

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-Arouri 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 Statute, 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.

Signatures (institutional affiliation noted for identification purposes only):

Prof. Anne van Aaken, University of Hamburg

Prof. Benjamin Abtan, Sciences Po

Prof. Martin J Adelman, George Washington University

Prof. Kai Ambos, Universität Göttingen

Prof. Yutaka Arai-Takahashi, University of Kent, Brussels

Prof. Andreas von Arnould, University of Kiel

Prof. Helmut Aust, Freie Universität Berlin

Dr. Shelly Aviv Yeini, Haifa University

Adv. Yfat Barak-Cheney

Prof. Jack M. Beard, University of Nebraska

Dr. Markus P. Beham, University of Passau

Attorney Marina Bejarano, Esq., New York Law School

Dr. Ulad Belavusau, University of Amsterdam

Prof. Avi Bell, Bar Ilan University

Prof. Orna Ben-Naftali, College of Management

Prof. Daniel Benoliel, Haifa University

Prof. Eyal Benvenisti, Cambridge University

Dr. Antal Berkes, University of Liverpool

Attorney Laura Bertilotti, Sciences Po

Prof. Leora Bilsky, Tel Aviv University

Dr. Daley J. Birkett, Macquarie University

Dr. Hannah Birkenkötter, Instituto Tecnológico Autónomo de México (ITAM)

Dr. Stefan Birkner, Leibniz Universität Hannover

Prof. Régis Bismuth, Sciences Po

Prof. Daniel Bodansky, Arizona State University

Dr. Ziv Bohrer, Bar-Ilan University

Prof. Sergio Raul Borisonik, Profesores Republicanos Argentina

Veronica Botticelli, University of Padua

Prof. Susan Breau, University of Victoria

Attorney Marcela Briceno-Donn

Prof. Tomer Broude, Hebrew University of Jerusalem

Prof. Charles H. Brower II, Wayne State University

Prof. Nathaniel Berman, Brown University

Prof. Iris Canor, College of Management

Prof. Naomi Chazan, Hebrew University of Jerusalem

Prof. Amichai Cohen, Ono Academic College

Prof. Gary P. Corn, American University Washington

Prof. Geoffrey S. Corn, Texas Tech University

Prof. Irwin Cotler, McGill University

Dr. Robert Craig, University of Bristol

Dr. Beatrice Coscas Williams, Western Galilee Academic College

Prof. Tom Dannenbaum, Tufts University

David	Davenport, Hoover	Institution
Dr. Natalie Davidson,	Tel Aviv University	Prof. Hans-Georg Dederer, University of Passau
Prof. Laura A. Dickinson,	George Washington University	Dr. Anne Dienelt, University of Hamburg
Prof. Janina Dill,	Oxford University	Prof. Giovanni Distefano, University of Neuchatel

Prof. Adriana Dreyzin de Klor, National University of Cordoba, Argentina

Prof. Ariel Dulitzky, University of Texas at Austin

Prof. Jeffrey L. Dunoff, Temple University

Prof. Kanstantsin Dzehtsiarou, University of Liverpool

Prof. Talia Einhorn, Ariel University

Dr. Cochav Elkayam Levy, Hebrew University

Prof. Richard A. Epstein, New York University, The Hoover Institution, The University of Chicago

Prof. Carlos Espósito, Universidad Autónoma de Madrid

Dr. Myriam Feinberg, Gornitzky & Co

Prof. Veronika Fikfak, University College London

Dr. Agata Fijalkowski, Leeds Beckett University

Ms. Olivia Flasch, Consultant in Public International Law

Dr. Dieter Fleck, Honorary President, International Society for Military Law and the Law of War

Prof. Serena Forlati, University of Ferrara

Prof. Lisa Forman, University of Toronto

Prof. Rosa Freedman, University of Reading

Ms. Felice Gaer, Jacob Blaustein Institute for Human Rights

Dr. Sofia Galani, Panteion University

Prof. Hannah R. Garry, UCLA

Prof. Tarcisio Gazzini, Università di Padova

Prof. Thomas Giegerich, Europa-Institut, Saarland University

Dr. Rotem Giladi, University of Roehampton, London

Dr. Emanuela-Chiara Gillard, University of Oxford

Dr. Adi Gillat, H-F & Co. Law Offices

Prof. Tom Ginsburg, University of Chicago

Dr. Aleksandra Gliszczynska-Grabias, Polish Academy of Sciences

Administrative Law Judge Leah Goldberg

Prof. Nan Goodman, University of Colorado Boulder

Prof. Gregory S. Gordon, The Chinese University of Hong Kong

Prof. Aeyal Gross, Tel Aviv University

Prof. Oren Gross, University of Minnesota

Prof. Claudio Grossman, American University, Washington

Prof. Nienke Grossman, University of Baltimore

Prof. Amos N. Guiora, University of Utah

Prof. Michaela Hailbronner, University of Münster

Prof. Gábor Halmai, European University Institute

Prof. Matthew Happold, University of Luxembourg

Prof. Adil Haque, Rutgers University

Prof. Guy Harpaz, Hebrew University

Prof. Wolff Heintschel von Heinegg, Europa-Universität Viadrina

Prof. Moshe Hirsch, Hebrew University of Jerusalem

Prof. Stephan Hobe, University of Cologne

Dr. Jane Hofbauer, Universität der Bundeswehr München

Prof. Duncan B. Hollis Temple University

Prof. Tamar Hostovsky Brandes, Ono Academic College

Dr. Nicole Horn, Sigmund Freud University Vienna

Dr. Sigall Horovitz, Hebrew University of Jerusalem

Dr. David Hughes, University of Toronto

Prof. Francesca Ippolito, University of Cagliari, Italy

Dr. Shahram Iranbomy

Dr. Kushtrim Istrefi, Utrecht University

Dr. Philipp Janig, University of the Bundeswehr Munich

David Joseph, KC

Prof. Yann Jurovics, Université Evry Val d'Essonne

Prof. Natia Kalandarishvili-Mueller, ALTE University, Tbilisi

Adv. Yuval Kaplinsky, Former Director of the Department of International Affairs, Israel's State Attorney's Office

Dr. Avidan Kent, University of East Anglia

Joshua Kern, 9BR Chambers

Prof. Mark Kersten, University of the Fraser Valley

Prof. Eugene Kontorovich, George Mason University

Prof. David Kaye, University of California, Irvine

Prof. Alexandre Kedar, Haifa University

Dr. Renana Keydar, Hebrew University of Jerusalem

Prof. Orde F. Kittrie, Arizona State University/FDD

Prof. Eckart Klein, Potsdam University

Prof. Thomas Kleinlein, University of Kiel

Prof. Markus Kotzur, Universität Hamburg

Prof. Daniel Kraus, University of Neuchatel

Prof. Shiri Krebs, Deakin University

Prof. Claus Kreß, University of Cologne

Prof. David Kretzmer, Hebrew University of Jerusalem

Prof. Heike Krieger, Freie Universität Berlin

Dr. Dilek Kurban, Berlin Social Science Center (WZB)

Dr. Viktoriia Lapa, Bocconi University Dr. Petra Larsen, University of Manchester

Prof. Annabelle Lever, Institut d'Etudes Politiques, Paris

Prof. Melanie Levy, University of Neuchatel

Dr. Liron A. Libman, Sapir Academic College

Prof. Eliav Lieblich, Tel Aviv University

Prof. Lucas Lixinski, UNSW Sydney

Prof. James Loeffler, Johns Hopkins University

Dr. Marco Longobardo, University of Westminster

Dr. Henry Lovat, University of Glasgow

Prof. David Luban, Georgetown University

Prof. Noam Lubell, University of Essex

Dr. Asaf Lubin, Indiana University

Dr. Doreen Lustig, Tel Aviv University

Dr. Ivana Machonova Schellongova, Webster University Geneva

Prof. Mikael Rask Madsen, University of Copenhagen

Prof. Matthias Mahlmann, University of Zurich

Prof. Avihai Mandelblit, College of Law and Business

Dr. Pablo Luis Manili, Universidad de Buenos Aires

Prof. Yuri G. Mantilla, Liberty University

Prof. Paola Mariani, Bocconi University

Prof. Mahmoud Masaeli, Retired prof. at Carleton University and University of Ottawa

Dr. Shavit Matias, Reichman University

Dr. Kasey McCall-Smith, University of Edinburgh

Dr. Tamar Megiddo, Hebrew University Jerusalem

Dr. Andrea Mensi, University of Bologna

Prof. Roberto Mesrob Malkassian, Universidad de Buenos Aires

Prof. Ralf Michaels, Max Planck Institute for Comparative and International Private Law, Hamburg

Prof. Marko Milanovic, University of Reading

Dr. Tal Mimran, Hebrew University of Jerusalem

Prof. Martha Minow, Harvard University

Prof. Wyrzykowski Mirosław, University of Warsaw

Prof. Daniel Moeckli, University of Zurich

Dr. Hilly Moodrick Even-Khen, Ariel University

Dr. Avigail Moor, Tel Hai Academic College

Dr. Niall Moran, Dublin City University

Prof. Luis Moreno Ocampo, Sao Paulo University

Prof. Sean D. Murphy, George Washington University

Prof. Roda Mushkat, Johns Hopkins University

Dr. Renata Nagamine, Cebrap (Brazilian Center for Analysis and Planning)

Prof. Juan Javier Negri, Asociación Argentina de Derecho Comparado

Prof. Dwight Newman, KC, University of Saskatchewan

Prof. Michael A Newton, Vanderbilt University Law School

Dr. Angelika Nußberger, University Cologne

Dr. Robert S. Neufeld, Haifa University

Prof. Roger O'Keefe, Bocconi University, Milan

Prof. Belen Olmos Giupponi, University of Portsmouth

Attorney Sandra Opincaru

Prof. Federico Ortino, King's College London

Prof. Mark Osiel, University of Iowa

Dr. Magdalena Pacholska, University of Amsterdam

Dr. Hadas Peled, Bar Ilan University

Prof. Anne Peters, Max Planck Institute for Comparative Public Law and International Law Heidelberg

Prof. Monica Pinto, Universidad de Buenos Aires

Prof. Ellen S. Podgor, Stetson University

Prof. Jiří Příbáň, Cardiff University

Prof. Marcela Prieto, University of Southern California

Prof. Alexander Proelss, University of Hamburg

Mr. Daniel R. Quiroga-Villamarín, Geneva Graduate Institute (IHEID)

Prof. Frances Raday, Hebrew University of Jerusalem

Prof. Camilo Ramírez Gutiérrez, Universidad el Bosque, Bogotá

Prof. Steven Ratner, University of Michigan

Prof. Arie Reich, Bar Ilan University

Dr. Yuval Reinfeld, Reichman University

Dr. Daphné Richemond-Barak, Reichman University

Prof. Noya Rimalt, Haifa University

Attorney Ivan Roisman, Universidad Nacional Rosario

Prof. Graziella Romeo, Bocconi University

Prof. Yaël Ronen, Academic Center for Science and Law

Prof. Marco Roscini, University of Westminster/Geneva Academy of International Humanitarian Law and Human Rights

Prof. Richard D. Rosen, Texas Tech University

Prof. Issachar Rosen-Zvi, Tel Aviv University

Prof. Menachem Rosensaft, Cornell University

Dr. Ido Rosenzweig, Haifa University

Prof. Brad R. Roth, Wayne State University

Judge (retired) Saviona Rotlevy, Tel Aviv Court

Dr. Ilya Rudyak, University of the Pacific

Prof. Robbie Sabel, Hebrew University of Jerusalem

Prof. Giorgio Sacerdoti, Bocconi University Milano

Dr. Michal Saliternik, Netanya Academic College

Attorney Sandra Saltrese-Miller, Esq., Saltrese Law

Prof. Sixto Sánchez Lorenzo, University of Granada

Prof. Wojciech Sadurski, University of Sydney and University of Warsaw

Attorney Alon Sapir

Prof. Aurel Sari, University of Exeter

Prof. Ben Saul, The University of Sydney

Christine Savino, Cornell University

Prof. Paul Schiff Berman, George Washington University

Professor Thoresten Ingo Schmidt, University of Potsdam

Professor Maimon Schwartzchild, University of San Diego

Prof. Tullio Scovazzi, University of Milano-Bicocca

Dr. Katarzyna Sekowska-Kozłowska, Polish Academy of Sciences

Dr. Omri Sender, Reichman University

Prof. Amanda Shanor, University of Pennsylvania

Prof. Yuval Shany, Hebrew University Jerusalem

Prof. Marina Sharpe, Royal Military College Saint-Jean

Adv. Pnina Sharvit Baruch, Institute for National Security Studies

Prof. Malcolm Shaw, KC

Prof. Shimon Shetreet, Hebrew University of Jerusalem

Dr. Vera Shikhelman, Hebrew University of Jerusalem

Adv. Vadim Shub, Jerusalem Public Defender's Office

Prof. Stefanie Schmahl, Universität Würzburg

Prof. Michael Schmitt, University of Reading

Dr. Roy Schondorf, Herzog, Fox & Neeman

Prof. Ady Schonmann-Bethlehem, King's College, London

Prof. Avrom Sher, University of London

Dr. Yahli Shereshevsky, Haifa University

Adv. Yifa Segal, JISS

Dr. Sivan Shlomo Agon, Bar-Ilan University

Prof. James C. Simeon, York University

Prof. Prabhakar Singh, BML Munjal University

Prof. Elies van Sliedregt, Tilburg University

Dr. Olga Śniadach, University of Gdańsk

Dr. Carlo de Stefano, Roma Tre University

Prof. Michael Stein, Harvard Law School

Prof. Richard H. Steinberg, University of California (Los Angeles)

Prof. Nomi Stolzenberg, University of Southern California

Prof. Anna Su, University of Toronto

Dr. James Summers, Lancaster University

Prof. Edward Swaine, George Washington University

Prof. Tomasz Tadeusz Koncewicz, University of Gdansk

Prof. Christian J. Tams, University of Glasgow

Prof. Ruti Teitel, New York Law School

Prof. D. A. Jeremy Telman, Oklahoma City University

Dr. Stephen Terrett, University of Warsaw

Prof. Patrick Terry, University of Public Administration Kehl

Prof. Joel Trachtman, Fletcher School of Law and Diplomacy

Attorney Arthur Traldi

Prof. Nicholas Tsagourias, University of Sheffield

Prof. Antonios Tzanakopoulos, University of Oxford

Dr. Valentina Vadi, University of Florence and University of Padua

Dr. Dimitri Van Den Meerssche, Queen Mary University of London

Prof. Rachel VanLandingham, Southwestern Law School

Dr. Maria Varaki, King's College London

Prof. Gabriella Venturini, University of Milan

Attorney Yael Vias Gvirsman, Reichman University

Dr. Pedro A. Villarreal Lizárraga, Max Planck Institute for Comparative Public Law and International Law/German Institute for International and Security Affairs

Prof. Alfredo M. Vitolo, Universidad de Buenos Aires

Prof. Markus Wagner, University of Wollongong

Prof. Michael Waibel, University of Vienna

Prof. Christian Walter, LMU Munich

Prof. Matthew Waxman, Columbia Law School

Prof. Annette Weinke, Friedrich Schiller University, Jena

Dr. Dana Wolf, Reichmann University

Adv. Dan Yakir, The Association for Civil Rights in Israel

Dr. Ganna Yudkivska, Academy of Advocacy of Ukraine, UN Working Group on Arbitrary Detention

Prof. Jonathan Zasloff, UCLA

Dr. Ariel Zemach, Ono Academic College

Prof. Katja Ziegler, University of Leicester

Prof. Reuven (Ruvi) Ziegler, University of Reading

Prof. Yaffa Zilbershats, Bar Ilan University

Prof. Noam Zohar, Bar Ilan University