

# Putting the October 7 culprits on trial

**I**f you are failing to plan,  
you are planning to fail."  
(Henry Thoreau)

## LEGAL AFFAIRS By STEVE ADLER

Like the special public trial of Hitler accomplice Adolf Eichmann in Jerusalem in 1961 and 1962, Israel is facing an unprecedented scenario for the perpetrators of the October 7 massacre in the South.

Recent media reports indicate that the attorney-general and the Justice Ministry are considering a law to establish an ad hoc court to try the Hamas prisoners who on October 7 committed monstrous acts of sadistic murder, torture, sexual violence, rape, kidnapping, and other horrors that go beyond what we typically associate with terrorism or war crimes.

Since the crimes were committed within Israeli boundaries, Israel should prosecute the perpetrators, but many legal experts believe that the existing legal frameworks for court proceedings against these criminals are unsuitable. Therefore, it is necessary to establish a special court that will emphasize the severity of the crimes and serve as an educational tool for both Israelis and people around the world.

Israel has existing laws to try terrorists for crimes committed within its official borders and in Judea and Samaria. Trials take place in both the general court system and military courts. Terrorists can be prosecuted under existing laws, such as the Penal Law, the Military Justice Law, the Counterterrorism Law, and laws relating to arrests and imprisonment of illegal combatants. These laws define terrorism, set penalties, and establish a

framework used today for trials of terrorists.

Israel's criminal court system and military justice system include all the necessary institutions for prosecuting prisoners of war. These courts have extensive experience, professional judges, prosecutors, defense attorneys, and the required administrative infrastructure.

However, prosecuting Hamas prisoners within the general or military court system appears to be unsuitable. A unique crime demands a special trial to ensure that justice is served and for educational purposes.

A special law and court would underscore the uniqueness of the crimes committed on October 7. This trial is not just a typical murder case. Israeli courts deal with many cases involving rape and sadistic murder. This trial involves unimaginable horrific actions, including murdering groups of bound children, burning babies in ovens, shooting or kidnapping children who watched their parents being tortured and murdered, rape, sadistic acts of murder, and kidnapping. These actions go beyond the scope of war crimes and are a stain on humanity.

In addition, the Hamas prisoners are not soldiers of a recognized army or country; they are zealots whose ultimate goal is to destroy Israel. The motivation behind these acts is not purely criminal but driven by religious fanaticism. There is adequate evidence that the

October 7 attack was part of a plan involving Iran, Hezbollah and Hamas to destroy Israel.

A special court hearing would also provide survivors of the massacre an opportunity to appear and be heard in public. We recall the opening speech of chief prosecutor Gideon Hausner at the Eichmann trial, held in 1961 and 1962: "Where I stand before you, judges of Israel, to prosecute Adolf Eichmann, I do not stand alone. With me, at this hour, stand six million prosecutors."

Telford Taylor, who was the prosecutor at the Nazi doctors trial, said in his opening remarks on December 9, 1946: "The defendants in this case are charged with murders, tortures, and other atrocities committed in the name of medical science.... To their murderers, these wretched people were not individuals at all.... The victims of these crimes are numbered among the anonymous millions who met death at the hands of the Nazis and whose fate is a hideous blot on the page of modern history. [Prosecution of these defendants] is owed... to the victims and to the parents and children of the victims...."

There are parallel historic trials that addressed crimes committed against the Jewish people. In 1950 Israel enacted the Nazi and Nazi Collaborators (Punishment) Law, which provided a legal framework for prosecuting crimes against Jews by Nazi Germany. The planning paid off, and Eichmann was tried



ADOLF EICHMANN during his trial in Jerusalem. (Reuters)

In 1960 according to this law.

German courts prosecuted 22 Nazi war criminals in what is called the "Frankfurt Auschwitz trials," held between December 1963 and August 1965. In this highly publicized trial, most of the Nazi war criminals, many of whom held senior postwar government and business positions, were convicted of war crimes. This trial exposed the German public to the horrors of the Holocaust.

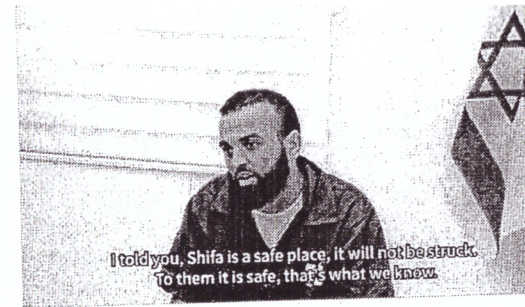
World War II was the first major conflict where victors conducted trials and punished war criminals who had committed horrific war crimes which were outside the scope of regular warfare. Thus the Nuremberg trials of Nazi war criminals and the Tokyo war crimes trial of Japanese war criminals.

Another relevant trial, although not concerning the Jews or Israel, was the 2003-2006 trial of Saddam Hussein, the deposed dictator and president of Iraq, by the Iraqi Interim Government, for crimes against humanity while in office dating back to the 1980s. The

Iraqi provisional government established The Iraqi Special Tribunal, consisting of Iraqi judges. Saddam and other defendants were tried; he was convicted and sentenced to death, his appeal was denied, and he was hanged December 30, 2006. American White House spokesman Tony Snow expressed approval of the procedure and praised the Iraqi people for replacing "the rule of a tyrant with the rule of law... today, the victims of this regime have received a measure of the justice which many thought would never come."

Another reason for a specific law is that it could include provisions for the death penalty, even though it is not allowed under existing Israeli court precedents. It could also include provisions allowing those injured by the Hamas massacre and their survivors to sue countries sheltering Hamas leaders and/or that are patrons and financiers of the Hamas terrorist organization.

We must, however, be aware of the challenges associated with establishing a special



A SCREEN CAPTURE from video released last month showing a Hamas terrorist who was captured on October 7. (DDF)

court to try the Hamas criminals.

A special trial would require the most talented and experienced state attorneys to handle the prosecution. The only comparable instance was the Eichmann trial, where the prosecutors were among the most talented Israeli jurists.

An additional difficulty is who to try in the special court. Past experience indicates it should be the Hamas leaders and those terrorists against whom there is clear evidence that the specific prisoner committed a particular heinous act. Some have already confessed to murdering Israelis, and there are recorded phone calls made by specific terrorists bragging about murdering or raping Israelis. These are the terrorists who can clearly be tried by a special court.

Another situation involves Hamas terrorists who participated in the October 7 attack and massacre, but for whom there is no specific evidence of their actions. Is participation enough to warrant prosecution under a special law?

There are also Hamas soldiers involved in combat against Israel from October 8 onward, and who were captured. They are Hamas terrorists, fighting to destroy Israel,

and this could be considered a war crime.

FINDING AN Israeli defense attorney willing to represent the Hamas criminals may be challenging. While pro-Palestinian NGOs represent or provide representation for terrorists, they may be reluctant to defend those who committed the October 7 heinous crimes. If an Israeli defense attorney cannot be found, perhaps an attorney from abroad can be allowed to appear in the special Israeli court.

Some might argue that establishing a special court diminishes the uniqueness of the Eichmann trial. No trial can truly compare to the Eichmann trial, which presented the Holocaust in full detail and horror, capturing the attention of the Israeli public and arousing international interest. The Eichmann trial was educational, highlighting the immensity of the Holocaust and the importance of "never again." However, this does not mean that there cannot be other unique events of horrendous crimes, on a lesser scale, that merit a special trial. Such a trial of Hamas leaders and a

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few Hamas criminals may not carry the same weight as the Eichmann trial, but it would serve as an educational tool, informing Israelis and people around the world about Hamas terrorism and inhumanity, its goals and its actions.

It would also take place when highly political international organizations are calling for trials against Israel for conducting what we define as a defensive war, while ignoring Hamas crimes.

Attorney Amos Hausner, the son of Gideon Hausner, and coauthor of the Hebrew book *When Eichmann Knocked at our Door*, told me that, in principle, he favors a specific law establishing a special court to try Hamas criminals. Such a move should specify the court's jurisdiction, and its introductory explanation should reference laws passed after Israeli independence, related to Nazi war crimes. In his opinion, such a law would be upheld by the Supreme Court.

Another obstacle to a specific law and court is the current political and legal climate. While the attorney-general is widely respected, her authority is to recommend that the government approve enacting a law to establish a special court. At the political level, it would be difficult to find a highly respected senior jurist in the current government to justify establishing a special court and persuade world opinion of its credibility. The justice minister and chairman of the Knesset Constitution, Law, and Justice Committee are still involved in damaging restructuring of the prestigious Israeli court system. They do not have the national or international status to undertake exceptional legal measures. It seems that a special court would only be considered reliable if the judges were appointed by the president of the Supreme Court and not by a politician.

Furthermore, a special law and court must be implemented swiftly, and the Knesset is not known for acting quickly. However, during the war, some government ministries have acted promptly to address challenges within their jurisdiction. It is possible that the justice minister and chairman of the Knesset law committee could redirect their efforts from dismantling the independent court system and focus on laws and regulations relating to the war effort, especially if directed to do so by the prime minister. Preparation is the key to success. If Israel plans for the future, it will get there prepared and successful.