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/