The Geneva Convention and the US massacre of POWs in Afghanistan

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On December 1 the last of some 80 survivors of the US-British-Northern Alliance assault on the Qala-i-Janghi prison fortress outside Mazar-i-Sharif emerged from their underground hideouts and surrendered to their assailants. For six days, beginning Sunday, November 25, American and British special forces joined with troops loyal to Northern Alliance General Rashid Dostum in a massive and one-sided attack on 400 to 800 non-Afghan Taliban who had surrendered the previous day in Kunduz. The US, Britain and Northern Alliance justified their slaughter of the prisoners, most of whom were killed in two days of American air strikes, on the grounds that the Taliban captives had staged an uprising.

But news footage of American and Northern Alliance troops firing down on the POWs from the heights of the fortress walls, and fields littered with the corpses of dead and mutilated prisoners, provided clear evidence of a massacre. Even as the extermination of pockets of survivors continued, demands were being raised by human rights organizations for an investigation into violations of the Geneva Convention and other international laws of war.

Amnesty International and Human Rights Watch called for an inquiry into the events at the Qala-i-Janghi fortress, and were joined by Mary Robinson, the United Nations High Commissioner for Human Rights.

The United States and Britain have rejected all such appeals. The American media, which paid only passing attention to the bloody events as they were unfolding, has gone completely silent in their immediate aftermath.

But the slaughter of POWs outside of Mazar-i-Sharif cannot so easily be swept under the rug. As the British newspaper the *Guardian* suggested on December 1: “A single, horrific atrocity can provide the defining moment in a war ... questions are being asked about whether the bloody end to this week’s prison siege at the 19th-century Qala-i-Janghi fort outside the northern Afghan city of Mazar-i-Sharif will be the defining moment of the Afghan war. Pictures of aid workers picking their way through the corpses of Taliban prisoners killed by a combination of Northern Alliance fighters and American bombings have caused revulsion around the world.”

No single act carried out by the American military so clearly bespeaks a war crime as the killing of hundreds of POWs at the prison fortress. In the My Lai massacre in Vietnam, American military and civilian authorities sought to attribute the slaughter of civilians to a rogue element. The chief perpetrator, Lt. William Calley, was prosecuted by US courts.

This time, the statements and actions of top US military and government officials both before and after the siege of the prison fortress provide ample evidence that the massacre was a direct consequence of the decisions of leading US policymakers in Afghanistan. This is a crime of immense proportions that will haunt the American ruling elite. At some point, leading figures in the military establishment and the Bush administration may very well go to jail for their role in the bloodbath at Qala-i-Janghi.

Many details of the siege remain unclear, but the basic facts are not in dispute. When the Taliban forces in Kunduz surrendered on November 23-24, Afghan Taliban were allowed to return to their villages. But foreign-born soldiers—mainly Pakistanis, but also Uzbeks, Chechens and Arabs—were singled out and taken prisoner. This was in line with public declarations by US Secretary of Defense Donald Rumsfeld and other American officials, who had vetoed reported negotiations between Northern Alliance generals and Taliban officers to provide safe passage for non-Afghan Taliban in exchange for the surrender of Kunduz.

Hundreds of foreign-born Taliban—estimates have varied between 400 and 800—were trucked from Kunduz to the outskirts of Mazar-i-Sharif and eventually herded into the Qala-i-Janghi fortress, which was serving as General Dostum’s military headquarters. According to a number of press reports, the prisoners had thought they would be released, and were shocked to find themselves imprisoned in the fortress. The December 1 *Guardian* quoted Amir Jan, the anti-Taliban commander who had negotiated the surrender, as saying, “The foreigners thought that after surrendering to the Northern Alliance they would be free. They didn’t think they would be put in jail.” Jan also told the newspaper that it was the American “advisers” who decided to incarcerate the prisoners in the Qala-i-Janghi fortress, after the Northern Alliance initially proposed to hold them at an airport near Mazar-i-Sharif.

During the night of November 24, a Taliban prisoner about to be frisked detonated a hidden hand grenade, killing himself and two aides to Dostum. A number of other POWs followed suit, blowing themselves up with hand grenades.

The following day, Sunday, November 25, Northern Alliance forces began tying the hands of prisoners behind their backs. Some 250 POWs had been tied up when two American Central Intelligence Agency (CIA) agents inside the fortress began interrogating them. The intervention of the Americans was apparently the spark that set off the ensuing events.

According to Amir Jan, “The prisoners suspected they were about to be shot.” A fight broke out between CIA agent Johnny Spann and one of the prisoners, leading to gunfire that resulted in Spann’s death. The *Times* of London reported on November 28 that Spann shot and killed four prisoners before he was wrestled to the ground and killed by other POWs. Prisoners then charged the Northern Alliance guards and grabbed their weapons.

The second CIA agent fled the scene and contacted American officials via satellite phone, urging them to send in forces. US and British special forces arrived outside the fort and began directing an all-out assault on the POWs inside, which soon included massive bombings.

In the ensuing days, US special forces oversaw the extermination of the vast majority of POWs. They reportedly instructed Northern Alliance troops to pour diesel fuel into a basement where prisoners were hiding and set it on fire. After the heaviest of the fighting was over, an Associated Press photographer said he saw the bodies of up to 50 Taliban whose hands had been bound, laid out in a field inside the fortress. Other (British) press reports said Northern Alliance forces executed all Taliban prisoners who managed to escape from the fort.

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The British Broadcasting Company in a November 29 report documented the direct role of American forces, noting that a half dozen US special forces soldiers were seen firing down on prisoners from outside the compound. The *Times* of London on November 28 confirmed this report, writing: "Witnesses said it was quickly apparent that trained soldiers were taking part in the assault, as the ragged bursts of Alliance machine gun fire were replaced by the steady single-shooting of marksmen."

As for the fire-power at the disposal of the prisoners, the *Times* of London reported that they had captured only 30 guns, two anti-tank weapons and two grenade launchers.

The US government and media have advanced a series of claims to justify the massacre of Taliban POWs and deny that American forces committed war crimes. These involve both factual distortions and misrepresentations of the Geneva Convention on POWs.

Claim # 1: The onus for the bloodbath rests with the prisoners, who staged an unprovoked uprising.

This is the theme that pervades the reportage of the massacre in the American press. The articles published by the *New York Times*, in particular, are models of ostensibly objective reporting, carefully crafted to diminish the culpability, if not entirely exonerate, the US.

On November 29, in the *Times*' first major article on the siege of the prison, Carlotta Gall described the scene as "an uprising against their captors" by prisoners who had "plunged into a desperate battle to the death." Gall did her best to downplay the role of American forces in the massacre, euphemistically writing of "American and British troops who assisted the Northern Alliance in their defense of the fort."

In a subsequent article (December 2), Gall ignored the intervening reports in the foreign press pointing to Northern Alliance and US provocations, and described the slaughter as a "prisoner uprising that began last Sunday when prisoners rushed their guards and seized their weapons."

This version of events was most crudely stated by CIA Director George Tenet, who lauded the slain CIA agent as a national hero and said of the Taliban POWs, "Their prison uprising—which had murder as its goal—claimed many lives, among them that of a very brave American..."

The implication of the *Times* articles and similar reports is that the prisoners had decided on a mass suicide action, hoping to take as many of their captors as possible down with them. The *Washington Post*, in a November 27 editorial, stated as much explicitly: "Al Qaeda and Taliban prisoners, many of them non-Afghan, have been willing to set off grenades against their own bodies in order to kill nearby guards. Yesterday some were still fighting what looked like a deliberate battle to the death inside a fort where they were held prisoner."

The first thing to be said of these claims is that they fly in the face of the facts. The second thing is that, even were they true, they would in no way justify, either morally or legally, the carnage that was unleashed by the US and its allies.

Under international law, any military response to a prisoner revolt must be proportionate. The indiscriminate bombing of prisoners, many of whom were tied up, is clearly a violation of this provision.

The claim, moreover, that the prisoners were bent on either homicide, suicide, or both is belied by the fact that they had just surrendered to their enemies in order to avoid a futile "battle to the death." At the same time, they had good reason to fear they were being led into a trap and set up for summary execution, since General Dostum's forces had committed such atrocities only two weeks before in the taking of Mazar-i-Sharif and more recently in the seizure of Kunduz. Having their hands tied behind their backs and facing American interrogators could only have intensified such fears.

Claim # 2: The Taliban prisoners forfeited their legal status as prisoners of war once they resisted their captors.

This claim was made November 26 by US military spokesman Kenton Keith, who said the "status" of the prisoners as POWs covered by the Geneva Convention had changed once they "engaged in offensive action."

This assertion might merit consideration, from the standpoint of international law, only if it could be shown that the prisoners' actions were premeditated and unprovoked. The facts, however, point to the opposite conclusion. Moreover, even if the prisoners ceased, in a strictly legal sense, to be POWs, they remained human beings, and the international rules of war were drawn up to minimize gratuitous violence and bloodshed. Indeed, a 1977 protocol to the Geneva Convention makes it illegal "to order that there shall be no survivors."

Claim # 3: The conflict in Afghanistan is a civil war, not a war between states. Consequently, captured fighters are not covered by the Geneva Convention and lack legal protection under international law.

This rationalization is offered, again, by the *New York Times*, which states in a December 2 article that non-Afghan Taliban soldiers imprisoned by the Northern Alliance are "foreign soldiers in a civil war; their rights are uncertain..." The same theme is broached in a November 30 commentary by *New York Times* writer Serge Schmemann, who says of the mass killing at the Qala-i-Janghi fortress, "It was not even clear whether the Geneva Convention applied ... the rules are different for international conflicts—for which the Geneva Conventions were written and under which the United States would be directly responsible for the treatment of POW's—and internal conflicts. The fighting in Afghanistan is the sort of internationalized civil war that has become increasingly common, but legally complex."

The claim that the Geneva Convention on the treatment of POWs does not apply to civil wars is false on its face. The Convention, adopted August 12, 1949, declares in Article 3: "In the case of armed conflict *not of an international character* occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions..." (emphasis added).

The Article goes on to declare that captured soldiers must be treated humanely and proscribes "(a) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular, humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

The United States, Britain and Afghanistan are all signatories to the 1949 Convention, and therefore legally bound by its provisions.

That the Geneva Convention applies to the war in Afghanistan is the opinion not only of the *World Socialist Web Site*, but also the International Committee of the Red Cross (ICRC), the agency authorized by the Convention to monitor the implementation of its provisions. The ICRC issued an unambiguous statement on November 23, on the eve of the surrender of Taliban forces in Kunduz and two days before the onset of the massacre at Qala-i-Janghi. "Article three applies to anybody—the Northern Alliance, the Taliban, al Qaeda, anybody fighting in the territory," said Catherine Deman, legal adviser to the legal division of the ICRC. She continued: "It is the same in the Afghan mountains as it would be in Rwanda, Iraq or anywhere else." The United States, Deman added, was morally obliged to abide by the full terms of the Convention.

Amnesty International issued a similar statement last month, stressing that "Any Taliban fighter, or any member of Usama bin Laden's *al-qa'ida* organization, captured by US or UK forces must be protected as a prisoner of war."

A statement issued December 1 by Human Rights Watch on this question bears quoting at some length. Calling for an investigation into the Qala-i-Janghi "slaughter," the organization declared: "The humane treatment of all persons not actively taking part in hostilities, including

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detained or surrendered enemy soldiers, is a fundamental principle of international humanitarian law (the laws of war). It must be respected in all circumstances, whether the conflict is considered an international or internal armed conflict, and applied for the benefit of all persons held by an armed force, be they prisoners of war, combatants without prisoner-of-war status, or detained civilians."

As for the assertion that the conflict in Afghanistan is a civil war, it is fascinating to observe apologists for the Bush administration and the US military suddenly discovering that America's "war on terrorism," declared with such fanfare by President George W. Bush in his address to Congress September 20, with ultimatums to Afghanistan and boasts of US readiness to attack the country, is in reality an internal Afghan conflict. Only a few weeks ago the American press was debating the viability of the White House plan to use the Northern Alliance as a proxy force in its war to overthrow the Taliban regime. Now the same newspapers would have us believe that the US is playing only an advisory role in an ongoing civil struggle.

Claim # 4: The Taliban regime is not recognized by the world community as the legitimate government of Afghanistan, and therefore the Geneva Convention does not apply.

This rationalization has been floated by some US officials. It is flatly refuted by the letter of the 1949 Convention. Article 4, which defines the term "prisoner of war," includes in its definition "members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining power."

Claim # 5: Foreign Taliban fighters are not genuine soldiers. They are all linked to Osama bin Laden's Al Qaeda organization, and are hardened killers, terrorists and criminals.

The *New York Times*, in a December 2 article on the prison massacre, stated this theme in crude fashion, asserting that the Qala-i-Janghi prisoners' resistance proved their criminality: "That the ranks of the foreign Taliban held hardened killers seemed clear enough over the last week, when prisoners revolted and killed an American intelligence officer."

White House counsel Alberto R. Gonzales sounded the same theme in defending Bush's proposal to try captured Al Qaeda members before secret military tribunals. Under the rules of war, he declared, they are stateless "unlawful combatants" and not subject to the rules of the Geneva Convention.

Secretary of Defense Rumsfeld has repeatedly equated all foreign Taliban fighters with Al Qaeda and bin Laden. Just last Sunday, speaking on the "Meet the Press" interview program, he branded the survivors of the prison slaughter as "the last hard-core Al Qaeda elements," adding that "if people will not surrender, then they've made their own choice."

This blanket identification of foreign Taliban with Al Qaeda is false. Indeed, on-the-spot interviews with survivors of the prison massacre have confirmed that many of the non-Afghan fighters are very young and raw recruits, with no connection to bin Laden. Most are supporters of Islamic parties in Pakistan, and many came to Afghanistan only after the US began bombing the country.

As the *World Socialist Web Site* wrote in an article published three days before the onset of the US-led assault on the prison fortress: "The purpose of branding all foreign Taliban as terrorists is obvious—to justify in advance any slaughter that takes place in Kunduz or elsewhere."

The US policy of singling out foreign-born Taliban for especially harsh treatment and trial before kangaroo courts is not only arbitrary, anti-democratic and morally reprehensible; it is illegal under the Geneva Convention. Article 3 states: "(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, *without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria*" (emphasis added).

Moreover, under the Convention, POWs suspected of criminal actions must continue to be treated as POWs, with all of the legal rights which that status entails, unless and until they are convicted by a military court that grants them a public trial, due process and the right to appeal. (See Articles 5, 84 and 106 of the Geneva Convention on POWs, available at http://www.yale.edu/lawweb/avalon/lawofwar/geneva03.htm). Bush's secret military tribunals clearly violate these provisions.

Claim # 6: The United States has little or no control over the Northern Alliance's handling of captured Taliban, and is therefore not culpable for any atrocities or illegalities that may have occurred in the siege of Qala-i-Janghi.

That American officials can make this claim with a straight face, and the media can repeat it uncritically, only underscores the cynicism and hypocrisy that pervade the US political establishment. Such assertions express contempt for international public opinion and the belief that the US can carry out the most brutal actions with impunity.

Typical of this argument were the remarks of Pentagon spokeswoman Victoria Clarke, who told reporters on November 29, "To say that we can control or dictate what the opposition groups might do is just an overstatement. We can't."

Another "senior Defense Department official" was quoted in the press as saying that asking Washington about the treatment of captured Taliban soldiers was "like asking me what conditions prisoners in France are being held in."

These sophistries fly in the face of the hard fact that American forces directed and participated personally in the slaughter of POWs at the prison fortress. US special forces were on the ground, firing at semi-defenseless prisoners, and CIA personnel inside the fortress provided the spark that ignited the prisoners' resistance. It was American missiles and bombs that killed the bulk of the POWs.

Moreover, US policy, as enunciated publicly by top Bush administration officials, set the stage for the massacre. Prior to the Taliban surrender at Kunduz, Secretary of Defense Rumsfeld made no bones about the fact that Washington was calling the shots in regard to the handling of Taliban forces. He issued repeated statements vetoing any agreement that would allow foreign Taliban to go free in return for the surrender of the city. He did so with full knowledge that the Northern Alliance commanders had only days before carried out summary executions and massacres in the taking of Mazar-i-Sharif.

Rumsfeld went further, making clear that the course of action preferred by the US was the killing of all foreign Taliban soldiers. In the week preceding the massacre at the Qala-i-Janghi fortress, he told the press the US was "not inclined to negotiate surrenders" and that he hoped what he called Al Qaeda forces would "either be killed or taken prisoner."

On November 21, Rumsfeld was even more explicit, saying on the CBS "60 Minutes II" program he would prefer that Osama bin Laden be killed rather than taken alive. "You bet your life," he said.

On November 20, the official spokesman for US and British forces in Afghanistan, Kenton Keith, said the US opposed any negotiated settlement at Kunduz. He then sought to disavow American responsibility for a coming massacre, saying the "coalition" was urging the Northern Alliance to treat prisoners properly. But, he added, "We are not in a position to guarantee anything."

The implications of the remarks by Rumsfeld and other American officials were unmistakable. On November 23 the *Washington Post* reported widespread concern in the Middle Eastern press that Rumsfeld's comments amounted to a "a 'green light' from the United States to kill so-called Afghan Arabs." One commentator wrote, with full justification, that the Northern Alliance was being "encouraged and incited by the Americans" to wreak vengeance on captured Taliban prisoners.

In the aftermath of the massacre at Qala-i-Janghi, some human rights

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advocates and commentators in the international press have pointed to Rumsfeld's remarks as evidence of US government complicity in the atrocity.

In a December 2 editorial headlined, "Bloodstained Bush," the British-based *Observer* called for a full-scale international probe of the events at Mazar-i-Sharif. "Until the circumstances are investigated," the newspaper said, "the suspicion will remain that the US is pursuing a policy of capital punishment without trial."

The US has not concealed the fact that American Special Forces and CIA personnel are directly involved in the interrogation of captured Taliban soldiers. Since the assault on the Qala-i-Janghi fortress, Rumsfeld has repeatedly declared American opposition to any surrender of the last Taliban stronghold, Kandahar, that would allow foreign Taliban and alleged Al Qaeda forces to go free, and has demanded that the anti-Taliban commanders turn over captured Taliban leaders to the US for interrogation and possible trial.

The US posture flies in the face of another core provision of the Geneva Convention, the stipulation, laid down in Article 17, that a POW is bound to divulge only his name, rank, date of birth and serial number, and may not be coerced into giving any additional information to his captors. This right is spelled out in unambiguous terms, with the following injunction: "No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind."

Significantly, Pentagon officials have not denied that Taliban prisoners are being subjected to torture, including those under questioning by American special forces personnel. According to a report in the November 30 *Washington Post*, a "senior Defense Department official" would only say that "he had not seen any information about whether the prisoners were tortured during those interrogations."

American actions at the prison fortress, as is clear from the preceding analysis, violated the basic prohibitions of the Geneva Convention against murder, torture, or any form of inhumane treatment of captured soldiers. Furthermore, US policy in regard to the handling, questioning and prosecution of prisoners in the Afghan war contravenes other provisions of the Convention.

It also violates the spirit and letter of the US Department of Defense's own guidelines, which demand adherence to the Geneva Conventions. A Defense Department directive issued in 1994 declares: "It is DoD [Department of Defense] policy that: (1) The US Military Services shall comply with the principles, spirit, and intent of the international law of war, both customary and codified, to include the Geneva Conventions." The directive continues: "(3) Captured or detained personnel shall be accorded an appropriate legal status under international law." It goes on to stipulate that any "suspected or alleged violations ... of the international law of war are promptly reported to the appropriate authorities and investigated..."

Another Defense Department document on the treatment of captured soldiers declares: "If there is any doubt about a captive's status, protect him under the rules of the Geneva Conventions and the US policy until a competent tribunal can determined his status."

The Geneva Convention of 1949 requires signatory nations to pass the necessary laws and "provide effective penal sanctions" for persons "committing, or ordering to be committed" any "grave breaches" of the Convention. Article 129 goes on to state that each signatory "shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts."

Article 130 defines "grave breaches" as those involving "willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of a hostile Power, or willfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention."

The massacre of hundreds of Taliban prisoners at the Qala-i-Janghi fortress clearly meets the legal definition of a "grave breach" of the Geneva Convention. The United States, as well as every other signatory of the Convention, is therefore legally obliged to prosecute those responsible.

There is historical precedent for prosecuting government and military officials for atrocities against prisoners of war. A major component of the indictment against German officials at the Nuremberg war crimes tribunal concerned the abuse of POWs.

The United States opposes the establishment of an International Criminal Court that would have jurisdiction over its own actions, and has in the past defied rulings against it by the international court at the Hague—for example, the court's ruling against the US mining of Nicaraguan ports in 1984. Yet the American government is the most vociferous advocate of war crimes trials against government leaders deemed to be inimical to US capitalism's global interests.

The US government pressed for the prosecution of Yugoslav President Slobodan Milosevic and hailed his indictment in May of 1999 by the International Criminal Tribunal for the Former Yugoslavia as a vindication of its air war against Serbia. Yet the original indictment cited the deaths of only 346 Kosovo Albanians, alleged to have been carried out by Serb military and paramilitary forces over a four-month period. The indictment was able to cite only six incidents of multiple or mass killings.

While Serb forces were undoubtedly guilty of atrocities—as were its Kosovo Liberation Army antagonists—nothing cited by the Hague tribunal compared in either the scale of bloodletting, the number of casualties or the massive dimensions of the force employed to the bombing of the Qala-i-Janghi fortress.

In assigning responsibility for the killings in Kosovo to Milosevic, the Hague tribunal produced no direct evidence of his personal role, such as cables, minutes of meetings, directives, public statements, etc. It simply asserted that by virtue of his office as head of state, Milosevic was personally culpable.

In the present case, there is ample evidence that the events of late November outside of Mazar-i-Sharif were the outcome of US government and military policy. Certainly the public statements of Secretary of Defense Rumsfeld make him a prime candidate for prosecution as a war criminal. And inasmuch as no spokesman of the Bush administration, including the president, has repudiated Rumsfeld's remarks, or opposed the US policy toward captured foreign Taliban soldiers, they all must be held accountable.

History forgets nothing and politics is full of surprises. World public opinion, including that in the United States, will not remain forever in its present state of ignorant stupefaction. Many journalists and media pundits who are today covering up and even lauding the war crimes instigated by US government officials will, in years to come, have a hard time explaining away what they wrote during the bloody enterprise in Afghanistan. And as for those in the administration directly responsible for what has happened, they will, sooner or later, be compelled to respond to allegations of war crimes in the appropriate legal forums.

See Also:

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