Public Statement Regarding October 7th Events by International Law Experts

On October 7th, 2023, over a thousand terrorists, members of Hamas and the Islamic Jihad, infiltrated and captured civilian villages and towns in Israel, as well as a number of military bases. The terrorists massacred over 1300 people, including women, children, elderly people and young adults who were celebrating at an outdoor party. Thousands of people were severely wounded. The numbers of those slaughtered are still not final, and details about the magnitude of the atrocities are still unfolding. These acts constitute gross violation of international law, and, in particular, of international criminal law. As these widespread, horrendous acts appear to have been carried out with an “intent to destroy, in whole or in part” a national group – Israelis – a goal explicitly declared by Hamas, they most probably constitute an international crime of genocide, proscribed by the Genocide Convention and the Rome Statute of the International Criminal Court.

In addition to those murdered and wounded, it is estimated that over 150 people were kidnapped and taken hostage. The majority of the hostages are civilians, and they include Israeli as well as non-Israeli citizens. Among those abducted there are women, children, infants, elderly people in need of medical care and people with disabilities. According to media reports, some kidnapped persons were murdered following their abduction. Videos, released mostly by Hamas, posted on social media, document acts of torture, sexual violence, violence towards children and molestation of bodies. Hamas leader Salah Al-Aroui and Abu Obeida, spokesman of Izz ad-Din al-Kassam confirmed that they were holding Israeli abductees. No information has been provided regarding the current location, status and condition of hostages. They are being held without any communication with the outside world, and the ICRC has not had access to them. There is every reason to believe that their lives and basic rights are under immediate threat of the gravest nature.

War Crimes

International law prohibits the taking of hostages, defined in the International Convention Against the Taking of Hostages as seizing or detaining and threatening to kill, to injure or to continue to detain another person “in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage”. The customary international law prohibition on the taking of hostages applies both to international armed conflicts and to non-international armed conflicts. It thus applies to the armed conflict between Israel and Hamas.

The taking of hostages is defined as a war crime, including by article 8 (2) (c) (iii)of the Rome Statue, reflecting customary international law. The laws pertaining to the holding of prisoners of war do not apply to terrorist organizations. Thus, holding both civilian and soldier hostages constitutes a war crime. The circumstances surrounding the kidnapping of all hostages, civilian and soldiers, reveals that they were taken with the purpose of holding them hostage. Hamas must release all hostages immediately.

In addition to taking hostages, according to information posted on social media and testimonials of survivors, members of Hamas deliberately targeted their attacks against large numbers of civilians, committing murder, torture, rape, mutilation and molestation of bodies. Each of these acts constitutes a war crime, for which perpetrators must bear full accountability.
**Crimes Against Humanity**

Crimes against humanity refers to acts conducted as part of a “widespread or systematic attack directed against a civilian population”. The acts that may constitute crimes against humanity include, among others, enforced disappearances, torture, sexual violence and persecution. The abduction of people without provision of information regarding their whereabouts constitutes the crime of enforced disappearances. Furthermore, available information indicates that many abductees were tortured by their captors. These acts were multiply committed by Hamas towards the hostages in execution of its policy to attack civilians, and thus constitute crimes against humanity, for which perpetrators must bear full accountability.

Pending the release of hostages, Hamas must provide under international law information regarding the hostages, including their medical condition, and provide them with the necessary medical care. International law imposes additional particular duties of care towards women and children.

It is the legal and moral duty of all states to act swiftly to halt these crimes.

The international community, including all states and relevant international organizations, must take all measures necessary to ensure immediate release of all hostages held by Hamas. Any delay in action will result in more loss of human life and aggravated human suffering.

Pending release of the abductees, all states must demand Hamas to immediately provide clear information as to the actual whereabouts and condition of all abductees.

Pending release, humanitarian organizations, including the ICRC and all relevant UN agencies should demand from Hamas to provide them with access to the abductees. These organizations must also do their utmost to ensure that essential foodstuff and appropriate medical treatment are provided.

Pending release, all states should use all available means to support Israel, the ICRC and all other relevant organizations and states to gain access to the abductees and to receive information about their fate and whereabouts. Such assistance should include, at the least, providing all possible logistical assistance and available intelligence and supporting relevant diplomatic efforts.

Without derogating from the duty to demand the immediate and unconditional release of all abductees, all states and international organization have a duty to use all available means at their disposal in order to pressure Hamas to give precedence to the immediate release of those abductees who belong to specially protected groups: children, women, older persons, people with disabilities and those in need of medical treatment.
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