

US drops 'daisycutter' on Geneva C

LONDON—The treatment of al-Qaeda and Taliban prisoners by the United States offends sense of justice since they are being kept on an island where normal guarantees of defendants' rights do not apply and their lawyers can neither appeal for their release nor challenge their extradition or the criteria for it, writes Peter Beaumont in *The Observer*.

The reality of what is happening to the prisoners of Afghanistan is a scandal of international proportions. Brutalised, often tortured, the al-Qaeda prisoners have been stripped of their most basic rights under international and US law, rights guaranteed at the International Tribunal in the Hague even for the alleged architects of the genocide in Yugoslavia and Rwanda, says Beaumont.

The *Observer* report creates the following scene for the readers: Imagine the scene. A group of alleged Irish terrorists is seized and handed over to the British Government by a third country. They are held without access to any lawyers. Some are threatened by interrogating intelligence officers. They are told that if they don't tell them what they want to know then they might simply 'disappear'. Some of the men are tortured while being held in prison

and forced into confessing that they are members of a terrorist organisation.

These men are drugged and bound and then flown out of the country to an island camp, where lawyers are appointed for them but where the normal guarantees of defendants' rights do not apply. Those lawyers cannot appeal for their release - no mechanism exists - nor can they challenge their extradition or the criteria for it.

In that island camp, they will face an emergency military tribunal that has the right to kill them. Confronted with these gross violations, the international media and human rights organisations would rightly be up in arms in protest.

Yesterday, a group of unidentified men, including a Briton, completed a journey identical in almost every detail to the one described above. Manacled, with some sedated, they were chained to their seats in the aircraft that delivered them. The difference is that this group of 20 men were alleged terrorists with the Taliban and al-Qaeda and their destination was the US base at Guantanamo Bay in Cuba. The difference, too, is that what complaint there has been about their treatment has been curiously muted.

The reality of what is happening to the prisoners of Afghanistan is a scandal of international proportions. Brutalised, often tortured, these prisoners have been stripped of their most basic rights under international and US law, rights guaranteed at the International Tribunal in the Hague even for the alleged architects of the genocide in Yugoslavia and Rwanda.

In a few deft strokes, the administration of President George W. Bush has dropped a 'daisycutter' not only on the Geneva Conventions, designed to protect the rights of prisoners of war, but also America's own constitutional guarantees for defendants.

It is possible, even likely, that many of these people committed terrible crimes - some may even have had foreknowledge of the attacks of 11 September - but their special treatment presupposes a special guilt.

They are the kind of people, we are assured, after all, by General Richard B. Myers, US Chief of the Joint Staffs, who are so 'dangerous that they would gnaw through the hydraulic cables' on their transport plane to bring it down. It is a description appropriate to an animal, not to a man.

A few weeks ago, I was in Af-

ghanistan looking for some of these almost mythically self-destructive creatures. The first man we tried to see was an elderly Taliban official our fixer had come across at an anti-Taliban base in the suburbs of the former Taliban stronghold of Kandahar.

When our fixer saw him, he was being beaten slowly and methodically to death by a local warlord. We reached the camp too late. When we arrived, the man who had been doing the beating told us that he no longer had any Taliban prisoners. They had buried some al-Qaeda fighters that day whom they had killed during the liberation of the city, he told us. We asked again about the prisoner. He clarified the situation: 'There are no prisoners any longer.'

It was not an isolated incident. Ten days later, I found myself with a group of Western journalists in the office of the governor of the Third Directorate prison in Kabul.

Abdul Qayum, a lean and hard-faced man in his fifties, had been promising for a week to let reporters see his prisoners and check on their conditions. He told us he was both jailer and the man who leads the interrogations. He told us, too, that he regarded the Taliban and al-Qaeda as indistinguishable.

So how, we asked, does he persuade them to confess? 'We ask them in a friendly and Islamic way to confess their crimes,' he explained to us. 'If they do not confess, then we use force.'

If one cannot condone this sort of behaviour, perhaps one can understand it in a virtual state, stripped of its institutions and atomised by two decades of war. But the role of America and its allies in the maltreatment of the Taliban and al-Qaeda prisoners defies comprehension.

What is most alarming are the potential consequences of those beaten and forced confessions in the context of the legal process that has been constructed for the al-Qaeda prisoners. For the torture, threats and humiliation of the Taliban and al-Qaeda prisoners in Afghanistan's jails pale into insignificance before the cynical acrobatics that George Bush's administration has gone through to strip these prisoners of their most basic rights to a fair legal process.

Let's start with the Geneva Conventions. Not the obvious stuff like the proscriptions on summary executions (witnessed across the country as the Taliban fell), or torture (see above), or the humiliating and degrading treatment (parading prisoners for the

Conventions

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international media), but the niggly details of legal process.

Details like the proscription on the handing-over of prisoners of war to a third party that is not a party to the war, which America insists implausibly to the International Committee for the Red Cross that it is not; in other words, the US claims that it is merely assisting the anti-Taliban forces rather than prosecuting a war.

Or the little detail that insists that those prisoners must be tried by regularly constituted courts, not military tribunals constituted under emergency powers. If they are combatants - and prisoners of war - acting under orders, then, as the US Supreme Court's *ex parte Quirin* ruling declared in 1942 in the case of a group of German saboteurs seized in America in the Second World War, they 'are subject [only] to capture and detention as prisoners of war by opposing military forces'.

But then, say Mr Bush's advisers, including Attorney-General John Ashcroft and Defence Secretary Donald Rumsfeld, these aren't prisoners of war. These are men who fought without uniforms. They bore their weapons in secret for a criminal organisation without a formal legal command. They are criminals,

they argue, 'unlawful combatants', and therefore not covered by the protections of the Geneva Conventions.

And there lies the source of the Bush administration's greatest contortions. For if the prisoners of Guantanamo Bay are not covered by the 'laws of war', then they are ordinary criminals. And the rights of ordinary - and even extraordinary - criminals are guaranteed by the US Constitution.

The Sixth Amendment, in case Mr Bush has forgotten, insists that in 'all criminal prosecutions' in the United States inalienable rights apply. Those rights include the right to a jury trial, a right underlined by case law in the US Supreme Court that insists that if the civilian courts are open and functioning then the armed forces cannot convene a military tribunal to try offences that fall within the jurisdiction of civilian courts.

So if the prisoners of Guantanamo Bay are not criminals or combatants, what are they?

They are the examples that America feels it needs to make before the world, condemned before the fact by their alleged membership of a criminal association. They are triply damned, one suspects, by their nationality, religion and the colour of their skins.