



PERSPECTIVES

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Israel's Release of Second Ramallah Lynch Murderer Violates International Law

by Prof. Louis René Beres

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EXECUTIVE SUMMARY: All states share a common and binding obligation to apprehend and punish terrorists. Although Israel remains on the front line of this rule and does everything possible to comply with operational terms, it has a corollary obligation to keep sentenced terrorist murderers in confinement. When Haitham Muari, one of the Hamas murderers convicted in the grotesque 2004 mutilation murders of two Israelis in Ramallah, was recently set free, it placed Israel in the regrettable position of initiating yet another lawless terrorist release. The official explanation from Jerusalem – that Muari had "only" been involved in the pre-mutilation beating of Sgt. Maj. Yosef Avrahami, and should therefore be released after a much briefer period of imprisonment – is wrongly exculpatory, legally contrived, and nationally self-destructive.

Israel has just released one of several Palestinians convicted in the October 2000 Ramallah lynching of two IDF soldiers. Haitham Muari was convicted in 2004 of the grotesque murder and mutilation of one of the two victims, Sgt. Maj. Yosef Avrahami, and sentenced to life in prison. New evidence allegedly suggested, however, that Muari was "only" complicit in the pre-mutilation beating of the soldiers. This beating followed the two reservists' accidental entry into Ramallah, and their wholly unwarranted arrest by Palestine Authority policemen.

With active PA police cooperation, therefore, this "official" Palestinian venue became the location of both Ramallah murders.

On its face, this latest Israeli terrorist release is legally unacceptable. Being "only" an admitted accomplice to murder – in this case, a savagely ritualistic homicide

that involved the literal dipping of perpetrator hands into the victims' internal organs – is hardly exculpatory. Nor was this the first instance when Israel violated *jus cogens*, or the peremptory expectation of every civilized domestic legal system. This norm was similarly violated during the 2011 Gilad Shalit prisoner "exchange", when Aziz Salha, the other Palestinian murderer – who had been wildly cheered when, from the PA police station window, he proudly raised his hands in a perverse gesture of victory while drenched in his victims' blood – was released by Israel.

All countries, including Israel, coexist under the authority of a planet-wide law of nations. A core element of longstanding international law is the rule *Nullum crimen sine poena*, or "No crime without punishment." This immutable principle was strongly reaffirmed – with particular significance for the self-defined Jewish State – at the post-WWII Nuremberg Trials of 1945-46.

This principle imposes upon every state the basic obligation under international law to prosecute and punish terrorists. "No crime without punishment" is directly codified in many jurisprudential sources, and is also deducible from the binding and intersecting Nuremberg Principles (1950). According to Principle 1, "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment."

"No crime without punishment" remains a conspicuous part of civilized national legal systems, as it should. In June 2003, Shurat HaDin, or the Israel Law Center, condemned Israel's intended freeing of 100 Palestinian terrorists in astute anticipation of then-planned wider terrorist releases. Later, almost five times that number were set free by Prime Minister Ariel Sharon. In a letter to the Prime Minister, Shurat HaDin Director Nitsana Darshan-Leitner wrote that wrongly releasing terrorists would only reignite Arab terrorism against defenseless Jewish men, women, and children.

Darshan-Leitner was proven correct. Soon thereafter, several newly released Fatah-linked terrorists launched multiple suicide bomb attacks in Israel. In one of these attacks, the "military target" of the Palestinian "fighters" was a cafe filled with mothers and their young children.

Terrorism is a serious crime under international law. The precise offenses that comprise this crime can be found, *inter alia*, at the European Convention on the Suppression of Terrorism. Notwithstanding Israeli government assurances that this would not occur, some released Palestinian terrorists have been guilty of war crimes and crimes against humanity. These Nuremberg-category crimes are so manifestly egregious that the perpetrators are known in law as *Hostes humani generis*, or "Common enemies of humankind."

International law presumes solidarity between all states in the common fight against crime, including the crime of terrorism. This longstanding presumption was mentioned as long ago as the seventeenth century, in *The Law of War and Peace* by Hugo Grotius (1625). Although Israel has unequivocally clear jurisdiction to punish all terrorist crimes committed on its territory, it may also sometimes have the right to act under certain broader principles of "universal jurisdiction."¹

Jerusalem's case for wider jurisdiction, which would partially derive from a reasonable legal expectation of interstate solidarity, is found, among other sources, in the four Geneva Conventions of August 12, 1949. These conventions imposed upon the contracting parties the sober obligation to punish all "Grave Breaches" of humanitarian international law.

No government has any legal right to free terrorists as a presumptively pragmatic gesture. Rather, terrorism is always a criminally sanctionable violation of international law, one that is never subject to even the most well-intentioned national modifications. To wit, in the US, it is clear from the Constitution that the president's power to pardon does not encompass violations of international law. This power is always limited very narrowly and unambiguously to "Offenses against the United States."

In its original capture and punishment of the Palestinian Ramallah terrorists, Israel acted, however unwittingly, on behalf of all civilized states. No state possesses any authority to pardon violations of international law, especially the uniquely cruel violations committed by Haitham Muari and Aziz Salha in Ramallah in 2000. No matter what might be permissible under Israel's own Basic Law, any freeing of terrorists by Israel must always be judged impermissible.

In this most recent case, however well-meant, Israel's narrowly legalistic decision to release because the perpetrator had "only" participated in the pre-mutilation beating is worse than mere chicanery or contrivance. At best, it is utterly confused, and overlooks the decision's full implications.

A fundamental principle has been established in law that by virtue of any such unwarranted release, the releasing state must itself assume direct legal responsibility for pertinent past criminal acts, as well as for future ones. Under international law, therefore, Israel's release of Haitham Muari, effectively analogous to the national pardoning of an international criminal, implicates Israel in a "denial of justice."

¹ A similar right of universal jurisdiction was invoked by Israel during its 1961 trial of Nazi war criminal Adolf Eichmann. The pertinent indictment was Nuremberg-based "crimes against humanity," included as the universalizing complement to "crimes against the Jewish People."

This implication could have profound practical as well as jurisprudential consequences. Although it is arguable that punishment, always central to justice, does not necessarily deter future crimes, Israel's indefensible freeing of Ramallah-lynch murderers will nonetheless undermine the country's irremediable obligation to incapacitate terrorists.

A final question arises. What sort of national government would repeatedly agree to free the unrepentant murderers of its own women and children without any remotely plausible expectation of reciprocal peace or justice? In many ways, this non-legal question is even more important than the critically pertinent matters of international law.

But who in Jerusalem will dare to answer?

*Louis René Beres is Emeritus Professor of International Law at Purdue and the author of twelve books and several hundred articles on nuclear strategy and nuclear war. His newest book is *Surviving Amid Chaos: Israel's Nuclear Strategy* (Rowman & Littlefield, 2016).*

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