



AMERICAN ASSOCIATION OF JEWISH LAWYERS AND JURISTS

U.S. Affiliate of the International Association of Jewish Lawyers and Jurists

January 1, 2024

Almudena Arpón de Mendivil Aldama
President
International Bar Association,
Chancery House,
53-64 Chancery Lane, London WC2A 1QS
By Email to: aam@ga-p.com

Re: Call for Retraction or Revision of the Human Rights Institute of the IBA's Statement of Friday 22 December 2023

Dear Ms. Arpón de Mendivil,

I write as president of the American Association of Jewish Lawyers and Jurists (“AAJLJ”) to express deep disappointment and disapproval of the Human Rights Institute of the International Bar Association’s [Statement of Friday 22 December 2023](#) (“December Statement”). Not only is the December Statement a marked departure from the IBA’s condemnation of Hamas in early October, it is prejudicial at its very core, and diametrically opposes the Rule of Law platform that the current IBA president is committed to upholding.

As Jewish Lawyers, we have wearily grown accustomed to blanket, ill-founded condemnations of Israel—but we expect more from the IBAHRI. In calling for a cease-fire, and misapplying the laws of proportionality and distinction, the IBAHRI has adopted the narrative of Hamas, a designated terrorist entity in both the United States and in the United Kingdom—the seat of the IBA.

The primary call of the IBAHRI should have been for the immediate release of the 129 hostages that Hamas is still holding in the Gaza Strip (110 men and 19 women, including two children). The statement should have acknowledged the active rescue operation in progress, which Israel is pursuing in painstaking fashion, costing Israeli lives in order to minimize casualties to Gazan civilians.

The IBAHRI’s second call should be for the resounding condemnation of Hamas for using sexual and other atrocities as tools of war. For the IBAHRI to issue such a statement is particularly important as the revisionists are out in force, denying the overwhelming evidence of the worst examples of [mutilation and torture](#) that any lawyer I have spoken to, who has seen the evidence, has ever encountered. That a woman-led IBAHRI has remained silent, and conspicuously so, beggar’s belief.



While allocating *some* blame to Hamas (“also bears responsibility for the continued suffering of the Palestinian people”), the statement focuses on Israel as aggressor. This is not only factually incorrect but, shockingly, it lays equal or lesser culpability at the feet of a terrorist organization that initiated the hostilities, committed atrocities, and took hostages—and thereby plunged its people into a prolonged conflict. The call for a cease-fire is not only incorrectly premised, but it would leave the terrorist perpetrators of sexual and other violence firmly in place—to declare victory and repeat their atrocities, as they have vowed to do.

The December Statement Fails to Address the International Crimes Committed by Hamas

Hamas’ charter calls for the elimination of the state of Israel and the genocide of the Jews, and Hamas’s leaders repeatedly reaffirm that goal. Hamas has waged a decades long terrorist campaign in pursuit of that hideous objective—including firing thousands upon thousands of missiles at Israeli population centers. Israel had lived with that threat largely because Hamas hides among and beneath Gaza’s civilians, so eliminating the threat would cause many civilian casualties.

When Hamas’ terrorists invaded Israel on October 7, as part of their annihilationist campaign, they carried out unimaginable atrocities against Israel’s civilians, and they proudly trumpeted their achievements. They carried 240 hostages back to Gaza—mostly civilians, including dozens of babies and children—of whom the above-cited 129 remain in captivity.

The severity and brutality of the October 7 attacks changed Israel’s paradigm. It can no longer live with the Hamas threat. Israel’s war objectives are just and legitimate: to eliminate Hamas as a governing authority and military power in Gaza and to bring home the hostages. Israel cannot be expected to cease fire until it meets these objectives.

The atrocities of Hamas and its terrorist allies were part of a “widespread or systematic attack directed against a civilian population” (Art. 7(1). Rome Statute of the International Criminal Court). They constitute **crimes against humanity**, including, *inter alia*, deliberate murder of civilians, enforced disappearances, torture and inhumane treatment, rape, and sexual mutilation and violence.

The atrocities were carried out with an “intent to destroy, in whole or in part” a national group, Israelis in other words, they were a major step in Hamas’s campaign to commit the **crime of genocide**, as defined by the Rome Statute of the International Criminal Court (Art.6).

No law requires a sovereign nation, including Israel, to live with genocidal neighbors. Israel has a duty and an inherent right under customary international law to eliminate that threat to its people, and to free the hostages abducted by Hamas.



The December Statement Fails Properly to Address the Principle of Distinction

The December Statement was unbecoming of any lawyers' organization, as it makes pronouncements without any legal analysis. The starting point for any analysis of the law of distinction is the international Law of Armed Conflict ("LOAC" or "IHL").

IHL permits the direct attack of military targets and prohibits direct attacks on civilian targets and civilian objects. Military targets include objects that by their nature, purpose, location, or use make an effective contribution to military action and whose destruction offers a definite military advantage. See (Art. 52(2) of Additional Protocol I of 1977). When Hamas places its military infrastructure in the heart of Gaza's civilian population, including in residential houses, schools, hospitals, mosques, and businesses, these civilian sites lose their protected status and become legitimate military targets.

Under the fundamental principle of distinction, fighters must distinguish themselves from the civilian population and avoid injuring civilians to the extent feasible. Israel does not target civilians. On the contrary, it makes every effort to avoid civilian casualties as it pursues its legitimate war aims. Yet, astonishingly, the IBAHRI statement accuses Israel of violating that standard—with zero evidence.

While Israel abides by the LOAC, Hamas has never done so. Hamas notoriously violates the principle of distinction in numerous ways, including its continual indiscriminate attacks against Israeli civilians, its attacks from within densely populated areas of Gaza, and its use of the Gazan population as human shields. Hamas built a tunnel system hundreds of kilometers long directly under civilian cities and towns to harbor its leadership and arms. It even, cynically, placed its main commands and control centers, and operational centers, under protected places like hospitals, schools and mosques. Although those places thereby lose their protected legal status, Israelis get blamed for attacking them.

That the IBAHRI accuses Israel of violating the distinction requirement suggests a shocking level of bias.

The December Statement also fails to appreciate that the Israel Defense Force ("IDF) has built LOAC into its military operations through legal training, operational procedures, continuous operational legal advice, and robust and independent investigation mechanisms for addressing allegations of IDF misconduct. In fact, the Israeli army probably is the only one in the world that requires a legal advisor to approve each Israeli strike—to assure that it complies with the requirements of distinction and proportionality.

The December Statement Fails Properly to Address the Principle of Proportionality

Without evaluating a shred of evidence concerning any specific military action, the IBAHRI made this baseless and highly prejudicial assertion: "[o]ur statement was premised on the well-established principles of international law of proportionality and distinction." Principles do not exist in a vacuum



but have to be applied to actual events. Simply put, facts matter. The BBC's rush to judgment in the unfortunate case Al-Ahli hospital incident—with its worldwide repercussions— demonstrates the need for accurate facts. Particular caution should be exercised when relying on casualty figures from Hamas-run organs such as the “Ministry of Health,” which fail to discriminate between combatants and civilians, or between children and terrorist youth, as they are unreliable and lead to wildly inaccurate conclusions.

We cannot know the number of Gazan civilians killed in this war until an actual assessment can be made. IBAHRI quotes from Save The Children, Human Rights Watch and the UN, and Hamas itself, all of which are at best unreliable sources that have long harbored anti-Israel biases.

Under LOAC, an attack against a military target must accord with the rule of proportionality, which prohibit carrying out an attack when the expected incidental loss of civilian life, injury to civilians, or damage to civilian objects would be excessive in relation to the concrete and direct military advantage that is anticipated from the attack. LOAC provides that a proportionality assessment is based on the military commander's information and judgement at the time of the attack, not on hindsight. Yet, without citing one offending attack, or balancing the objectives of the attack against the civilian harm, the December Statement declares Israel's actions disproportionate.

As a matter of law, civilian casualties, or damage to civilian objects, do not of themselves permit a conclusion as to proportionality without an informed evidence-based assessment of the expected civilian harm and the military advantage anticipated at the time. As such, the December Statement falls far short of being an acceptable conclusion by a lawyer's organization and should be retracted.

The December Statement Improperly Deems Gaza to be Under “Siege”

Israel evacuated all Israelis—soldiers and civilian—from Gaza in 2005, and left businesses and agricultural infrastructure including greenhouses for the Gazans to establish their own economy. Hardly a siege. Although an enraged Israeli official vented about a siege in the in the initial shock following Hamas's ferocious attack, Israel has never placed a siege on Gaza. Israel has re-opened the Kerem Shalom crossing, which Hamas had attacked and damaged (just as it destroyed the Erez crossing). In recent weeks, Israel inspected hundreds of trucks per day at the Kerem Shalom and Nitzana Crossings—which would provide tens of thousands of tons of humanitarian aid daily. The UN and its partners have only managed to get some one third of those trucks to Gaza's people. Gazans have been furious to discover stockpiles of aid in UNRWA facilities—not to mention the aid hijacked by Hamas. The Israelis also re-opened the power lines that Hamas had destroyed On October 7.



A Ceasefire At This Time Would Lead to Dire Consequences.

Many major nations—including but not limited to several prominent Arab countries—do not call for a ceasefire now, for good reasons including:

- i) Hamas would declare victory and continue its declared genocidal campaign to eradicate Israel and the Jewish people—including by repeating the kind of atrocities it committed on October 7. As recently as three weeks ago, Hamas' leadership vowed to repeat the Oct 7 atrocities to accomplish its explicit genocidal goal of annihilating Israel and eliminating all Jews.
- ii) Israel's deterrence would be impaired and its other enemies—such as Iran and Hezbollah—would be emboldened. The deterrence of the United States and other enemies of terrorism also would be diminished.
- iii) Israelis living near Israel's legitimate borders, who are now displaced, would be unable to return safely to their homes.

Asking Israel to continue living with a genocidal power across its border—one that has proved the horrific war crimes it is willing and able to commit—is not humanitarian. Asking Israel to tolerate a level of violence and threat that no other country could tolerate is not humanitarian. It is feckless at best, and more likely bigotry.

The IBAHRI and other well-meaning organizations are understandably alarmed at the perilous situation of Gaza's civilians. They should turn their attention away from defaming Israel and focus on how Hamas can be rooted out of Gaza, so that it stops threatening Israelis and endangering and oppressing Gazans.

For all of the above reasons, we ask the IBAHRI to substantially amend or retract the December statement to reflect a much more accurate understanding of the law and facts of the war brought on by Hamas' atrocities of October 7.

Yours sincerely,

Robert Garson
President

Cc: [IBA Human Rights](#), [IJL](#), [Helena Kennedy](#) [Anne Ramberg](#) [Mark Stephens](#)