

Saddam Hussein Is a Prisoner of War

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Focus

U.S. v. Manuel Noriega,

USDC, SDFL, No. 88-79 CR,
Dec. 8, 1992.

“(GC III) is undoubtedly a valid international agreement and „the law of the land“ in the U.S [...] Geneva III is self-executing [...] Articles 2,4, and 5 of Geneva III establish the standard for determining who is a POW. [...] Geneva III’s definition of a POW is easily broad enough to encompass [...] Noriega [...] what is a competent tribunal? [...] The Court [...] is a “competent tribunal” which can decide the issue [...] the Court finds that General Noriega is in fact a POW [...]”

**Vietnam Era U.S.
Military Directives:**

MACV Directive 381-46,
27.12.67: Criteria for
Classification and Disposition
of Detainees.

MACV Directive 20-5,
15.03.68: POWs-Determination
of Eligibility.

Tribunal procedures: 1.
Jurisdiction. Military tribunals
[...] limited to [...] determination of whether
detained persons [...] are entitled
to POW status.

3.The tribunal shall consist of
not less than 3 officers. [...] at
least one member of the tribunal
shall be a judge advocate
(lawyer) [...]

The 2003 conflict in Iraq between the U.S. and Iraq is the classical international armed conflict. As such Geneva Convention (GC) III governs the treatment of Prisoners of War (POWs). AP I does not apply as conventional law because neither the U.S. nor Iraq is a party to the protocol. Also, the provisions of AP I regarding combatants are not yet accepted as customary international law.

Certainly Saddam Hussein, as commander of the armed forces of Iraq, is a member of the armed forces. Since internal legislation of Iraq is not available in English, this can only be deduced from Saddam’s numerous appearances wearing a military uniform. He serves in the same capacity as U.S. president Bush, as commander-in-chief of the armed forces. GC III, Art. 4 A (1) provides that a member of the armed forces of a party to the conflict is a POW. There can be no doubt here.

Art.5 provides that the Convention applies from the time such a person falls into the power of the enemy until his final release and repatriation.

Furthermore, whether Saddam surrendered or was captured is no longer a decisive issue as was argued at the end of World War II by the U.S. in order to deny POW status to surrendering German soldiers. (See Pictet Commentaries to GC III, p.50.)

If there were any doubt as to Saddam’s status, the U.S. must, in accordance with Art 5 of GC III, convene a competent tribunal to resolve the doubt, as it has refused to do regarding those detained at Guantanamo Bay, Cuba.

There is U.S. precedent for the use of a competent tribunal to assess POW status. This procedure was used by the U.S. during the war in Vietnam to resolve doubt about the status of detainees. The law is clear.

Further, Art. 130 provides that willfully depriving a POW of the rights of a fair trial is a grave breach of the convention, i.e., a war crime.

There is also U.S. precedent regarding a head of state and commander of the armed forces, General Manuel Noriega of Panama. In that case a U.S. court stated that Articles 2,4, and 5 of GC III establish the standard for determining who is a POW. The U.S. had refused to decide whether Noriega was a POW. The court ruled that it was a “competent tribunal” for resolving doubt and found that General Noriega was a POW as defined by GC III. The situation is remarkably similar to that of Saddam Hussein.

As to the treatment of Saddam Hussein, the fundamental provision of humane treatment is contained in Art 13. POWs “[...]must at all times be protected against (among other things) insults and public curiosity,” and be treated with “[...] respect for their persons and their honor.” We have all seen the pictures showing Saddam soon after capture, with a soldier looking into his mouth with a tongue depressor and a light. Immediate reaction to this must be that it is degrading treatment, perhaps meant to be exactly that for public consumption. This should have been done in private without the presence of cameras or, at least, not released over the airwaves.

Responsibility

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