

Israel – Hamas 2024 Symposium – Why Yahya Sinwar Was Not Hors de Combat

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On or about October 17, 2024, members of the Israel Defense Force (IDF) killed [Yahya Sinwar](#), the political leader of [Hamas](#) and a suspected [mastermind](#) behind the October 7, 2023 [attack](#) that viciously murdered 1,200 Israeli men, women, and children. Among those welcoming news of his death were President Biden, who [characterized](#) it as “a good day for Israel, for the United States, and for the world.” Some have suggested his death, which President Biden further likened in significance to the 2011 killing of Osama bin Laden, could pave the way for ending the current conflict and establishing new leadership in Gaza.

Long a prominent figure in the Palestinian militant group, Yahya Sinwar increasingly emerged as one of the organization’s most influential leaders in recent years. Born in 1962 in the Khan Younis refugee camp in Gaza, Sinwar’s [involvement](#) with Hamas began during the group’s formative years in the late 1980s. He gained notoriety for his [role](#) in Hamas’s internal security organization, the al-Majd, a group that worked to identify and punish Palestinian collaborators with Israel. Following his release from prison in 2011 as part of a prisoner

exchange, Sinwar further ascended the ranks of Hamas, eventually becoming its Gaza bureau chief in 2017 and, following the killing of Ismail Haniyeh by the IDF in July, the head of its Politburo.

The circumstances surrounding Sinwar's final moments have ignited a debate about whether he was *hors de combat*, or immune from direct attack due to his wounds under the law of armed conflict. The engagement that led to his death originated in the Tal al-Sultan neighborhood of the southern Gaza city of Rafah, where an IDF unit was patrolling. According to multiple reports, members of the IDF patrol spotted at least three enemy fighters moving furtively between buildings, leading to an eventual gunfight (e.g., here, here, and here). The exchange, which included volleys from an IDF tank, left at least two Hamas fighters dead and dislodged another, who fled into a nearby building.

After the tank fired a shell at the building, the eluding fighter allegedly threw two grenades at approaching IDF forces. The IDF patrol then flew a small drone into the damaged building and located an injured man—later identified as Sinwar—sitting alone on the second floor perched in an armchair. The drone footage depicts a visible injury to Sinwar's right arm, his hand apparently missing. Moments later, he notices the drone and futilely hurls a stick or similar object at it.

This is the last publicly released footage of him alive. It is unclear how he was killed. According to *The Times of Israel*, the IDF killed him by firing a tank shell at the building. A *New York Times* account, on the other hand, claims he was dispatched by a sniper's bullet to the head. An autopsy, which detailed a makeshift tourniquet of electoral cord tied around his arm, and images allegedly showing Sinwar's body in the presence of IDF soldiers appear to confirm this latter account. One photo shows a grenade visible in his lap. The troops also discovered an assortment of other weapons nearby.

As noted, Sinwar's injuries raise the question of whether he was *hors de combat*. Immediately following the reports of his death, for example, observations on social media were mixed as to whether he qualified for that protection or not. The majority concluded—correctly, in our view—that he did not. Concerningly, however, analysis regarding *why* he was not varied, with some implying that his wounds were not “severe enough.” In those commentators' views, the nature of Sinwar's wounds, rather than his conduct, made him a valid military target.

Any suggestion that an injury must meet a particular threshold of severity before one can be considered *hors de combat* is, we believe, an inaccurate statement of the law. This post, therefore, seeks to clarify when the law of armed conflict prohibits an individual from being made the object of attack due to their wounds. Our aim is limited to eliminating confusion as to when the obligation attaches. We therefore do not address other related issues pertaining to *hors de combat* status due to injury, including whether attackers must take feasible

precautions to mitigate any incidental harm to qualifying individuals or whether such harm should be considered in an attacker's proportionality assessment. While both are subjects of significant debate (see e.g., [Meier](#)), they are beyond this post's narrow scope.

Was Sinwar a Lawful Target?

Although some may reasonably conclude otherwise, we believe Israel's ongoing conflict with Hamas is best characterized as a non-international armed conflict (NIAC). As such, the IDF could only lawfully target Sinwar while he was a member of an organized armed group (OAG) or for such time as he was directly participating in hostilities.

Considering Hamas's organization and Sinwar's relationship with its various subcomponents, whether he was a member of an OAG is a legal inquiry that is both complicated and fact-intensive (see e.g., Schmitt [here](#), [here](#), and [here](#)). Although we cannot rule out his targetability on that basis due to his relationship with Hamas's military wing, the al-Qassam Brigades, we need not wrestle with that issue here. There is little doubt that, as described above, Sinwar was directly participating in hostilities at the time of his death. Accordingly, he was a lawful target unless he was *hors de combat* due to capture, surrender, or injury. Although we concluded in a previous *Articles of War* [post](#) that, under certain circumstances, surrendering to a drone can be legally effective, it is evident from the drone footage that Sinwar was neither captured nor clearly signaling a genuine intent to surrender at the time. As we explain below, nor was he *hors de combat* due to his wounds.

***Hors de Combat* Status**

States have long observed law of armed conflict protections for those wounded on the battlefield. The 1863 Lieber Code, for instance, proscribed "intentionally inflict[ing] wounds on an enemy already wholly disabled, or kill[ing] such an enemy, or who orders or encourages soldiers to do so" ([art. 71](#)). The 1874 Brussels Declaration and the 1880 *Oxford Manual* similarly prohibited killing those "having no longer means of defense" ([art. 13\(c\)](#)) or who are "disabled" by their injuries ([art. 9\(b\)](#)). States later reaffirmed these protections in the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, [Article 23\(c\)](#) of which especially forbids "kill[ing] or wound[ing] an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion." The 1929 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field likewise provided that "[o]fficers and soldiers and other persons officially attached to the armed forces who are wounded or sick shall be respected and protected in all circumstances" ([art. 1](#)).

As these provisions show, there is widespread, if not universal, agreement that customary international law prohibits making those *hors de combat* by virtue of their wounds the object of direct attack (see International Committee of the Red Cross (ICRC) *Customary International Humanitarian Law (CIHL)* study, [rule 47](#)). This is true regardless of a conflict's

character. In NIACs like that between Israel and Hamas, for example, Common Article 3 to the 1949 Geneva Conventions requires that “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘*hors de combat*’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely.” Although “humane” treatment is undefined by the text, there is little question that in this context it includes immunity from direct attack (see ICRC, 2016 Commentary to Geneva Convention I, art. 3, para. 537; U.S. Department of Defense (DoD), Law of War Manual, § 5.9.1; see also Additional Protocol I (AP I), art. 41).

Accordingly, there is no debate that Israeli soldiers were prohibited from making Sinwar the object of attack and killing him if he was *hors de combat* due to his wounds at the time. Based on our understanding and assessment of the facts described in news reports and other media, and despite the observations of some to the contrary, we are unable to conclude that he was.

When is a Person *Hors de Combat* Due to Their Wounds?

In contrast to the question of *whether* a person who is *hors de combat* may be made the object of attack, the determination of *when* the protection attaches is more contentious. Common Article 3 does not define the term; nor do the 1949 Geneva Conventions more broadly (see ICRC, 2016 Commentary to Geneva Convention I, art. 3, para. 536). Article 41 of AP I, however, sets forth a commonly accepted definition that fairly captures the customary prohibition (see, e.g., ICRC, *CIHL* study, commentary to rule 47; DoD, Law of War Manual, §§ 5.9.1, 5.9.4). In relevant part, it states that “a person is ‘*hors de combat*’ if ... he has been rendered unconscious or is otherwise incapacitated by wound or sickness, and therefore is incapable of defending himself; provided that ... he abstains from any hostile acts and does not attempt to escape.”

The article’s formulation begs the question of what it means to be “incapacitated,” which neither the Protocol nor its 1987 Commentary by the ICRC further defines. Adopting a similar definition, the U.S. DoD Law of War Manual elaborates that “[i]n order to receive protection as *hors de combat*, the person must be *wholly disabled* from fighting” (§ 5.9.4, emphasis added). Regrettably, some observers have interpreted these terms to suggest that *hors de combat* status turns on the severity of the injury in question. Indeed, other *Articles of War* posts by military practitioners have highlighted the challenges that such language presents in interpreting and applying the prohibition (e.g., Reitz and Montazzoli). Their concerns remain timely, as the ambiguities they identified resemble some of the confusion pertaining to the rule’s interpretation that we witnessed on social media immediately following Sinwar’s death.

According to a severity-based approach, Sinwar could only have been *hors de combat* if the nature of his injuries were such that he was physically incapable of continuing to fight. This would be the case if, for example, he was rendered unconscious, substantially disabled, or in the throes of death. Some of those we observed on social media suggested that Sinwar was

not *hors de combat* on this basis alone, seemingly without regard to what he was *doing* at the time. Although we find a severity-based interpretation consistent with the ordinary meaning given to the term “incapacitated” (and, for that matter, “wholly disabled”), we struggle to reconcile it with AP I’s context and in light of its object and purpose (see Vienna Convention on the Law of Treaties, [art. 31](#)). Such a narrow construction skews the balance between military necessity and humanity that permeates the law of armed conflict’s rules. Moreover, we find it incompatible with our training and experience.

In our view, the decisive criterion in determining when a person is *hors de combat* is not the nature or severity of the wound received, but rather the individual’s *conduct* thereafter. The essence of the protection, in other words, is that one’s injury causes them to withdraw (and remain withdrawn) from the fight, that is, to abstain from any hostile acts. This is not to say that the severity of an injury is irrelevant. If a wound renders a person unconscious or otherwise physically incapable of engaging in hostilities, there is little doubt that they are *hors de combat*. In such cases, their abstention is in a sense involuntary. But short of physical incapability, one who voluntarily ceases committing hostile acts due to their wounds is likewise *hors de combat*. This is true regardless of their injury’s severity. After all, even those gravely or even mortally wounded are not *hors de combat* so long as they continue or resume fighting. Thus, if Sinwar remained a lawful target—as we conclude he was—it was not because of the nature or severity of his injuries. Rather, his behavior at the time confirmed he was not *hors de combat*.

The better interpretation of “incapacitated” as used in Article 41, and by extension, the *Law of War Manual*’s use of “wholly disabled,” therefore, is that they refer to a belligerent’s conduct, volitional or otherwise, not the severity of their injury. In so concluding, we find [Article 12](#) of Geneva Convention I (GC I)—which sets forth the cardinal protection in international armed conflicts (IACs) for those *hors de combat* due to wounds—and especially its commentaries, particularly instructive. Clarifying what “wounded and sick” means in the context of that Convention, Jean Pictet’s 1952 *Commentary* observed:

No attempt has ever been made in the Geneva Convention to define what is meant by a “wounded or sick” combatant; nor has there ever been any definition of the degree of severity of a wound or a sickness entitling the wounded or sick combatant to respect. That is as well; for any definition would necessarily be restrictive in character, and would thereby open the door to every kind of misinterpretation and abuse. The meaning of the words “wounded and sick” is a matter of common sense and good faith. They cover combatants who have fallen by reason of a wound or sickness of any kind, or who have ceased to fight and laid down their arms as a consequence of what they themselves think about their health. It is the fact of falling or laying down of arms which constitutes the claim to protection. It is only the soldier who is himself seeking to kill who may be killed. The abandonment of all aggressiveness should put an end to aggression (p. 136).

The ICRC's 2016 *Commentary* likewise rejects the contention that protections only inure to "those persons whose medical condition is of such severity that they are physically incapable of continuing to fight" (para. 1344). Although Article 12 only applies in IACs, and although Sinwar likely would not have qualified as a "protected person" under GC I in any event, we nonetheless understand these interpretations to accurately reflect the customary rule of when a person becomes *hors de combat*, generally, regardless of a conflict's character.

Challenges in Recognizing *Hors de Combat* Status

That we find a conduct-based interpretation more persuasive should not imply that it is likely to eliminate all practical difficulties in determining who is *hors de combat* on the battlefield. To the contrary, as the ICRC rightly cautions in its 2016 *Commentary*:

Under combat conditions, in the very moment that a person is injured, it may be extremely difficult to determine with any degree of certainty whether that person is wounded in the legal sense, and in particular whether he or she is refraining from any hostile act In the context of ongoing hostilities, a combatant's status may change within seconds from being a lawful target to being a protected person by reason of wounds. Therefore, the attacking force must be alert to a possible cessation of acts of hostility by an injured combatant and be prepared to suspend or cease an attack at any moment. The visible abandonment of all hostile acts by a wounded combatant must put an end to all hostile acts against that person (paras. 1348–49; see also U.S. DoD, *Law of War Manual*, § 5.9.4).

Nevertheless, these concerns differ neither in degree nor kind from those pertaining to narrower interpretations of the rule. In the final analysis, *any* determination of whether someone is *hors de combat* must be reasonable and made in good faith based on the information available at the time. It is often a tall order, easier said than done. But in our view, it is the ordinary and expected task of soldiers to recognize hostile acts and other threatening conduct in real time on the battlefield; it is not to instantaneously assess the medical severity of enemy wounds.

Conclusion

There is no dispute surrounding Sinwar's injuries. Under the circumstances, however, the degree of his injury is a red herring. Lest there be any doubt, Sinwar's status turned on his *conduct*. Based on our review of news reports and the drone's video footage, we strain to find any persuasive evidence that he had ceased to fight or intended to do so. Instead, he exchanged gunfire with IDF forces on the street and, upon fleeing to a hasty redoubt nearby, defended his position with grenades. Video footage then clearly shows him defiantly throwing a stick or similar object at the drone sent to reconnoiter the building, presumably to disable the drone to further evade threat or capture. Even if it was for some other purpose, and notwithstanding his visibly weakened state, he was manifestly not refraining from hostilities. As such, he was not *hors de combat* by any standard.

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