

THE CHARGES AGAINST THE ISRAELI GOVERNMENT AND HAMAS BROUGHT BY THE I.C.C. or a case of European Chauvinism at its worst.

In this article I will be referencing four articles. (1) The first is the transcript of the [International Criminal Court's](#) Indictment, (2) the [1988 Hamas Covenant](#), (3) the [2017 Covenant](#) which replaced the earlier one, (4) [Our Narrative, Operation Al Aqsa Flood](#) issued after the incursion. The reasons for this selection will become clear.

I will reverse the order in which the prosecutor introduced the charges by beginning with the indictments of genocidal war crimes against the Israeli Prime Minister and Defense Minister and potentially other Israeli and military figures. These charges, which presumably will culminate in arrest warrants, is a body blow to the reputation of Israel and its backers, and without a doubt immense pressure must have been brought to bear on the court to only prosecute Hamas. The failure to prevent this Court ruling is but one more instance of the sun setting on the US empire ending its global stranglehold.

It is also demoralizing for the Israeli people. Between three out of four and four out of five Israelis, depending on polling, [support the war aims](#) of the Prime Minister and the Defense Minister. Even before October the 7th, 62% of Israelis considered themselves to be on the [political right](#) or what is the same thing supportive of the expulsion of the Palestinian people. Thus the indictment of the Israeli leadership falls heavily on the Israeli population. In a brutal manner they are being informed that the world has turned against them, that they are despised and condemned as criminals despite Israel allegedly being the only democratic country in the Middle East. That they are losing on all fronts, and that this is the beginning of the end of Zionism.

Of course the Israeli leadership has been left squealing. As Shakespeare puts it: the entitled doth protest too much. And of course they hide behind the holocaust, claiming that the court is initiating another holocaust. Bullies always claim to be the victim, but for the Zionists to desecrate the memory of the holocaust to justify their own genocide is going to resonate throughout history, creating a new memory, that Zionism was not only one of the most ruthless colonial regimes of all times, but probably the most dishonest.

And of course it is not only the Israelis who are squealing, so too their backers in Europe and the USA. They too are implicated in abetting these war crimes. As expected [Biden](#) called the charges *outrages*, he reiterated that Israel was only defending itself and he railed against the Court drawing equivalence between the crimes committed by Hamas and that of Israel. (I will deal with equivalence later.) This is political stupidity of the highest order, the equivalent of saying that if he is found guilty then so am I. Of course members of Congress went further than the Administration. In a letter to the ICC, [12 Congressional Senators](#) claimed that the US and Israel were untouchable or in their words were threatening the sovereignty of the US and Israel. How dare the ICC hold their actions to account. They were above the law. These living in a bubble deluded Congress men and women should take the time to pop out of the Capital Building and view the gloaming.

The charges.

Neither the US nor Israel are members of the International Criminal Court located in the Hague, Palestine is. Seems the US is picky when it comes to its rules based order, but then it was always a fool's based order

designed to provide cover for US machinations. Having become a member in 2015, both Hamas and the PLA who are the recognised Palestinian representatives, have repeatedly called for an enquiry into the conduct of both Israel and the Palestinians with the view to correcting the criminal behaviour of the Zionist state. They were systematically rebuffed.

The fact that the Court has now conceded to view criminal acts dating from **at least** the 7th of October on the part of Hamas, and **at least** the 8th of October on the side of the Israelis speaks to the shift in world opinion. (I highlighted the term *at least* which in legalese does not exclude crimes committed before that date which is interesting.) Had it not done so the Court would have been diminished and exposed as nothing more than the agent of Western Imperialism intended only to target enemies of the West such as Putin or murderers out of Africa. Clearly the court is a victim of the tectonic shift in world opinion caused by the first live streamed genocide.

Of course to cover itself when indicting Netanyahu and Gallant, it had to indict Hamas as well. And to be sure it has covered all the bases it has decided to prosecute at least three Palestinians and only two Israelis. As I said Biden railed against the equivalence between the two sides, insisting that democratic Israel could not be compared to murderous Hamas. A case of my friend can do no wrong while my foe can do no right. Of course Biden, being on the wrong side of history is always diagrammatically wrong.

Objectively one cannot compare the Palestinian resistance to the Israeli aggressor. The Palestinians are an oppressed and dispossessed nation, the Israelis a colonizing and oppressor nation. The Palestinians are engaged in a war of liberation while the Israelis are engaged in a war of conquest and subjugation. The liberating violence of the former is progressive, the subjugating violence of the latter is always reactionary. That is why only the Palestinians have the right of self defense, the Zionists do not. In the hands of the oppressor, this right is as it's always been, the right of offense, the right to reinforce and preserve their aggressive colonization.

All the laws in the world cannot reconcile this as the Prosecutor has sought to do. And he gives the game away when he grants only Israel the right of self-defense, and not Hamas, This is no mere oversight. This is what the Court has concluded: *"20. The Panel also considers that there are reasonable grounds to believe that the crimes were committed in the context of a widespread and systematic attack against the civilian population of Israel, pursuant to an organizational policy of Hamas."* So Israel has a legal right to self-defence, while Hamas has an illegal organizational policy. Shame on the Court. Seems the shoe is on the other foot.

To grant Hamas and the rest of the Palestinian resistance the right of self-defense would legitimize Hamas and render its actions no longer terroristic. This the Prosecutor cannot do without breaking from Imperialism and its world order. And he does so oblivious to an earlier ruling in which the Court explicitly denounces Israel's right of self defense to act against the Palestinians in all cases. *"In 2004, the International Court of Justice (ICJ) gave an advisory opinion in the case concerning the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" which stated that "Israel" – the brutal occupying force – cannot rely on a right of self-defense to build such wall on the Palestinian territory."* Thus behind the even handedness is the intent by the court to preserve the status quo.

So let us move on to the specific charges. The first is the crime of extermination: *"The Prosecutor seeks arrest warrants against three senior Hamas leaders for the war crimes of murder and the crimes against humanity of murder and **extermination** for the killing of hundreds of civilians on 7 October 2023."*(1)

Immediately he shows his bias accepting at face value the events on the day as set out by the Zionists. An honest Jurist would call for an independent enquiry to investigate the events on the day to determine culpability rather than accept the accounts of one of the parties to the conflict. Were he to do so he would be supporting the call for an independent enquiry announced by Hamas itself.

He then uses these events to support the accusation that this evidenced an intention to exterminate the Jews. The crime of extermination is the most egregious accusation that can be levelled at any person or people. Of course all he is doing is repeating a Zionist trope. Just as the Israeli government equates criticism of Zionism with anti-Semitism they equate the destruction of the Zionist state with the destruction of the Jewish people. Hamas' programme does call for the destruction of the colonizers' state, but do they call for the destruction of the Jewish people, driving them into the sea so to speak, an echo of the Apartheid causing whites in South Africa fearing their servants would kill them in their beds? *"[Hamas affirms](#) that its conflict is with the Zionist project not with the Jews because of their religion. Hamas does not wage a struggle against the Jews because they are Jewish but wages a struggle against the Zionists who occupy Palestine. Yet, it is the Zionists who constantly identify Judaism and the Jews with their own colonial project and illegal entity."* Thus the fear of extermination only exists in the brains of the oppressor fertilized by irrepressible guilt.

To answer this question on the plausibility of the charge of extermination, three documents need to be examined. The 1988 Covenant, the 2017 Covenant and the statement by Hamas after the 7th of October. Only the *1988 Covenant* calls for the killing of every Jew hiding behind every tree and rock. But that document is the *sigh of the oppressed* calling upon their merciless god to smite their enemies and give them the comfort and justice denied on earth on judgement day. This is in the same league as the Christian Far Right in the USA which seeks to pit Arab against Jew so as to bring forward the *Rapture*.

As Hamas has said repeatedly the 1988 document exists only as a document of record. The operative document is the *2017 Covenant*. What changed? Hamas grew up. Instead of relying solely on god, they had become more resourceful through governing Gaza and being able to arm themselves. Instead of prostrating themselves and worshipping the god they had created, they had got off their knees through their own efforts, and while this was emancipating, it was not emancipating enough for them to abandon their religious principles and convictions.

Nowhere in the text of the 2017 Covenant is there a call for the slaughter of the Jews. Instead the opposite is found – tolerance - as these quotes drawn from the 2017 document shows:

8. By virtue of its justly balanced middle way and moderate spirit, Islam – for Hamas - provides a comprehensive way of life and an order that is fit for purpose at all times and in all places. Islam is a religion of peace and tolerance. It provides an umbrella for the followers of other creeds and religions who can practice their beliefs in security and safety. Hamas also believes that Palestine has always been and will always be a model of coexistence, tolerance and civilizational innovation.

16. Hamas affirms that its conflict is with the Zionist project not with the Jews because of their religion. Hamas does not wage a struggle against the Jews because they are Jewish but wages a struggle against the Zionists who occupy Palestine. Yet, it is the Zionists who constantly identify Judaism and the Jews with their own colonial project and illegal entity.

17. Hamas rejects the persecution of any human being or the undermining of his or her rights on nationalist, religious or sectarian grounds. Hamas is of the view that the Jewish problem, anti-Semitism and the persecution of the Jews are phenomena fundamentally linked to European history and not to the history of the Arabs and the Muslims or to their heritage.

39. From a legal and humanitarian perspective, the liberation of Palestine is a legitimate activity, it is an act of self-defence, and it is the expression of the natural right of all peoples to self-determination.

What about the Hamas narrative following their successful *Operation Al-Aqsa Flood* which destroyed the Gaza Brigade, the entire surveillance-containment-targeting structure around Gaza, and which so disturbed the self-esteem and self-confidence of Israeli society. Did it allude to genocide? Again there is no evidence whatsoever, unlike the Israeli political and military leadership who advocated driving the Palestinians out of Gaza by showing them no mercy, and if that did not work, making Gaza uninhabitable and life impossible.

Contrast this to the goals laid out in the recent Hamas document. Firstly it insists that October the 7th was made inevitable by the failure of the international institutions, and we may add, the Arab misleaders, to address the grievances endured by the Palestinians. (Of course what should not be ignored either to our shame is the international working class's lack of action.) And furthermore that the attack took place in the context of defending the imprisoned Palestinian people in Gaza. *"What was expected from [the Palestinian people](#) after all of that? To keep waiting and to keep counting on the helpless UN! Or to take the initiative in defending the Palestinian people, lands, rights and sanctities; knowing that the defense act is a right enshrined in international laws, norms and conventions."* And: *"Palestine is a member-state of the International Criminal Court (ICC) and it acceded to its Rome Statute in 2015. When Palestine asked for investigation into Israeli war crimes committed on its territories, it was faced by Israeli intransigence and rejection, and threats to punish the Palestinians for the request to ICC."*

Nowhere is found the intention to deliberately or intentionally harm Israelis in either the 2017 document or this one. *Hamas rejects the persecution of any human being or the undermining of his or her rights on nationalist, religious or sectarian grounds. As attested by many, the Hamas Movement dealt in a positive and kind manner with all civilians who have been held in Gaza, and sought from the earliest days of the aggression to release them, and that's what happened during the week-long humanitarian truce where those civilians were released in exchange of releasing Palestinian women and children from Israeli jails.*

This refutes the allegation levelled by the Court that Hamas deliberately set out to commit war crimes as its modus operandi. At no point does the Court prove this by recourse to written documentation or utterances made by Hamas leaders, in stark contrast to the Israeli leaders who wrote and spoke genocide. Instead, and one sidedly, it relies on Zionist evidence, much of which has been proven to have been fabricated. *"9. After assessing the material provided by the Prosecutor, including statements from survivors and eye-witnesses at the scene of six key attack locations -- Kfar Aza, Holit, the location of the Supernova Music Festival, Be'eri, Nir Oz, and Nahal Oz -- video material and statements by the perpetrators, the Panel has concluded that there are reasonable grounds to believe that the three suspects had a common plan that necessarily involved the commission of war crimes and crimes against humanity."*

The court repeatedly condemns Hamas for systemic sexual abuse and torture, but it does not once raise the same issue regarding the sexual abuse not only of women, but of men inside Israeli prisons and Gaza itself. In the case of the sexual abuse of Israeli women on the 7th no evidence has been found. Due to the

diligence of investigative reporters such as the *Electronic Intifada*, the *Greyzone* and the *Intercept*, not one case of rape was reported on the day. This covers all the hospitals, specialised units and rape support groups found in Israel. In the case of hostages, two women reported they were abused or had seen others abused but beyond that nothing. All other hostages, including many women reported they were well treated.

The same cannot be said for the torture and sexual abuse found in Israeli prisons, not to mention Gaza. Here there is voluminous evidence sufficient to force the UN to express concern. Death is irrefutable and sadly the number of Palestinian prisoners dying in custody have been growing by the week. But none of that can issue from the mouth of the Prosecutor lest he malign a democratic country.

And here the racism of this white prosecutor is evident. When a people are demonized as the Palestinian resistance is, there is an expectation they will act badly. They have to be potential rapists. Not so the Israelis who after all are governed by the rule of law. This is hypocrisy at its worst. The biggest rapists and abusers are the arrogantly self-entitled, and there is no more self-entitled person than the Zionist when it comes to the Palestinian. Those who steal the land, who drive away the people of the land, have no qualms about abusing these people when they resist.

Then of course there is the vexing question of hostages. On the one side Hamas kidnaps on the other side Israel arrests, on the one side there are hostages and the other prisoners, on the one side illegality on the other side legality. This is the differential treatment levied at the actions of Hamas and Israel. So let us go beyond the form to the essence. Why does Israel take thousands of Palestinians hostage and put them in jail? What crime have they committed? Their only crime is exercising their right to self-determination, the crime of resisting the occupiers. Is this a crime? Certainly not. If they end up in jail that is only because might is right not because their actions have been illegitimate and illegal.

Let us turn to Hamas and the Palestinian resistance. Do they have the right to arrest Israelis on the spot, or as the media and the Prosecutor would have it, engage in hostage taking? On balance they have a greater right because the Israelis are trespassing on Palestinian land. This is indisputable, but does not provide motive. However, the Palestinian resistance did not arrest Israelis as trespassers, they arrested them in order to secure the release of the Palestinian hostages rotting in Israeli jails.

Were it not the case that thousands of Palestinians are rotting in Israeli prisons, many of them children, this hostage taking may not have occurred. *“Operation Al-Aqsa Flood on Oct. 7 targeted the Israeli military sites, and sought to arrest the enemy’s soldiers to pressure on the Israeli authorities to release the thousands of Palestinians held in Israeli jails through a prisoners exchange deal.”* Whatever the motive and the context, what is being addressed is a tactical question not a legal question as the Court would have us believe. Was it wise to take Israelis prisoners? In the case of soldiers the answer is yes, they were prisoners of war or better still prisoners of war crimes, inter-alia the caging of over two million Palestinians and the targeted execution of many of their leaders and activists.

Then there is a grey area. Every Israeli other than Haredi Jews has to undergo compulsory military training covering a number of years. After that they go on the reserves list up to the age of 40. This means that many Israelis are soldiers out of uniform, and worse, during their conscription, and later when called up to do their regular reserve duty, most if not all will have acted against the Palestinians either directly or in a supportive role at some time. After all, Israel is the most militarised nation on earth. As Hamas puts it: *When speaking about Israeli civilians, it must be known that conscription applies to all Israelis above the*

age of 18 – males who served 32 months of military service and females who served 24 months – where all can carry and use arms. This is based on the Israeli security theory of an “armed people” which turned the Israeli entity into “an army with a country attached.” The same thing about the Kibbutzim which surround Gaza. They are not your ordinary farms but are militarized and weaponized encampments. “It is also a matter of fact that a number of Israeli settlers in settlements around Gaza were armed, and clashed with Palestinian fighters on Oct. 7. Those settlers were registered as civilians while the fact is they were armed men fighting alongside the Israeli army.”

When all this is factored in, as well as the documented deaths caused by Israeli tanks and helicopters carrying out the *Hannibal Directive*, the number of civilian deaths at the hands of Hamas is dramatically reduced. That said, it was still not tactically wise for Hamas to take anyone out of uniform or not in barracks as hostages, despite their high motives. This played into and continues to play into the hands of the Zionists despite the release of most of the elderly, women, and children during the first hostage release. In fact it is in the interest of Israel, despite the protests, not to negotiate for the release of the Israeli hostages as their captivity allows this issue to remain live and distracting. Also there is the embarrassing issue of senior officers being in the limelight when they are released.

Conclusion.

Will these potential indictments hurt Israel or Hamas. It will hurt Israel more because this breaks new ground whereas with Hamas it tramples over old ground. Will it stop the Israelis? Unlikely as their goal is set on destroying Hamas either through military means or emptying the water in which they swim, that is by so damaging Palestinian society that it becomes debilitated to the point it can no longer support nor sustain any military response.

Will it stop Hamas? It will have a more suffocating effect on Hamas because the Court has ruled de facto that the incursion on the 7th of October was illegal and a violation of Israeli sovereignty. Therefore that any future incursion with or without civilian casualties or hostages will be deemed illegal. The purpose of the Court can therefore be summed up in one sentence, to moderate Israel’s right of self defence while denying Hamas and the Palestinian Resistance the right of resistance. Any anti-imperialist should and would shut down this Court.

(On a personal note, and with reference to the music festival, I find it offensive that a householder can hold a party in the front room when there are people locked up in an adjacent cupboard.)

Brian Green, 21st May 2024.