



The Geneva Convention on the Treatment of Prisoners of War





The Geneva Convention

The Geneva Conventions have laid the cornerstones for international humanitarian law, as they were written in order to reduce and ultimately efface the barbarity of war. The Conventions mission is to stop “grave breaches,” which are defined as the “willful killing, torture or inhuman treatment, including biological experiments, as well as the willful causing of great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.” According to the Conventions, all persons or countries that refuse to pay heed to Convention Protocol will be punished. The Geneva Convention has been supported by 194 States, and has been globally lauded for its efforts to protect persons who are either not fighting, or can no longer fight.

The Geneva Conventions are comprised of four different treaties:

First: Geneva Convention “for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field” (Initially adopted in 1864, revised in 1949)

Second: Geneva Convention “for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea” (first adopted in 1949)

Third: Geneva Convention “relative to the Treatment of Prisoners of War” (last revision 1949)

Fourth; Geneva Convention “ relative to the Protection of Civilian Persons in Time of War” (1949)

This committee will focus on the Third Geneva Convention, as our topic of debate is the Treatment of Prisoners of War. The articles in the third convention clearly state the circumstances and qualifications that a person / persons has in order to be recognized by international humanitarian law as a prisoner of war. Due to the fact that POWs generally have no protection from the law of the nation that captures them and no civil remedy, it is essential that the conventions of international law be abided by in order for these prisoners to receive humane treatment. For example, the Geneva Conventions established that a prisoner of war may not be treated as a criminal but may be employed in nonmilitary paid work. However, despite the treaty’s articles, the definition of a prisoner of war has become a topic of controversy in the global sphere. Different nations, due to an adherence to certain social conventions, cultural beliefs, or traditional values have developed vastly different opinions on the qualifications of prisoner of war status. Henceforth, the treaty of the Third Geneva Convention has been violated on many different accounts throughout history, and continues to be violated in our present day.

The Issue: Treatment of Prisoners of War

The current, and most pressing controversy is the question of whether the Geneva Conventions apply to terrorists. International law currently has no universally agreed upon definition of a terrorist. For example, the United States has denied that al-





Qaeda members qualify for POW status, because they do not constitute a national armed force. The law states that members of the armed forces of a nation when captured are prisoners of war, as well as members of organized militias or volunteers corps that are part of the armed forces. It is important to note that illegal combatants are still guaranteed humane treatment and protection under the law, as well as the right to appeal their status through a due process hearing.

A Summary of the Six Parts of the Third Geneva Convention of 1949:

Part I: General Provisions

Part one sets out the overall parameters for the conventions. Articles 1 and 2 specify which parties are bound by GCIII, and when the parties are bound by GCIII. Article 3, otherwise known as the “convention in miniature” applies in non-international conflicts. Article 4 gives a specific definition of a prisoner of war, while Article 5 specifies that prisoners of war are protected from the time of their capture until their repatriation.

Part II: General Protection of POWs

Part two covers the status of a POW, explaining that POWs are the state’s responsibility, not the person’s who take them into captivity. Further, part two declares that POWs must be treated humanely, and their medical needs must be met.

Part III: Captivity

Part three is divided into six sections. The first section discusses the beginning of captivity, describing the rights a prisoner has during times of interrogation and detainment- there can be “no physical or mental torture” and “not any other form of coercion.” Section two declares the details of the internment of POWs (food, clothing, hygiene, medical attention, religious freedoms, etc.). Section 3 covers the details of the type of labor POWs may be compelled to do, taking sex, age, and rank into account. Section 4 discusses the fiscal resources of POWs. Section 5 covers the relations of the POW with the outside world (receiving and sending mail). Finally, section 6 lays boundaries between the relations between the POWs and the detainees.

Part IV: Termination of Captivity

Part four covers the direct repatriation and accommodation in neutral countries, as well as the release of the POWs when the hostilities come to an end. The fourth section covers the sensitive issue of the death of a POW.

Part V: Information Bureau and Relief Societies for Prisoners of War

Part five clarifies that an Information Bureau must be organized by the Detaining Power in order to facilitate the sharing of information by the two conflicting parties. This Bureau will correspond openly with the neutrally organized “A Central Prisoners of War Information Agency.”





Part VI: Execution of the Convention

The sixth and final part consists of two sections, which cover the general and final provision of the convention.

Generally, legal combatants must meet the following conditions (based on information provided by the Council on Foreign Relations):

- * They are commanded by a person responsible for his subordinates.
- * They wear uniforms or can otherwise be identified as fighters.
- * They carry arms openly.
- * They conduct their operations in accordance with the laws and customs of war.

According to the International Red Cross:

Captured combatants and civilians who find themselves under the authority of the adverse party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They must be protected against all acts of violence or reprisal. They are entitled to exchange news with their families and receive aid. They must enjoy basic judicial guarantees.

However, the category that terrorists fall under has become blurred, as the adverse party has been known to title a terrorist, as an “unlawful combatant” that does not deserve the rights that an innocent civilian would receive. An important point of contention in this committee will be the factors that differentiate a civilian from a terrorist.

Here are some common legal Q & A’s on wartime humanitarian law:

Q: Is it legal for fighters to dress in civilian clothes?

A: The answer is no, a combatant can use camouflage, but he cannot pretend to be a civilian or hide in a crowd.

Q: In illegal war, do humanitarian laws still apply?

A: Humanitarian laws must always be followed despite what one thinks about the legality of war. It has been argued that the U.S. led assault on Iraq is unlawful; nevertheless, all the laws of war must be followed. A strict interpretation of the Geneva Conventions declares that all tactics that unnecessarily endanger and target the civilian population are illegal.

Q: Are all countries agreed on the rules that govern war?

A: No. Although many countries have ratified the 1949 Geneva Conventions, not all of them have agreed to the 1977 agreements (these include guerrilla fighting and other issues of modern war). It is important to recognize that the rules of war are not solely determined by what is distinctly in the treaties, but also by international consensus, communication, and practice. This form of diplomacy and law making is called customary international law.





Prisoner of War Treatment: The Past and Present

During WWII (before the 1949 revised Geneva Convention of 1929, which we are debating, came to fruition), millions of people were taken as war prisoners. Said prisoners received treatment that vacillated between mild to absolutely medieval. Although the United States and Great Britain remained loyal to the standards for prisoner treatment declared in the Hague and the First couple Geneva Conventions, the Germans and Japanese paid no heed to international law and punished their prisoners of war unmercifully. In fact, only 60 percent of the Japanese survived. After WWII, a trial for the violation of international laws of war took place, during which Germany and Japan were held accountable for their war crimes.

The Geneva Convention of 1949 broadened the term for prisoners of war and further emphasized these prisoners' rights. Nevertheless, in the present day, the Geneva Convention relative to the treatment of war prisoners is actively violated by the U.S., through the detainment of prisoners in Guantanamo Bay, Cuba and Iraq's Abu Ghraib prison. Events such as the fall of Srebrenica in July 1995, Omarska, Vogosca, and Bihac reveal an unfortunate pattern of mistreatment of prisoners of war.

Further examples of Geneva Convention violations relative to the treatment of POW's

Vietnam War:

In 1966 and 1967, the North Vietnamese

army paraded captured American fliers through the streets of Hanoi (on multiple occasions), blatantly violating article 13 of the Convention, which states that POW's must be protected against "insults and public curiosity." One of the main reasons that the U.S. prospects of withdrawing from Vietnam in the early 70s remained slim was the looming POW problem. In fact, two decades later, more than 2,000 US soldiers remained unaccounted for and were listed as "missing in action."

Also, in 1970, reports revealed that the South Vietnamese were mistreating prisoners by using "tiger-cages" to confine North Vietnamese prisoners.

Korean War:

Initially, the aggressors of the Korean War agreed to adhere to the principles of the 1949 Convention. However, as the Korean War unfolded, the North Korean and Chinese Communist armies committed the following war crimes: murder, assaults, torture-perforation of the flesh of prisoners with heated bamboo spears, burning with lighted cigarettes, starvation, coerced indoctrination, and other illegal practices. In fact, almost every provision of the Geneva Convention as far as POW's were concerned was violated or ignored by the North Korean and Chinese Communists. The Korean War was also distinctive among wars that have crowded the corridors of time, due to considerable and effective amount of psychological warfare, or "brainwashing" of prisoners (by North Korea).

Some International Positions regarding the Geneva





Conventions “relative to the Treatment of Prisoners of War”

U.S.

The United States has been accused of blatant violation of the Geneva Convention relative to Treatment of Prisoners of War, at Abu Ghraib Prison in Iraq from 2003-2004. In addition to the specific individuals who committed these war crimes, the international community has put pressure on the US to bear responsibility for its violations of the conventions mandates. Human Rights Watch has accused the US of directly violating the provision of the accords protecting prisoners of war from “public curiosity” and “public humiliation”. Other human rights advocates have illuminated other violations of the Geneva Conventions by U.S. Military personnel holding prisoners in Afghanistan, Guantanamo Bay, Cuba, and elsewhere. Combatants captured and held by the United States as a result of its operations in Afghanistan against the Taliban government and Al Qaeda forces were not recognized as prisoners of war by the Bush administration and were termed "unlawful combatants" instead. In response to these accusations, the United States has repeatedly denied these claims, white house spokesman Ari Fleischer said “We have always treated people humanely, consistent with international agreements”.

South Africa

From 1968 onwards, the United Nations General Assembly adopted resolutions requesting the implementation of the Geneva Conventions in the southern African liberation struggles. For

example, in resolution 2396 (which deals with South Africa’s apartheid policies), the Assembly expressed concern over the “ruthless persecution of opponents of apartheid under arbitrary laws and treatment of freedom fighters who are taken prisoners during the legitimate struggle for liberation” as well as condemning the Government of South Africa for its “cruel, inhuman and degrading treatment of political prisoners”. Further, the Assembly declared, “that such freedom fighters should be treated as prisoners of war under international law”. The South African Government completely ignored the Assembly’s request, and henceforth been condemned for its unlawful and inhumane practices.

Pakistan

The Indian government have declared that the “members of the Pakistan armed forces and armed personnel under Pakistani control have committed grave breaches of the Geneva Convention.... in the course of the military operations on the Indian Side of Control”. The grave breaches violated allegedly included: “willful killing, torture, inhumane treatment, and causing great suffering or serious injury to body or health”. Pakistan has not responded to these claims.

Responsibility for Breaches

According to the Geneva Conventions, detaining powers are required to “enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed” grave breaches, and to “search for persons alleged to have committed, or to have





ordered to be committed...grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.” (GPW art. 129) Article 127 of the international law obligates powers to instruct their people (especially the military) about the requirements of the Geneva Conventions. In fact, militia are by law required to possess the text of the Convention as they must pay heed to its provisions at all times. Those prisoners that are detained have the right to challenge and contest their mistreatment to the detaining power or to a neutral power/organization that serves to protect them. An example of an international rights protection organization is the International Committee of the Red Cross.

According to the Conventions, the most serious violations are (based on list provided by the Council of Foreign Relations):

- * Violence, more specifically murder of all kinds, cruel treatment, and torture.
- * Violations of personal dignity, in particular humiliating and degrading treatment.
- * Sentencing and executing prisoners without a

judgment handed down by a regularly constituted court that offers all standard judicial guarantees.

- * Hostage-taking.
- * Withholding treatment from the wounded and sick.

Questions to consider when researching your country

In this committee, our debate will be channeled in this direction: **How do nations vary in their adherence to the protocols of the Geneva Convention relative to the Treatment of Prisoners of War? What factors determine the status of a person as a Prisoner of War? What should be the consequences of violating the Geneva Conventions, and are there any exceptions? Finally, how can the international community collaborate in order to see to it that the Geneva Conventions are being upheld in war torn regions around the globe?**





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