

Memorandum of Law
(15 October 2015)

Discussion

This memorandum of law states the general international law providing prisoners the right to human dignity, especially protection from being subjected to public curiosity or other such scrutiny.

According to international human rights and humanitarian law both civilians and military prisoners deserve respect for their human dignity. The respect due a prisoner includes the duty of the State to prevent a prisoner from being subjected to public scrutiny or ridicule or from being exposed in any manner that constitutes an affront to his or her human dignity.

The protection of human dignity is provided for in Article 7 of the International Covenant on Civil and Political Rights (ICCPR), 999 *UNTS* 171 (1966), which provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” Article 10(1) of the ICCPR provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Similar protections of human dignity are found in regional human rights treaties in Europe, the Americas, Africa, and the Arab world.

Equally international humanitarian law prohibits the exposure of protected civilian persons or prisoners of war to public curiosity. The prohibition as regards civilians is found in article 27, subparagraph 1, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 *UNTS* 287 (1950), which provides that “[p]rotected 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.” The prohibition as regards prisoners of war is found in article 13, subparagraph 2, of the Geneva Convention relative to the Treatment of Prisoners of War, 75 *UNTS* 135 (1950), which states that “[p]risoners of war must at all times be humanely treated.... Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.”

In the United States case before the United States Court of Appeals for the Second Circuit, *American Civil Liberties Union v. Department of Defense*, No. 06-3140-cv (22 September 2008), the District Court determined that where the release of unflattering photos was in the interest of the protection of the prisoners concerned the State could not suppress them claiming that their release was in conflict with its above-mentioned obligations under international humanitarian law. The Court emphasized that it had to consider the relationship between the release of photographs and harm to the person or persons concerned. During this case it was brought to the attention of the Court that “[p]hotos and videos depicting POWs with their faces covered or their identities otherwise disguised [do] not, in the view of the [United States] Department of Defense, violate ... art. 13” of the Geneva Convention relative to the Treatment of Prisoners of War.

Paragraph 60 of the United Nations’ Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31

July 1957 and 2076 (LXII) of 13 May 1977, states that “[T]he regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.”

Conclusions

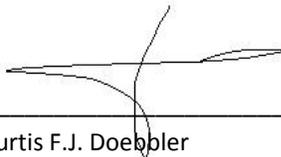
The publishing of pictures of a detainee that might reasonably be viewed as subjecting the person concerned to public curiosity could give rise to both State and individual responsibility.

The responsibility of any State Party or individuals might be incurred. For State Responsibility to be shown it is only necessary to show actions or omissions that are attributable to a State and that these actions or omissions are inconsistent with an international legal obligation of that State.

To pursue the responsibility of an individual it is necessary to show that the individual not only knew of the action but knew or should have known of the possible consequence that it would subject a civilian or prisoner to public scrutiny and/or ridicule. This element of *mens rea* must always be accompanied by an *actus reus* or action covered by the law.

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I am a visiting professor of international law at Webster University in Geneva and the Geneva School of Diplomacy and a member of the Bar of the District of Columbia and the Supreme Court of the United States. I declare that I have no interest that might bias this memorandum. The memorandum was requested by a private individual seeking to rely on this information. I have not received any payment or material advantage for this memorandum. This memorandum describes the basic international law protecting civilians and prisoners from acts exposing them to public curiosity to the best of my abilities and using my expertise.



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