

# An Open Letter of Dissent to the International Committee of the National Lawyers Guild

*By James M. Branum*

October 10, 2023

## **Introduction:**

I am writing a very difficult letter to an organization that I care a great deal about, the [National Lawyers Guild](#).

Before I address the matter at hand, I think it is important to share a bit of context.

I first became involved with the NLG during law school (I think in 2003). I was not a happy law student, as I felt I was the proverbial square peg being driven into a round hole, but I found hope in a little booklet published by the NLG called [The Disorientation Handbook](#). The handbook told me that I wasn't crazy for feeling alienated by the law school experience, but that I had another option besides toughing it out. I could instead subvert the experience and take my activism into law school. This revolutionary thought gave me back my sanity, and I did my best to subvert the rest of my legal education from that point forward.

My process of subversion didn't just happen in the classroom. After working with friends to start a law school student chapter, I attended a national Guild convention and eventually got plugged into the [MLTF \(Military Law Task Force\) of the NLG](#), which became my primary source for mentoring and training in an area of law that I would otherwise not have the chance to be trained in. And, after becoming a lawyer, I continued to be deeply involved in the MLTF and other Guild projects.

The NLG didn't just give me training and mentorship, but it also gave me a new philosophy, particularly in its slogan that [“human rights shall be held more sacred than property interests.”](#) This focus on human rights is why I have stayed part of the NLG, but it is also why I'm writing this letter.

## **My Response to the IC Resolution**

I am deeply troubled by some aspects of the recent statement by the Guild's International

Committee entitled [“NLG International emphasizes Palestinian right to resist, stands in solidarity with Palestine”](#) in light of the vicious attacks on civilian populations by Hamas in recent days.

The resolution correctly speaks of the right (as recognized under International law<sup>1</sup>) of oppressed people to resist oppression through armed struggle and of the long history of oppression by the state of Israel against the Palestinian people, but it fails to recognize that this right of resistance does not excuse war crimes, many of which have been perpetrated by Hamas in recent days,<sup>2</sup> including:

- “Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities”<sup>3</sup>
- The use of torture<sup>4</sup>
- Taking of hostages<sup>5</sup>
- “Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives”<sup>6</sup>

---

<sup>1</sup> [United Nations General Assembly Res. 37/43.](#)

<sup>2</sup> A non-exhaustive list of media reporting on some of these crimes include:

1. Sharon, Jeremy [“Scene of Hamas attack on outdoor rave reveals grim evidence of how slaughter unfolded” \*Haartz.com\* \(Oct. 9, 2023\)](#)
2. [“Footage of Hamas assault on civilians shows likely war crimes, experts say”](#). *The Times of Israel*. [Archived](#) from the original on 8 October 2023.
3. Graham, Caroline, et. al [“Revealed: German tattoo artist, 30 killed by Hamas while attending a music festival before the militants paraded her body on the back of a truck and claimed she was an Israeli soldier - as her devastated family say they are in a 'nightmare' \*Daily Mail\* \(Oct. 8, 2023\)](#)
4. [“Images of the mass kidnapping of Israelis by Hamas” \*The Atlantic\* \(Oct. 9, 2023\)](#) - (warning this story includes descriptions of sexual assault)
5. [Jones, Sam “‘Murdered in cold blood’: stories emerge of Israelis killed at Gaza border” \*The Guardian\* \(Oct. 10, 2023\)](#)
6. [Shapiro, Rich “Revered peace activist is missing after sending harrowing text message during Hamas assault” \*NBCNews\* \(Oct. 9, 2023\)](#)

<sup>3</sup> See Rome Statute of the International Criminal Court, Article 8 para. (2)(b)(i) as quoted by <https://www.un.org/en/genocideprevention/war-crimes.shtml>.

<sup>4</sup> See Rome Statute of the International Criminal Court, Article 8 para. (2)(a)(ii) as quoted by <https://www.un.org/en/genocideprevention/war-crimes.shtml>.

<sup>5</sup> See Rome Statute of the International Criminal Court, Article 8 para. (2)(a)(iviii) as quoted by <https://www.un.org/en/genocideprevention/war-crimes.shtml>.

<sup>6</sup> See Rome Statute of the International Criminal Court, Article 8 para. (2)(b)(v) as quoted by <https://www.un.org/en/genocideprevention/war-crimes.shtml>.

- “Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;”<sup>7</sup>

The Law of War applies to all parties. I am glad the NLG’s International Committee is rightly calling out the state of Israel for its past and ongoing actions that violate international law (including the ongoing siege of Gaza<sup>8</sup>), but, unfortunately, the IC has chosen to ignore the recent and ongoing war crimes committed by Hamas.

This position is a terrible mistake. It undermines the validity of international law (because critics can easily argue that “the law of war can only be applied against one’s enemies”), but it also hurts the efforts of peace and social justice activists in Israel, Palestine, and the world to seek an end to the conflict and a path forward for Palestinian self-determination.

The UN Human Rights Council has said that there is “clear” evidence of war crimes being committed by both Hamas and Israel at the present time.<sup>9</sup> The NLG International Committee needs to recognize this reality and speak with clarity about the moral and legal imperative of not committing war crimes under any circumstances.

---

<sup>7</sup> See Rome Statute of the International Criminal Court, Article 8 para. (2)(b)(xxii) as quoted by <https://www.un.org/en/genocideprevention/war-crimes.shtml>.

<sup>8</sup> “Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions” is a violation of Rome Statute of the International Criminal Court, Article 8 para. (2)(b)(xxiv) as quoted by <https://www.un.org/en/genocideprevention/war-crimes.shtml>.

<sup>9</sup> ["UN says there is 'clear evidence' of war crimes committed in Gaza and Israel \*The Guardian\* \(Oct. 10, 2023\)](https://www.theguardian.com/world/2023/oct/10/un-says-there-is-clear-evidence-of-war-crimes-committed-in-gaza-and-israel)