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DIGNITY BEYOND DEATH: NECROPHILIC ABUSE **AND THE PROTECTION OF THE DEAD UNDER** **INTERNATIONAL HUMANITARIAN LAW**

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ABSTRACT

Necrophilia, understood in psychiatric literature as a paraphilic disorder involving sexual attraction towards or engagement with human corpses¹, presents complex challenges at the intersection of criminal law, medical jurisprudence, and international humanitarian law. While often analyzed through the lens of psychopathology, necrophilic conduct simultaneously implicates foundational legal principles concerning personhood, dignity, and the treatment of the dead².

This paper examines the normative foundations of posthumous protection through Salmond's conception of legal personality and RWM Dias's theory of juristic constructs, situating the protection of the deceased within broader jurisprudential debates concerning residual legal interests after death³. It further considers the historical and customary recognition of respect for the dead as a cross-cultural legal norm, reflected in international humanitarian law obligations requiring the respectful treatment of the deceased⁴.

The study distinguishes between necrophilia as a psychiatric condition and necrophilic conduct as a legally punishable act. It argues that while mental health considerations may inform sentencing and rehabilitation, they do not diminish the criminal character of conduct that violates the dignity of the deceased. A comparative review of legal frameworks demonstrates inconsistency in domestic criminalization, with particular deficiencies evident in the Indian legal system, as illustrated in *Rangaraju v State of Karnataka*⁵.

¹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th edn, 2013) 685.

² Theodor Meron, 'The Humanization of Humanitarian Law' (2000) 94 *American Journal of International Law* 239, 258.

³ John Salmond, *Jurisprudence* (12th edn, Sweet & Maxwell 1966) 352; RWM Dias, *Jurisprudence* (5th edn, Butterworths 1985) 269.

⁴ Geneva Convention I (1949) art 15; Geneva Convention IV (1949) art 16; Additional Protocol I (1977) art 34.

⁵ *Rangaraju v State of Karnataka* 2021 SCC OnLine Kar 237.

At the international level, the paper analyses whether sexual abuse of corpses may fall within the war crime of outrages upon personal dignity under the Rome Statute⁶, particularly in light of jurisprudence interpreting dignity-based offences. Rather than characterizing such conduct as a grave breach in the technical sense, the study evaluates its doctrinal placement within the broader framework of international criminal law. Since, Necrophilic conduct constitutes a war crime only when committed in the context of and associated with an armed conflict and when meeting the gravity threshold.

The paper ultimately argues for coherent legislative reform that explicitly criminalizes necrophilic conduct while recognizing its psychological dimensions, thereby aligning domestic legal systems with international humanitarian standards and reinforcing the principle that human dignity warrants protection beyond biological death.

Introduction

Necrophilia refers to sexual attraction towards, or engagement in sexual acts with, deceased persons and is classified within psychiatric literature as a paraphilic disorder⁷. While its clinical categorization situates the phenomenon within mental health discourse, necrophilic conduct simultaneously raises distinct legal concerns. The core legal issue is not merely pathological abnormality but the violation of the dignity accorded to human remains within civilized legal systems⁸.

The protection of the dead is neither incidental nor symbolic. Classical jurisprudence provides a conceptual foundation for recognizing continuing legal interests beyond biological death. Salmond defined a legal person as any being recognized by law as capable of rights and duties⁹. Although death extinguishes most enforceable rights, legal systems routinely recognize residual interests associated with burial, reputation, and the respectful treatment of remains. Similarly, RWM Dias observed that legal constructs may be created to protect interests independent of living subjectivity¹⁰. These theoretical accounts support the proposition that the dignity of the deceased remains a legitimate object of legal protection.

⁶ Rome Statute of the International Criminal Court (1998) art 8(2)(b)(xxi); art 8(2)(c)(ii).

⁷ Idib n(1).

⁸ Debra W Sohnen, 'Necrophilia and the Law' (2007) 33 J Med Ethics 702.

⁹ John Salmond, *Jurisprudence* (12th edn, Sweet & Maxwell 1966) 299.

¹⁰ RWM Dias, *Jurisprudence* (5th edn, Butterworths 1985) 272.

International humanitarian law reinforces this principle in binding treaty obligations. The Geneva Conventions require parties to armed conflict to search for, collect, and treat the dead with respect¹¹. Additional Protocol I further mandates respect for the remains of deceased persons and their grave¹². These provisions reflect a broader customary norm recognising that the dead must not be subjected to mutilation or outrage¹³.

Within international criminal law, the prohibition of outrages upon personal dignity has been interpreted expansively to encompass serious humiliation and degradation¹⁴. Although much of the jurisprudence concerns living victims, the underlying rationale, protection of human dignity against degrading treatment raises the question whether sexual abuse of corpses may fall within this doctrinal category in situations of armed conflict. This issue requires careful analysis rather than categorical assertion¹⁵.

A distinction must therefore be maintained between necrophilia as a mental disorder and necrophilic conduct as a punishable offence. Psychiatric classification may inform mitigation or treatment; however, it does not negate the criminal character of conduct that violates legally protected interests. Domestic legal systems adopt divergent approaches. The United Kingdom expressly criminalises sexual penetration of a corpse under the Sexual Offences Act 2003¹⁶. By contrast, the Indian legal framework has historically lacked an explicit statutory provision addressing necrophilia.

The limitations of Indian law were judicially recognized in *Rangaraju v State of Karnataka*, where the Karnataka High Court observed that sexual intercourse with a corpse could not be prosecuted as rape in the absence of a living victim. The decision exposed a legislative lacuna rather than endorsing impunity. The absence of express criminalisation generates doctrinal uncertainty and underscores the need for legislative clarity.

Accordingly, the regulation of necrophilic conduct engages three interrelated domains:

- a. firstly, the jurisprudential theory concerning posthumous dignity,

¹¹ Geneva Convention I (1949) art 15; Geneva Convention IV (1949) art 16.

¹² Additional Protocol I (1977) art 34.

¹³ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, vol I: Rules (CUP 2005) Rule 113.

¹⁴ Rome Statute (1998) art 8(2)(b)(xxi); art 8(2)(c)(ii); *Prosecutor v Kunarac (Appeals Judgment)* IT-96-23 & IT-96-23/1-A (12 June 2002) [162].

¹⁵ Werner Menski, *Hindu Law* (OUP 2003) 211.

¹⁶ Sexual Offences Act 2003, s 70.

- b. secondly, international humanitarian law governing respect for the dead, and
- c. lastly, the domestic criminal law defining punishable conduct.

A coherent legal response must integrate these domains without conflating psychological diagnosis with criminal accountability. The subsequent analysis examines whether existing international norms adequately encompass necrophilic abuse in armed conflict and evaluates the necessity of explicit domestic incorporation to ensure comprehensive protection of posthumous dignity.

Part 1 – Necrophilia And Posthumous Dignity: A Conceptual And Legal Perspective

This Part lays the conceptual and doctrinal groundwork for analysing necrophilic abuse within the structure of international humanitarian law. It begins by distinguishing the psychiatric classification of necrophilia from its legal relevance, emphasising that international criminal responsibility depends upon the nature and context of the act rather than upon clinical diagnosis¹⁷. It then examines the historical and normative foundations of the protection afforded to the dead in armed conflict, demonstrating that respect for human remains constitutes a longstanding obligation under the law of war. By clarifying the legal basis of posthumous dignity without attributing full juridical personality to the deceased, this Part provides the analytical framework through which subsequent sections evaluate whether sexual abuse of corpses may fall within the prohibition of “outrages upon personal dignity” under Common Article 3 of the Geneva Conventions and Article 8 of the Rome Statute of the International Criminal Court.

1.1 Necrophilia in Psychiatric and Medical Discourse

In psychiatric literature, necrophilia is described as a paraphilic condition involving a recurrent and intense sexual attraction to corpses¹⁸. It is generally classified within the broader category of paraphilic disorders, characterised by persistent sexual interests that deviate from normative sexual behaviour and that may involve non-consenting or incapacitated individuals¹⁹. Unlike isolated acts of post-mortem sexual contact, clinical necrophilia requires patterns of repetition, compulsion, and psychological dependence.

¹⁷ John Money, *Lovemaps* (Prometheus 1986) 154.

¹⁸ Debra W Sohnen, ‘Necrophilia and the Law’ (2007) 33 J Med Ethics 702.

¹⁹ Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

Psychiatric scholarship often associates necrophilia with underlying pathologies such as impaired interpersonal attachment, fear of abandonment, a desire for absolute control, and emotional dissociation²⁰. The absence of reciprocity from the deceased body is sometimes interpreted as fulfilling fantasies of domination and emotional security. However, medical classification remains distinct from legal assessment. Not every isolated act involving a corpse, amounts to a diagnosable psychiatric disorder; the clinical category is reserved for sustained behavioural patterns rather than episodic conduct²¹.

The psychiatric characterisation is relevant only insofar as it clarifies the nature of the conduct involved. International humanitarian law does not criminalise psychological conditions; it evaluates acts and their legal consequences.

1.2 International Humanitarian Law and the Protection of the Dead

The protection of the dead in armed conflict has long formed part of the normative structure of the law of war²². Early codifications, including the Oxford Manual and the Hague Conventions, prohibited mutilation and desecration of corpses. These rules reflected an emerging consensus that the remains of the dead merit respect and protection even after biological death²³.

This principle was further consolidated in the Geneva Conventions, which impose obligations on parties to armed conflict to search for, collect, identify, and ensure the respectful burial or disposal of the deceased²⁴. These duties are reinforced by customary international humanitarian law²⁵, which requires respectful handling of remains and protection against despoliation and mutilation.

Central to this protective framework is the prohibition of “outrages upon personal dignity” under Common Article 3 of the Geneva Conventions²⁶. Although certain provisions concerning violence presuppose living victims, authoritative interpretations by the International

²⁰ Martin Kafka, ‘Pharmacological Treatment of Paraphilias’ (2010) 5 J Sex Med 346.

²¹ Anil Aggrawal, *Forensic and Medico-Legal Aspects of Sexual Crimes and Unusual Sexual Practices* (CRC Press 2009) 312.

²² Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (CUP 2005) vol I, 299

²³ Francis Lieber, *Instructions for the Government of Armies of the United States in the Field* (1863) art 75.

²⁴ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, arts 15–17

²⁵ ICRC Customary IHL Study, Rules 113-116.

²⁶ ICRC, *Commentary on the First Geneva Convention* (2nd edn, CUP 2016) 589.

Committee of the Red Cross recognise that the prohibition of humiliating and degrading treatment extends to the treatment of dead bodies where such conduct would seriously affront human dignity²⁷.

The Rome Statute of the International Criminal Court criminalises “outrages upon personal dignity” in both international and non-international armed conflicts²⁸. Jurisprudence of international criminal tribunals has interpreted this offence as encompassing conduct that humiliates, degrades, or otherwise seriously violates the dignity of victims, including in certain circumstances the desecration or abuse of corpses, eg. Prosecutor v Brđanin, ICTY Trial Judgment; Prosecutor v Bagosora et al, ICTR Trial Judgment.

While the deceased are no longer legal persons in the strict biological sense, international humanitarian law recognises that the dignity attached to human remains continues to command legal protection. This protection is grounded not in the attribution of full legal personality after death, but in the recognition that human dignity retains social, symbolic, and relational significance beyond life. Acts such as mutilation, public exhibition, or sexual abuse of corpses may therefore fall within the ambit of the war crime of outrages upon personal dignity when committed in the context of and associated with armed conflict.

1.3 Conceptual Clarification for Legal Analysis

For the purposes of this study, necrophilic conduct refers to intentional sexual acts committed upon a corpse. The psychiatric classification of necrophilia is not determinative of criminal responsibility under international law²⁹. Rather, the relevant legal inquiry concerns whether such conduct:

- a. Occurs in the context of and is associated with an armed conflict;
- b. Is committed intentionally; and
- c. Seriously humiliates, degrades, or otherwise violates the dignity owed to human remains.

Where these elements are satisfied, post-mortem sexual abuse may constitute the war crime of outrages upon personal dignity under Common Article 3 and Article 8 of the Rome Statute.

²⁷ ICRC, *Customary International Humanitarian Law* (ICRC 2005) Rule 47.

²⁸ Rome Statute, art 8(2)(b)(xxi); art 8(2)(c)(ii).

²⁹ John Money, *Lovemaps* (Prometheus 1986) 154.

International law does not explicitly articulate a doctrine of “posthumous legal personality.” However, it clearly affirms that the remains of the dead are protected objects of legal concern. This protection arises from the enduring normative value attached to human dignity and from the obligation of parties to conflict to preserve respect for the dead³⁰. The prohibition of sexual exploitation of corpses therefore derives not from metaphysical claims about personality after death, but from the legally recognised imperative to prevent humiliation, degradation, and desecration in armed conflict.

This conceptual clarification provides the analytical foundation for the subsequent Parts, which examine treaty provisions, customary norms, and jurisprudential developments to determine whether necrophilic abuse can be subsumed within existing categories of international crimes, and how such protection may require clearer articulation within domestic legal systems.

Part 2 - Rules Of International Law For The Protection Of The Bodies Of The Dead In Armed Conflicts

International humanitarian law has historically understood that the repercussions of armed conflict do not cease with the cessation of life. The bodies of the dead have a distinct legal and moral area under the law of war, reflecting the enduring value attributed to human dignity³¹. This acknowledgment is embedded in treaty law, customary international law, and international criminal jurisprudence, which together form a coherent framework for the protection of human remains during and after wars³². As observed in the scholarly research of post-conflict legal standards, international law employs different terms such as “the dead”, “bodies”, and “remains of deceased persons”, however consistently treats them as objects of legal protection rather than simple physical relics.³³

Historical Foundations Of Protection

The protection of the deceased in armed combat has evolved steadily. The earliest Geneva Convention of 1864 featured no clear prohibitions on this matter³⁴. It was only with the 1906 Geneva Convention that explicit obligations evolved, mandating parties to protect the deceased

³⁰ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (CUP 2005) vol I, 299.

³¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (CUP 2005) vol I, 299.

³² Marco Sassòli, *International Humanitarian Law* (2nd edn, Edward Elgar 2019) 251.

³³ Geoffrey Corn and others, *The Law of Armed Conflict* (2nd edn, Wolters Kluwer 2019) 463.

³⁴ Marco Sassòli, *International Humanitarian Law* (2nd edn, Edward Elgar 2019) 251.

from thievery and ill-treatment and to perform careful examinations before to burial or cremation³⁵. These principles were reiterated in the Hague Convention of 1907 and further refined in the 1929 Geneva Convention, which incorporated systematic reporting and identifying requirements³⁶.

The Geneva Convention relative to the Treatment of Prisoners of War further refined these obligations by introducing structured identification and reporting requirements. These early instruments collectively established three foundational principles: protection from despoliation, duty of identification, and respectful disposal³⁷. Although expressed in general terms, they laid the normative groundwork for the comprehensive regime that followed³⁸.

The Geneva Conventions of 1949 and Additional Protocols

The modern legal architecture is primarily derived from the Geneva Conventions. Geneva Convention I³⁹ and Geneva Convention II⁴⁰ require parties to search for, collect, and protect the dead without adverse distinction, prevent despoliation, and ensure careful examination prior to burial. Geneva Convention III⁴¹ imposes obligations regarding deceased prisoners of war, including proper recording and honourable burial while the Geneva Convention IV extends related protections to civilians⁴².

These obligations are reinforced by Additional Protocol I, which provides that the remains of persons who have died for reasons related to occupation or hostilities “shall be respected”⁴³. The formulation, though concise, encompasses protection against mutilation, public display, and exploitation. Additional Protocol II extends similar principles to non-international armed conflicts⁴⁴, thereby reducing normative divergence between conflict classifications.

Taken together, these instruments establish continuous obligations of search and recovery, prevention of despoliation, identification, respectful disposal, and maintenance of gravesites.

³⁵ Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (1864).

³⁶ Geneva Convention Relative to the Treatment of Prisoners of War (1929) arts 76–77.

³⁷ Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (OUP 1989) 74.

³⁸ Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd edn, CUP 2016) 136.

³⁹ Geneva Convention (I) 1949, arts 15–17.

⁴⁰ Geneva Convention (II) 1949, arts 18–20.

⁴¹ Geneva Convention (III) 1949, art 120.

⁴² Geneva Convention (IV) 1949, art 130.

⁴³ Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I) 1977, art 34.

⁴⁴ Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol II) 1977, art 8.

Customary International Law

Customary international law ensures that these protections apply universally, including to states not party to specific treaty provisions⁴⁵. The International Committee of the Red Cross (ICRC) Customary International Humanitarian Law Study identifies rules requiring parties to search for, collect, and evacuate the dead without adverse distinction and to prevent mutilation and despoliation⁴⁶.

Customary law also prohibits outrages upon personal dignity, including humiliating and degrading treatment, in both international and non-international armed conflicts⁴⁷. This prohibition has particular relevance where conduct does not amount to physical violence in the conventional sense but nevertheless seriously affronts human dignity. In this respect, customary norms reinforce treaty-based obligations by recognising that humiliation and degradation may arise from the manner in which the dead are treated.

International Criminal Law and Individual Responsibility

International criminal law translates humanitarian obligations into enforceable legal requirements. The Rome Statute of the International Criminal Court classifies certain acts of assault, mutilation, and humiliating treatment as war crimes.⁴⁸ While the crime of mutilation is commonly viewed as applicable to live persons, the offence of outrages upon personal dignity has been authoritatively extended to acts perpetrated against the dead.

The Elements of Crimes established by the Assembly of States Parties specify that a deceased person may be deemed a victim of humiliating or degrading treatment⁴⁹. This interpretation reflects the concept that dignity is not extinguished by death but survives as a legally protected interest. Judicial practice and scholarly opinion increasingly support this position, even though considerable doctrinal disagreement exists.⁵⁰

The ICC Elements of Crimes clarify that the victim of humiliating or degrading treatment may include a deceased person. This reflects not the attribution of continued legal personality, but the recognition that conduct directed at human remains can constitute a serious affront to

⁴⁵ Henckaerts and Doswald-Beck (n 1) Rule 112.

⁴⁶ ICRC Customary IHL Study, Rules 112–116.

⁴⁷ ICRC, *Customary International Humanitarian Law* (ICRC 2005) Rule 47.

⁴⁸ Rome Statute of the International Criminal Court 1998, art 8(2)(c)(ii).

⁴⁹ William A Schabas, *An Introduction to the International Criminal Court* (5th edn, CUP 2017) 152.

⁵⁰ Prosecutor v Kunarac (Judgment) IT-96-23 (ICTY, 12 June 2002) [150]–[153].

dignity protected under international law. When committed in the context of and associated with armed conflict, such acts may give rise to individual criminal liability.

Core Rules Governing the Protection of the Dead

From the combined operation of treaty law, customary norms, and criminal jurisprudence, several essential laws may be extracted.

- a. First, participants to an armed conflict are under a continuous obligation to seek for, collect, and evacuate the dead without unfavorable distinction, whenever circumstances permit⁵¹.
- b. Second, the dead must be protected against pillage, mutilation, and all types of ill-treatment, including sexual abuse and public disgrace.⁵²
- c. Third, parties must perform careful investigations of bodies, record identifying information, and facilitate the identification of remains, particularly for the benefit of families and communities.⁵³
- d. Fourth, remains must be disposed of in a courteous manner through burial or cremation, preferably on an individual basis, and in accordance with religious and cultural traditions where possible.⁵⁴
- e. Fifth, gravesites and burial places must be honored, maintained, and protected against sacrilege and arbitrary disturbance.⁵⁵
- f. Sixth, acts that humiliate, degrade, or violate the dignity of the dead may entail individual criminal culpability under international law. These criteria reflect both humanitarian considerations and broader social interests in memory, grief, and reconciliation.

Recognition of Posthumous Dignity in International Law

A major concern underlying these rules is whether international law respects dignity after death. Although international agreements rarely apply the word “posthumous dignity” specifically, the form and content of humanitarian law provide a clear affirmative answer⁵⁶.

⁵¹ Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I) 1977, arts 32–34.

⁵² Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (CUP 2005) vol I, Rules 112–113.

⁵³ ICRC, *Commentary on the Geneva Conventions of 12 August 1949: Volume I* (2nd edn, CUP 2016) 587–605.

⁵⁴ Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I) 1977, arts 32–34.

⁵⁵ ICRC, *Commentary on the Geneva Conventions of 12 August 1949: Volume I* (2nd edn, CUP 2016) 587–605.

⁵⁶ Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (2nd edn, Edward Elgar 2019) 252.

The need to prevent despoliation, to provide respectful disposal, and to ban humiliating treatment reveals that the law assigns intrinsic value to the departed⁵⁷. The inclusion of corpse mistreatment within the crime of outrages upon personal dignity demonstrates that dignity is not restricted to living beings but extends symbolically and socially beyond death⁵⁸. This definition of dignity is relational and collective. It safeguards not only the memory and identity of the deceased but also the emotional and moral interests of families, communities, and humankind at large. By conserving human remains, international law tries to preserve the minimal standards of civilization even in instances of terrible atrocity⁵⁹.

Part 3 - Are the Dead Protected Persons under International Humanitarian Law in International and Non-International Armed Conflicts?

The legal status of the deceased under international humanitarian law (IHL) raises a structural question: do the dead qualify as “protected persons,” or are they safeguarded through distinct obligations independent of formal status? IHL is primarily designed to regulate the treatment of living persons affected by armed conflict⁶⁰. Nevertheless, as demonstrated in Part II, it also establishes detailed rules concerning the treatment of the dead. Whether these rules amount to the recognition of the deceased as “protected persons” depends upon the conflict classification and the interpretative framework applied⁶¹.

The Concept of Protected Persons in IHL

The concept of “protected persons” is usually connected with international armed conflicts and is important to the Geneva Conventions of 1949.⁶² It applies mostly to specific types of individuals who, due to their vulnerability, are entitled to special protection, including the wounded and sick, shipwrecked persons, prisoners of war, and certain civilians.⁶³ These categories are defined in Articles 13 of Geneva Conventions I and II, Article 4 of Geneva Convention III, and Article 4 of Geneva Convention IV.⁶⁴

⁵⁷ Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I) 1977, arts 32–34.

⁵⁸ Geneva Conventions of 1949, Common art 3; Rome Statute of the International Criminal Court 1998, art 8(2)(c)(ii).

⁵⁹ ICRC, *Commentary on the Geneva Conventions of 12 August 1949: Volume I* (2nd edn, CUP 2016) 603–605.

⁶⁰ Theodor Meron, ‘The Humanization of Humanitarian Law’ (2000) 94 AJIL 239, 258.

⁶¹ Marco Sassòli, *International Humanitarian Law* (2nd edn, Edward Elgar 2019) 251–252.

⁶² Geneva Convention (III) relative to the Treatment of Prisoners of War (1949) art 4.

⁶³ Geneva Convention (I) 1949 art 13; Geneva Convention (II) 1949 art 13.

⁶⁴ Geneva Convention (IV) 1949 art 4.

Notably, the dead are not expressly covered within these essential rules.⁶⁵ This absence reflects the life-preserving orientation of the Conventions, which emphasize the rescue, care, and survival of those impacted by hostilities. Obligations respecting the dead are consequently presented as auxiliary obligations, based on protection from despoliation, identification, and respectful disposal, rather than on comprehensive human status.⁶⁶

The Dead as Protected Persons in International Armed Conflicts

In international armed conflicts, the Geneva Conventions guarantee differential protection for the dead depending on their former legal position and the circumstances of death. Under Geneva Conventions I and II, the obligation to seek for and protect the deceased applies broadly, including to members of enemy forces and, in certain instances, one's own armed forces.⁶⁷ However, this does not immediately give universal "protected person" status. Instead, the deceased are protected solely in regard to specified norms guiding their treatment. Greater clarity arises under Geneva Conventions III and IV. Prisoners of war who die in captivity are protected persons under Geneva Convention III, and its obligations on investigation, reporting, and burial continue to apply⁶⁸.

Similarly, individuals who die while incarcerated under Geneva Convention IV retain their protected status for the purposes of the Convention's rules on the dead.⁶⁹ In certain instances, death does not terminate the individual's legal relationship with the detaining power. Nevertheless, this protection is selective. Civilians who are not incarcerated, and soldiers who die on the battlefield, do not fall neatly within the personal scope of Geneva Conventions III and IV⁷⁰. As a result, only select categories of the dead qualify as protected persons within the traditional treaty framework. The legal obligations consequently rely on the location of the body, the form of custody, and the individual's position before death.

Additional Protocol I and Customary Law

Additional Protocol I greatly expands the protective framework. Article 34 demands that the remains of all those who have perished in connection with wars or occupation will be

⁶⁵ Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd edn, CUP 2016) 136.

⁶⁶ Geneva Convention (I) 1949 arts 15–17.

⁶⁷ Geneva Convention (I) 1949 art 15; Geneva Convention (II) 1949 art 18.

⁶⁸ Geneva Convention (III) 1949 arts 120–121.

⁶⁹ Geneva Convention (IV) 1949 art 130.

⁷⁰ Sassòli (n 1) 253.

respected⁷¹. This commitment applies independently of country, military status, or incarceration. It includes preventing despoliation, avoiding public exposure, and assuring disposal along with religious and cultural customs.

Customary international humanitarian law encourages this larger perspective. According to the ICRC Customary Law Study, parties to both international and non-international armed conflicts must search for, collect, and evacuate the dead without unfavourable distinction and must avoid mutilation and destruction.⁷² These provisions apply to all persons whose death is linked to armed conflict⁷³, so establishing the largest personal scope of protection in IHL. Through the joint effect of Additional Protocol I and customary law, the deceased in international armed conflicts may therefore be regarded as protected people in a functional sense. Their protection is not drawn from official status alone but from the circumstances of death and the humanitarian values at stake.⁷⁴

Protection of the Dead in Non-International Armed Conflicts

In non-international armed conflicts, the notion of “protected persons” is virtually missing. The legal system is activity-based rather than status-based. Additional Protocol II pertains to all persons impacted by the war and does not establish categories analogous to those in the Geneva Conventions. Article 8 just requires parties to search for the dead, prevent despoliation, and dispose of bodies respectfully.⁷⁵ Common Article 3 of the Geneva Conventions sets the underlying standard. It protects those taking no active part in hostilities, including those placed hors de combat.⁷⁶

Although the deceased are not specifically addressed, they are, by definition, incapable of participating in hostilities. It has consequently been maintained that death constitutes “any other cause” rendering a person hors de fight. This interpretation is reinforced by the ICRC Commentary, which accepts that elements of Common Article 3 apply to the dead. While laws respecting life and physical integrity are logically limited to living persons, the

⁷¹ Protocol Additional I (1977) art 34.

⁷² Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (CUP 2005) vol I, Rules 112–113.

⁷³ Assembly of States Parties, *Elements of Crimes* (ICC-ASP/1/3, 2002) art 8(2)(c)(ii) fn 47.

⁷⁴ Prosecutor v Kunarac (Judgment) IT-96-23 (ICTY, 12 June 2002) [150]–[153].

⁷⁵ Protocol Additional II (1977) art 8.

⁷⁶ Geneva Conventions 1949, Common art 3.

prohibition of outrages upon personal dignity under Article 3(1)(c) extends to the deceased⁷⁷. Mutilation and humiliating treatment of corpses are thus illegal in both international and non-international armed situations. Customary law further confirms that these obligations are relevant irrespective of conflict classification.⁷⁸ Accordingly, in NIACs, the dead are not protected people in a formal sense but are protected by IHL through minimum humanitarian guarantees anchored in dignity and respect.

International Criminal Law and the Status of the Dead

International criminal law gives vital clarification regarding the legal status of the deceased. The Rome Statute criminalises outrages of personal dignity in both international and non-international armed situations. The Elements of Crimes indicate that, for this offence, the term “person” includes the dead.⁷⁹ This approach follows post-World War II law and customary standards establishing individual criminal culpability for misuse of corpses.

Historical cases, such as Max Schmidt and Pohl, illustrate that deplorable treatment of the dead has always been viewed as unlawful under international law. Contemporary law and intellectual opinion overwhelmingly embrace this approach, considering the protection of the deceased as an important component of humanitarian ideals.⁸⁰ Although some observers wonder whether a footnote in the Elements of Crimes might enhance personal scope, the prevalent view is that it just codifies existing customary law. It confirms that dignity-based protections are not eliminated by death.

Do the Dead Qualify as Protected Persons under IHL?

The investigation demonstrates that the answer changes depending on the legal setting. In international armed conflicts, the dead are protected persons under the Geneva Conventions only in limited and status-dependent situations, particularly in connection to prisoners of war and imprisoned civilians. Outside these situations, people are protected through specialized requirements rather than comprehensive personal status.⁸¹

⁷⁷ Rome Statute of the International Criminal Court 1998, art 8(2)(c)(ii).

⁷⁸ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (CUP 2005) vol I, Rules 112–113.

⁷⁹ Assembly of States Parties, *Elements of Crimes* (ICC-ASP/1/3, 2002) art 8(2)(c)(ii) fn 47.

⁸⁰ Theodor Meron, ‘The Humanization of Humanitarian Law’ (2000) 94 AJIL 239, 258.

⁸¹ Geneva Convention (III) relative to the Treatment of Prisoners of War (1949) art 4.

Under Additional Protocol I and customary law, however, all persons who die in connection with hostilities are entitled to respect and protection.⁸² In this broader ethical framework, the deceased are protected under IHL, but not generally as ‘protected persons’ within the technical meaning of the Conventions. In non-international armed conflicts, the traditional concept of protected persons does not apply.

Nevertheless, the dead are protected via Common Article 3, Additional Protocol II, and customary law, particularly via the prohibition of outrages upon personal dignity.⁸³

Part 4 - The War Crime of Outrages of Personal Dignity against the Dead under International Humanitarian Law

The prohibition of outrages upon personal dignity constitutes a foundational norm of international humanitarian law (IHL)⁸⁴. Initially articulated in relation to persons placed hors de combat under Common Article 3 of the Geneva Conventions⁸⁵, the prohibition has progressively been interpreted to encompass conduct directed at deceased persons. Contemporary international criminal law confirms that serious humiliation, degradation, or abuse of human remains may amount to a war crime in both international and non-international armed conflicts⁸⁶. The extension of this prohibition to the dead does not represent a conceptual innovation, but rather a clarification of the dignity-based foundations of humanitarian law⁸⁷.

This section argues that modern IHL recognises the continued legal protection of human dignity after death, and that the Necrophilic conduct constitutes a war crime only when committed in the context of and associated with an armed conflict and when meeting the gravity threshold⁸⁸.

Status under Customary International Law

The inclusion of deceased persons within the scope of the war crime of outrages of personal dignity cannot be justified only by reference to the footnotes of the ICC Elements of Crimes.⁸⁹

⁸² Protocol Additional I (1977) art 34.

⁸³ Marco Sassòli, *International Humanitarian Law* (2nd edn, Edward Elgar 2019) 251–252.

⁸⁴ Geneva Conventions of 12 August 1949, Common art 3.

⁸⁵ Protocol Additional I (1977) art 75(2)(b).

⁸⁶ Rome Statute of the International Criminal Court 1998, art 8(2)(c)(ii).

⁸⁷ ICRC, *Commentary on the Geneva Conventions* (2nd edn, CUP 2016) 603–605.

⁸⁸ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (CUP 2005) vol I, Rule 113.

⁸⁹ Assembly of States Parties, *Elements of Crimes* (ICC-ASP/1/3, 2002) art 8(2)(c)(ii) fn 47.

Common Article 3 prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment⁹⁰.” Although the provision does not explicitly refer to the deceased, neither does it restrict its scope to persons capable of subjective experience⁹¹. Post-Second World War jurisprudence demonstrates that mutilation, desecration, and public degradation of corpses were treated as violations of the laws and customs of war capable of incurring individual criminal responsibility⁹².

The Rome Statute of the International Criminal Court codifies this approach. Article 8(2)(b)(xxi) and Article 8(2)(c)(ii) criminalise outrages upon personal dignity in international and non-international armed conflicts respectively⁹³. The Elements of Crimes clarify that, for this offence, the victim may include a deceased person. This clarification reflects an understanding that dignity-based protections do not terminate upon death.

State practice further reinforces this position⁹⁴. Military manuals of numerous States prohibit mutilation or abuse of the dead without distinction between international and non-international conflicts⁹⁵. Domestic criminal systems frequently penalise corpse abuse in both peacetime and wartime contexts⁹⁶. The consistency of such practice, accompanied by expressions of legal obligation, supports the existence of *opinio juris*⁹⁷. Authoritative commentary, including that of the International Committee of the Red Cross, recognises that the prohibition of humiliating and degrading treatment extends to human remains⁹⁸.

Accordingly, the protection of the deceased under the offence of outrages upon personal dignity is best understood as the product of customary development rather than an artificial expansion of treaty text⁹⁹.

Material Elements (Actus Reus)

International humanitarian law does not provide an exhaustive list of acts constituting outrages

⁹⁰ Marco Sassòli, *International Humanitarian Law* (2nd edn, Edward Elgar 2019) 251.

⁹¹ Prosecutor v Furundžija (Judgment) IT-95-17/1-T (ICTY, 10 December 1998).

⁹² Prosecutor v Akayesu (Judgment) ICTR-96-4-T (2 September 1998).

⁹³ Theodor Meron, ‘The Humanization of Humanitarian Law’ (2000) 94 AJIL 239.

⁹⁴ Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd edn, CUP 2016) 136–138.

⁹⁵ Henckaerts and Doswald-Beck (n 5).

⁹⁶ ICRC Customary IHL Study (2005) Rule 113 commentary.

⁹⁷ ICRC Commentary (2016) 605.

⁹⁸ William A Schabas, *An Introduction to the International Criminal Court* (5th edn, CUP 2017) 152–155.

⁹⁹ ICRC, *Customary International Humanitarian Law* (ICRC 2005) Rule 113 commentary.

upon personal dignity. The offence is formulated in open-ended terms in order to capture evolving forms of abuse¹⁰⁰.

International jurisprudence has characterised the actus reus as conduct which objectively humiliates, degrades, or otherwise seriously violates the inherent dignity of the victim¹⁰¹. The Elements of Crimes clarify that the victim need not be aware of the humiliation or degradation. This feature is particularly significant in cases involving deceased persons, who are incapable of subjective perception¹⁰².

Acts that may satisfy the material element when directed at corpses include mutilation, beheading, post-mortem amputation, sexual abuse of remains, posing with bodies in a trophy-like manner, intentional public display of corpses for propaganda purposes, and dissemination of degrading images or recordings¹⁰³. The common denominator is not the physical harm inflicted upon remains, but the objective denial of human dignity through treatment that reduces the deceased to objects of ridicule, intimidation, or exploitation¹⁰⁴.

The assessment remains contextual. The conduct must be evaluated in light of prevailing humanitarian standards and the circumstances of the conflict¹⁰⁵.

Severity of the Violation

Not every instance of disrespect toward the dead constitutes a war crime. The conduct must reach a level of seriousness sufficient to amount to an outrage upon personal dignity¹⁰⁶.

International jurisprudence applies an objective standard¹⁰⁷: whether a reasonable observer would regard the conduct as a serious affront to human dignity. The threshold is lower than that required for torture or cruel treatment, but it excludes trivial or incidental acts lacking substantial gravity¹⁰⁸.

¹⁰⁰ Geneva Conventions of 12 August 1949, Common art 3.

¹⁰¹ Prosecutor v Kunarac (Judgment) IT-96-23 (ICTY, 12 June 2002) [150]-[153].

¹⁰² Prosecutor v Bemba (Judgment pursuant to art 74 of the Statute) ICC-01/05-01/08 (21 March 2016).

¹⁰³ Assembly of States Parties, *Elements of Crimes* (ICC-ASP/1/3, 2002) art 8(2)(c)(ii) fn 47.

¹⁰⁴ Schabas (n 15) 154.

¹⁰⁵ Meron (n 10) 258.

¹⁰⁶ Prosecutor v Kunarac (Judgment) IT-96-23 (ICTY, 12 June 2002) [150]-[153].

¹⁰⁷ Kunarac (n 19).

¹⁰⁸ German Federal Court of Justice, Judgment of 27 July 2017, 3 StR 57/17; Supreme Court of Sweden, Judgment of 19 December 2019, Case No B 3787-19.

In the digital context, courts have examined factors such as the manner of recording, the intent behind dissemination, the scale of distribution, and the surrounding circumstances. Public circulation of degrading imagery capable of reaching a broad audience is more likely to satisfy the gravity requirement than limited or private sharing. Similarly, mere presence in an image depicting corpses does not automatically establish responsibility absent active participation in humiliating conduct.

Judicial reasoning consistently emphasises that the offence is dignity-centred and objective in nature. The absence of additional physical injury to the remains does not negate the possibility of a serious violation where symbolic degradation is evident.

Subjective Element (Mens Rea)

Under Article 30 of the Rome Statute¹⁰⁹, the offence requires intent and knowledge. The perpetrator must intentionally engage in the conduct and be aware of the factual circumstances that establish the existence of an armed conflict and the protected status of the victim.

In cases involving deceased persons, the mental element is generally satisfied where the accused knows that the victim is dead and consciously performs the degrading act¹¹⁰. There is no requirement to prove that the perpetrator knew the victim's precise legal classification prior to death, as the protection of dignity applies irrespective of antecedent status¹¹¹.

Nor is it necessary to demonstrate a specific purpose to humiliate. It is sufficient that the perpetrator was aware that the conduct would, in the ordinary course of events, amount to humiliating or degrading treatment. The offence does not require discriminatory intent. Its rationale lies in the objective protection of humanitarian values rather than in the motives of the accused.

Sentencing and Aggravation factors

Domestic and international practice indicates variation in sentencing outcomes depending on the nature and gravity of the conduct. Where the accused's role is limited to dissemination of degrading material, penalties have often been comparatively moderate¹¹². By contrast, direct

¹⁰⁹ Rome Statute 1998, art 30.

¹¹⁰ Protocol Additional I (1977) art 75(2)(b).

¹¹¹ ICRC Commentary (2016) 605.

¹¹² Kunarac (n 19).

participation in mutilation or severe abuse of corpses has resulted in significantly harsher sentences.

Mistreatment of the dead may also function as an aggravating factor in prosecutions for other international crimes. Post-mortem abuse has been considered indicative of particular cruelty or moral gravity, thereby influencing sentencing in cases involving murder, torture, or unlawful detention¹¹³. The treatment of corpses may therefore compound the seriousness of underlying offences.

Recognition of Posthumous Dignity in International Law

The cumulative effect of treaty provisions, customary norms, and international criminal jurisprudence demonstrates that international law affords protection to human dignity beyond biological death¹¹⁴. This protection is not framed in metaphysical terms but operates through concrete obligations and criminal prohibitions.

By extending the offence of outrages upon personal dignity to the deceased, international humanitarian law affirms that the remains of persons who die in armed conflict must be treated with respect¹¹⁵. The legal protection of the dead serves multiple functions: safeguarding humanitarian limits in warfare, protecting the interests of families and communities, and preserving the integrity of the legal order governing armed conflict.

The recognition of dignity after death thus reflects a structural feature of modern IHL. While the deceased may not uniformly qualify as “protected persons” in the technical sense examined in Part III, they remain beneficiaries of binding norms that prohibit serious humiliation and degradation¹¹⁶. The war crime of outrages upon personal dignity provides the principal mechanism through which this protection is enforced.

¹¹³ Prosecutor v Akayesu (Judgment) ICTR-96-4-T (2 September 1998).

¹¹⁴ ICRC, *Commentary on the Geneva Conventions* (2nd edn, CUP 2016) 603–605.

¹¹⁵ Meron (n 10) 258.

¹¹⁶ Assembly of States Parties, *Elements of Crimes* (ICC-ASP/1/3, 2002) art 8(2)(c)(ii) fn 47.

Part 5 - International Jurisprudence Regarding the Physical Illtreatment of the Bodies of the Dead in Armed Conflicts

The physical ill-treatment of the bodies of the dead constitutes one of the clearest violations of humanitarian restraints in armed conflict¹¹⁷. Although international humanitarian law (IHL) was primarily designed to regulate the conduct of hostilities and protect the living, judicial practice has consistently recognised that respect for the dead forms part of the legal discipline of warfare¹¹⁸. Through the jurisprudence of post-Second World War military tribunals and subsequent international criminal courts, a body of case law has developed prohibiting mutilation, desecration, and degrading treatment of human remains¹¹⁹. This jurisprudence demonstrates that post-mortem abuse may incur individual criminal responsibility under customary and treaty-based international law¹²⁰.

Post-Second World War Military Tribunals

The earliest explicit judicial responses to the ill-treatment of the dead emerged after the Second World War. In *United States v Schmid*, a United States Military Government Court sitting at Dachau convicted a German medical officer who decapitated and preserved the head of a deceased American airman¹²¹. The tribunal characterised the conduct as a violation of the laws and usages of war, relying upon customary law and the 1929 Geneva Convention relative to the Treatment of Prisoners of War¹²². The judgment affirmed that the remains of enemy combatants must not be mutilated or dishonoured.

Similarly, in *United States v. Mabuchi and Kikuchi*, a Military Commission in Yokohama condemned Japanese commanders for ordering and engaging in the bayoneting and decapitation of a deceased prisoner of war.¹²³ The Commission classified these acts as universally accepted crimes under international law and anchored its rationale principally in customary law.¹²⁴ The case was essential in proving that guilt extended not only to direct perpetrators but also to leaders who failed to prevent or allowed abuse of corpses.

¹¹⁷ Marco Sassòli, *International Humanitarian Law* (2nd edn, Edward Elgar 2019) 251–253.

¹¹⁸ Geneva Conventions, Common art 3; Additional Protocol I, art 34.

¹¹⁹ Rome Statute, art 8(2)(b)(xxi); art 8(2)(c)(ii).

¹²⁰ Rome Statute of the International Criminal Court 1998, art 8(2)(c)(ii); Assembly of States Parties, *Elements of Crimes* (ICC-ASP/1/3, 2002) art 8(2)(c)(ii) fn 47.

¹²¹ *United States v Schmid* (General Military Government Court, Dachau, 19 May 1945).

¹²² Geneva Convention relative to the Treatment of Prisoners of War (1929) arts 76–77.

¹²³ *United States v Mabuchi and Kikuchi* (Yokohama Military Commission, 1947).

¹²⁴ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (CUP 2005) vol I, Rule 113.

These early verdicts illustrate that, beginning in the 1940s, international tribunals recognized the physical mistreatment of the dead as a distinct and grave violation, separate from the crimes of murdering or wrongful execution.¹²⁵ They also reflect an early court realization that the dignity of the deceased merited legal protection.¹²⁶

The Jurisprudence of the International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda further developed the legal treatment of post-mortem abuse. In *Prosecutor v Bagosora et al*, the Trial Chamber found that the genital mutilation of the body of Prime Minister Agathe Uwilingiyimana constituted an inhumane act and a grave assault on human dignity¹²⁷. Although procedural factors affected the final convictions, the Appeals Chamber unequivocally condemned the mutilation as incompatible with fundamental humanitarian norms¹²⁸.

The Appeals Chamber also observed that numerous domestic legal systems criminalise interference with corpses, reinforcing the customary status of the prohibition. The ICTR thus treated the deceased as beneficiaries of dignity-based protection under international criminal law, even though the ICTR Statute did not explicitly refer to post-mortem abuse. The tribunal's reasoning marked a shift toward recognising corpse maltreatment as a serious violation in its own right.

The Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for the former Yugoslavia addressed corpse mistreatment in a more indirect manner. In *Prosecutor v Brđanin*, the Trial Chamber noted that bodies were mutilated, desecrated, and disposed of in mass graves in ways that contributed to persecution and inhumane treatment¹²⁹. However, such conduct was generally subsumed within broader charges, including crimes against humanity, rather than prosecuted as distinct offences.

This approach may reflect the structure of the ICTY Statute, which relied on broader categories such as inhumane acts¹³⁰. As a result, post-mortem abuse was often considered evidentiary of

¹²⁵ William A Schabas, *An Introduction to the International Criminal Court* (5th edn, CUP 2017) 152–155.

¹²⁶ ICRC, *Commentary on the Geneva Conventions of 12 August 1949* (2nd edn, CUP 2016) 603–605.

¹²⁷ *Prosecutor v Bagosora et al*, ICTR-98-41-T, Judgment (18 December 2008).

¹²⁸ *Prosecutor v Bagosora et al*, ICTR-98-41-A, Judgment (14 December 2011).

¹²⁹ *Prosecutor v Brđanin*, IT-99-36-T, Judgment (1 September 2004).

¹³⁰ ICTY Statute, art 5

gravity rather than conceptualised as a separate legal wrong. Nevertheless, ICTY jurisprudence reinforced the principle that degrading treatment of corpses formed part of systematic campaigns of persecution.

The Special Court for Sierra Leone

The Special Court for Sierra Leone further clarified distinctions between violence against the living and abuse of the dead. In *Prosecutor v Brima, Kamara and Kanu*, the Trial Chamber convicted the accused for mutilation primarily directed at living victims, treating such conduct as violations of Common Article 3¹³¹. The Court emphasised the terrorising impact of amputations and bodily mutilations on civilians.

In *Prosecutor v Charles Taylor*, acts including the decapitation of killed persons were generally addressed under murder, terrorism, or other inhumane acts rather than prosecuted independently as post-mortem offences¹³². This jurisprudence illustrates a tendency to confine the crime of mutilation to living victims, while addressing corpse abuse indirectly through broader categories.

The International Criminal Court

The International Criminal Court has drawn a clearer distinction between violence against the living and conduct directed at the dead. In *Prosecutor v Mbarushimana*, the Pre-Trial Chamber held that the crime of mutilation presupposes conduct directed against a living person and therefore does not apply to post-mortem acts¹³³. The Chamber declined to characterise alleged acts against a deceased person as mutilation.

However, the Rome Statute expressly criminalises outrages upon personal dignity in both international and non-international armed conflicts¹³⁴. The Elements of Crimes clarify that this offence may apply where the victim is deceased¹³⁵. Accordingly, doctrinal analysis suggests that post-mortem abuse is more appropriately addressed under the offence of outrages upon personal dignity rather than mutilation.

¹³¹ *Prosecutor v Brima, Kamara and Kanu*, SCSL-04-16-T, Judgment (20 June 2007).

¹³² *Prosecutor v Taylor*, SCSL-03-01-T, Judgment (18 May 2012).

¹³³ *Prosecutor v Mbarushimana*, ICC-01/04-01/10, Decision on Confirmation of Charges (16 December 2011).

¹³⁴ Rome Statute, art 8(2)(b)(xxi); art 8(2)(c)(ii).

¹³⁵ ICC Elements of Crimes, art 8(2)(b)(xxi), fn 49.

Comparative Assessment of International Jurisprudence

International judicial practice reveals both continuity and doctrinal fragmentation. Early military tribunals articulated a principled recognition of corpse abuse as an independent war crime grounded in customary law. Subsequent international tribunals acknowledged the gravity of such conduct but often addressed it through broader categories such as inhumane acts, persecution, or murder.

A consistent feature across jurisdictions is the rejection of the proposition that death extinguishes all legal protection. Courts have repeatedly characterised post-mortem abuse as an affront to human dignity and humanitarian principles. Variations in legal labelling reflect differences in statutory frameworks rather than fundamental disagreement concerning the unlawfulness of such conduct.

Recognition of Posthumous Dignity in International Law

Judicial practice across military tribunals, ad hoc international tribunals, and the ICC supports the conclusion that international law recognises dignity beyond death. This recognition operates through concrete prohibitions against mutilation, degrading treatment, and outrages upon personal dignity¹³⁶.

The protection of the deceased serves broader humanitarian objectives, including safeguarding respect for families, preserving the integrity of armed conflict regulation, and preventing the normalisation of brutality. While tribunals have employed varying doctrinal pathways, the cumulative jurisprudence affirms that the physical ill-treatment of corpses may constitute a prosecutable war crime under contemporary international law.

PART 6 - TOWARDS A COHERENT DOCTRINAL FRAMEWORK: POST-MORTEM DIGNITY, PROTECTED STATUS, AND THE FUTURE OF ACCOUNTABILITY

The preceding analysis demonstrates that international humanitarian law (IHL) and international criminal law prohibit the physical ill-treatment of the dead, yet the doctrinal basis of this protection remains structurally fragmented. While the prohibition of outrages upon

¹³⁶ Geneva Conventions, Common art 3; Additional Protocol I, art 34; Rome Statute, art 8.

personal dignity extends to deceased persons¹³⁷, the status of the dead within the architecture of IHL continues to be framed inconsistently across treaty regimes and judicial practice. This Part argues that a coherent doctrinal framework can be constructed by recognising that protection of the deceased in armed conflict is grounded not in continuing legal personality, but in the objective preservation of human dignity as a structural principle of humanitarian law.

The Normative Basis of Post-Mortem Protection

International humanitarian law does not expressly declare that dignity survives death. Instead, it imposes concrete obligations concerning the search, collection, identification, and respectful disposal of the dead¹³⁸. These provisions apply irrespective of nationality and, under Additional Protocol I, irrespective of prior status.

Common Article 3 of the Geneva Conventions prohibits outrages upon personal dignity in both international and non-international armed conflicts¹³⁹. Although the text does not explicitly refer to the deceased, international jurisprudence and the ICC Elements of Crimes confirm that the offence may encompass conduct directed at corpses¹⁴⁰.

The doctrinal foundation of this protection lies in the objective character of dignity under IHL. The prohibition of humiliating or degrading treatment does not depend upon the victim's subjective experience. International tribunals have consistently applied an objective "reasonable observer" standard when assessing outrages upon personal dignity¹⁴¹. The absence of consciousness in deceased persons therefore does not negate the legal wrong. The protection of the dead is thus best understood as an extension of the humanitarian limitation on violence, rather than as a recognition of continuing subjective rights after death.

Status-Based Versus Conduct-Based Protection

As demonstrated in Part III, the category of "protected persons" within IHL is primarily status-based and most clearly articulated in the Geneva Conventions applicable to international armed

¹³⁷ Rome Statute of the International Criminal Court 1998, art 8(2)(b)(xxi), art 8(2)(c)(ii); ICC, *Elements of Crimes*, art 8(2)(b)(xxi), fn 49.

¹³⁸ Geneva Convention I 1949, arts 15–17; Geneva Convention II 1949, arts 18–20; Additional Protocol I 1977, art 34.

¹³⁹ Common art 3(1)(c).

¹⁴⁰ ICC, *Elements of Crimes*, art 8(2)(b)(xxi), fn 49.

¹⁴¹ ICTR, *Prosecutor v Bagosora et al*, ICTR-98-41-T, Judgment (18 December 2008), paras 2221–2224; ICTY, *Prosecutor v Brđanin*, IT-99-36-T, Judgment (1 September 2004), paras 1030–1032.

conflicts¹⁴². The deceased do not generally fall within these definitional clauses.

However, protection of the dead is not dependent upon formal protected-person status. Under Additional Protocol I, art 34, all persons who die in connection with hostilities are entitled to respect. Customary international humanitarian law similarly obliges parties to prevent mutilation and despoliation of the dead in both international and non-international armed conflicts¹⁴³.

This shift from status-based to conduct-based protection reflects an important structural development. Rather than asking whether the deceased qualify as “protected persons,” contemporary IHL regulates specific forms of conduct directed at remains. The legal focus therefore lies on the nature of the act mutilation, humiliation, desecration, rather than on the antecedent classification of the victim.

The jurisprudence of the International Criminal Court reinforces this approach. In *Prosecutor v Mbarushimana*, the Pre-Trial Chamber held that mutilation presupposes conduct against a living person¹⁴⁴. However, the Chamber did not exclude the possibility that post-mortem abuse could fall under outrages upon personal dignity¹⁴⁵. This distinction illustrates the gradual doctrinal consolidation of corpse abuse under dignity-based offences rather than under bodily integrity crimes.

Fragmentation and Convergence in International Jurisprudence

International jurisprudence reveals both divergence in legal characterisation and convergence in normative outcome. Post-Second World War military tribunals explicitly treated corpse abuse as an independent violation of the laws and customs of war¹⁴⁶. Later tribunals, including the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia, often subsumed such conduct within broader categories such as inhumane acts or persecution¹⁴⁷.

¹⁴² Geneva Convention III 1949, art 4; Geneva Convention IV 1949, art 4.

¹⁴³ ICRC, *Customary International Humanitarian Law*, vol I: Rules (2005), Rules 112–116.

¹⁴⁴ ICC-01/04-01/10, Decision on Confirmation of Charges (16 December 2011), para 183.

¹⁴⁵ Rome Statute, art 8(2)(c)(ii).

¹⁴⁶ *United States v Schmid* (General Military Government Court, Dachau, 1947); *United States v Mabuchi and Kikuchi* (US Military Commission, Yokohama, 1946).

¹⁴⁷ ICTR, *Bagosora*, ICTR-98-41-T, paras 2221–2224; ICTY, *Brđanin*, IT-99-36-T, paras 1030–1032.

Despite terminological variation, courts consistently rejected the proposition that the dead fall outside humanitarian protection. The recurring judicial emphasis on humiliation, degradation, and symbolic violence indicates that the core concern lies in the preservation of human dignity as a structural value of IHL. The convergence is therefore normative rather than lexical while legal labels differ, the underlying prohibition of post-mortem abuse remains constant.

The Relationship Between IHL and International Criminal Law

International criminal law has played a consolidating role in clarifying the enforceability of post-mortem dignity. The Rome Statute of the International Criminal Court criminalises outrages upon personal dignity in both international and non-international armed conflicts¹⁴⁸. This clarification is significant for two reasons. First, it eliminates ambiguity concerning *ratione personae*. Second, it ensures that serious corpse abuse engages individual criminal responsibility rather than remaining solely within the domain of state responsibility. By grounding liability in dignity rather than bodily harm, international criminal law bridges the gap between traditional IHL protections and contemporary forms of symbolic or digital humiliation, including dissemination of degrading images.

Doctrinal Implications and Future Development

The analysis across Parts III–V suggests three principal doctrinal implications.

First, the protection of the deceased should be conceptualised as an objective limitation on conduct rather than as a derivative right of a continuing legal person. This framing avoids metaphysical debates about posthumous personality while preserving enforceable standards.

Second, greater doctrinal clarity would be achieved if international courts consistently prosecuted physical abuse of corpses under the offence of outrages upon personal dignity, rather than attempting to subsume such conduct under mutilation or other bodily integrity crimes designed for living victims.

Third, as digital technologies amplify the dissemination of degrading imagery, the interpretative development of the severity threshold will assume increasing importance. The objective “reasonable observer” standard, already recognised in international jurisprudence¹⁴⁹, provides a stable analytical foundation for future adjudication.

¹⁴⁸ art 8(2)(b)(xxi); art 8(2)(c)(ii). The ICC Elements of Crimes confirm that the victim may be deceased (ICC, *Elements of Crimes*, art 8(2)(b)(xxi), fn 49.

¹⁴⁹ ICTR, *Bagosora*, paras 2221–2224.

International law does not uniformly classify the deceased as “protected persons.” Nevertheless, through treaty provisions¹⁵⁰, customary norms¹⁵¹, it establishes a coherent prohibition against the physical ill-treatment of the dead.

The protection of post-mortem dignity operates as a structural feature of modern humanitarian law. While doctrinal articulation has evolved incrementally, from early military tribunals to contemporary international criminal courts, the normative conclusion remains stable: serious mutilation, desecration, or humiliation of corpses in armed conflict constitutes a violation of international law capable of engaging individual criminal responsibility.

In this manner, international humanitarian law affirms that the limits of warfare extend beyond the preservation of life to encompass respect for human remains, thereby reinforcing the civilising function of legal restraint even in the context of armed violence.

CONCLUSION

This study has demonstrated that the protection of the deceased under international humanitarian law (IHL) and international criminal law forms an established and integral component of the law of armed conflict. Far from representing a recent doctrinal innovation, the prohibition of post-mortem abuse is rooted in customary law, reflected in post-Second World War military jurisprudence, and reinforced through the normative framework of the Geneva Conventions and their Additional Protocols. Its subsequent codification in the Rome Statute of the International Criminal Court confirms that serious humiliation, desecration, or degradation of corpses may entail individual criminal responsibility in both international and non-international armed conflicts.

Contemporary developments, particularly before domestic courts exercising universal jurisdiction, have strengthened the operational clarity of this prohibition. By addressing conduct that international tribunals have sometimes treated indirectly, national jurisprudence has contributed to refining the elements of the offence and reinforcing accountability mechanisms. In doing so, domestic courts have assumed a complementary role in ensuring that humanitarian norms relating to the dead are not rendered ineffective through institutional hesitation.

¹⁵⁰ Geneva Conventions, Common art 3; Additional Protocol I, art 34.

¹⁵¹ ICRC, *Customary IHL*, Rules 112–116), and criminal prohibitions (Rome Statute, art 8.

The extension of criminal responsibility to grave post-mortem abuse reflects a principled commitment to the preservation of human dignity within armed conflict. At the same time, its enforcement must remain consistent with the structural safeguards of international criminal law, including legality, gravity thresholds, and individual culpability. Maintaining this balance is essential in light of contemporary conflicts in which corpse desecration is frequently instrumentalised for intimidation, propaganda, and dehumanisation.

The cumulative effect of treaty provisions, customary rules, and judicial interpretation indicates that international law protects the dead through enforceable obligations rather than symbolic aspiration. While the deceased are not uniformly classified as “protected persons” in a technical sense, they remain beneficiaries of binding norms prohibiting mutilation, degrading treatment, and outrages upon personal dignity. These prohibitions safeguard not only the integrity of human remains but also the credibility and coherence of humanitarian restraint.

Continued doctrinal clarification remains necessary. Questions concerning legal classification, evidentiary standards in digital contexts, and proportional sentencing require sustained scholarly and judicial engagement. Addressing these issues will ensure that the protection of the deceased is recognised not as a peripheral concern, but as an intrinsic element of humanitarian justice.

Ultimately, the enforcement of prohibitions against post-mortem abuse affirms a fundamental proposition underlying IHL that the limits of warfare extend beyond the protection of life to encompass respect for human remains. In preserving this boundary, international law reinforces the normative discipline of armed conflict and affirms that even in conditions of extreme violence, certain forms of degradation remain legally impermissible.