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A case study on *War Poses*

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Abstract

This article delves into Sweden's evolving legal response to international crimes, notably focusing on the 2021 War Poses *case before the Swedish Supreme Court. The case involves an Iraqi asylum-seeker charged with violating the personal dignity of several persons, presumed to be deceased, during a 2015 non-international armed conflict in Kirkuk, Iraq. A key contention is whether deceased individuals can be considered "protected persons" under Swedish war crimes legislation. The article examines the Swedish Supreme Court's decision, which deems deceased individuals as protected persons, drawing on the Rome Statute's Elements of Crimes. It examines the complexities surrounding the application of international humanitarian law (IHL) to cases involving the deceased and explores potential misinterpretations arising from the Court's brief and ambiguous reasoning. As Sweden grapples with the complexities of international criminal law, the article advocates for clarity and comprehensive discussion to ensure that justice is served while upholding accurate and harmonized definitions of fundamental concepts of IHL.*

Keywords: war crimes, Rome Statute, protected persons, the dead, outrages upon personal dignity, universal jurisdiction.

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Introduction

As of the present date, the Swedish judicial system has overseen fifteen cases involving charges of genocide and war crimes. Although these cases exhibit considerable dissimilarities, a common thread binds them: none of the alleged offences occurred within Swedish territory. In fact, hostilities have not unfolded on Swedish soil since the Dano-Swedish War of 1808–09. Prior to the initial case in 2006, Sweden's contemporary legal framework had not encountered the task of addressing crimes perpetrated during armed conflicts. Notably, despite the presence of suspected war criminals in Sweden following the Second World War, none had faced legal accountability; instead, they were deported, extradited or permitted to live out their lives in tranquillity.[1]

In the present day, the management, inquiry and prosecution of core international crimes necessitates the involvement of various Swedish agencies. These include the Swedish National Police's War Crimes Unit, which receives information and complaints from the public, in addition to collaboration with the Swedish Migration Agency, the Swedish Security Service and local police departments. Investigations are conducted in close cooperation with the International Public Prosecution Authority, where a designated team of prosecutors specializes in cases involving core international crimes.[2] Several ongoing investigations stem from structural criminal investigations by Swedish prosecutors, targeting offences linked to armed conflicts in Syria and Ukraine, and activities by the so-called Islamic State group (IS).[3]

The present analysis will delve into the *War Poses* case[4] announced by the Swedish Supreme Court in 2021. This case pertains to acts committed during a non-international armed conflict in Iraq in 2015. The defendant, an Iraqi national who sought asylum in Sweden, was charged with the war crime of seriously violating the personal dignity of unidentified individuals. It is presumed that these individuals had either sustained severe injuries or died. The violation manifested through the defendant's participation in degrading acts, including posing alongside mutilated and desecrated bodies, which were subsequently documented in photographs and a video. The Court's ruling asserts that failure to respect the personal dignity of deceased individuals can result in criminal liability for war crimes, as delineated in the Rome Statute of the International Criminal Court (Rome Statute) and its Elements of Crimes. This article will argue that the Court's brief and ambiguous

1 Mats Deland, "Deportations, Extraditions and the Absence of Swedish Legal Proceedings of International Crimes in the Second World War", in *Scandinavian Studies in Law*, Vol. 66, Stockholm Institute for Scandinavian Law, Stockholm, 2020, pp. 16 ff.

2 Swedish Police Authority, "Krigsbrott – polisens arbete", 10 September 2021, available at: https://polisen.se/om-polisen/polisens-arbete/krigsbrott/ (all internet references were accessed in November 2023).

3 Swedish Prosecution Authority, "Helt avgörande att tidigt samla in vittnesmål från krig", 13 April 2022, available at: www.aklagare.se/nyheter-press/aktuellt-pa-aklagarmyndigheten/helt-avgorande-att-tidigt-samla-in-vittnesmal-fran-krig/.

4 Supreme Court of Sweden, Case No. B 5595-19 (Swed.), 5 May 2021 (*War Poses*), available at: www.domstol.se/globalassets/filer/domstol/hogstadomstolen/avgoranden/engelska-oversattningar/b-5595-19-eng.pdf.

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reasoning poses a risk of misinterpretation of fundamental concepts of international humanitarian law (IHL) during future war crimes proceedings.

Facts of the case

In the spring of 2015, a non-international armed conflict unfolded in the Daquq district in the Iraqi province of Kirkuk. Iraqi government forces, together with forces associated with the Kurdish Peshmerga and with the support of US air forces, initiated an offensive operation aimed at reclaiming the region from IS. As per the defendant's own testimony, he served as a soldier within the Kurdish Peshmerga forces during this period. Later that same year, he sought asylum as a refugee in Sweden and subsequently faced prosecution in the Örebro District Court for war crimes tied to his involvement in the 2015 offensive. Despite neither the defendant nor the victims holding Swedish nationality, the defendant's prosecution in Sweden was enabled by a provision in the Swedish Criminal Code rooted in the principle of universal jurisdiction. This jurisdiction empowers Swedish courts to adjudicate cases involving war crimes committed beyond the nation's borders.[5]

As per the Swedish Supreme Court's findings, the defendant let himself be photographed and recorded while posing alongside deceased individuals on four separate occasions. These images and video show the defendant striking poses near bodies that had been mutilated or dismembered. One of the photos has the defendant putting his foot on a dead body. In the video, he is seen next to a lifeless body while an accomplice leans on it, rifle in hand, and engages in disrespectful behaviour like spitting, kicking and verbal abuse. These disturbing images were then shared on the defendant's social media profiles. It is worth noting that the victims in the photos and video have not been identified. The defendant was charged under Swedish war crimes legislation for crimes consisting of seriously violating the personal dignity of several persons by humiliating or degrading treatment, by letting himself be photographed and filmed posing next to their bodies. The Örebro District Court and the Göta Court of Appeal both found him guilty. The defendant appealed the Court of Appeal's decision, seeking either to be cleared of the war crimes charge or to receive a reduced sentence. In a landmark move, the Swedish Supreme Court agreed to review the case, making it the first time a war crimes case had received such a review.

A prerequisite for the war crimes legislation to be applicable is that the acts can be linked to an ongoing armed conflict. In the District Court proceedings, the prosecution presented evidence showing that a non-international armed conflict occurred across different parts of Kirkuk during the spring of 2015. The District Court found this evidence convincing and concluded that the defendant, as he

5 Dennis Martinsson and Mark Klamberg, "Jurisdiction and Immunities in Sweden when Investigating and Prosecuting International Crimes", in *Scandinavian Studies in Law*, Vol. 66, Stockholm Institute for Scandinavian Law, Stockholm, 2020, pp. 59–60.

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himself stated, had served as a soldier in the Kurdish Peshmerga forces during that time. This connection tied his actions to the conflict in question. The matter of nexus was not subjected to analysis by the Supreme Court; instead, the Court's attention was directed towards two pivotal issues. Primarily, it discussed the question of whether "protected persons" as delineated within the scope of Swedish war crimes legislation encompasses deceased individuals. Subsequently, the Court deliberated upon whether the inherent character of the actions, as executed, satisfies the prerequisites for classification as a serious violation of personal dignity.

Swedish war crimes legislation

The 2014 Act on Penalties for Certain International Crimes (Act of 2014)[6] embodies Sweden's commitment regarding individual criminal liability for core international crimes. The legislation is designed to address acts committed in armed conflicts as outlined in Articles 6–8 of the Rome Statute. It establishes criminal responsibility for an exhaustive list of war crimes, mirroring those enumerated in Article 8. This legislation, employing a dualist approach, stipulates that Swedish courts shall apply domestic law, with international humanitarian and criminal law exerting influence primarily through interpretative means. Section 4, para. 1(7) of the Act of 2014 pertains to war crimes, positing that an individual can be found guilty of such a crime if they subject a protected person to treatment that seriously violates their personal dignity, provided the act is connected to an armed conflict or occupation. Penalties for this crime can include imprisonment for a maximum of six years (Section 4, para. 2). The term "protected person" is defined in Section 3 of the Act, which is one of the few sections referring directly to IHL. The term encompasses wounded, sick or shipwrecked individuals, prisoners of war, civilians, or those enjoying special protection under Geneva Conventions I–IV, Additional Protocol I (AP I) or "general international law applicable in armed conflict or occupation", which is generally understood as customary international law. This expansive interpretation extends beyond the traditional definitions of "protected persons" under IHL. It has been argued that the interpretation in Swedish law can be defined as "persons protected by IHL" rather than "protected persons under IHL".[7]

Status of the victims

Significantly, and as noted above, the identities of the victims depicted in the photographs and video remain unknown. Neither the findings of the District

6 Act on Penalties for Certain International Crimes, SFS 2014:406, 28 May 2014. Previously known as the Act on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes.

7 Anna Andersson, "Outrage upon the Personal Dignity of the Dead in International and Swedish War Crimes Legislation and Case Law", in *Scandinavian Studies in Law*, Vol. 66, Stockholm Institute for Scandinavian Law, Stockholm, 2020, p. 256.

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Court nor of the Court of Appeal conclude whether the persons in the photos and video are civilians or combatants. According to the District Court's assessment, there is no doubt that the persons in the photos and video are to be regarded as protected persons, "notwithstanding the fact that it is not possible in all cases to determine whether they were civilians or in combat or whether they were all dead or only seriously injured".[8] For the reasons stated by the District Court, the Court of Appeal concluded that each of the four persons with whom the defendant posed and allowed himself to be photographed or filmed was a protected person as referred to in the Act of 2014, "although it has not been clarified other than that all four were deceased".[9] The Supreme Court concluded that, in the absence of any other evidence, it is presumed that all the victims in the photographs and video are persons from the opposing side who were killed during the air strikes that preceded the offensive by the forces in which the defendant was a soldier; "In other words, the victims were soldiers who had been killed in combat."[10]

Are the dead "protected persons"?

One of the central questions of the case revolves around whether deceased individuals can be defined as "protected persons". The claim of the prosecutors in all three instances was as follows: "The persons are to be regarded as protected persons since, at the time of the acts, they were placed *hors de combat* as wounded or deceased or because they were civilians."[11] Consequently, the prosecutors categorically excluded the possibility of dead individuals qualifying as "protected persons" simply because of the fact that they are dead; rather, it is the deceased individuals' status as *hors de combat* that grants them protection.

Naturally, we can consider the deceased as protected by IHL, if only within a specific set of relevant rules. For instance, according to Articles 120–121 of Geneva Convention III, prisoners of war who die while in the hands of the enemy are still considered protected persons. Similarly, under Geneva Convention IV, civilians who die while interned based on Articles 41–43, 68 or 79 also retain their protected status. In situations of non-international armed conflict, the concept of "protected persons" is not explicitly present in IHL, yet there are many cases where the deceased are still covered by IHL safeguards.[12] As noted earlier, the definition of "protected persons" in Swedish war crimes legislation goes beyond the traditional IHL interpretation. In the context of the Act of 2014, a "protected person" is someone protected by the Geneva Conventions, AP I or customary

8 Örebro District Court, *Prosecutor v. KBHS*, Case No. B 1662-18, Judgment, 19 February 2019, p. 11.
9 Göta Court of Appeal, *Prosecutor v. KBHS*, Case No. B 939-19, Judgment, 24 September 2019, p. 4.
10 Supreme Court of Sweden, *War Poses*, above note 4, para. 39.
11 *Ibid.*, para. 2.
12 See e.g. Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Arts 33–34.

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international law. The Supreme Court has asserted that elucidating the extent of Section 3 within the framework of the Act of 2014, and consequently explicating the definition of the term "protected person" as prescribed by the Act, necessitates an examination of how the term is contextualized within the realm of IHL. For this purpose, the Court turned its attention to the Rome Statute: notably, Article 8(2)(c) of the Statute penalizes, according to the Court, "serious violations of Article 3 of the Geneva Conventions committed in non-international armed conflicts".[13] Within this context, the Court has identified the prohibition against acts which entail outrages upon personal dignity, in particular humiliating and degrading treatment, in Article 3(c) common to the four Geneva Conventions.

Subsequently, the Supreme Court has posited that codification of (at the time) customary international law was one of the intentions of the Rome Statute, and that it is based on the fundamental premise that both the International Criminal Court (ICC) and domestic courts should possess the authority to prosecute the offences delineated in the Statute, in accordance with the principle of complementarity.[14] In this vein, the Supreme Court proceeded to introduce the Elements of Crimes, which were endorsed under Article 9 of the Rome Statute. These elements serve as a guiding framework for interpreting the provisions of the Statute. Moreover, the Court contended that these elements should also carry significant weight within the Swedish legal framework, in alignment with the preparatory works for the Act of 2014.[15] After briefly deliberating on the potential application of customary international law and jurisprudence derived from the ICC and other international criminal tribunals, the Court transitioned to an examination of the core issue of the case: are dead persons also covered by the term "protected persons"?

The Supreme Court initiated its examination by delving into the identification of a "protected person" as stipulated in Section 3 of the Act of 2014. Upon citing the first part of common Article 3(1), the Court came to the somewhat curious conclusion that "[a]ccordingly, Section 3 covers persons from the opposing side who, in various ways, have been placed *hors de combat*".[16] While this pronouncement does not suffer from factual inaccuracy, it does embody a noticeably circumscribed construal of the categories of individuals protected under common Article 3. Furthermore, this interpretation implicitly ascribes the status of *hors de combat* to the victims, a position that the Court subsequently substantiated within its verdict: "the victims were soldiers who had been killed in combat and were thereby placed *hors de combat*".[17] Essentially, the Court's underlying assertion rests on the notion that death, in itself, has rendered the opposing combatants *hors de combat*. While this notion is not entirely

13 Supreme Court of Sweden, *War Poses*, above note 4, para. 13.
14 *Ibid.*, paras 14–15.
15 *Ibid.*, para. 16.
16 *Ibid.*, para. 20.
17 *Ibid.*, para. 39.

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unprecedented,[18] it is unconventional.[19] Regrettably, the Court's rather remarkable claim lacks any depth of supportive rationale.

The principle that persons *hors de combat* must not be attacked and must be treated humanely is a fundamental rule of IHL. Its recognition extends back to historical legal instruments such as the Lieber Code, the Brussels Declaration, the Oxford Manual and the Hague Regulations.[20] Although there is no universal definition for persons rendered *hors de combat*, one could argue that the relevance of protecting those who have stopped taking part in hostilities against harm and death might appear to diminish when they are already dead. However, a nuanced exploration of common Article 3(1)(c), the provision relevant to the present case, reveals that its protective ambit transcends the mere prohibition against attacks. The 2016 Commentary by the International Committee of the Red Cross (ICRC) pertaining to common Article 3 posits that the prohibition against acts constituting outrages upon personal dignity applies also when the victim is deceased.[21] Notably, however, the Commentary refrains from suggesting that death can confer the status of *hors de combat* upon an individual. Common Article 3 extends its protective shield to encompass those who take no active part in hostilities, *including* persons rendered *hors de combat*. Arguably, the deceased can be perceived as taking no active part in hostilities, irrespective of their status prior to death. However, as previously delineated, the prosecution's claim pivoted on the notion that the victims in the photographs and video were rendered *hors de combat* due to death, rather than protection arising solely from death. This aspect potentially provides insight into the Court's decision to attribute *hors de combat* status to the victims, despite the fact that they have yet to be identified and the plausible assertion that the deceased could conceivably be afforded equivalent protection under common Article 3, and thereby under Section 3 of the Act of 2014.

The Supreme Court's subsequent line of reasoning pertains to the Elements of Crimes as delineated in the Rome Statute and the import of customary

18 See e.g. Anna Petrig, "The War Dead and Their Gravesites", *International Review of the Red Cross*, Vol. 91, No. 874, 2009, p. 350.

19 See e.g. AP I, Art. 41: "A person is 'hors de combat' if: (a) he is in the power of an adverse Party; (b) he clearly expresses an intention to surrender; or (c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself; provided that in any of these cases he abstains from any hostile act and does not attempt to escape." See also Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), p. 164, available at: https://ihl-databases.icrc.org/en/customary-ihl/rules.

20 Francis Lieber, *Instructions for the Government of Armies of the United States in the Field*, General Order No. 100, US Department of War, 24 April 1863 (Lieber Code), Art. 71; Project of an International Declaration concerning the Laws and Customs of War, Brussels, 27 August 1874 (Brussels Declaration), Art. 13(c); Institute of International Law, *The Laws of War on Land*, Oxford, 9 September 1880 (Oxford Manual), Art. 9(b); Convention (IV) respecting the Laws and Customs of War on Land and Its Annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (Hague Regulations), Art. 23(c).

21 ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., 2016, paras 611, 668; A. Andersson, above note 7, p. 261.

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international law. While fundamentally cogent, regrettably, the Court's statement remains somewhat brief in its exposition. The Court briefly addressed the legal standing of the Elements of Crimes in light of Article 21(1)(a) of the Rome Statute. Moreover, it arrived at the determination that the identical footnotes to Articles 8(2)(b)(xxi) and 8(2)(c)(ii) within the Elements of Crimes explicitly posit that, in the context of this particular category of offence, the term "persons" may encompass deceased individuals. In substantiating its standpoint, the Court posited that "[t]he fact that dead persons are mentioned only in the footnotes does not per se mean that the text is not to be deemed to be an integral part of the elements of crimes".[22] The Court proceeded to acknowledge the genesis of the Elements of Crimes as an outcome of diplomatic negotiations, yet underscored that the preparatory undertakings of the Preparatory Commission, tasked with their formulation, were underpinned by an intent to align them with customary international law. Furthermore, it advanced the contention that the footnotes are based upon jurisprudence subsequent to the Second World War.[23]

The line of argumentation presented closely mirrors the rationale articulated by the German Federal Supreme Court in its judgment of 27 July 2017.[24] The foundational context of the German case exhibits some similarity to the *War Poses* case. In the German case, the accused had embarked on a journey to Syria in March 2014 with the aim of participating in "armed jihad" against the Assad regime. During the course of these hostilities, he, in concert with his affiliated group, detained two Syrian soldiers, subsequently executing them by beheading, and thereafter publicly exhibited their severed heads by impaling them on poles for public display and ridicule. The defendant was charged with war crimes after German investigators discovered photographs of him with the impaled heads.[25] This led to his conviction by the Frankfurt Higher Regional Court, which sentenced him to a two-year term of imprisonment for the war crime of treating a protected person in a gravely humiliating and degrading manner, in accordance with the German Code of Crimes against International Law. The conviction was upheld by the German Federal Supreme Court.[26] The Swedish Supreme Court referred to this case in its judgment and submitted that, "[l]ike the Swedish Act, the intention of the German Act is to criminalize acts in accordance with the Rome Statute".[27]

This reference to the precedent set by the German Federal Supreme Court may potentially offer further insight into the lexical intricacies evident in *War Poses*. In the German case, the victims were unequivocally identified as adversary

22 Supreme Court of Sweden, *War Poses*, above note 4, para. 22.
23 *Ibid.*, para. 24. See also Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary*, Cambridge University Press, Cambridge, 2003, p. 314.
24 Federal Supreme Court of Justice, Case No. 3 StR 57/17, Judgment, 27 July 2017.
25 *Ibid.*, para. 2(A) in the English translation by Margaret Hiley and Kai Ambos, provided in Kai Ambos, "Deceased Persons within the Meaning of International Humanitarian Law: German Federal Supreme Court Judgment of 27 July 2017", *Journal of International Criminal Justice*, Vol. 16, No. 5, 2018, p. 1106.
26 *Ibid.*, p. 1106.
27 Supreme Court of Sweden, *War Poses*, above note 4, para. 25.

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combatants who had been captured prior to death. Such detained enemy combatants inarguably fall within the ambit of individuals *hors de combat* by any accepted interpretation of the term.[28] According to the judgment rendered by the German Federal Supreme Court, the legal protection afforded to these combatants endured even after their death, as stipulated within the German Code of Crimes against International Law.[29] Regrettably, the Swedish Supreme Court appears to have omitted recognition of this significant distinction between the two cases.

Lacking a comprehensive explication, the Supreme Court concluded that the objectives and implementation of the Rome Statute's Elements of Crimes "clearly indicate that dead persons are covered by the term protected persons in accordance with customary international law and, accordingly, are also covered by the definition in Section 3 of the [Act of 2014]".[30] A more comprehensive deliberation concerning the application and legal standing of the Elements of Crimes within the framework of the Rome Statute would have been desirable. This is due not solely to the intricacies arising from terminological ambiguity, but also to the consideration that the attribution of the status of "protected persons" to the dead by the German Federal Supreme Court, paralleling the approach adopted by the Swedish Court in *War Poses*, has engendered critical evaluation.[31]

Serious violations of personal dignity

The second pivotal issue pertains to whether the acts committed by the defendant – namely, allowing himself to be photographed and filmed posing alongside deceased bodies – meet the criterion of intentionally seriously violating personal dignity. The Supreme Court posited that the mere presence of an individual within a battlefield photograph alongside a deceased protected person does not inherently suggest that a serious violation of personal dignity has transpired; the circumstances must also include degrading or demeaning aspects, such as "the mutilation, collection, arrangement or handling of the deceased in a demeaning or offensive way", or that the victims are displayed as "trophies" in photos or video used in the opposing side's war propaganda. The Court proceeded to undertake a distinct analysis of each photograph and the video, examining the portrayal of the victims as well as the manner in which the defendant was positioned in proximity to them. Subsequently, it drew the conclusion that in each of these instances, the defendant subjected the victims to treatment that was degrading and humiliating, conducted so as to seriously violate their personal dignity.

28 See e.g. ICRC Customary Law Study, above note 19, p. 166: "It is uncontested that a person who is in the power of an adverse party is *hors de combat*."
29 K. Ambos, above note 25, p. 1108.
30 Supreme Court of Sweden, *War Poses*, above note 4, para. 27.
31 K. Ambos, above note 25.

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Controversies in jurisprudence

In January 2023, the Blekinge District Court located in southern Sweden rendered its verdict in a case[32] akin to that of *War Poses*. The accused was indicted for war crimes predicated on actions undertaken during the non-international armed conflict transpiring in Syria in 2012. The prosecutor's assertion contended that the defendant had subjected numerous individuals to treatment that was humiliating and degrading, with the explicit intention of severely violating their personal dignity. The nature of the humiliating and degrading treatment encompassed instances where the defendant allowed himself to be photographed and filmed with his foot in proximity to a victim's head, gesturing victory signs, conveying derogatory and debasing comments toward the victims, and gesturing with a weapon. Citing the precedent set by the Supreme Court in *War Poses*, the Blekinge District Court concluded that "irrespective of whether the persons in the pictures were civilians or combatants, or dead or injured, it was clear that the persons had been rendered *hors de combat*. They have therefore been regarded as protected persons under international humanitarian law."[33] Unquestionably, this statement bears inherent fallacies. A civilian, regardless of their vital status, remains intrinsically protected by IHL in their civilian capacity and cannot, by virtue of their circumstance, be defined as *hors de combat*, given their non-participation in hostilities from the outset. Owing to the ambiguous reasoning given by the Supreme Court in *War Poses*, it is discernible that misinterpretations of fundamental concepts of IHL are emerging within Swedish judgments pertaining to war crimes. The 2023 case was subsequently subjected to an appeal process before the Skåne and Blekinge Court of Appeal, which upheld the initial verdict.[34]

Merely a few months later, in March 2023, the Göteborg District Court rendered its verdict in another instance of war crimes, involving actions that encompassed subjecting individuals to treatment that was humiliating and degrading, with the explicit aim of seriously violating their personal dignity.[35] In this particular case, the prosecutor framed the charge distinctively, asserting that the accused subjected a number of deceased individuals *protected under public international law* to humiliating or degrading treatment likely to seriously offend their personal dignity. Remarkably, neither the concept of *hors de combat* nor its attendant implications found mention within the formulation presented by the prosecutor or within the discourse of the District Court. The District Court cited the judgment in *War Poses* exclusively to support the argument that deceased individuals can be defined as protected persons within the framework of IHL, without engaging in an exhaustive analysis of the legal status that the victims held prior to their death.

32 Blekinge District Court, *Prosecutor v. Ubai Julaybib*, Case No. B 2759-21, Judgment, 4 January 2023.
33 *Ibid.*, p. 19.
34 Skåne and Blekinge Court of Appeal, *Prosecutor v. Ubai Julaybib*, Case No. B 461-23, Judgment, 6 August 2023.
35 Göteborg District Court, *Prosecutor v. Fatosh*, Case No. B 4663-22, Judgment, 29 March 2023.

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Conclusion

The Swedish legal landscape has undergone a transformation with respect to addressing core international crimes within its jurisdiction. Despite Sweden's historical absence of armed conflicts within its borders, its modern legal framework has evolved to encompass the pursuit of justice for such crimes committed beyond its borders. The emergence of the *War Poses* case in 2021 has provided a pivotal platform for exploring critical aspects of IHL and its practical implications within the context of war crimes prosecution in domestic courts. The analysis of *War Poses* underscores the complexities inherent in interpreting and applying IHL principles, especially concerning the status of deceased individuals and the scope of protection they receive. The case illuminated the potential consequences of terminological interpretations and the challenges posed by the Supreme Court's reasoning, leading to the risk of misinterpretations of fundamental IHL concepts in future war crimes proceedings. This case also exemplifies the evolving nature of war crimes investigations, as contemporary conflicts transcend national boundaries and challenge legal systems to adapt. The emergence of digital evidence, such as photographs and videos, has highlighted the importance of clarifying legal definitions and incorporating IHL principles within a modern technological context. Furthermore, the analysis of subsequent cases, such as those in the Blekinge and Göteborg District Courts, underscores the lingering uncertainties and controversies stemming from the *War Poses* case's interpretation of the protection offered by common Article 3. The variances in judicial interpretations and approaches to issues like the concept of *hors de combat* and the protection of deceased individuals emphasize the need for further legal clarity and comprehensive discussion within the realm of international criminal law. In essence, *War Poses* has contributed to a nuanced and intricate discourse within Swedish jurisprudence concerning the interpretation and application of IHL principles in war crimes cases. As Swedish courts continue to grapple with the intricacies of international criminal law, it is imperative for the legal community to engage in substantive dialogue, explore precedents, and strive to harmonize interpretations in order to ensure that justice is served while upholding fidelity to accurate definitions of fundamental concepts of IHL.

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