

Prisoners of War and the Iraq Conflict

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In any international armed conflict, international humanitarian law has a role to play. These laws regulate the manner in which the conflict is conducted to ensure that both combatants and non-combatants are accorded respect in accordance with basic principles of humanity. In light of the horrors of World War 2, the four 1949 Geneva Conventions and two 1977 Geneva Protocols were concluded to establish the basic laws of war. All of these Conventions and Protocols have been widely accepted, though the US has still to ratify Geneva Protocol I. Importantly for the conduct of the 2003 Iraq War, all of the major participants – Australia, Iraq, the United Kingdom and the US – were all parties to the 1949 Geneva Conventions, and particularly Geneva Convention III dealing with prisoners of war.

The war had a number of similarities to the 1990-1991 Gulf War with respect to prisoners of war. Both conflicts saw significant numbers of Iraqi POWs, with relatively few Coalition POWs. There were parallel concerns over the treatment of Coalition POWs in both conflicts with some particular concerns over the treatment of women. Both conflicts featured significant media exposure not only of the military engagements but also of POWs. In 1991, the role of CNN and its coverage of the conflict including captured POWs raised a number of moral, ethical, strategic and legal issues. Likewise, in 2003 with the media exposure even greater than in 1991, further questions were raised about the role of the media and their portrayal of POWs. Finally, both conflicts were concluded in relatively short periods of time, raising questions over repatriation of POWs.

Within 48 hours of Coalition military operations commencing, Iraqi POWs were being taken. In his Canberra media briefing of 22 March, General Cosgrove reported that HMAS *Kanimbla* had on board up to 50 Iraqi POWs picked up from a sunken Iraqi vessel. These prisoners were apparently transferred soon thereafter to another – presumably US or UK – facility. The act of transfer in itself raised an

important issue for Australia as while POWs can be transferred between detaining powers under Geneva Convention III, the original detaining power must be confident that the Convention's provisions will be upheld and respected by the transferee power. Given the US position regarding POWs taken during the 2001 Afghan conflict, and the apparently different position taken on this question by the ADF, Australia should have ensured that any POWs transferred to the US would be treated in accordance with the Convention.

On Sunday, 23 March, the Australian media began to show photographs of Iraqi POWs captured by Coalition forces. By the following day, the media exposure of both Iraqi and Coalition POWs had become a major incident. The al-Jazeera cable TV network had shown footage of US POWs being subjected to interrogation, with these images reproduced by both free-to-air and cable networks in Australian and internationally. President Bush was quoted as indicating that persons responsible for any war crimes committed against US POWs would be subject to prosecution.

The issue of the media and POWs is not a new one, with Geneva Convention III providing that POWs are to be protected "against insults and public curiosity". In addition, the 1977 Geneva Protocol provides for protection against "outrages upon personal dignity, in particular humiliating and degrading treatment". Clearly the airing of photographs, either still or action footage, of any POW makes them the subject of public attention. Given the nature of modern television coverage and the propaganda value of such coverage, there can be no denying that such actions are in violation of the Convention. Whether Coalition POWs were subjected to questioning about why they had entered Iraq, or were seen accepting refreshments from their captors, the story could be easily manipulated for propaganda value on either side. The spread of satellite television networks in the wake of CNN plus digital photography and the growth of the Internet also mean that photographs can be published or broadcast globally in real time. There is also the potential that media exposure of POWs can place their families at risk.

The point here is that media on all sides, were clearly acting in violation of the Convention. A fact highlighted by a Department of Defence Media Release on 24 March, which referred to the relevant provisions of Geneva Convention III and requested media organisations to "pixilate" the faces of both Coalition and Iraqi POWs. While the Department of Defence is of the view that Australian media

responded to this request, doubts remain over whether strict compliance was achieved.

The Iraq War also raised issues concerning the status of unlawful or unprivileged combatants, especially in the later stages of the conflict when reports emerged of mercenaries and terrorist organisations seeking to intervene in support of Iraq. While it may be consistent with Geneva Convention III to not accord some of these detainees POW status, there is no legal vacuum here as Geneva Convention IV and general human rights conventions would still apply to these persons.

The US position regarding POWs and their treatment in the Iraq War exposed the weakness of the US position taken during the Afghan conflict. In early 2002 the US was embroiled in a controversy over the application of Geneva Convention III to Taliban and al-Qaeda fighters. The US has consistently argued against applying the Convention to the Afghan POWs, insisting that the fighters were “battlefield detainees” with no rights under international law other than respect for very basic principles of humanity. Australia found itself part of this dispute following the capture of Taliban fighter David Hicks from Adelaide. While there can be little doubt that the Geneva Convention clearly applied in Iraq, the US ambivalence over the captured prisoners from the Afghan War now held in Guantanamo Bay, Cuba may have rebounded upon it in Iraq, especially as regards the rights of captured US POWs.

What seems to have been lost in the so-called war against terror and the associated Iraq campaign by Coalition forces, is that it is important for all parties to remember that if they expect their troops to be treated consistently with international law that carries with it a reciprocal obligation. The recent actions of the US in Afghanistan and now in Iraq to unilaterally interpret international law, including the UN Charter, unfortunately undermine respect for international law. These are matters which need to be carefully considered if universal recognition is sought for the fundamental guarantees to be accorded to prisoners of war.

References

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