The Red Cross Must Be Given Immediate Access to the Israeli Hostages Held By Hamas

written by Dr. Adi Schwartz | 22.10.2023

Key Messages:

Hamas carried out a heinous war crime under international law when it took numerous Israeli children, women and men captive during its October 7, 2023 terrorist assault on Israel. The international community must demand that they be released immediately.

At the very least, the International Committee of the Red Cross must be given immediate access to the Israeli captives for humanitarian purposes.

Hamas must provide Israel with precise information regarding the identities of all the Israeli citizens it is holding hostage. It must also promptly release or facilitate the transfer to a neutral country, for individuals who are seriously wounded or afflicted by specified medical conditions.

All countries, international organizations and institutions, must demand that Hamas uphold these basic humanitarian obligations.

Introduction

A large number of Israelis, including many unarmed civilians, were taken hostage during Hamas' unprovoked barbaric attack on Israel on October 7th, 2023. Media reports suggest that more than a hundred Israelis, including children, women and the elderly, were forcibly taken from their homes at gunpoint and are presently held captive by Hamas[1].

Such actions go against the principles of International Humanitarian Law, which explicitly and consistently prohibits the act of taking hostages, categorizing it as a heinous war crime[1]. Additionally, this body of law governs the treatment of prisoners of war (POWs). In accordance with universally accepted international norms, civilian hostages must be released immediately. At the very least, they

should be accorded the rights granted to POWs, as elaborated in this paper.

Rights of Prisoners of Wars

[1] International Convention against the Taking of Hostages, adopted by the UN General Assembly, Res. 34/146, 17 December 1979, Article 1; Statute of the International Criminal Court, adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 17 July 1998, UN Doc. A/CONF.183/9, Article 8(2)(a)(viii) and (c)(iii).

The Third Geneva Convention laid out the legal framework for the protection of POWs[1]. Every country in the world is a party to the Third Geneva Convention, which also confers a special mandate on the International Committee of the Red Cross, entrusting it with a central role in the protection of the dignity and well-being of POWs.

In accordance with universally recognized international standards, notably the Geneva Conventions, POWs are entitled to fundamental and immediate rights, which include

[1] Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949:

The detaining power must notify the authorities on which the prisoners depend of the capture.

The International Red Cross must be granted regular access to visit prisoners of war in order to verify the conditions of their detention and to restore contacts between them and their families.

Prisoners of war who are seriously wounded or suffer from specified diseases must be repatriated directly back to their own country or to a hospital in a neutral State.

1. Those whose diseases or wounds warrant a direct repatriation are:

   - the incurably wounded or sick whose mental or physical fitness seems to have been gravely diminished.
   - the wounded or sick who have recovered but whose mental or physical fitness seems to have been gravely and permanently diminished.

- the wounded or sick who, according to medical opinion, are not likely to recover within one year.

- 2.Those who may be accommodated in a neutral State are:

- the wounded and sick whose recovery may be expected within one year, or sooner if treated in a neutral country;
- prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

Any form of torture or cruelty are forbidden. The following acts are grave breaches of the Geneva Conventions: wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health.

Prisoners of war are entitled in all circumstances to respect for their person. Women must be treated with due regard to their specific needs.

Prisoners of war must be evacuated, as soon as possible, away from the combat zones.

Prisoners of war must be given sufficient food and water. They shall receive medical attention.

Prisoners of war must be released and repatriated without delay after the cessation of active hostilities.

Conclusion

International Humanitarian Law mandates that Hamas must promptly provide Israel with precise information regarding the number and identities of all Israeli citizens held within Palestinian custody. Moreover, it obliges Hamas to grant unrestricted access to the Red Cross for humanitarian purposes.

Additionally, the organization is expected to either promptly release or facilitate the transfer to a neutral country, such as Egypt, for individuals who are seriously wounded or afflicted by specified medical conditions, such as elderly individuals with mental disabilities, among others.

All countries, international organizations and institutions, must demand that Hamas uphold its obligations under international law. The International

Committee of the Red Cross must demand immediate access to each and every one of the Israeli hostages.

[1] The Times pf Israel. (2023). *Israel confirms civilians and soldiers abducted by Hamas into Gaza*. https://www.timesofisrael.com/hamas-claims-to-capture-soldiers-civilians-in-deadly-assault-on-gaza-border-towns/

[2] International Convention against the Taking of Hostages, adopted by the UN General Assembly, Res. 34/146, 17 December 1979, Article 1; Statute of the International Criminal Court, adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 17 July 1998, UN Doc. A/CONF.183/9, Article 8(2)(a)(viii) and (c)(iii).

[3] Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949.

[4] Medecins Sans Frontieres. (2023). *Prisoners of War*. https://guide-humanitarian-law.org/content/article/3/prisoners-of-war/

Lessons for Israel's Fight Against Hamas from the West's Fight Against ISIS

written by Dr. Adi Schwartz | 22.10.2023

Key Messages:

- World leaders, including US President Joe Biden, have compared Hamas to ISIS.
- A Western-led coalition has been fighting ISIS in Syria and Iraq since 2014. **American Secretary of Defense, James Mattis, characterized the fight against ISIS in their stronghold of Mosul as "a war of annihilation."**

- The fight against ISIS for Mosul, Iraq in 2016-2017 was the heaviest urban combat since World War II; **the destruction resembled that wrought by the Allied Forces in World War II on the German city of Dresden**. The UN calculated that more than 80% of Mosul was estimated to be uninhabitable as a result of the destruction.
- The city of Raqqa in Syria, another stronghold of ISIS attacked by the US military, was considered "unfit for human habitation," following the attacks.
- While Israel will continue to take steps to avoid civilian casualties, it is likely that in its fight against 'ISIS in Gaza' – e.g. Hamas – it will need to adopt similar strategies and standards as those actually used in some cases by Western governments in their fight against ISIS.

Background

In the wake of the barbaric atrocities perpetrated by Hamas against Israeli civilians on October 7, 2023, numerous world leaders have unequivocally denounced the actions of this radical Islamist extremist group. Some have drawn explicit parallels between these actions and the gravest atrocities committed by the Islamic State (ISIS). For example, on October 10, United States President Joe Biden declared: "The brutality of Hamas — this bloodthirstiness — brings to mind the worst — the worst rampages of ISIS."[1]

The War against ISIS

In reaction to ISIS's swift territorial expansion in Iraq and Syria, several Western nations, including the United States, the United Kingdom, and France, initiated interventions to counter the threat from the radical Jihadist group. Among the most significant military operations were those conducted in Mosul, located in Iraq, and Raqqa, situated in Syria, which both served as key strongholds of ISIS in the region.

According to Time magazine, senior American military commanders reached back into history for parallels and precedents as to the scope and ferocity of these battles[1]. PBS' Frontline program cited military commanders describing the fight for Mosul as the largest military operation in the world since the invasion of Iraq in 2003, and the heaviest urban combat since World War II[2]. Michael Butt, Emergency Response Coordinator for International Medical Corps Iraq, said that

the destruction resembled that of the Germany city of Dresden in WWII[3]. Then US Secretary of Defense James Mattis characterized the fight as "a war of annihilation."[4]

In an interview with CBS' Face the Nation program on May 28, 2017, Mattis said that ISIS was "a threat to all civilized nations. And the bottom line is we are going to move in an accelerated and reinforced manner, throw them on their back foot. Our intention is that the foreign fighters do not survive the fight to return home to North Africa, to Europe, to America, to Asia, to Africa. We're not going to allow them to do so. We're going to stop them there and take apart the caliphate."[5]

The destruction in both Mosul and Raqqa was near total. The United Nations calculated that more than 80% of Mosul was estimated to be uninhabitable as a result of the destruction.[6] The fighting left behind eight million tons of debris.[7] Raqqa was considered "unfit for human habitation," with around 80 percent of the city damaged or destroyed[8]. Army Command Sergeant Major, John Wayne Troxell, the senior enlisted advisor to the U.S. military's top officer, said in November 2017 that Americans "fired more rounds in Raqqa in five months than any other Marine artillery battalion since the Vietnam War".[9]

Collateral Damage

Since 9/11, the United States has been involved in the war against radical Islamic terrorist organizations, such as al-Qaeda and ISIS, with many of the battles taking place in densely populated urban areas. Under the law of armed conflict, military forces are required to apply a principle of discrimination — using deadly force against hostile forces, but not against civilian noncombatants. As applied with respect to civilian population centers, the requirement has two elements: there must be a legitimate military target, and the damage to civilians must be "proportionate." The question of course is how many innocent civilian deaths make a strike against a legitimate military target "disproportionate".

In an article in July 2007, Salon's Mark Benjamin learned that "the magic number was 30," according to Marc Garlasco, who was the US Pentagon's chief of high-value targeting at the start of the War on Terror. "That means that if you hit 30 as the anticipated number of civilians killed, the airstrike had to go to [then Defense Secretary Donald] Rumsfeld or [then President] Bush personally to sign off."[1] If it was anticipated that a lower number of civilian casualties would be caused by a

strike on a high-value military target, the strike could be approved at less senior levels.

Conclusion

Following the heinous acts committed by Hamas on October 7, both Israel and its Western allies have declared that Hamas shares similarities with ISIS, and consequently, they advocate for a comparable approach: the complete dismantling of the organization.

To implement this strategy, Israel may consider drawing lessons from the practices of its Western counterparts in combating ISIS, particularly in urban regions akin to those in the Gaza Strip. While Israel will continue to take steps to avoid civilian casualties, it is likely that in its fight against 'ISIS in Gaza' – i.e., Hamas – it will need to adopt similar strategies and standards as those actually used in some cases by Western governments in their fight against ISIS.

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[8] Ibid.

[9] Ibid.

[10] Amnesty International. (2019). *War in Raqqa: Briefing*. https://raqqa.amnesty.org/briefing.html

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Pressure Qatar until all Hostages are Released and Qatar Ends its Support for Hamas

written by Asher Fredman | 22.10.2023

Key Messages

In recent years, Qatar's relations with the West have grown stronger and deeper. In 2022, the United States defined Qatar as a 'major non-NATO ally'. Qatar's economic ties with European powers such as Germany, the UK and Italy are expanding.

- At the same time, Qatar is a prime sponsor of the Hamas terrorist group. Qatar has been hosting Hamas' HQ, leaders and operatives since at least 2012, including those involved in transferring millions of dollars for terror activities.
- It is estimated that over the last decade, Qatar sent over a billion and a

half dollars to the Gaza Strip, the significant majority of which went to Hamas, its operatives and employees.

- In recent years, Israel allowed and even encouraged the transfer of Qatari funds to Gaza, in the hope that this would buy quiet and delay the rounds of fighting. These transfers both strengthened Hamas and helped Qatar gain significant leverage over the terrorist organization.
- The United States and Europe, particularly Germany, Italy, the UK and France, must strongly pressure Qatar in order to ensure that Qatar employs all of its leverage to bring about the release of all of Hamas' hostages. Western governments, as well as private sector and civil society actors, must use all of the economic, political and public relations tools at their disposal to this end.
- In the mid-term, these countries must demand that Qatar choose between enhancing its relations with the democratic West, and its support for a radical terrorist organization more brutal than ISIS. Israel too must change its approach to Qatar, including with regards to post-war Gaza reconstruction.

Qatar and the West

Since the Gulf War, Qatar's relations with the West have greatly improved on both the economic and military fronts. The US is one of Qatar's most important trade partners,

responsible for 15% of all goods imported to Qatar.[1] The largest US military base in the Middle East is located at Al Udeid Air Base near Doha, which hosts US Central Command's Forward HQ as well as the US Combined Air Operations Center and US Special Operations Central Command.[2] In January, 2022, US President Biden announced that Qatar would be designated a 'Major Non-NATO Ally'.

Qatar's relationships with European nations are also gaining strength. Italy, Germany and the UK account for 14% of Qatari imports.[3] At the end of Q1 2023, the UK reported that trade with Qatar had grown 117% year-over-year.[4] While Qatari exports, which consist primarily of gas and oil, have traditionally gone to Asia, energy exports to Europe are growing as a result of Europe's desire to identify alternatives to Russian gas. For example, in 2022, French company TotalEnergies was selected by Qatar as its first partner in developing the world's

largest liquefied natural gas (LNG) project,[5] and in 2023, Italy's Eni signed a long term agreement with Qatar for the purchase of natural gas.[6]

While Western countries are eager to reap the benefits of economic and military cooperation with Qatar, Qatar's human rights violations, and support for terrorism and radical Islamist movements, have drawn criticism. In November 2022, the European Parliament passed a resolution deploring the deaths of thousands of migrant workers in Qatar in the lead-up to the World Cup, due to unsafe working conditions. The resolution also criticizes, "the abuse perpetrated by the country's authorities on the LGBTQ+ community. This includes the use of domestic laws that allow for LGBTQ+ persons to be provisionally detained without charge or trial for up to six months." [7] Qatar is currently embroiled in a EU corruption and bribery scandal dubbed 'Qatargate'.

Following Hamas' massacre of 1,400 Israelis and kidnapping of over 220 children, women and men, the number of voices in Europe calling for a reexamination of economic deals with Qatar is growing. During the Qatari Emir's October 12, 2023 visit to Germany, the energy policy spokesperson of Germany's Free Democratic Party declared ""Future energy partnerships should only take place with partners who recognize Israel's right to exist and do not fight it."[8]

Qatar and Hamas

Qatar is one of the primary sponsors of the Hamas terrorist organization, providing the group with extensive logistical and financial support. It is also a main sponsor of other Muslim Brotherhood-affiliated organizations and political parties, including those that have threatened moderate governments in the region.

Qatar has hosted Hamas' headquarters and leaders in Doha since at least 2012. According to estimates, over the past decade, Qatar transferred over a billion and a half dollars to Gaza.[9] While some of that money went to humanitarian aid, the significant majority (by some estimates, close to 80%) ended up in the bank accounts of Hamas, its operatives and employees, enabling Hamas to maintain its control of the Gaza Strip.[10] On October 18, 2023, the US Department of the Treasury's Office of Foreign Assets Control imposed sanctions on a longtime Hamas operative based in Qatar with close ties to Iran, who "was involved in the transfer of tens of millions of dollars to Hamas, including Hamas's military wing,

the Izz al-Din al-Qassim Brigades."[11]

Another way in which Qatar provides substantial support to Hamas is through its Al Jazeera television network. Al Jazeera provides a central platform for Hamas leaders, while spreading Hamas propaganda and inciting against Israel.

True to form, while Hamas' October 7 rampage of murder, kidnapping and rape against Israeli civilians was still ongoing, the Qatari Foreign Ministry issued a statement saying that Israel alone was responsible for the violence.[12] The Qatari media likewise expressed its support for the attacks.[13]

Israel's War Against Hamas

Until the current war, Qatar's transfer of funds to Hamas-controlled Gaza was viewed by Israel as largely serving its interest of maintaining quite in the Strip. The hope was that these funds would help preserve calm on the ground, and delay the next rounding of fighting for as long as possible.

Hamas' attack has uprooted this paradigm. Israel has now committed itself to destroying, "the military and governing capabilities of Hamas" and eliminating or capturing the Hamas' top leadership.[14] Simultaneously, Israel is also focused on efforts to return the approximately 220 babies, children, women and men being held hostage by Hamas and Palestinian Islamic Jihad. Qatar, together with Egypt, has played an active role on the issue of the hostages, winning praise from the US.[15]

Recommendations:

Following Hamas' massacre, the West cannot continue with a 'business as usual' approach towards Qatar's support for a terrorist organization more barbaric than ISIS. The US and Europe should put all necessary pressure on Qatar in order that Qatar uses all of its leverage over Hamas to bring about the immediate release of the hostages. As a first step, Qatar should demand that the Red Cross be allowed to visit and provide medical treatment to all of the hostages.

This pressure on Qatar should include reexamining and potentially downgrading or cancelling economic ties and agreements, and placing economic sanctions on all Qatari entities involved in the transfer of funds to Hamas. If Qatar fails to act decisively to free the hostages and end support for Hamas, the US should

examine whether Qatar's designation as a major ally is justified. European nations should identify alternatives to the purchase of Qatari natural gas.

- The US should explore the possibility of relocating military instillations and assets from Qatar to other Middle East locations, including Saudi Arabia. Relocating assets to Saudi Arabia would help provide the security guarantees Saudi Arabia seeks in exchange for establishing relations with Israel, would help defend it from Iran, and would serve to counter inroads being made by China.
- Additional countries which support Israel's right to defend itself, and which have extensive economic ties with Qatar, such as India, should participate in the efforts to apply pressure on Qatar as well.
- In the mid-term, all countries which recognize Hamas as a terrorist group should demand that Qatar end all forms of logistical and financial support for Hamas.
- Victims of Hamas terrorism should consider filing lawsuits in relevant jurisdictions against Qatari entities involved in providing material support to Hamas.
- Private sector actors, academics, athletes and civil society bodies should refuse to take part in events organized by Qatar, and should refuse Qatari sponsorships, until all the hostages have been freed and Qatar ends its support for Hamas.
- Israel should not allow Qatar to have a role in the post-war reconstruction of Gaza, unless Qatar demonstrably ends all support for Hamas.
- Similar steps should be explored with regards to other countries that both support Hamas and have extensive ties to the West, including Turkey, Algeria, Malaysia and Kuwait. Maximum pressure and sanctions should be applied to Iran for its ongoing support for Palestinian terror organizations.

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[3] https://home.treasury.gov/news/press-releases/jy1816

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[5] https://www.memri.org.il/cgi-webaxy/item?5918

[6] https://time.com/6322493/israel-hamas-ground-war-gaza-military/

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1 1] https://assets.publishing.service.gov.uk/media/652d52b66b6fbf0014b75759/qatar-trade-and-investment-factsheet-2023-10-19.pdf

1 2] https://totalenergies.com/media/news/press-releases/qatar-totalenergies-selected-qatarenergys-first-partner-north-field-south

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This time, Israel must topple

Hamas

written by Dr. Raphael BenLevi | 22.10.2023

Anyone observing the trends over the past year could have seen that Israel's deterrence was weakening on all fronts, both vis-à-vis Hamas and Palestinian terror, as well as Hezbollah and Iran.

Hamas has attacked before, but this time, the strategy that has guided Israel in its response to the terror organization since its takeover of Gaza in 2006 had entirely broken down. In response to previous rounds of Hamas rockets attacks, Israel's goal has been to restore a reasonable level of deterrence against such attacks by exacting a moderate price from Hamas. It did this by destroying parts of its rocket production infrastructure and some of the buildings that housed parts of Hamas's political and military establishment.

The success of this strategy was measured in terms of the amount of time without another period of extended rocket fire, which was on average two to four years. Under this strategy, Hamas should remain in power, as it appeared that the alternatives were worse.

If Israel toppled the Hamas regime, the thinking went, then what would appear in its stead? Likely the Islamic Jihad, or ISIS, and therefore we were better off deterring Hamas and focusing our attention on our bigger threats, like Hezbollah and Iran.

This strategic conception has had its merits over the past 18 years since Israel's withdrawal from Gaza.

Time for a new strategy

However, this weekend's attack has demonstrated that this strategy has broken down and that an alternative strategy must replace it.

Hamas has proven that, in truth, it is no different than ISIS. However, as opposed to the ISIS "Islamic state," which does not currently function as a state, the Hamas Islamic state actually maintains control over a significant portion of land and rules over two million people.

This past weekend has demonstrated that Israel cannot allow a brutal terrorist

state to continue to exist alongside it and no state should be expected to accept the existence of such an entity. The continued existence of Hamas has evolved from a tactical threat of sporadic rocket fire into a strategic threat whose continuation cannot be tolerated.

Therefore, the only acceptable result of the current war is the unconditional surrender of Hamas and the toppling of its regime. This must be Israel's goal, and this must be the goal of any moral nation around the world, all of whom should support and encourage Israel to attain it.

If the war ends with the Hamas Islamic State still intact, it will have grave implications that will certainly lead to a broader war in the Middle East in the near future. Hezbollah and Iran are closely watching Israel's next steps and if the results are anything less than decisive victory, then their conclusions will be clear, that now is the time to expand the war

Alternatively, if Israel adopts a new strategic conception and pursues unconditional surrender and the end of the Hamas Islamic State, it will have significant positive implications for the entire region. The most significant of which would be to encourage the negotiations with Saudi Arabia and the establishment of a strong Western-oriented, Israel and Gulf-Arab alliance against Iran.

Saudi Arabia is interested in strengthening relations with Israel for one primary reason, and that is that Israel is a strong country, willing to act forcefully against their common enemies. It is precisely against the backdrop of the progress of the negotiations with Saudi that Iran is looking to undermine them by encouraging this war, in the hopes that Israel will come out looking weak.

It is likely that the specific trigger for Hamas's actions was the progress on these negotiations, which would be a great strategic loss for Iran, its Shia proxies, and Sunni Islamists such as Hamas.

Even more broadly, a decisive Israel victory would be perceived by Russia and China as a sign that the West as a whole remains strong and not to be provoked, and vice versa.

Israel is perceived as the frontline of the West, and it is clear to China that Israel is supported and strategically aligned with the United States. If Israel falters, it

will be perceived as a weakness of the United States in general and its position in the Middle East. If it succeeds, it will project to the region and to the world that the US and its allies around the world remain strong.

Over 800 Israelis have been murdered, another over 2,200 wounded, and there are currently at least 100 Israelis being held hostage in Gaza as a result of the surprise terror attack. Per capita, that is about 10 times more murdered citizens than the US suffered on 9/11. Israel must not be tempted to manage a negotiation for the captives' release but rather must adopt an unwavering policy of non-negotiation with terrorists.

If the goal is to topple the Hamas Islamic State, then there is no legitimate entity with which to negotiate. Hopefully, Israel will be able to extract the hostages alive. But if it sacrifices the goal of decisive victory for their safe release, it will clearly result in incentivizing such incursions and would therefore be immoral and a grave strategic mistake.

Will adopting a policy of unconditional surrender and ending the regime bring Hezbollah into the war? Under the previous strategic conception, Israel sought to avoid a large-scale operation in Gaza in order not to encourage Hezbollah to open a second front. But this calculation is no longer valid.

The threat of Hezbollah unleashing its arsenal of missiles against Israel is not a question of if but when. Hezbollah has built up its terror arsenal for the sole purpose of attacking Israel at a time of its choosing.

A weak Israeli response will certainly encourage Hezbollah to embark on a similar surprise attack on Israel, including both missile attacks and infiltration to Israel communities along the border, but on a much greater scale than Hamas was capable of. Therefore, it may even be preferable for Israel to take the initiative to disarm Hezbollah now, on Israel's schedule, rather than wait to be dragged into another war in the near future at a time of Hezbollah's preference.

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