

# Israel-Hamas 2025 Symposium – Releasing Civilian Hostages and Returning Hostage Remains

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by [Michael N. Schmitt](#) | Apr 18, 2025



On 7 October 2023, Hamas fighters took 251 hostages during its infamous attack on Israel. Although many were Israel Defense Force (IDF) soldiers, the vast majority were civilians, including children. Since that time, some of the hostages have been released, while the bodies of others who died while in captivity have been returned. Fifty-eight of these hostages remain in Hamas’s hands as of 16 April; many of them are believed to have died.

Obviously, the taking of hostages is a violation of the law of armed conflict (LOAC) and a war crime in both international and non-international armed conflict. So, too, is their mistreatment while in captivity (see discussion [here](#)). However, legal questions have arisen regarding the manner in which Hamas has been releasing hostages and returning the remains of those who have died while in their hands. Typically, the process involves deliberately staged mass spectacles featuring large crowds, public statements by Hamas officials, the heavy presence of Hamas fighters, chanting, the extensive display of Hamas symbols, and widespread broadcasting of the spectacles, including on social media. Videos of the events are nothing short of shocking (see, e.g., [here](#), [here](#), [here](#), and [here](#)).

For the sake of illustration, consider two of the incidents. On 20 February, Hamas returned the bodies of four hostages, including two children aged four and nine months. The attendant ceremony included loud music, a display of the coffins on a podium with images from family photos that had been used in Israel for hostage posters, celebratory chants, armed escorts, and statements that characterized the return as an Israeli “capitulation.” Earlier that month, Hamas released three civilian hostages as part of ceasefire negotiations in exchange for 183 Palestinian prisoners. This was done in two theatrical ceremonies with huge crowds. The frail and gaunt hostages were forced to speak at the ceremony, understandably sparking outrage. These are not isolated incidents; they are the norm.

The result has been widespread condemnation as a matter of common decency and of law. Notably, a group of Special Rapporteurs appointed by the UN Human Rights Council has denounced such behavior. They asserted that “[i]nternational humanitarian law prohibits ‘outrages upon personal dignity, in particular humiliating and degrading treatment.’ Parading hostages as trophies of war, in a propaganda spectacle, clearly violates this rule. It is also distressing to their families.”

The Special Rapporteurs pointed in particular to the fact that some of the hostages were coerced into holding certificates on stage and had to engage in interviews on Hamas television, testifying to good treatment beneath political banners and surrounded by armed militants. They also highlighted a release that involved “an intimidating scene of a young female hostage shoved by a crowd” and another in which the hostages appeared malnourished, “suggest[ing] serious mistreatment.”

Brigadier Generals Shane Reeves and Dave Wallace have authored an earlier *Articles of War* post on the LOAC governing the public display of prisoners of war, using North Korean soldiers captured by Ukraine as their case study. In this post, I build upon their work by examining the LOAC rules relevant to the way Hamas has released *civilian* hostages and returned *civilian* remains. Because views on the classification of the conflict between Israel and organized armed groups in Gaza remain divided, I survey the law applicable in both international and non-international armed conflict.

Before turning to that law, it must be acknowledged that Israel has itself been criticized for alleged “mistreatment and abuses of Palestinian detainees.” Indeed, the Special Rapporteurs cited above did so in their condemnation of Hamas’s action. However, any such misconduct on the part of Israel would have no bearing on the legal character of Hamas’s actions, for LOAC violations by one side in an armed conflict do not justify violations by its adversary. The only exception is the limited case of reprisals, which would not apply to Hamas’s conduct (see my discussion of reprisals here).

## **Release of the Hostages**

A general principle of LOAC is that “inhumane treatment” of civilians is prohibited. Although there is no formal definition of the term, the International Criminal Tribunal for the former Yugoslavia (ICTY) has described such treatment as “an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity” (*Čelebići*, para. 543).

The key treaty law protection civilians enjoy against inhumane treatment lies in Common Article 3 of Geneva Convention IV, which prohibits, “at any time and in any place whatsoever,” “outrages upon personal dignity, in particular humiliating and degrading treatment,” against “persons taking no active part in hostilities.” It merits note that the article, which was initially intended to address non-international armed conflict, has been interpreted by international tribunals as equally applicable during international armed conflict (see, e.g., *Tadić*, ICTY Appeals Chamber, para. 94). Indeed, in its *Paramilitary Activities* judgment, the International Court of Justice labeled Common Article 3 a “minimum yardstick” applicable in both forms of conflict (para. 218). Thus, whether the conflict between Israel and Hamas is international or non-international, the civilian hostages enjoy Common Article 3’s protection.

Importantly, this and the other key elements of the 1949 Geneva Conventions have long been recognized as reflecting customary international law. Indeed, the International Court of Justice labeled them an “intransgressible principle of international law” in its 1996 *Nuclear Weapons* Advisory Opinion (para. 79). This is also the position taken by the International Committee of the Red Cross (ICRC) in Rule 87 of its *Customary International Humanitarian Law* (CIHL) study: “Civilians and persons rendered *hors de combat* [which would include captured IDF soldiers] must be treated humanely.” The study observes that “the requirement of humane treatment is an overarching concept” informed by the specific LOAC rules and human rights law. Importantly, it also cautions that the “notion develops over time under the influences of changes in society,” a point that bears on such practices as recording the releases and returns and making them publicly available over technologies that did not exist in 1949.

The ICRC has also characterized the prohibition on inhumane treatment as customary in nature, noting in Rule 90 that “[t]orture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited” in both international and non-international armed conflict. To explain the meaning of “outrages upon personal dignity,” the rule’s commentary references the International Criminal Court’s Elements of Crimes. There, an outrage upon human dignity is an act in which “[t]he perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons” in situations in which “[t]he severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity” (see, e.g., art. 8(2)(c)(ii)). In *Kunarac*, the ICTY Appeals Chamber came to a similar conclusion, finding that the term referred to “any act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity” (para.

164). The forced participation of frail hostages in the Hamas ceremonies, their compelled public statements under duress, and their exposure to public ridicule and intimidation constitute outrages upon the dignity of the hostages by any measure.

Article 75 of the 1977 Additional Protocol I, which provides that “persons in the power of a Party to the conflict ... shall be treated humanely in all circumstances,” reaffirms the requirement of humane treatment. Applicable in international armed conflict, it expressly prohibits, *inter alia*, “outrages upon personal dignity, in particular humiliating and degrading treatment ... at any time and in any place whatsoever, whether committed by civilian or by military agents.”

Israel is not a party to the instrument. Still, the provision is widely deemed reflective of customary law, a position the United States, also a non-party, has taken in its Department of Defense (DoD) Law of War Manual (§ 8.1.4.2). A comparable provision is found in Additional Protocol II, which applies to certain non-international armed conflicts for parties to the Protocol (art. 4), and that can also be fairly characterized as reflecting customary law. Again, the way Hamas conducted the releases self-evidently falls within the four corners of this prohibition, for there is no question that it subjected the hostages to humiliation and degradation.

Those who are “protected persons” under Geneva Convention IV also benefit from the prohibition of inhumane treatment found in Article 27 of the 1949 Geneva Convention IV:

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

As noted, there is disagreement about whether the conflict is international or non-international in character, thereby complicating matters because Article 27 applies only during the former. Moreover, it is not clear that the civilian hostages would qualify as “protected persons” even if the conflict is international, for nationals of an “Occupying Power” in occupied territory are not “protected persons” (art. 4, GC III, and a commentary thereon). Thus, the highly contentious issue of whether Israel was in occupation of Gaza at the time of the releases and returns further complicates the question of the rule’s applicability. Nevertheless, assuming for the sake of discussion that the article does not apply directly to the releases in question, the reference to “public curiosity” would still be instructive in that it helps understand the customary international law prohibition on inhumane treatment of civilians.

Unfortunately, a 1958 Commentary on the article does not address the meaning of “public curiosity.” However, the 2020 ICRC Commentary to Article 13 of Geneva Convention III does so in the context of prisoners of war and can be applied analogously to situations in which

others are subjected to public curiosity. It explains that “exposure to public curiosity can take many forms,” offering the example of “disclosure of photographic and video images . . . , irrespective of which public communication channel is used, including the internet.” It notes that “[a]lthough this is seemingly different from being marched through a hostile crowd, such disclosure could still be humiliating” (para. 1624). It also gives the example of “a crowd chanting offensive slogans outside a prisoner-of-war camp or at the vehicle they are being transported in” (para. 1623).

Applying this understanding to the case of civilians, the explicit display of hostages by Hamas in staged public events featuring coercive participation, exposure to intimidating crowds, chanting, and extensive broadcasting are unquestionably examples of public curiosity. As such, they amount to inhumane treatment in violation of customary law during both international and non-international armed conflict and, perhaps, Article 27 of Geneva Convention IV during international armed conflict.

The United States has repeatedly confirmed the prohibition of inhumane and other ill-treatment of civilians. For instance, the DoD *Law of War Manual* states, “Detainees shall in all circumstances be treated humanely and protected against any cruel, inhuman, or degrading treatment” (§ 8.2). In particular, they “must be protected against insults and public curiosity. For example, displaying detainees publicly with the purpose of exposing them to ridicule and humiliation is prohibited” (§ 8.2.2.2). A footnote to the provision cites the *Chairman’s Commentary to Principles and Guidelines of the Copenhagen Process on the Handling of Detainees*. In commenting on the *Principles and Guidelines’* requirement that “[a]ll persons detained or whose liberty is being restricted will in all circumstances be treated humanely and with respect for their dignity,” the Chairman observed, “humane treatment implies that detainees will be protected from insults and public curiosity.” Consistent with that obligation, the DoD’s *Detainee Program Directive* bans subjecting any detainee to “public curiosity” (para. 3.4.b). The British *Law of Armed Conflict Manual* likewise emphasizes that protected persons “must be humanely treated and protected against all acts or threats of . . . public curiosity” (para. 9.21).

Those engaging in such conduct or exercising command responsibility over it (superior responsibility for civilians) are perpetrating a war crime. For instance, the Rome Statute criminalizes “committing outrages upon personal dignity, in particular, humiliating and degrading treatment” in both international and non-international armed conflict for States party (arts. 8(2)(b)(xxi) and 8(2)(c)(ii)). Although Israel is not a party to the Statute, the International Criminal Court’s Prosecutor has (very controversially) opened investigations and issued arrest warrants concerning the conduct of both sides in the conflict (see here and here). Assuming solely for the sake of analysis that the Court enjoys jurisdiction, the release spectacles would plainly satisfy the elements set forth above.

But even if the International Criminal Court does not enjoy jurisdiction, most offenses set forth in its Statute reflect customary international law war crimes subject to universal jurisdiction; inhumane treatment would undoubtedly fall into this category. Thus, any State may exercise jurisdiction over the offense, regardless of nationality or where the crime was committed.

Finally, inhuman treatment is a grave breach of Geneva Convention IV (art. 147). If Article 27 of the instrument applies, then the conduct would amount to a war crime of particular significance during international armed conflict, one that obligates all States to search for and prosecute those responsible and that is subject to universal jurisdiction. Beyond that possibility, the mere characterization of its violation as a grave breach signals the seriousness of inhumane conduct in international criminal law.

### **Return of the Dead**

Under LOAC, dead civilians must be treated with solemnity and respect. Although Geneva Convention IV does not explicitly deal with the repatriation of bodies, Article 16 requires that the “killed” be protected against ill-treatment. A Commentary on the article explains, “Even human remains must be collected with the utmost care.” Further, Article 130 provides that they shall be “honourably buried,” sets forth criteria for the respectful burial, and requires the ashes of those cremated to be preserved for return upon request by the next of kin. In non-international armed conflicts to which the instrument applies, Additional Protocol II, Article 8, similarly prohibits despoiling the dead and requires their “decent” burial.

Article 34 of Additional Protocol I builds on the Geneva Convention IV obligations for parties to the instrument. It requires remains to “be respected” and obligates parties to “facilitate the return of the remains of the deceased ... to the home country upon its request or, unless that country objects, upon the request of the next of kin.” Application of the provision is complicated by the question of the purported occupation of Gaza, an issue addressed above. But as a Commentary to Article 34 observes, “under Article 75 [discussed above] ... it is clear that ... humanitarian treatment implies a respect for their remains” (para. 1299). Assuming the U.S. position on the customary status of Article 75 is correct, which I believe it is, the hostage remains would enjoy a right of respect even if Israel is in occupation of Gaza.

As with treaty obligations bearing on the release of civilians, those requiring respect for civilian remains are fairly characterized as customary in character during both international and non-international armed conflict. This is the position of the ICRC, which has proffered a series of rules on the dead in its CIHL study. For instance, Rule 113 forbids despoiling remains, Rule 114 requires parties to “endeavor to facilitate the return of the remains of the deceased,” and Rule 115 requires their “disposal ... in a respectful manner.” According to the ICRC, all three apply in international and non-international armed conflict. While there is no rule on the manner of repatriation, the underlying principle is straightforward: parties to a conflict shoulder a broad obligation to respect remains.

With respect to State guidance to their armed forces, the DoD Law of War Manual provides that civilian “internees” who die must be “honorably buried” (§ 10.34.3). And, albeit in the context of enemy military dead, it emphasizes that “[t]he respectful treatment of the dead is one of the oldest rules in the law of war” (§ 7.7.1). The British Law of Armed Conflict Manual is to the same effect, emphasizing the prohibition of “exposure as a curiosity” (para. 7.35). It is hard to imagine a convincing argument that the civilian remains of hostages would not be entitled to the same respect.

Additionally, in my estimation, the LOAC rules cited above concerning the humane treatment of persons in international and non-international armed conflict can reasonably be interpreted to encompass the dead. This is the position taken in the Rome Statute’s Elements of Crimes vis-à-vis outrages upon human dignity, which embodies humiliating, degrading, or otherwise violating the dignity of protected persons. A footnote makes it clear that the term “persons” in this context can include “dead persons” (footnote, art. 8(2)(c)(ii)).

The Commentary to Article 13 of Geneva Convention IV highlighted above, which requires humane treatment of prisoners of war and prohibits making them the object of public curiosity, supports this contention by analogy. It provides that “[t]he prohibition on exposing prisoners or their identifiable images to public curiosity, therefore, applies in the same fashion to their dead bodies” (para. 1629). I agree on the basis that such an interpretation is consistent with the overall object and purpose of both the specific rules and LOAC more generally (but see Watts, p. 168). In light of these obligations and prohibitions, it appears clear that the manner in which Hamas transferred the hostage bodies back to Israel was unlawful.

Considering the absence of a provision directly on point in international criminal law, as well as the more limited interpretive play in that body of law compared to LOAC, I am somewhat less confident that individual criminal liability would attach for the mistreatment of the remains. Nevertheless, a colorable argument, one with which I agree, can be fashioned that the conduct would be encompassed in the offense of outrages upon dignity.

## **Concluding Thoughts**

The public spectacles organized by Hamas for the release of the civilian hostages and the return of hostage remains constitute clear LOAC violations. This is so irrespective of whether the conflict is characterized as international or non-international. Such treatment—coerced participation, forced public statements, exposure to hostile or celebratory crowds, and broadcasting of the events—meets the threshold for inhumane treatment and outrages upon dignity enshrined in the Geneva Conventions, the Additional Protocols, and customary international law, as affirmed by the ICRC and States, including the United States. They are not incidental violations but deliberate practices that may entail individual criminal

responsibility under international criminal law. The conduct of Hamas during these events was not only an affront to the hostages but also to the fundamental humanitarian purposes of the law of armed conflict.

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