

US flouts world opinion and Geneva Convention in treatment of Afghan war prisoners

Shannon Jones, Patrick Martin
23 January 2002

The brutal treatment by the United States of Taliban and al Qaeda prisoners in its custody, who are being held in open-air cages at the Guantanamo naval base in Cuba, is provoking growing worldwide condemnation as a violation of international law.

The International Committee of the Red Cross said January 21 that those being held by American forces must be classified as prisoners of war under the Geneva Convention and were entitled to all the protections offered by it. The ICRC is the international body entrusted with enforcement of the Geneva Convention, and its decision is a political blow to the Bush administration.

Red Cross officials added that some of the terms used by the US government to describe the Afghan prisoners, such as “battlefield detainees,” have no legal meaning. The Red Cross has further charged that the US is abusing prisoners in Afghanistan, where it is holding 360 captured fighters in Kandahar in an unsheltered stockade, exposed to the bitter winter cold.

Amnesty International joined the Red Cross and other groups in asking the US government to define the prisoners as POWs. “It is not the prerogative of the Secretary of Defense or any other U.S. administration official to determine whether those held in Guantanamo are POWs,” the group said in a statement. “An independent US court, following due process, is the appropriate organ.”

The Bush administration and the Pentagon have employed makeshift and invented terms like “illegal combatant” to describe the prisoners, in order to disguise the fact that it is the US government, not the POWs, which is engaged in illegal activity.

Recognizing the POW status of the captured men would defeat the entire purpose of their removal from Afghanistan, which is aimed at facilitating intensive interrogation, drumhead trials before military tribunals, and prolonged imprisonment. Under the Geneva Convention, prisoners cannot be forced to reveal more than their name, rank, serial number and date of birth. Unless they are formally tried for war crimes, POWs must be returned to their home countries at the end of “active hostilities,” which could be very soon given the collapse of Taliban resistance in Afghanistan.

An earlier statement by Amnesty International suggested that the mistreatment of Afghan prisoners may itself constitute a war crime: “Any detainee who is suspected of a crime, whether or not they are POWs, must be charged with a criminal offense and tried fairly or released. Denying POWs or other people protected by the Geneva Conventions a fair trial is a war crime.”

Donald Rumsfeld, the US secretary of defense, dismissed the

mounting criticism of US treatment of prisoners: “I do not feel even the slightest concern about their treatment. They are being treated vastly better than they treated anybody else.” This characterization is not only arrogant but concedes that the Bush administration’s policy is not based on any objective legal norms.

So weak is the US government’s legal position that the *Washington Post* published an editorial January 17 under the headline, “Follow the Geneva Convention.” It is remarkable that the principal newspaper in the US capital should find it necessary to advise the US government not to commit war crimes, even if that caution is couched in the most mealy-mouthed terms.

The *Post* admitted that Rumsfeld does not have a leg to stand on with his argument that the US is “for the most part” observing the Geneva Convention even though the detainees “do not have any rights under the Geneva Convention.”

“That is not the case,” the newspaper said. “The Geneva Convention and other international treaties ratified by the United States give the detainees specific rights, rights that the Bush administration should respect.

“The first right most of the prisoners have is for a hearing by a tribunal to determine whether or not they are prisoners of war. Despite Mr. Rumsfeld’s declaration, detainees cannot as a group be designated unlawful combatants by the secretary of defense; according to most interpretations of the Geneva Convention, in the case of a dispute about status, prisoners must have a hearing before a tribunal.”

In Europe the position of the US government has provoked widespread outrage. British newspapers published photographs of the prisoners at Guantanamo, released by the US Navy, under captions labeling their treatment as “torture.” A columnist for the conservative British newspaper the *Daily Mail* wrote, “this is a bewildering and shocking experience. Even the SS were treated better than this.” The security chief of the European Union, Javier Solana, called for the detainees to be treated as POWs entitled to the protection of international law.

A US federal judge in Los Angeles agreed to hear a petition filed by the Committee of Clergy, Lawyers and Professors demanding that the US government bring the prisoners before a US court and spell out the charges against them. University of Southern California law professor Erwin Chemerinsky, a leader of the group, said, “These individuals were brought out of their country in shackles, drugged, gagged and blindfolded, and are being held in open-air cages in Cuba. Someone should be asserting their rights under international law.”

There was one significant public defense of the brutal treatment of

the prisoners: from Senator Joseph Lieberman of Connecticut, the Democratic candidate for vice president in 2000. After a briefing at Central Command headquarters at MacDill Air Force Base in Florida, he told reporters, "I think our military is doing just the right thing in the way they are handling them at Guantanamo. These are violent killers. They are already threatening the American personnel who are there to guard them."

The US treatment of the Afghan prisoners violates international law in many respects. The US says that it will carry out "intense interrogation" of captured fighters. But Article 17 of the Geneva Convention states, "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."

As a columnist for the *Toronto Star* wrote, "Those detainees, brought shackled, shaved and blindfolded to Cuba, are kept in chain link pens under the constant glare, night and day, of halogen lamps (The blindfolding, deliberate disorientation, discomfort and constant light are staples of police states all over the world. The idea is to break down the inmate, weaken him from lack of sleep and thereby make him more pliable when the interrogators begin their work.)"

The Bush administration plan to use secret military tribunals to try captured al Qaeda and Taliban is a further violation of international law. Article 84 of the Geneva Convention stipulates: "In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and in particular, the procedure of which does not afford the accused the rights and means of defense provided for in Article 105." (Right to choose own counsel, right to call witnesses)

Article 102 further enumerates the rights of prisoners of war to a fair trial: "A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedures as in the case of members of the armed forces of the Detaining Power."

And article 107 the Geneva Convention stipulates: "Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial."

Under terms of Article 130 grave breaches of international law include "willfully depriving a prisoner of war of the rights of fair and regular trial presented in this convention."

The housing of prisoners in open-air, chain-link cages six feet by eight feet with concrete floors is both inhuman and a violation of minimum standards set by the Geneva Convention. Article 25 stipulates: "Prisoners of war shall be quartered under conditions as favorable as those for the forces of the Detaining Power who are billeted in the same area...."

"The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

"The premises provided for the use of prisoners of war individually or collectively shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out...."

The US is violating both terms of the Geneva Convention and the

Vienna Convention on Consular Access in holding captives incommunicado and refusing to release their names. Article 70 of the Geneva convention states: "Immediately upon capture, or not more than one week after arrival in camp, even if it is a transit camp ... every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoner of War Agency, on the other hand ... informing his relatives of his capture, address and state of health."

The Geneva Convention stipulates that all prisoners, regardless of their exact status, be treated humanely.

Article 4 outlines broad terms under which captured belligerents must be considered prisoners of war. These include irregular forces such as "Members of other militias and members of other volunteer corps" and "Members of regular armed forces who profess allegiance to a government or authority not recognized by the detaining powers."

Article 5 stipulates that disputes over the status of prisoners cannot be unilaterally decided by the Detaining Power but must be arbitrated by third parties: "Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal."

Further, prisoners may not be indefinitely detained following the end of hostilities. Under terms of the Geneva Convention those held must be either repatriated or charged with specific crimes.

The Bush administration actions violate even official US military policy. According to Army regulations, "Leaders and soldiers must be knowledgeable of the Geneva and Hague conventions, applicable protocols, AR (Army Regulations) and US laws."

"The US policy demands that all persons who are captured, detained, or held by US forces during conflict be treated humanely. This policy applies from the moment captives are taken until they are released, repatriated or transferred."

A 1994 Department of Defense document on the treatment of prisoner of war states: "It is DoD policy that: 1 The U.S. 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."



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact