

Forum: General Assembly First Committee

Issue: The Question of Revising the Geneva Conventions on the treatment of prisoners in light of the changing nature of conflict and non-state actors in conflict

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Introduction

The four treaties and three protocols that comprise the Geneva Conventions have governed the humane treatment of victims of war since 1949. These conventions have helped protect both civilians caught in warfare and combatants who are *hors de combat* in conventional international wars, such as the 2008 Georgian War, and the present wars in Iraq and Afghanistan. However, in this modern age of warfare, an increasing number of conflicts occur not between states, but non-state actors. Consider, for example, the internal strife in Sudan and Somalia – these conflicts do not neatly fall into the categories stated by the Geneva Conventions.

Geneva Conventions do have provisions in Common Article 3 for the treatment of all persons captured by the enemy, regardless of allegiance, in armed conflict. The Protocol II additional to the Geneva Conventions, ratified in 1977, elaborates on those rights. However, gaps and ambiguities remain. These holes must be addressed if the Conventions are to remain relevant for the conflicts of the twenty-first century.

Key Terms Defined

Hors de combat: from French for “outside the fight” -- soldiers who are incapable of performing their military function, such as the sick, wounded, or disabled

POW: Prisoner of War

General Overview of the Topic

The Geneva Conventions do outline some rights for prisoners of the enemy, regardless of their nationality or origin, in Common Article 3. These rights are supplemented by the 1997 Additional Protocol II. However, numerous “gray areas” persist in international humanitarian law.

For example, the Conventions and the Additional Protocol do not offer clear criteria for what constitutes “armed conflict”. This has allowed certain groups to deny the existence of “armed conflict”, thereby denying victims of conflict basic human rights. Also, international humanitarian law is silent on the issue of arbitrary deprivation of freedom in non-international armed conflict. Finally, Common Article III only addresses non-international conflict within a single nation’s borders precluding human rights for victims of cross-border conflicts, such as in Somalia. These loopholes are but a few that must be addressed in the Geneva Conventions.

Major Parties Involved and Their Views

China

With China’s explosive economic growth comes both greater political and military power, but also the increased scrutiny of its policies. The PRC is a signatory of the Geneva Conventions, but with stated reservations, namely a refusal to allow neutral entities to treat POWs, wounded or

shipwrecked, without express written consent of the nation of those of affected. This could prove problematic with the increase in incidence of violence by non-state actors: under China's present terms, the Red Cross and other third-party humanitarian organizations would be unable to treat the prisoners without allegiance to a nation-state.

International Committee of the Red Cross

The ICRC is an international humanitarian organization based in Switzerland. The State parties to the Geneva Conventions have given the ICRC a mandate to protect victims of conflict. The ICRC engages directly with States to gain access to POWs and other victims; however, its findings are restricted to only governments directly involved. Naturally, the ICRC has a vested interest in expanding its mandate to help stateless victims of war.

Israel

Israel presently occupies territories won from the 1967 Six-Day War in the West Bank, the Gaza Strip, and much of the Golan Heights. Soon after the Six-Day War, Israel declared that the Geneva Conventions applied to the occupied territories, but quickly backed off from its stance. Today, Israel applies the humanitarian provisions of the Fourth Geneva Convention to the occupied territories, but refuses to apply others. Indeed, even in spite of intense international criticism (see UN Security Council Resolution 446) Israel continues to acknowledge the West Bank, the Gaza Strip, and the Golan Heights as merely "disputed territories", freeing them from the protections outlined in the Geneva Conventions. With Israel's heavy involvement in conflict with non-state actors, such as Hamas, its positions remain controversial.

Russia

Russia fought a brief but bloody war against Georgia over South Ossetia in 2008. Supporters of the Geneva Conventions criticized Russia for its conduct during the war, which, as an international conflict, was subject to the Conventions. Hundreds of civilians were killed and many more were forced to flee in the fighting. Much property was damaged during the war, also a violation of the Geneva Conventions.

Russia has also been involved in a long conflict in the troubled Chechen region. Chechnya is not a recognized state and thus its fighters are not subject to the Conventions. Nonetheless, both sides have accused each other of numerous human rights abuses, ranging from indiscriminate civilian killing to mistreatment of POWs.

Sri Lanka

Sri Lanka was recently involved in an internal conflict against the rebel Liberation Tigers of Tamil Eelam, which only ended in May of last year. The Sri Lankan government has received much criticism from the international community for its alleged human rights abuses during the war, including towards captured Tigers.

The United States

In 2002, the Bush Administration stated that al Qaeda and the Taliban were not entitled to the protections stipulated in the Geneva Conventions. In 2006, the US Supreme Court rejected the Bush Administration's interpretation and held that even if the Geneva Conventions did not apply in their entirety, Common Article 3, which prohibits torture and inhumane treatment of detainees, applied to the conflict between the United States and al Qaeda.

The new Obama administration has banned coercive interrogative methods and reaffirmed a commitment to the Geneva Conventions. However, in practice, hundreds of al Qaeda and Taliban agents remain in detention with unclear legal status. As such, the United States' position on the treatment of prisoners in conflicts involving non-state actors remains ambiguous at best.

Timeline of Events

1864: First Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field

1906: Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

1929: Third Geneva Convention relative to the Treatment of Prisoners of War

1945: end of the Second World War, where millions of POWs from both sides of the conflict were mistreated

1949: the Geneva Convention – updates the first three treaties and adds a fourth, relative to the Protection of Civilian Persons in Time of War

1992-95: Bosnian War – Bosniaks are charged with breaches of the Geneva Conventions

2001: United States begins invasion of Afghanistan

2002: United States opens prisoner detention camp in Guantanamo Bay

2008: Russian-Georgian South Ossetian War

2009: President Obama orders the closing of Guantanamo Bay

UN Involvement, Relevant Resolutions, Treaties and Events

All 192 UN member-states are party to the Geneva Conventions, making the Conventions the cornerstone of UN international humanitarian law. The International Committee of the Red Cross is also an observer within the UN.

The UN International Criminal Tribunal for the former Yugoslavia (ICTY) has seen numerous cases relating to violations of the Geneva Conventions, especially in regard to the mistreatment of POWs. It has set important precedents regarding disputes on the existence of armed conflict.

The Geneva Conventions are frequently cited in UN Resolutions. For examples, see UN SCR 446 or A/RES/51/198A.

Conclusion

Clearly, further clarification is needed regarding the Geneva Conventions. With the increasing frequency of non-international conflicts, the ambiguities in the Conventions need to be addressed to better protect the victims of future conflict. Those in a state of *hors de combat* and in the hands of the enemy are perhaps the most vulnerable of the victims of war. It is up to the UN to clarify their status and help reduce the damage of war.

Possible Solutions

1. Clarification of the definition of “armed conflict” to remove ambiguities in the application of the Geneva Conventions towards non-state actors
2. Allow the rights in Common Article 3 to apply to non-international cross-border conflicts
3. Clarification of rights due to state-less prisoners of war

4. Setting an international standard for the detention of freedom of state-less actors.

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