



שורת הדין (ע"ר)

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Oct. 24, 2023

Ms. Mirjana Spoljaric Egger
President of the International Committee of the Red Cross
International Committee of the Red Cross
Avenue de la Paix 19
1202 Geneva
Switzerland

Subject: Urgent Appeal for Assistance in the Care for and Rescue of Israeli and International Hostages in Gaza

Dear Ms. Spoljaric Egger:

I am an Israeli attorney and the president of the Shurat HaDin - Israel Law Center based in Tel Aviv. Our organization has dedicated the last 20 years to combating the scourge of international terrorism via the court system in jurisdictions worldwide. I write on my own behalf, and on behalf of XXX attorneys from around the world who have signed onto this letter.

On October 7, 2023, thousands of Hamas armed terrorists invaded the state of Israel, raided peaceful Israeli villages and cities, and attacked military bases. As part of this illegal invasion these terrorists kidnapped more than 200 men, women, and children. Amongst the kidnapped are infants and elderly people. These innocent civilians were dragged to an uncertain fate in Gaza, where they have since been held incommunicado.

The kidnappings occurred alongside Hamas' brutal massacre of more than 1,400 men, women, and children. They were murdered in unimaginable, horrific ways: babies were burned alive, children and men decapitated, women raped, villages pillaged, as Hamas perpetrated thousands of other unthinkable atrocities.

This letter focuses on the living. The barbaric act of taking hostages is an undebatable violation of international humanitarian law and clearly constitutes war crimes. The Geneva Conventions and its protocols prohibit hostage-taking in Article 34 to the Fourth Convention, common Article 3 to the Geneva Conventions; Article 75(2c) to the Additional Protocol I, Article 4(2c) to Additional Protocol II and is repeated in numerous UN resolutions. The customary international law prohibition on hostage-taking applies both to international armed conflicts and to non-international armed conflicts. It thus applies to the armed conflict between Israel and Hamas. It is defined as a war crime, including in article 8(2)(c)(iii) to the Rome Statute, reflecting customary international law. The laws pertaining to prisoners of war do not apply to terrorist organizations. Thus, Hamas holding both civilian and soldier hostages constitutes a war crime.

If the barbarity of the murders accompanying the kidnappings is not evidence enough to fear for the hostages' fate, accumulated evidence and information elicited from Hamas terrorists arrested during the attack magnify our grave concern for the hostages' safety and well-being. We fear that women and children are being forced to serve as sex slaves for their captors and that the hostages are being held in inhumane conditions and are subject to torture, humiliation, and violence. There is great concern that Hamas is using and will use the hostages as human shields, just as it treats its own civilians, especially considering a Hamas spokesperson's claim that 22 hostages have been killed in Israeli bombings against Hamas targets. It is also very likely that many of them, taken after being shot and brutally tortured by their Hamas captors, have died for lack of care.

The ICRC Is Not Fulfilling its Obligations.

Since the outbreak of the events of Oct. 7th, the ICRC has not fulfilled its duties to *demand* to see the hostages, to *ensure* their humanitarian care, and to *arrange* for their immediate release. Although we appreciate the ICRC's limited involvement in the transfer of Judith and Natalie Raanan, there remains over 200 hostages held illegally by Hamas. The ICRC cannot repeat its failure to assist and protect Jews in peril today as it did during the Holocaust. The following is a quote from your own website:

"27 January is the anniversary of the liberation of Auschwitz in 1945. For the International Committee of the Red Cross (ICRC), it also marks a failure, the failure to help and protect the millions of people who were exterminated in the death camps. The ICRC has publicly expressed its

regret regarding its impotence and the mistakes it made in dealing with Nazi persecution and genocide."¹

The mistakes that the ICRC admits having made during the Holocaust alarmingly resemble the mistakes that you are making today: in your desperate attempt to appear "impartial" you do the minimum necessary. You issue hollow statements, serving a policy of going through the motions. You are passive. You are "neutral". You choose not to "risk" your ties with the Nazi-like terror organization, and other anti-Israel and antisemitic entities, for the sake of innocent Jews.

Parallels between the Holocaust and the present situation are undeniable. Who would have suspected that the world would watch in real-time a replay of the iconic Holocaust photograph of a bewildered, terrified little boy, all alone, tormented by his captors. Equally unfathomable is yet another terrifying irony: Hamas' seizing Holocaust survivors who thought that "never again" would Jews be slaughtered or carted off to face an uncertain fate at the hands of a barbaric captor because they are Jews. The ICRC must act. Indeed, the 1949 Geneva convention names the ICRC as the international organization charged with this task. This is your duty.

Notably, the ICRC has had many successes in facilitating the release of missing persons and hostages, including more than 1,800 people held by non-state armed groups in Colombia and the handover of fallen fighters in Afghanistan. In the last decade the organization helped secure the release of over 100 young girls held hostage for years in Chibok, Nigeria; helped to repatriate over 1,000 detainees from the Yemen conflict and conducted successful search and retrieval operations for mortal remains in Azerbaijan in 2021.

We expect that your Regional Director, Mr. Fabrizio Carboni, who boasts of his "sustained and daily contacts with Hamas" will use every resource to demand to see the hostages, to facilitate their immediate release and, at the very least, to enforce his demand that "all parties who have influence on this case, and especially Hamas to treat [the hostages] humanely, respect their dignity, allow them to contact their family and inform them of their situation." A vital step would be to provide for the medical needs of the hostages without delay using information transmitted quite some time ago to the ICRC by their families.

This appeal is not about the ICRC taking sides in the Israel-Hamas conflict, but rather to activate the principles that exemplify the ICRC's credo as a "Movement, born of a desire to bring assistance **without discrimination** to the wounded on the battlefield....to prevent and alleviate human suffering wherever it may be found [and] to protect life and health to ensure respect for the human being." [Emphasis added.] Moreover, it's an appeal to establish balance between the ICRC's one-sided critique of

¹ <https://www.icrc.org/en/document/icrc-wwii-holocaust>

Israel during multiple armed conflicts and how it treats Israeli victims of Hamas' real, self-documented war crimes. For example, during past hostilities, ICRC officials blamed Israel's blockade as the cause of dwindling medical supplies in Gaza hospitals. In yet another instance, it falsely accused the IDF of using white phosphorus on civilians in Gaza. The ICRC was forced to rescind these spurious claims, but once published, they had significant consequences.

Biased treatment of Israel generates global outrage against the Jewish state and sparks antisemitic attacks around the world. Via Amnesty International, Human Rights Watch and other organizations, these accusations spur Palestinian groups to call for IDF commanders and officers to be tried for war crimes. The sad irony is that Israel goes to extraordinary, unprecedented lengths to preserve the lives of Gazan civilians while Hamas forces them to be human shields and cannon fodder. If the ICRC takes prompt, assertive action to save all of the hostages, it will restore international confidence that the ICRC is indeed a "neutral intermediary." Conversely, if the ICRC continues its present course, then it will be known as an organization (1) that is easily cowed by Hamas' autocratic regime; and (2) that dedicates resources to condemning the victims – those in Israel, and Jews worldwide.

We maintain that the Geneva Conventions require the ICRC to immediately take decisive actions to secure the release of the hostages. And until their release we demand that you take all necessary actions to ensure their safety and well-being, including but not limited to the following:

1. Conduct a complete census of all hostages taken by Hamas and any of its affiliates including name, age, home, and present health status.
2. Facilitate any arrangements to release hostages and transport them to safety.
3. Compile a list of daily medication needed by those in captivity.
4. Distribute those medications as provided to the ICRC by Israeli authorities or any reputable source.
5. Inspect any locations where a hostage is being detained to ensure humane conditions and treatment.
6. Assure that any injured hostage receives appropriate medical care.
7. Ensure that there are adequate provisions for hostages.
8. Distribute any relief packages sent to the hostages.
9. Provide psychological support.
10. Visit the hostages on a regular basis to monitor and facilitate their well-being.

At desperate times like these, the ICRC must repair its reputation. That reputation and its charitable status could well be jeopardized in a world that is watching how the ICRC responds to Hamas' outrageous war crimes.

Shurat HaDin urges immediate action, as any hesitation could be fatal and will most certainly cause suffering. As the great sage Hillel taught, "If not now, when?"

Yours Sincerely,

A handwritten signature in blue ink that reads "Nitsana Darshan-Leitner". The signature is written in a cursive style and is set against a light green rectangular background.

Nitsana Darshan-Leitner, Esq.

Shurat HaDin-Israel Law Center, President

The following attorneys from around the world consent to their names being listed and join in this demand for action: