

# The legal status of al-Qaeda detainees

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The US government under George W. Bush shown scant regard for internationally agreed upon norms and treaties. The US refusal to ratify Kyoto protocol, its obduracy with regard to 'Anti-Ballistic Missile Treaty' opposition to the establishment of 'International Court of Justice' illegal detention of non US citizens and most recently meting out of inhumane treatment to the Al-Qaeda and Taliban detainees at he 'Guantanamo Bay' point out the arrogant bent of mind in exception of policies, by the Bush government.

The Bush administration has tried to dispel this impression and it has made an attempt to woo 'Environment Protection' activists and the Human Rights groups through a series of recently announced measures. The White House unveiled its plan on 14th February, 2002 for cuts in the greenhouse gases, which was termed by many as a "Valentine day gift" to the oil magnates- the chief contributors to Mr. Bush's Presidential campaign magnates. Similarly, his magnanimous offer to treat the Taliban detainees and not the Al-Qaeda members, as proper prisoners of war (POW). According to the rubrics of Geneva Connection, this is nothing but a mockery of the spirit of the convention. It gives a free hand to the US authorities to treat the Al-Qaeda members in any way it deems fit.



information other than their names and ranks.

From a strictly legal point of view, this stance is paradoxically justified and flimsy at the same time keeping in mind the relevant injunctions of the Geneva Connection. It is because Article 4 of the Geneva Connection III put forth some conditions, which have to be met if the POW status is to be

has reluctantly acknowledged their right to protection as 'POW' we now consider the case of Al-Qaeda members. Other categories specified by Article 4 of Geneva Connection III in this regard, are persons who accompany the armed forces without actually being member of its fighting force like, air craft crew members, members of labor units, supply contractor.

But it is hard to deny that they do not fulfill the last one, which is abiding by the rules and customs of war, the foremost of which stipulates that civilians should not be in any case made a target of attack. The Al-Qaeda men have flouted this principle. They exclusively targeted civilian objects as exemplified by the bombing in 'East Africa' and the 9/11 event.

The graphic images from the camp X ray showed that the detainees were manacled blind folded, moved on a stature and living in deplorable conditions and were even without any proper shelter. The Americans have ignored the provision, stipulated in Article 5 of the Geneva Contention III, which says that until and unless the legal status of detainees in doubt, which is confirmed by competent court, he or she shall be humanely treated. In case of any difference of opinion in this regard, the matter is to be put for arbitration. The US seems to pay no heed to such calls.

The treatment of the Al-Qaeda detainees, the US authorities profess, is in conformity with their supreme national interests as they need to get the network around the globe. This cannot be done if Al-Qaeda detainees are treated as 'POW' since the Geneva Convention bars the detaining authority from forcing the POW to divulge any

granted. According to it, members of the armed forces of a party the conflict as well as militia members volunteer corps, which constitute its part therefore to be treated as POW. They were the members of a regular armed force of one of the belligerent states or parties to the conflict.

Being a signatory of Geneva Connections, its combatants enjoy protection. However, one needs to remind the entourage of Mr. Bush that according to Article 118 of Geneva Convention III, 'POW' can no longer be tied after the cessation of hostilities between the high contracting parties and can not be individually held responsible for the policies and practices of the party to which they belong. The "Nuremberg Trail" is not viable legal option since Talibans have not been accused of genocide or mass deportations, rather they have been nabbed for being extremists.

Now that the Bush regime

correspondents, religious minister and lastly the inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces without having had time to form themselves in to regular armed units.

The Al-Qaeda members do not belong to either of these categories. They come closer to another category, which specifies 'POW' status for those organized resistance movements and operating in or outside their own territory. They fulfill the following conditions.

(a) Command by a person responsible for his subordinates.

(b) Can be recognized from a distance by some fixed distinctive sign.

(c) Carry arms openly.

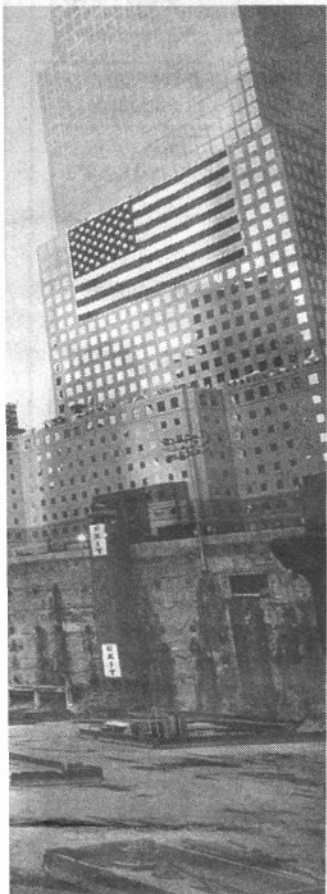
(d) Abide by the laws and customs of war in conducting their war operations.

It is an open debate whether Al-Qaeda member meet the first three conditions.

This tantamount to a grave breach of the Geneva Connection and hitherto protected person becomes a war criminal, which can be prosecuted for his or her crime.

The above arguments may support American claim but one needs to lick at the other side of the coin as well. To begin with, there is no guerilla trained resistance movement in the world, whether it be Kashmir Mujahideen, Basque separatists, Intifada fighters of Irish guerrillas. All such movements tend to strike at the soft belly of the oppressing authorities so as to ignite a sense of awe and awakening among the civilians of that authority to bring about a change. When the oppressing authority itself shows little regard for humanity or laws of war and indulges in cruel mutilation of the civilians, it is quite native not to expect relation. Acts of reprisal become legal according to international law of war in

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ensured the blocking of relief supplies to the civilian population so as they bring the heady Taliban to subjugation. It was none of their problem whether by doing this, they were intensifying the suffering of Afghan civilians still reeling under the trauma of famine, leading to colossal loss of life, for which US alone is to be blamed.

It was the US war aimed to inflict damage on the Taliban by striking directly on the civilian or targeting civilian objects, which is indeed a gross violation of Geneva laws, a war crime indeed. Raids on the Kandahar power supply station, schools and even hospitals were carried out with virtual impunity. The ICRC office was not exempted from destruction either. It is hard to believe that the ICRC office would not have been marked by a prominent, distinctive emblem of 'Red Crescent' a fundamental requirement according to ICRC's own laid out rules. The US, however, claimed immunity from such barbaric acts by conveniently calling these incidents as accidents.

Furthermore, Americans violated the provision of protocol I addition to the Geneva Convention, 1977. The Article 51 clearly bars indiscriminate attacks on civilian population. With all their sophisticated weaponry and precision guided missiles, Americans failed to honor this

extreme cases of perfidy and non-compliance of treaties on the part of adversaries. Having said that, let there be no doubt that loss of innocent life is not justified whosoever commits it. But punishing the oppressed and exonerating the oppressor is even more inhumane.

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This is what, happening at the 'Guantanamo Bay'. By subjecting and condemning the Al-Qaeda detainees to deplorable state of living, the Americans are trying to veil their atrocious behaviour and war crimes committed by them during the so called "War against terror". In fact Americans have a nightmarish history of such gross violations, which is proved by their inhuman conduct in Vietnam, Cambodia, Panama, Iraq, Chile and now Afghanistan along with numerous examples in the past in which CIA gave arms and support to most tyrannical regimes of their 'vested interests' in Latin America, Africa and Asia.

For the moment, let us restrict ourselves to Afghanistan alone. The official civilian toll accepted by the Pentagon is near 6,000 more than the loss of civilian lives during the 9/11 events. But the 'Washington Post' claims that the loss of civilian life is much more than what Pentagon wants the public to believe. By blocking all possible communication links, the US

Americans tried to limit this provision, which seems to be more of an act of willful indulgence rather than human error. Article 35 and 55 of the same protocol prohibits long term, sever damage to the chemical weapons is clear violation of this provision. Many of the unexploded bombs will pose a serious threat in the future. The damage already done is incalculable.

In the light of these violations, will it not be justified by Afghan dissidents to treat any captured US combatant in the way they deem fit, even if it means resort to torture, mutilation or inflicting sever injuries.? The Americans must realize that by inhumane treatment of Al-Qaeda members, the Americans are setting precedence for others to emulate and are threatening the life of their own soldiers. Thus, by granting the 'POW' status to the Al-Qaeda detainees, Americans will be serving their national interests in better way as it will not only elevate their international stature but also help to safeguard the life, dignity and rights of their own nationals.