

Defending the indefensible: more US lies on Afghan prisoners and Geneva Convention

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The US treatment of the 158 prisoners being held in Guantanamo Bay, Cuba has generated shock and revulsion around the world. Photographs showing the captives on their arrival, kneeling on rocky ground, with blacked-out goggles and their hands shackled behind their backs, conjure up images of the treatment meted out by Latin American dictatorships against their opponents.

But despite growing condemnation of US policy at “Camp X-Ray,” the US continues to maintain that the men are “detainees,” and not prisoners of war who must be afforded all the protections of the Geneva Convention. In fact, government officials contend that the prisoners—who are locked in individual open-air cages made of concrete and chain-link fencing—are being treated humanely, and should be happy to be in “sunny Cuba.”

Recent statements by President Bush that he might consider applying the rules of the 1949 treaty to the prisoners in Cuba represent a shift in rhetoric on the part of the administration, and not a substantive change in policy. Bush and Defense Secretary Donald Rumsfeld have made it clear that under no circumstances will the detainees be designated as prisoners of war. They maintain the position that they are “unlawful combatants” who can be interrogated at will and held indefinitely.

Responding to international pressure over US policy, in a memo leaked to the press last week Secretary of State Colin Powell urged the administration to consider applying the Geneva Convention to the process of determining the status of the Guantanamo prisoners. Members of the Joint Chiefs of Staff also reportedly support a change in official US policy. But these gestures are also thoroughly hypocritical, and not motivated by any humanitarian consideration for the civil liberties of the prisoners.

The overriding concern of the military chiefs is that the US policy might set a precedent for the mistreatment of captured US soldiers in the future. And while Powell is worried that the administration’s flouting of international law will discredit the US among its allies in Europe and the Middle East, he has also made it clear that the prisoners should never be granted POW status.

“The debate is not actually over whether these people are prisoners of war,” the *New York Times* quotes one State Department official as saying. “They are not. The debate is why they are not prisoners of war.” In other words, Powell and others in the administration, including Rumsfeld, are considering using the process of the Geneva Convention—presumably utilizing tribunals to determine POW status—to arrive at a determination they have already decided upon in advance.

The *Washington Post* quotes an unnamed administration official making the same point: “We already know the end point, which is they’re not POWs.... Now the question is, why are they not POWs.” Overall, the statements emanating from the White House and other sections of the government are full of such doubletalk, and are aimed at confusing public opinion while proceeding with the same brutal policy. The Bush administration is also counting on the general lack of knowledge in the

American public about the Geneva Convention and is resorting to verbal trickery and outright lies to justify its position.

The first lie is that the US can choose whether or not to abide by the Geneva Convention. Article 1 of the Conventions states: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.” Article 2 says that “the present Convention shall apply to all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”

Both the US and Afghanistan are signatories to the 1949 treaty. The Bush administration declared a “war on terrorism,” and went to war against Afghanistan, publicly stating that the ousting of the Taliban regime was its objective. The US initiated bombing raids and dispatched ground troops. But when enemy fighters are captured, including Taliban, the government claims they are not prisoners of war and their treatment is not governed by international law.

Even if the US wants to claim that they are not POWs because the US never formally declared war, this doesn’t pass muster, as the Geneva Convention does not require that both parties recognize a state of war. This is a ludicrous argument in any event, as the people of Afghanistan undoubtedly interpreted the dropping of multi-ton bombs and the ravaging of their country as a clear sign that the US was waging war against them.

Bush also claims the reason these captured fighters are not POWs is because “al Qaeda is not a known military. These are killers, these are terrorists, they know no countries.” Defense Secretary Rumsfeld commented: “They will not be characterized as prisoners of war, because that is not what they are. They’re terrorists.”

But all that has been established about these prisoners is that they were captured by the US in course of an invasion of Afghanistan. Many of those fighting with the Taliban came into Afghanistan after the US launched the war and may not have had any connection with Osama bin Laden and al Qaeda.

But the Bush administration purposely describes the Guantanamo prisoners as including both Taliban and al Qaeda, using the terms interchangeably, in an effort to blur any distinction and justify their refusal to grant any of them POW status. Calculating that they can more easily justify denying POW status to alleged al Qaeda members, they utilize this verbal trick in an attempt to cover up their blatant violation of international law.

Article 5 of the Geneva Convention states: “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 of the 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.”

In other words, it is not up to the US to dictate who is a POW and who is not. Furthermore, until their status is determined, they must be provided with all the protections of a prisoner of war. All those detained have the

right to refuse to provide any information aside from name, rank and serial number. Whether or not they are determined by a tribunal at a later time to be terrorists, or defendants to be tried for war crimes, can have no bearing on their treatment upon capture.

Another baseless contention of the Bush administration is that the prisoners in Guantanamo do not qualify as POWs because they do not meet the four requirements contained in Article 4, section 2 of the Geneva Convention. These include being under the control of superior, having a “fixed distinctive sign,” carrying arms openly and functioning in accordance with the “laws and customs of war.”

These four items have been wrongly cited in numerous press reports as the virtual litmus test for POW eligibility. But in truth these requirements apply to only one of the many categories of captured soldiers that are afforded prisoner of war status by the Conventions, including some members of organized resistance movements and other volunteer corps. The majority of potential POWs—including both civilian and military forces—are not required to meet these qualifications. Again, US officials have thrown up this argument in an effort to deflect attention from their refusal to abide by Geneva Convention.

In fact, the overwhelming majority of prisoners taken in Afghanistan were captured in the course of open combat, and would clearly qualify for POW status as defined in Article 4, section 1, as “Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.” Nearly all of them were captured by the Northern Alliance and then handed over to the US. Even the so-called al Qaeda are largely prisoners captured from the “Arab Brigade,” which fought as a regular combat unit.

It has also been reported that some prisoners were not even aware until their arrival in Guantanamo of the September 11 terrorist attacks, a further indication that they are not part of any terrorist organization and are mainly poor and misled Muslim youth who joined up to fight the Northern Alliance.

The criteria for qualifying for prisoner of war status in the Geneva Convention is extremely broad, and includes a wide variety of categories of those who can be considered POWs. These included civilians, engineers, war correspondents, members of resistance groups, and members of militias not recognized by one of the warring parties.

The treatment and accommodations of the prisoners in Guantanamo also violate the provisions of the Geneva Convention, which the US has chosen to defy. Article 25 states: “Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area.” Being held in 6-foot by 8-foot chain-link, open-air cages hardly qualifies. Article 21 also states that “prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.”

Life in a POW camp as outlined in the Conventions is far different from that which exists at Camp X-Ray. Article 28 stipulates that “Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use.” According to the April 38: “Prisoners shall have opportunities for taking physical exercise, including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.”

Bush administration officials would counter that such conditions should not be provided for “terrorists.” But the US has taken it upon itself to reject POW status for these men—without bringing them before a “competent tribunal,” as set down in the Geneva Convention. This also means their questioning of the prisoners is not subject to the scrutiny of international law. On January 23, interrogators from several US civilian and military agencies began questioning the prisoners in Guantanamo. The prisoners have been isolated and questioned individually, and have not been provided legal representation.

Another reason the US does not want to grant POW status to these prisoners is because under the Geneva Convention “Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities” (Article 118). The Bush administration wants to reserve the right to hold the prisoners indefinitely, subject them to interrogation and possibly try them in military tribunals. A US-backed regime has been installed in Afghanistan and hostilities have effectively ceased, but the Bush administration has given no indication that the prisoners will be repatriated to their native countries.

An estimated 25 countries are represented among the prisoners, including Britain, Australia, France, Belgium, Sweden, Algeria, Yemen, Afghanistan and Pakistan. France has sent a delegation to the base to verify the citizenship of a number of French-speaking prisoners. Australia has asked that the one Australian national known to be among the prisoners be returned to that country to face charges. Saudi Arabia says that 100 of its citizens are being held in Guantanamo. About 15 percent of the prisoners are Afghans. The US claims that even these Afghan soldiers—captured fighting on their own soil—do not qualify as POWs.

Defense Secretary Rumsfeld said Wednesday that the number of prisoners transported from Afghanistan to Cuba will most likely be far fewer than the 2,000 earlier projected. Late last month the Pentagon suspended all flights of prisoners to the base, saying they would need more interrogators and detention cells to handle a new influx of prisoners.

In addition to the prisoners in Guantanamo Bay, the US says there are 309 suspects being held in military custody in Afghanistan. Rumsfeld said “thousands of these people” are still being held by the Afghans, Pakistanis and US forces in Central Asia. Many of these prisoners have been held in appalling conditions since mid-November in makeshift prisons and jails, and their plight has received little media attention.

The Shibarghan prison in northern Afghanistan is packed with about 3,500 men, more than 10 times its capacity, with prisoners crammed into six-by-nine foot rooms, sleeping on cold concrete floors. The prison is about 75 miles west of Mazar-i-Sharif, the scene of a US-led massacre of hundreds of POWs inside the Qala-i-Janghi prison in late November. Shibarghan is the base of the Uzbek warlord General Abdul Rashid Dostum, who was in charge of the surrender of Kunduz and the thousands of captured Taliban.

The prison warden said that US interrogators—looking for Taliban leaders and al Qaeda members—moved several dozen prisoners from Shibarghan in December. One of General Dostum’s commanders said the other prisoners would remain until the US completes its investigations. One Afghan prisoner pleaded with reporters: “Will we be here forever? No one can tell us. We were simple fighters. We know nothing about the Taliban leaders.”

Like the prisoners at Guantanamo, these prisoners have not been afforded POW status and their treatment is not subject to its protections. A delegation for the Physicians for Human Rights, which visited Shibarghan earlier this month, wrote in its report on the prison conditions: “The United States cannot wash its hands of responsibility for prisoners whose fate from the start it has been in a position to influence or determine.”



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