

Languishing in Guantánamo

By Charles Levendosky

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ON Oct 10, concluding a two-month visit to the US Naval Base at Guantánamo Bay, Cuba, the International Committee of the Red Cross reported that many of the 660 detainees imprisoned there were suffering "a worrying deterioration" in mental health due to their languishing in legal limbo.

During the visit, representatives of the ICRC carried out private interviews with the Taliban and Al Qaeda detainees.

Florian Westphal, a spokesman for the ICRC, said of the prisoners: "They have no idea about their fate and they have no means of recourse at their disposal through any legal mechanism. As the internees spend more time in Guantánamo and continue to have no idea what is going to happen to them, we are concerned that the impact on them will get more serious."

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Although the ICRC press release did not mention it, the media has reported 32 suicide attempts by detainees in the past year. On Oct 8, according to an Associated Press story, Richard Bourke, an Australian lawyer representing a few Guantánamo detainees, told Australian radio that US military officials were using "good, old-fashioned torture" to force confessions out of prisoners. Bourke said his assertions are based on reports leaked by US military personnel and from descriptions by some detainees that have been released.

"One of the detainees had described being taken out and tied to a post and having rubber bullets fired at them," Bourke reported. "They were being made to kneel cruciform in the sun until they collapsed."

The Bush administration has refused

Article 4 of the Third Geneva Convention requires countries at war to grant POW status to all captured members of a government's regular armed forces — whether the government is diplomatically recognised or not. This naturally applies to all captured Taliban soldiers. POW status means a captive has due process rights. By denying this status, the US presents itself as rogue nation intent upon flouting the international norms to which it is party

to grant any detainee in Guantánamo the status of prisoner of war, which would require a military trial. To date no charges have been brought against any of the detainees.

In May, Jakob Kellenberger, president of ICRC, met with top administration officials to request due process for the detainees. His request was turned down.

Channel News Asia reports that a group of prominent former judges, diplomats, military officials and human rights advocates have urged the US Supreme Court to review the administration's denial of due process rights for the detainees held at Guantánamo Bay.

The legal briefs filed with the high court question the legality of the treatment of those prisoners under the US Constitution, the Geneva conventions and international law.

According to the independent, non-governmental organisation Human Rights Watch, international law prohibits arbitrary detention.

Both Afghanistan and the United States signed the Geneva conventions. Article 4 of the Third Geneva Convention requires countries at war to grant POW status to all captured members of a government's regular armed

forces - whether the government is diplomatically recognised or not. Thus, the Third Geneva Convention requires the United States to grant POW status to all captured Taliban soldiers who were members of Afghanistan's armed forces.

POW status means a captive has due process rights. POWs accused of war crimes must, according to the Geneva conventions, be tried before "the same courts according to the same procedures as in the case of members of the armed forces of the Detaining Power" - meaning military courts.

The White House fact sheet on the status of detainees at Guantánamo attempts to wheedle around the Third Geneva Convention. It states, in part: "Although we never recognised the Taliban as the legitimate Afghan government, Afghanistan is a party to the Convention, and the President has determined that the Taliban are covered by the Convention. Under the terms of the Geneva Convention, however, the Taliban detainees do not qualify as POWs."

First, as a matter of record, the United States gave millions of dollars to the Taliban leadership in Afghanistan to eradicate heroin crops. Second, the Third Geneva Convention specifically eliminates the question of one warring country's diplomatic recognition of its adversary country.

Bush administration officials have also asserted that "regular armed forces" means having a responsible command, wearing fixed insignia, carrying arms openly, and conducting operations in accordance to the laws of war - therefore, the Taliban do not qualify. Factually, Article 4 of the Third Geneva Convention contains no such requirements.

The direction the Bush administration has taken in regard to the Geneva conventions is a dangerous one. Not only does it make the United States a rogue nation in international law, it puts the men and women of America's armed forces in jeopardy.

If the United States, as a party to the Geneva conventions, will not adhere to them, why should a government hostile to the United States observe the humanitarian restrictions the conventions place on all signatory parties? — Courtesy The New York Times

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