the commission would be under the direct supervision of the Palestinian presidency and that the payments would be made directly by the PLO’s National Palestinian Fund. In December 2015, PA Cabinet Secretary ‘Ali Abu Diyak announced that the PA government was committed to continuing to pay allowances to fighters imprisoned for their national struggle and to the families of the martyrs, the wounded, and the prisoners.’²¹

26. Palestinian officials speak publicly and frequently about the importance of the pay to slay scheme. **Mahmoud Abbas** declared that “If we had a single penny left, we would spend it on the families of the martyrs and the prisoners, and only then on

²⁰ Terror funding by the Palestinian Authority, *supra* note 6, see also the testimony of Jawad Amawi.

²¹ Kuperwasser, *supra* note 5.

the rest of the people.”²² Also, **Abbas** said in an interview with the London-based Qatari daily Al-Quds Al-Arabi that he would not give in to the American and Israeli demand to stop payments to the families of prisoners and martyrs, calling them “fighters” and underlining his obligation to them.²³

²²MEMRI, Palestinian Authority (PA) President 'Abbas: 'If We Had Only A Single Penny Left, We Would Pay It To Families Of The Martyrs And Prisoners, at: <https://www.memri.org/reports/palestinian-authority-pa-president-abbas-if-we-had-only-single-penny-left-we-would-pay-it>. More statements can be found on MEMRI: MEMRI TV Clip No. 6179, Former Chief Palestinian Negotiator Nabil Shaath: We Will Not Stop Payment To Prisoners And Their Families, August 27, 2017; MEMRI Inquiry and Analysis No. 1321, Palestinian Authority, PLO Officials: Allowances To Prisoners Will Continue; 'This Issue Is Not Subject To U.S.-Israeli Extortion,' June 16, 2017; MEMRI Special Dispatch No. 7070, Palestinian Media Stresses: President Mahmoud 'Abbas Refuses To Halt Payments To Prisoners, Families Of Martyrs, August 28, 2017; MEMRI Special Dispatch No. 7001, 'Abbas, PA Officials, Reaffirm Commitment To Continue Paying Allowances To Prisoners And Martyrs' Families, July 10, 2017; MEMRI Inquiry and Analysis No. 1327, 2017 Palestinian Authority Budget Shows: Salaries, Benefits For Prisoners, Released Prisoners Several Times Higher Than Welfare For Needy, August 22, 2017. The allowances paid by the PA to incarcerated and released prisoners and to the families of "martyrs" were described in detail by MEMRI President Yigal Carmon in his July 6, 2016 testimony before the U.S. Congress. See MEMRI Daily Brief No. 97, MEMRI President Yigal Carmon's Testimony To House Committee On Foreign Affairs, July 6, 2016: Palestinian Authority Support For Imprisoned, Released, And Wounded Terrorists And Families Of 'Martyrs,' July 6, 2016.

²³ Al-Quds Al-Arabi (London), September 19, 2017; MEMRI Special Dispatch No. 7100, 'Abbas Ahead Of UNGA Speech: I Will Continue Payments To Families Of Prisoners And Martyrs, September 20, 2017

F. The "pay to slay" scheme and the Palestinian ethos of glorification of terrorists and indoctrination of violence in Educational system.

E.1 The glorification of terrorism

27. The “pay to slay” scheme is only one aspect of a larger PA **ethos** of glorification of terrorists and terrorism. Palestinian officials, educators and PA-controlled media celebrate the vilest terrorists. Here are just some examples, out of many:

Official PA and PLO Ceremonies and receptions commemorating martyrs and inciting terrorist acts

28. The PA systematically holds official ceremonies, celebrations and other activities in commemoration of murderers and glorifying their crimes. Examples are abundant and diverse:
29. **“Mourning tabernacle” in PA embassies:** On Dec. 15 2018 the PA embassy in Saudi Arabia unveiled a mourning tabernacle in a formal ceremony of for terrorists who murdered two Israeli civilians on Oct. 7 2018. The mourners were welcomed by the PA ambassador in Saudi Arabia, the “martyr’s” brother and the embassy staff. The PA ambassador later uploaded a video praising the “martyr’s” bravery.²⁴
30. **Formal receptions for terrorists:** Ceremonies and formal PA receptions, headed by Abbas and other PA officials, for released murderers and their families are a matter of routine in the PA. The official reception which Abbas hosted in 2018

²⁴ The Meir Amit Intelligence and Terrorism Information Center, https://www.terrorism-info.org.il/app/uploads/2018/12/H_313_18.pdf

for a terrorist who had murdered a Jewish civilian in Jerusalem is an example of these types of ceremonies.²⁵



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

31. **Parades:** The PLO celebrated its 53th anniversary across universities in Judea and Samaria universities with parades celebrating “martyrs” and presenting “unit” named after terrorists responsible for the death of civilians.²⁶
32. **Naming of streets, squares and institutions under terrorists: Dalal Mughrabi** murdered³⁷ Israelis in the “coastal massacre;” Dalal Mughrabi was a 19-year-old Palestinian. In 1978, her group murdered an American journalist, hijacked a bus and went on a deadly massacre on the coast of Israel. Mughrabi and her team took

²⁵ The Meir Amit Intelligence and Terrorism Information Center, *Legitimizing Terrorism: Mahmoud Abbas and other senior Fatah and Palestinian Authority figures honor terrorists involved in killing Israelis*, November 22, 2018, at: <https://www.terrorism-info.org.il/en/legitimizing-terrorism-mahmoud-abbas-and-other-senior-fatah-and-palestinian-authority-figures-honor-terrorists-involved-in-killing-israelis/>

²⁶ See: The Meir Amit Intelligence and Terrorism Information Center, yearly PLO anniversary celebrated in Universities by commemorating terrorists, at: https://www.terrorism-info.org.il/app/uploads/2018/01/H_013_18.pdf

71 civilian hostages, and the fighting that ensued resulted in 38 dead Israeli civilians, 13 of whom were children.²⁷

33. In 2011, the PA officially named a **public square** in Mughrabi's honor in Ramallah, complete with a plaque depicting Mughrabi pointing a weapon at a map of "Palestine," which includes the West Bank, Gaza and the whole state of Israel.²⁸
34. According to MEMRI, the following statements were made in the ceremony:
 - a. Tawfiq Tirawi, a member of the Fatah Central Committee described Mughrabi, "not [as] a terrorist," but rather as "a fighter who fought for the liberation of her own land." In total, two high schools, two summer camps, a soccer tournament, and a public square carry Mughrabi's name in honor.
 - b. Fatah Secretary in Tulkarm Mu'ayid Sha'aban, said that "Dalal Al-Mughrabi's self-sacrifice is still a symbol and an inspiration to Arab women in general and Palestinian women in particular. In giving her life and leading a group of men to the Coastal Road in Palestine, it was as if she was saying that heroism and sacrifice are not exclusive to a certain gender, and that the role and the national duty of the Palestinian woman cannot come down to merely raising generations who believe in the justice of the Palestinian cause or to being the mother of a prisoner or a martyr, or the sister of a fighter. She was saying that the Palestinian woman can herself be imprisoned, injured or martyred [for the cause], or can be an outstanding commander."
 - c. Brigadier General Mazen 'Izz A-Din, the former head of the PA's Political and National Education Authority, published an article reviewing the

²⁷ Kershner, Isabel, *Palestinians Honor a Figure Reviled in Israel as a Terrorist*, The New York Times, 11 Mar. 2010.

²⁸ Haaretz, *Palestinians Honor Fatah Terrorist, despite Israel's Protests*, Jan. 11, 2018, www.haaretz.com/1.5135803.

planning and execution of the terrorist attack, while praising Dalal Al-Mughrabi. Al-Din wrote: “Dalal is the pride of Palestinian women; we place her as a badge of honor on the chests of heroes. Isn't she the keeper of the Palestinian flame?... Let us salute the souls of the martyrs on their special day, the day of the martyr Dalal Al-Mughrabi and her comrades.”²⁹

35. Further official actions have been made commemorating **Mughrabi**: in In May 2017, the Palestinian Authority via its organization Women's Affairs Technical Committee (WATC) named a **women's center in the town of Burqa after Mughrabi** and celebrated her as a role model. The center was built with the aid of the government of Norway and UN Women. Norway's Foreign Minister demanded that Norway's funding for the building be repaid and its logo removed from the building. He said that “Norway will not allow itself to be associated with institutions that take the names of terrorists in this way.”³⁰
36. **Adulation and elevated social status for terrorist's families**: Terrorists guilty of war crimes and their families receive adulation and elevated social status as a result of PA efforts. Such is the case of Umm Nasser Hmeid; Umm Nasser Hmeid is the mother of six convicted terrorists who are members of Hamas and Fatah, and who were involved in shooting and suicide attacks against Israeli civilians. Abbas Zaki, a member of the Fatah Central Committee, who said “[s]he is ‘the Al-Khansa’ of Palestine’ She is a woman of virtues and willpower of whom we are proud as a symbol of the women of Palestine.” On June 11, 2018, Dr. Laila Ghanam, governor of Ramallah and Al-Bireh district, visited Nasser Hmeid. On June 18, 2018, in an interview on official PA TV, Dr. Ghanam stressed that “our

²⁹MEMRI, Palestinian Authority Praises Female Terrorist Dalal Al-Mughrabi, (March 20, 2013) <https://www.memri.org/reports/palestinian-authority-praises-female-terrorist-dalal-al-mughrabi>

³⁰ "Danmark strammer betingelserne for bistand til palæstinenserne", At: www.b.dk (in Danish). 22 December 2017. Retrieved 10 March 2018; Keinon, Herb (27 May 2017). "Norway slams PA for glorifying terrorists with its money", JPost.com. Retrieved 27 May 2017; Affairs, Ministry of Foreign (26 May 2017). "Unacceptable glorification of terrorist attacks".

people, on the official and popular level, will stand alongside this [i.e. Nasser Hmeid's] fighting family.³¹

E.2 The indoctrination of hatred by Palestinian education ministry and Media

37. The Palestinian Ministry of Education has responsibility for the provision of education and educational materials to pupils who attend Palestinian Authority schools.³²
38. The Palestinian Authority Ministry of Education's instructional materials incite its students to violence directed specifically at Jews and Israelis. Islam is falsely presented as a deeply anti-Semitic religion. Youths in Palestinian Authority schools are falsely taught that Islam condemns Jews to a status of perpetual inferiority. For example a 6th grade textbook currently in use teaches that the Prophet Mohamed commanded his followers "to learn the language of the Jews in order to be safe from their cheating."³³ An 11th grade text in Islamic Education declares that "God has prepared for [the Jews] and those perpetrating corruption (mufsidin) a painful torture."³⁴ A 12th grade text declares that "the Jews" greedy ambitions in Palestine stem from their religious beliefs...."³⁵
39. This sub-human and perfidious status of Jews in Palestinian Authority textbooks is presented as a justification for acts of violence against them. According to Palestinian Authority educational materials, "Muslim countries today badly need

³¹ <https://www.jns.org/fatah-and-palestinian-authority-headed-by-mahmoud-abbas-praise-terrorists-and-their-families-provide-housing-for-families-of-martyrs/>

³² Palestinian Authority Ministry of Education website, *available at* [http://www.mohe.gov.ps/\(X\(1\)A\(cBo6Wnlz0AEkAAAAMjhiNGEyOWUtMml1ZS00ODA2LThkODMtMzBINWY0NjdjYTM46l6MSuYJfTSLVhYz99YoqLrd2r01\)S\(nodl4555xvbam155uid3ytad\)\)/ShowArticle.aspx?ID=180](http://www.mohe.gov.ps/(X(1)A(cBo6Wnlz0AEkAAAAMjhiNGEyOWUtMml1ZS00ODA2LThkODMtMzBINWY0NjdjYTM46l6MSuYJfTSLVhYz99YoqLrd2r01)S(nodl4555xvbam155uid3ytad))/ShowArticle.aspx?ID=180)

³³ Institute for Monitoring Peace and Cultural Education in School Education, Israel, the West, Women and the Environment in Palestinian Textbooks, 2011, *citing* History of the Arabs and Muslims, 133.

³⁴ *Id. citing* Islamic Education, Grade 11, Part 1 14-15 (2010).

³⁵ *Id. citing The Muslim World at Present*, 105 (1996).

Jihad and Jihad fighters in order to liberate the usurped land, evict the usurping Jews from the Muslim's land in Palestine.”³⁶ Far from being a spiritual struggle, “jihad is the making of an effort in fighting the unbelievers in the battlefield” that involves definite acts of violence.³⁷ Jihad is a duty of the schoolchild. “The Muslim nation should be bent on constantly preparing for Jihad, as it is a Jihadic nation. The construction of the Muslim state's military power is not merely for defensive preparation [purposes]. It is rather a definite matter so that it will be easier for the [Muslim] state to perform what God has imposed on it...”³⁸

40. A recent research by Dr. Arnon Groiss and Dr. Roni Shaked on PA textbook, which includes many examples taken from these books, shows that the educational system in PA territories is characterized by **delegitimization, demonization and indoctrination to violent fight** instead of a call for peace. Upon these principles, a distorted historical narrative is progressed, which leaves no room for peace³⁹.
41. This small sampling of materials contained in Palestinian Authority books indicates a deliberate effort to incite jihad attacks against Jews and Israelis because of their mere status as Jews and Israelis. The incitement to these attacks constitutes incitement, as discussed below.
42. This indoctrination for hatred further receives encouragement by religious figures in the PA, adding a support for this indoctrination. According to Palestinian Authority chief cleric, Mufti Muhammad Hussein, “Palestine in its entirety is a revolution... continuing today, and until the End of Days. The reliable Hadith... says ‘The Hour [of Resurrection] will not come until you fight the Jews. The Jew will hide behind stones or trees. Then the stones or trees will call: 'Oh Muslim,

³⁶ *Id. citing Religious Subjects for Grade 8, Unit 3: Noble Prophetic Hadith, 12.*

³⁷ *Id.*

³⁸ *Id. citing Islamic Systems 183 (1996).*

³⁹ Arnon Groiss, Roni Shaked, *Schoolbooks of the Palestinian Authority: The Attitude to Jews, to Israel and to Peace* (Hebrew), at: <https://besacenter.org/mideast-security-and-policy-studies/schoolbooks-palestinian-authority/>

servant of Allah, there is a Jew behind me, come and kill him.”⁴⁰ This sort of sentiment, endorsed by the highest religious figure of the Palestinian Authority, and replete in the Palestinian Authority’s educational materials, proves that when those students and former students act to “wage jihad,” they do so with the intent of killing or injuring as many Jews, Israelis or both as possible, on the basis of their religion, ethnicity, and/or nationality and of destroying these groups as such.

⁴⁰ Palestinian Authority Television, Jan. 9, 2012.

Part II - The Criminal Nature of the 'Pay to Slay' Scheme

43. During the period of time concerning which you intend to conduct an investigation, there have been thousands of terrorist attacks by Palestinians constituting war crimes. Many of these atrocities were subjects of our previous communications, including:

- a) **Indiscriminate attacks against Israeli civilians** involving **thousands of rockets and mortars** fired at Israeli civilian towns and villages. Fatah members **under the command of the President Abbas** perpetrated many of these attacks.

- b) **Hundreds of terrorist attacks** by Palestinian individuals against Israelis, including the stabbing to death of Israeli civilians, car-ramming, sniper shootings and others.

- c) The **wanton destruction of civilian property and the natural environment** by use of incendiary devices which destroyed nature reserves, agricultural land and residential property in Israel, destroying tens of thousands of acres in Israel.

- d) The **abuse of Palestinian children** in armed conflict and the **use of civilians as human shields** for the commission of war crimes.

- e) The attempted invasion of Israeli territory in order to **attack civilian villages** and kill civilians.

It is not necessary to further elaborate. The attacks are numerous and were duly publicized in the media and in our previous communications.

44. PA officials, PLO officials and others involved bear criminal responsibility for war crimes because the 'pay to slay' scheme incentivizes these crimes. These officials bear criminal responsibility for crimes **already committed** and for the solicitation of **future crimes**.

45. The “pay to slay” scheme places a "price tag" on the heads of civilians for acts of terrorism against Israelis in the same manner that a mafia contract encourages criminal killings. PA authority officials involved in implementing this *ex ante* scheme are responsible for the crimes they have assisted, induced and abated.

46. Pursuant to Article 25(3)(a)-(d) in the Rome Statute:

“In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

- (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible
- (b) **Orders, solicits or induces** the commission of such a crime which in fact occurs or is attempted.
- (c) For the **purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission**, including providing the means for its commission;
- (d) In any other way **contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose**. Such contribution shall be intentional and shall either:
 - (i) Be made with **the aim of furthering the criminal activity** or criminal purpose of the group, where such activity or

purpose involves the commission of a crime within the jurisdiction of the Court;

- (ii) Be made in the **knowledge of the intention** of the group to commit the crime;

The pay-to-slay scheme violates several provisions of the statute;

Art 25(3)(b) – Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted

47. Ambos writes on the meaning of "solicits" and "induced":

"Soliciting a crime means, *inter alia*, 'urging, advising, commanding, or otherwise inciting another to commit [an offense.]' Similarly, inducing entails the 'enticement or urging of another person to commit a crime.' **Thus, both terms basically refer to a situation where a person is influenced by another to commit a crime.** In fact, the French version of the Statute speaks of 'solicite ou encourage,' thereby using a form of solicitation to express the English term 'induce.' **In substance, in both cases a person is caused to commit a crime.** Such 'causal' influence is normally of a psychological nature (persuasion), but may also take the form of physical pressure (coercion) within the meaning of *vis compulsiva*. It may also occur in a chain, i.e., a person induces another to induce a third person to commit a crime. In contrast to cases of 'ordering', a superior-subordinate relationship is not necessary. In both cases, however, the conduct must have a 'direct effect on the commission or attempted commission of the crime' or attempted commission of the crime.⁴¹

⁴¹ Kai Ambos, in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 3rd ed., C.H. Beck/Hart/Nomos, Munich/Oxford/Baden-Baden, 2016, at 1003.

48. The PA **solicits** and **induces** war crimes by glorifying murder, legitimating violence, and promising financial benefits for committing war. The combination of moral and material support, together with the indoctrination of hatred deeply influences Palestinians to commit war crimes.

Art 25(3)(c) - For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.

49. Providing encouragement for the commission of a war crime and assuring both glorification of the act and financial support abets or “otherwise assists” war crimes.
50. The level of assistance/involvement under sub art. (c) is less than that required under sub art. (b).⁴² Even acts which will not be regarded as “solicitations” or “inducement” may come under art (c).
- .
51. In the ICTY *Tadic* case, the court found that:

“The Trial Chamber finds that aiding and abetting includes all acts of assistance **by words or acts that lend encouragement or support**, as long as the requisite intent is present....

....

In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission

⁴² Ambos, *Id*: "Subparagraph (c) codifies any other assistance not covered by subparagraph (b). Generally speaking, participation as defined by subparagraph (b) implies a higher degree of responsibility than in the case of subparagraph (c)"

before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.”⁴³

52. In the case of the “pay to slay” scheme, there are both “words” and “acts” that substantially⁴⁴ contribute to committing war crimes. The ICTY explained that such contribution needs not a “cause-effect” relationship:

“It is unnecessary to prove that a cause-effect relationship existed between participation and the commission of the crime. **The act of participation needs merely have significantly facilitated the perpetration of the crime.** The accused must also have participated in the illegal act in full knowledge of what he was doing. This intent was defined by Trial Chamber II as **“awareness of the act of participation coupled with a conscious decision to participate.”** If both elements are proved, the accused will be held responsible for all the natural consequences of the unlawful act.”⁴⁵

53. PA and PLO officials are aware of the consequences of their policy because the consequences are manifest and because international condemnation has informed them of these consequences.
54. The PA participation in the crimes is done by an *ex ante* promise for a reward after the crime has been committed. Even *ex post* assistance may be considered as participation. In the *Aleksovski* case, the ICTY also found that abating and assisting may be done **after the acts** have been committed:

⁴³ *Prosecutor v. Tadic*, No. IT-94-1-T, Judgment, TC, 7 May 1997, para. 687, 691. For the broad understanding of the concept of “aiding and abetting.” See also *Prosecutor v. Furundzija*, No. IT-95-17/1-T, Judgment, TC, 10 December 1998

⁴⁴ As to the requirement of “substantial effect,” *see* *Prosecutor v. Delalic, et al.*, No. IT-96-21-A, Judgment, AC, 20 February 2001, para. 352

⁴⁵ *Prosecutor v. Aleksovski*, No. IT-95-14/1-T, Judgment, TC, 25 June 1999 para 61.

“Participation may occur **before, during or after the act is committed**. It can, for example, consist of providing the means to commit the crime **or promising to perform certain acts once the crime has been committed**, that is, behaviour which may in fact clearly constitute instigation or abetment of the perpetrators of the crime.”⁴⁶

55. Therefore, promising financial reward to be paid after the commission of the crime, abets the crime. This is exactly why “pay to slay” scheme abets war crimes.
56. The payments scheme is a **complementary aspect of the PA’s ethos** of violent war crimes. The mere creation of this ethos constitutes “abetting” crimes. In *Akayesu*, the ICTR defined aiding in as “giving assistance to someone” and abetting as involving **“facilitating the commission of an act by being sympathetic thereto.”**⁴⁷ Furthermore, the contribution to the crime need neither be “tangible” nor need it be indispensable (in the sense of a *conditio sine qua non*).⁴⁸

Art 25(3)(d) - ‘In any other way contributes’ to the (attempted) commission ... ‘by a group ... acting with a common purpose’

57. The PA “pay to slay” scheme rewards **all Palestinian armed groups, including Fatah** (a component of the PLO), **Hamas, Islamic Jihad and others**. Although the PA portrays itself as a peaceful, nonviolent entity it **knowingly supports the efforts of terror groups**, and utilizes these groups violent efforts for its purposes:

⁴⁶ *Supra*, para 62.

⁴⁷ *Prosecutor v. Akayesu*, No. ICTR-96-4-T, Judgment, TC, 2 September 1998, para. 484 <<http://www.legal-tools.org/en/doc/b8d7bd/>>

⁴⁸ *Ambos*, note 41, at 1007. *Prosecutor v. Kayishema and Ruzindana*, No. ICTR 95-1-T, Judgment, TC, 21 May 1995, para. 200-201.

“Commonly described as peace-seeking and opposed to violence, the PA appears to contrast favorably with Hamas. But no one paying attention can honestly say that the PA opposes the murder of ordinary Israelis going about their business on the streets.”⁴⁹

58. The PA is fully aware as to the intentions of Hamas and other terrorist groups. Through the “pay to slay” scheme, the PA and PLO officials encourage and facilitate their acts, and therefore are criminally responsible for them.⁵⁰

These actions fulfil the cumulative legal requirements of sub art. (d), including: the **objective contribution, subjective level of intentional contribution** and requirement of "**the knowledge of the intention of the group**" under sub-sub para (b).

59. **Objective Contribution:** In *Katanga*, the ICC Trial Court held that the contribution must be “significant.” A significant contribution is one that, on the influences the occurrence of the crime or how it was committed. The "contribution need not depend on it.”⁵¹

The promise of financial support for Hamas and other terrorists enables Hamas to commit war crimes. The “pay to slay” scheme serves as both psychological incentive (“we have the support”) and as material assistance. It diminishes the need to “take care” for its members and their families in case “something goes wrong,” thus relieving Hamas of the financial burden of supporting families of terrorists, enabling Hamas to divert funds to its violent purposes.

⁴⁹ Douglas J. Feith & Sander Gerber, *The Department of Pay-for-Slay, Commentary* (April 2017), available at: <https://www.commentarymagazine.com/articles/the-department-of-pay-for-slay/>

⁵⁰ Note that this sub article finds its roots directly International Counter-Terror instruments; see: Ambos, note 43, at 1008.

⁵¹ *Prosecutor v. Katanga*, No. ICC-01/04-01/07-3436, Jugement rendu en application de l’article 74 du Statut, TC, 7 March 2014, paras. 1632–3

60. **Subjective level of intentional contribution** – this requirement is explained by Ambos:

“The distinction between subparagraphs (c) and (d) gains particular importance on the subjective level. While aiding and abetting generally requires the knowledge that the assistance contributes to the main crime and subparagraph (c) adds to this the ‘purpose of facilitating’, participation in a group crime within the meaning of subparagraph (d) requires, on the one hand, a ‘common purpose’ of the group and, on the other, an ‘intentional’ contribution of the participant, complemented by alternative additional requirements”⁵²

61. The 'Pay to Slay' scheme fulfills both the “common purpose” and the “intent” requirement of the scheme of these groups’ goals;
- a. There is no question as to the “common purpose” of the armed Palestinian groups the PA is supporting – they have made their views, manifests, military and political goals explicit, in so many ways.
 - b. The word “intentional” in the subparagraph under examination is used in the same general sense as Art. 30, which includes being “aware” that the consequences (the criminal acts) will occur.⁵³ There is no question that the PA is fully aware of these groups’ goals and actions, as these groups publicly declare their aspirations and goals.

⁵² Ambos, note 41, at 1013.

⁵³ *id.* at 1014.

62. **“In the knowledge of the intention of the group”** – Under the ICTY's ruling that it is sufficient that the participant is “aware that a crime will probably be committed,”⁵⁴ or under a standard that requires a participant to be aware of “a specific crime intended by the group,”⁵⁵, or under a requirement that the perpetrators know of “the substantial likelihood that a certain crime will be committed,”⁵⁶ – the “pay to slay” scheme fulfills each of these theories of criminal liability. There is no question that the PA is in full “knowledge” of the intentions of these groups in light of the repeated war crimes Hamas and other Palestinian groups commit, again and again (this includes both attacks by Hamas members in Judea and Samaria and attacks from Gaza).

Note: Incitement to commit crimes against Humanity – is the PA crossing this line too?

63. As previously noted, the “Pay to Slay” scheme is the "tip of the iceberg" of an ethos of delegitimizing the State of Israel's right to exist, the glorification of the murderers of Israeli civilians and the indoctrination of hatred by the educational system. It is one of the **means** to achieve this ethos, providing **material reward** for actions inspired by it.

This is an incentive to murder Israelis, **as such**.

64. According to the Israeli Ministry of Foreign affairs, **1,358** Israelis have been killed by Palestinian violence and terrorism since September 2000.⁵⁷ As shown in Part I, the PA has actively implemented its “pay to slay” policy during this entire time.

⁵⁷ List of the victims' names can be found at:
<https://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Victims/Pages/In%20Memory%20of%20the%20Victims%20of%20Palestinian%20Violence%20a.aspx>

65. While we believe that the criminal nature of this scheme, in regard to war crimes committed, has duly been presented and cannot be disputed, the incitement to kill human beings because they are Jewish or Israeli, may have even more serious implications.
66. Even if this conduct does not constitute a violation of Articles 6 or 7, it should surely affect the importance of this investigation.

The Mental Element

67. PA officials commit their crimes with knowledge of them and the intent to commit them. According to Article 30:

1. "Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with **intent** and **knowledge**.
2. For the purposes of this article, a person has intent where:
 - (a) In relation to conduct, that person means to engage in the conduct;
 - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

68. According to Gil:

“‘Conduct’ in Article 30 means human conduct meeting the definition of the crime, and the Statute requires **the intention to perform it**. ‘Consequence’ means the naturalistic result which is a product of the criminal conduct, which is in turn constitutive of an international crime

of result, and with respect to the same, ‘**it is sufficient to be aware that it will occur in the ordinary course of events**’⁵⁸

69. As to the question of the level of certainty required to case of “consequences,” there have been different opinions expresses in ICC cases, which moved between virtual certainty and mere possibility, as the Court’s second judgment, in *Katanga*, adhered to the “virtual certainty” side of the spectrum.⁵⁹
70. As to the issue of “knowledge,” Eser argues that a principled approach to Article 30 militates for the inclusion of willful blindness as a sufficient form of knowledge, lest a perpetrator escape culpability through “shutting his eyes to the truth” despite awareness of “facts he merely does not want to see.”⁶⁰
71. When considering the mental element of PA officials such as Abbas, it is important to stress the effects of both the **continuance** of the policy of the “pay to slay” scheme, and its correlation with the **ethos of legitimizing violence**.
72. The mere **continuation** of the policy over decades, means that its effects on the public, on leaders of terrorist armed groups and on actual perpetrators of crimes cannot be deemed surprising. There has been plenty of information available to the PA, and to PA officials, as to the importance of the payments, and the fact that these payments are an integral part of the decision to commit atrocities. The perpetrators count on it and PA officials are fully aware of that.
73. This is complemented by the **ethos of legitimizing violence**, the delegitimization of the right of Israel to exist **and glorification of martyrs**. As previously noted,

⁵⁸ Alicia Gil, *Mens Rea in Co-perpetration and Indirect Perpetration According to Article 30 of the Rome Statute. Arguments against Punishment for Excesses Committed by the Agent or the Co-perpetrator*, 14 ICLR 82 105 (2014).

⁵⁹ See Ambos, note 41, at 1123, Prosecutor v. Germain Katanga, No. ICC-01/04-01/07-3436, Jugement rendu en application de l’article 74 du Statut, 7 March 2014, paras 770–779

⁶⁰ Eser, in: A. Cassese et al. (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (2002) 902, 931–932.

the “pay to slay” scheme is no more than the material expression of this ethos. When promoting this ethos and when indoctrinating children and youth with hatred, there is no question that further atrocities will occur.

74. When the PA officials administer the “pay to slay” scheme, they have full **knowledge** of its implications. They know that they are putting a price tag on the heads of Israeli civilians. They know that someone – one of the children educated on this industry of hate, one who may be deliberating whether to commit the act that he was raised to believe is an act of heroism, or is wondering as to the potential consequences for his family – will decide to commit an atrocity based on this.

As they have raised their people on this ethos, their **intention** to have more “fighters and martyrs” is apparent.