

Bush's legal propagandist defends the indefensible: torture in Afghanistan and Iraq

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The erstwhile mouthpiece of American liberalism, the *New York Times*, on May 15 published a brazen and lying defence of the Bush administration's illegal use of torture, sexual abuse and severe "stress" techniques against detainees in Afghanistan, Guantanamo Bay and Iraq by President George W. Bush's counsel Alberto Gonzales. The column's provocative title was "The Rule of Law and the Rules of War".

The comment by Gonzalez is remarkable for its cynical and contemptuous misstatement of the actual legal content and meaning of the Third Geneva Convention with respect to prisoners of war. A reading of the article can lead to only two possible conclusions; either Gonzalez is completely ignorant of the Convention and its well established interpretations since 1949, or he has simply become a shameless propagandist for the war crimes of the Bush administration.

In the face of mounting evidence that torture was approved at the very highest levels of the White House in deliberate violation of international law, President Bush's chief legal representative (legal propagandist is perhaps a more apt description) declared that the US had pursued a "consistent and humane" policy on the treatment of detainees throughout the "war on terror", starting with the invasion of Afghanistan.

Gonzales' column came just two days after Deputy Defense Secretary Paul Wolfowitz and the Joint Chiefs of Staff vice chairman General Peter Pace were forced to admit to a US Senate committee that interrogation techniques ordered by the Pentagon in Iraq violated the Geneva Convention on prisoners of war, and were "not humane". During the course of questioning, Wolfowitz hesitated for a significant period of time before answering the question (which he initially attempted to avoid): do you consider keeping a bag over a prisoner's head for 72 hours to be humane? Grudgingly, he finally said, "no".

Wolfowitz and Pace implausibly pleaded ignorance of the "Rules of Engagement Relative to Interrogation" approved by Lieutenant General Ricardo Sanchez, the top US commander in Iraq, which allow prisoners to be placed in painful positions, deprived of sleep for up to 72 hours, threatened with dogs and kept in isolation for more than 30 days. Each of these methods is a flagrant violation of the Third Geneva Convention on the Treatment of Prisoners of War.

Gonzales—in one of a litany of lies—claims that "there has never been any suggestion by our government that the [Geneva] conventions do not apply in that conflict". The "Rules of Engagement" prove otherwise. Lie number two follows: "The United States government understands and seeks to comply with its legal obligations and will act swiftly and responsibly under the law to address violations of those obligations."

If that were true, not only General Sanchez but President Bush and Defense Secretary Rumsfeld would have to be placed on trial for violating the Geneva Convention, which is also a serious crime under US law. Even if Bush and Rumsfeld did not personally order the violation of the Convention, Article 12 of the Convention holds them—not the individual soldiers directly involved—responsible, as the leadership of the "Detaining Power", for the maltreatment of detainees. Article 12 of the Convention states:

"Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them."

Furthermore, the entire invasion of Iraq, lacking any UN sanction, was a war crime. It was and is a war of aggression—the very charge upheld against the Nazi leaders at the Nuremberg Trials. The foul and systematic abuse of Iraqi detainees arises from the same contempt for "the rule of law and the rules of war," which characterized the Nazi attack on Poland in 1939 and the subsequent acts of aggression of the Nazi regime. It is also the inevitable result of a war whose objective is the colonial re-subjugation of the peoples of the Middle East.

There is no room for doubt that the White House and the Pentagon had full knowledge from the first day of the invasion that US forces were trampling all over the Geneva Convention. Articles 13 to 17 stipulate that prisoners of war cannot be interrogated, let alone tortured. POWs are only required to give their name, rank, date of birth and serial number. They must be treated "humanely" and with "respect", and cannot be subjected to "cruel", "humiliating" or "degrading" treatment or any "form of coercion". Article 17 expressly 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 whatsoever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.”

The Convention also stipulates that prisoners must not be held in close confinement and “shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area”. This is a far cry from the over-crowded cells and tents of Abu Ghraib prison.

Advancing lie number three, Gonzales insists that Iraq was a “very different situation” to Afghanistan and Guantanamo Bay, because “in February 2002 President Bush determined that Al Qaeda terrorists were not prisoners of war under the treaty known as the Third Geneva Convention”. Apart from the fact that Gonzales stupidly brackets all three detention locations together as part of the “war on terrorism”—inviting readers to “revisit the origins” of the detention policy in the events of 9/11—his presentation of the February 2002 decision is entirely false. The origins of the detention policy lay, in fact, with the White House itself.

As an article in the May 24 issue of Newsweek, titled “The Roots of Torture”, has revealed, Gonzales wrote a January 25, 2002 memo to Bush, urging him to disregard the “obsolete” and “quaint” provisions of the Geneva Convention, precisely because the interrogation methods it was already employing against prisoners captured in Afghanistan were in violation of the Convention, leaving US officials open to prosecution for war crimes.

Lie number four is that Al Qaeda supporters captured in Afghanistan were not covered by the Geneva Convention because Al Qaeda “is not a state”. Article 2 of the Convention specifies that it governs the conduct of the signatories (such as the US) even if the detainees were fighting for a power that had not signed the Convention. Furthermore, the alleged Al Qaeda members were most likely covered by Article 4, as “members of militias or volunteer corps” fighting in defence of the Taliban administration, at the time the de facto government of Afghanistan, which was a signatory of the Convention.

Lie number five is that Bush determined that Taliban soldiers did not qualify as prisoners of war because the Convention stipulates that combatants must distinguish themselves from the civilian population, “which the Taliban clearly did not”.

Article 4 of the Convention makes no such distinction. It simply requires members of militias, volunteer corps and “organised resistance movements” to have a commander, have distinctive insignia, carry arms openly and conduct their operations in accordance with the laws and customs of war. In addition, it protects inhabitants of a territory who, on the approach of the enemy, “spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units”.

Even if the status of the Al Qaeda-Taliban soldiers were in dispute, Article 5 of the Convention makes it plain that Bush had no right to make a unilateral, executive decision to strip

them of protection. It specifies that where any doubt arises as to whether a person is a POW, the detainee shall enjoy the protection of the Convention until a “competent tribunal” has determined their status. No such tribunal has been established by Washington, consistent with the Bush administration’s drive to institute arbitrary and extra-legal machinery of rule.

In line with the Bush administration’s thuggish approach, Gonzales declares that alleged combatants must “earn” prisoner-of-war status by complying with the Convention. In fact the treaty says the opposite: anyone who has been captured after committing a “belligerent act” must be protected until a properly constituted tribunal decides their status.

By asserting that the Taliban fighters were indistinguishable from civilians, Gonzales has unwittingly admitted that the invasion of Afghanistan was a war against the Afghan people, indiscriminately conducted against ordinary civilians. This raises the question; if the US-led coalition’s troops could not recognise combatants, but instead regarded any civilian as a likely “enemy combatant,” is it not probable that many—if not most—of those incarcerated in Guantanamo Bay are innocent civilians?

Lie number 6 is that Bush nevertheless “reaffirmed” the US policy of treating Al Qaeda and Taliban detainees “humanely” and “in keeping with the principles of the Third Geneva Convention”. As released British detainees from Guantanamo Bay have confirmed, the prisoners there have been treated just as cruelly as those in Abu Ghraib.

Gonzales speaks on behalf of the White House. His statement is a further declaration of the administration’s complete contempt for international law and legality generally. The crudeness of his legal analysis and the cynicism of his defence is a direct expression of the increasingly fascistic trajectory of the Bush administration.



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