

Washington's use and abuse of the Geneva Conventions

Henry Michaels
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Media commentators, legal experts and human rights organizations internationally have rightly accused the Bush administration of brazen hypocrisy in threatening to indict Iraqi leaders as war criminals for displaying American prisoners of war on state television.

On March 23, following the news that US soldiers had been captured by Iraqi forces, President Bush declared: "We expect them to be treated humanely, just like we'll treat any prisoners of theirs that we capture humanely.... If not, the people who mistreat the prisoners will be treated as war criminals."

Defense Secretary Donald Rumsfeld added: "The Geneva Convention indicates that it's not permitted to photograph and embarrass or humiliate prisoners of war." British Prime Minister Tony Blair issued similar comments.

The American media have dutifully taken their cue and waxed indignant over Iraq's alleged breach of the Geneva Conventions. After remaining silent on the US trashing of the Conventions in its treatment of Taliban soldiers captured in Afghanistan, the press and TV news channels have taken to pronouncing on the sanctity of the provisions on POWs. Academic "experts" have popped up on TV screens to denounce the Iraqis, without making any reference to Washington's far more grievous violations of international law concerning the treatment of POWs.

It is not difficult to understand the worldwide disgust with the Bush administration's newfound concern for international law. The White House and Pentagon have permitted "embedded" journalists serving with US units to photograph Iraqi POWs, whose faces and identities have been splashed all over the US media in the most humiliating and degrading manner, in clear violation of the 1949 Geneva Conventions.

Moreover, the US government has a record of flouting the authority of the International Court of Justice at The Hague. It ignored the court's judgment against it in the 1980s for illegally mining Nicaraguan ports.

The Bush administration has gone further by rejecting the new International Criminal Court, which opened this month and is mandated to try individuals for genocide, crimes against humanity and violations of the laws of war. The US has demanded treaties with other countries not to prosecute American representatives for crimes against humanity

Only last week, Secretary of State Colin Powell demanded that Belgium change its war crimes legislation in order to halt a case against Powell, George Bush senior, Vice President Dick Cheney and former US army commander Norman Schwarzkopf for committing war crimes during the 1991 Gulf War. Washington fears a similar lawsuit is about to be made against George W. Bush for human rights violations and civilian deaths in the current war.

Lawyers Against the War, an international legal group, has accused the current Bush administration of "committing the supreme international crime, as defined by the Nuremberg Tribunal," by launching an unprovoked assault on Iraq in defiance of the UN Security Council. According to one of the group's founders, Professor Michael Mandel of Canada's Osgoode Hall Law School, the Nuremberg International War Tribunal, which prosecuted Nazis leaders after World War II, said that "to initiate a war of aggression is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole."

The Bush administration is the world's most egregious violator of the provisions of the Geneva Conventions regarding the treatment of prisoners of war. It is illegally holding hundreds of Taliban soldiers captured in Afghanistan at Guantanamo Bay in Cuba. When the first of the detainees arrived in Guantanamo in January 2002, the Pentagon released photographs and footage of them in orange jumpsuits, kneeling before US soldiers, shackled, handcuffed and wearing blacked-out goggles over their eyes and masks covering the mouth and nose. The images shocked world opinion, but Bush, Rumsfeld and Powell refused to recognize the detainees as POWs.

On the same day that Bush and Rumsfeld attacked Iraq's filming of American POWs, about 30 more detainees were flown from Afghanistan to Cuba. According to Amnesty International, "This brought to about 660 the number of foreign nationals held in the base. They come from more than 40 countries. Most were taken into custody during the international armed conflict in Afghanistan. Some have been held in Guantánamo, without charge or trial, and without access to lawyers, relatives or the courts, for more than a year. Their treatment has flouted international standards."

From the outset, the US government refused to have the

status of the Taliban captives determined by a “competent tribunal,” as required under Article 5 of the Third Geneva Convention. It has unilaterally declared them to be “terrorists” and “unlawful combatants”—terms not used in the Conventions—even though they were fighting with the armed forces of the Taliban government, then the UN-recognized administration of Afghanistan, which was a signatory to the Conventions.

In its definition of POWs, Article 4 of the Conventions specifically includes “members of militias or volunteer corps forming part of “a country’s armed forces,” as well as “organized resistance movements” and inhabitants who “spontaneously take up arms to resist invading forces, without having had time to form themselves into regular armed units.”

Washington has maintained its stance despite condemnation by the UN Human Rights Commissioner, the Inter-American Commission on Human Rights, the UN Working Group on Arbitrary Detention, and the International Committee of the Red Cross (ICRC), the most authoritative body on the provisions of the Geneva Conventions.

The US continues to hold the Guantanamo detainees in barbaric conditions, most of them confined in tiny cells for 24 hours a day and reportedly allowed to “exercise” in shackles for only 30 minutes a week—another clear violation of the 1949 Conventions. Article 13 states: “Prisoners of war must at all times be humanely treated.” Article 25 states: “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.” Article 21 prohibits close confinement, except to safeguard detainees’ health.

The detainees at Guantanamo remain in a legal black hole, unable to challenge the lawfulness of their detention and with no indication as to how long they will be held. At the government’s application, US federal courts have refused to accept jurisdiction over the prisoners, blocking their habeas corpus motions to be brought before a court. As a result, there have been numerous suicide attempts.

The Bush administration has also rejected an Amnesty International call for an inquiry into allegations of torture and ill-treatment by US personnel against alleged Taliban and Al Qaeda detainees held at the US Air Base in Bagram, Afghanistan. Autopsies revealed that two prisoners who died in the Bagram detention facility in December 2002 had sustained “blunt force injuries.” It has also been alleged that detainees have been subjected to “stress and duress” techniques, including hooding, prolonged standing in uncomfortable positions, sleep deprivation and 24-hour illumination.

In late November and early December 2001, US and British special forces in Afghanistan joined with troops loyal to Northern Alliance warlord General Rashid Dostum (now joint Deputy Defense Minister of Afghanistan) to massacre 400 to 800 non-Afghan Taliban supporters who had surrendered the previous day in Kunduz. The slaughter inside the Qala-i-Janghi

fortress, which involved American air strikes, was justified on the grounds that the captives had staged an uprising, but all the evidence pointed to a one-sided killing spree. In any case, the Geneva Conventions prohibit reprisals and executions and ban the use of weapons against POWs, “especially those attempting to escape,” except in “extreme” circumstances.

Following the events at Qala-i-Janghi, the American Army command, together with Northern Alliance troops, were complicit in the killing and disposal of a further 3,000 prisoners, out of a total of 8,000 who surrendered after the battle of Kunduz.

For its part, the Iraqi regime has pledged to abide by the Geneva Conventions in its treatment of American POWs. Legal experts are divided on whether its televising of the US prisoners actually breached Article 13 of the Conventions, which was written before television and does not prohibit media footage or photographs. Its only relevant clause requires prisoners of war to be protected against “insults and public curiosity.” While condemning Iraq, well-known British lawyer Geoffrey Robertson conceded that the public display of prisoners may have the advantage of assuring relatives that they are alive.

Even if Iraq has infringed on the Conventions, the breach is insignificant compared to Washington’s far greater violations. Furthermore, implicit in the Bush administration’s statements is the threat to disregard the Conventions for the reported 3,500 Iraqi POWs it is holding, who could face treatment similar to that of the Taliban soldiers.

As the resistance of the Iraqi people makes more apparent the disastrous implications of the US-led invasion, American ruling circles are becoming more desperate and ready to resort to any accusations and any atrocities. The problem they face is that millions of people around the world, including many Americans, are increasingly studying the record, drawing their own conclusions and rejecting the lies and calumnies of not only the White House and the Pentagon, but of the American media as well.



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