

In-House Counsel

Hostage-taking must never be rewarded | Sergio R. Karas

By **Sergio R. Karas**

Sergio R. Karas

(October 25, 2023, 2:49 PM EDT) -- On Oct. 7, 2023, Hamas terrorists invaded Israel and brutally murdered, raped and tortured men, women and children and broadcasted their savagery on social media. In addition, they took over 200 hostages which they are now holding in Gaza terror tunnels to be used for propaganda purposes and as human shields. They threatened to kill hostages if Israel exercised its right to self-defence to root out Hamas. They may also use them to obtain concessions from the international community notwithstanding the barbarism they have displayed.

To delay the Israeli response and to sway world public opinion, they recently released a few elderly, sick hostages to appear less brutal. Hamas' political leadership resides in luxury hotels in Qatar, enjoying the largesse of their Iranian paymasters. Hamas has been designated a terrorist organization by the government of Canada and many others.

Hostage-taking is a serious crime under international law, and several international treaties and conventions specifically address this issue. Here are some of them:

International Convention Against the Taking of Hostages (1979): This convention, adopted by the United Nations, is the primary international treaty dealing with hostage-taking. It defines the offence of hostage-taking as the seizure or detention of a person with the intent to compel a third party, such as a government or international organization, to do or refrain from doing something as a condition for the release of the hostage. The convention requires that parties to the treaty make hostage-taking a criminal offence under their domestic laws and co-operate to prevent and prosecute this crime.

The Geneva Conventions (1949): The Fourth Geneva Convention, which relates to the protection of civilians during times of armed conflict, contains provisions related to hostage-taking. It prohibits the taking of hostages and the use of civilians as hostages during armed conflicts. These conventions are considered customary international law and are binding on all states, even if they are not party to the specific conventions.

The Rome Statute of the International Criminal Court (ICC): The Rome Statute established the ICC and includes hostage-taking as a war crime under the court's jurisdiction. The ICC can prosecute individuals for hostage-taking when it is committed in the context of an international armed conflict.

Customary international law: The prohibition of hostage-taking is considered customary international law, which means that it is binding on all states, whether or not they are parties to specific treaties. Customary international law reflects widely accepted state practices and norms. Hostage-taking is generally condemned by the international community.

UN Security Council resolutions: The United Nations Security Council has passed numerous resolutions condemning hostage-taking, especially in the context of international terrorism. These resolutions call on all states to co-operate in combating this crime and to prevent the payment of

ransoms to hostage-takers, as doing so can encourage further acts of hostage-taking.

Hostage-taking is a grave violation of human rights and is considered a criminal act under both international and domestic laws. States and international organizations work together to combat and prevent hostage-taking, and individuals who engage in this crime can be prosecuted and held accountable for their actions. However, Hamas is not a state actor. It is a terrorist organization funded by Iran. So how can it be held accountable? The answer lies with Iran and Qatar.

In his article "Fifty Years after Hostage Taking Went Global, We're Still Learning Lessons," published in 2022 by *The Hill* and reprinted by the Center for Strategic and International Studies, former special assistant to the president and senior director for counterterrorism at the U.S. National Security Council, Christopher P. Costa, aptly notes that "If terrorists learn that hostage taking is unprofitable, they will cease taking hostages, or so the theory goes. But for states like Iran, Russia, and China to name a few, hybridizing hostage taking as part of its statecraft is a profitable insurance policy for malign purposes and inexplicably reflects a new reality of so-called hostage diplomacy." He notes further that "Whatever way terrorism scholars cast the current wave of terrorism, there remains a persistent undertow of hostage taking by terrorists. And now hostage taking has become the connective tissue to the organs of malign nation states, meaning wrongfully detained civilians are pawns on the world stage."

Hamas has routinely targeted Israeli civilian residents in Southern Israel communities and taken them as hostages to obtain the release of Palestinian terrorists held in Israeli jails. They have now taken this barbaric practice to a new and unprecedented level.

Iran should be held responsible for the hostage-taking. Iran is the financier and enabler of Hamas, and there is now significant intelligence indicating that Iran greenlighted the invasion. Sanctions against Iran must be increased dramatically; it should not be allowed to sell its oil to China or to anyone, and it should be expelled from all international organizations. Canada should stop issuing visas to Iranian citizens in most cases, with the rare exceptions of well-known human rights activists inside Iran.

Canada and the international community must demand that Qatar surrender immediately the entire Hamas leadership residing comfortably in their luxury hotels to the International Criminal Court to be judged and pay for their crimes against civilians, barbarism and hostage-taking, or face sanctions too. Canada should not be passive and equivocal in its stance to root out terrorism and hostage-taking.

Sergio R. Karas, principal of Karas Immigration Law Professional Corporation, is a certified specialist in Canadian citizenship and immigration law by the Law Society of Ontario. He is co-chair of the ABA International Law Section Immigration and Naturalization Committee, past chair of the Ontario Bar Association Citizenship and Immigration Section, past chair of the International Bar Association Immigration and Nationality Committee and a fellow of the American Bar Foundation. He can be reached at karas@karas.ca.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the author's firm, its clients, LexisNexis Canada, Law360 Canada, or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

Interested in writing for us? To learn more about how you can add your voice to Law360 Canada, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437-828-6772.