Is Torture of Terrorists a Violation of the Geneva Convention?

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Abstract

A huge controversy exists on what types of interrogation techniques we should allow interrogators to use in this war on terrorism. Many people state that the Geneva Convention protects terrorist prisoners. The Supreme Court Justices can not even agree if the terrorists meet the elements outlined in the Geneva Convention. While this debate rages on, U.S. Service Members are dying around the world, where intelligence gathered by more aggressive means could save lives. The Staff Judge Advocate prosecuted Lt. Col. Allen B. West for aggravated assault and forced him to retire at the rank of Major, when he aggressively interrogated an Iraqi policeman. He fired his 9mm pistol into a clearing barrel next to his head, resulting in the Iraqi giving relevant information about an impending ambush on his Soldiers. It also resulted in the capture of two co-conspirators and a third fleeing the area. The Forward Operating Based received no further attacks. Lt. Col. West immediately reported the incident to his superiors, hiding nothing. He saved lives, was he wrong?
The case of Lt. Col. West raises many questions. The American people place faith in the military leaders to ensure the safety of their sons and daughters. Should we tie those leaders’ hands to protect terrorists that have no concept of the value of human life? Many believe we should take the moral high ground at all costs. I wonder how many of these individuals have sons and daughters in harms way.

The Indiana Law Journal stated that the United States has properly classified Al Qaeda as unlawful combatants, due to their lack of meeting the four attributes specified in Article 4 of the Geneva Convention.

The attributes that they do not meet are (a) being commanded by a person responsible for his subordinates; (b) having fixed distinctive sign recognizable from a distance; (c) carrying arms openly; (d) conducting their operations in accordance with the laws and customs of war. (Geneva Convention, 1949)

I do not believe that any reasonable person would argue these points. The drafters of Geneva Convention were unaware of the complexity of asymmetric warfare or terrorism, thus ill-equipped to draft an appropriate document to address the issues that arise. They drafted the document to protect combatants between sovereign nations involved in armed conflict. Yes, it does have provisions for militias and resistance groups; however these groups were in support of a sovereign nation. Terrorists in today’s world do not fit the bill.

So the dilemma remains, should we tie the hands of our intelligence personnel to protect these international criminals? Or do we allow them to pursue the most aggressive means necessary to extract information needed to protect American lives. I do not believe that we should allow any cowboy to go off half cocked, trying to extract information. However, we need
to allow our highly trained personnel that specialize in this area to use every tool in their kit bag to get the job done. Lives depend on real time intelligence.

Let us quit talking in circles, and call a spade a spade. In past wars we had prisoner of war camps on United States soil, not in Cuba. Why is this? Is it because we have the ability to use different procedures and tactics when not on U.S. soil? In past wars, we did not load a prisoner on an aircraft and transport him to Tunisia, Jordan, or Israel, when we could not extract intelligence. What do we think is happening in those countries to the detainee when we turned them over? I doubt that they receive a warm welcome. We never in the past called them a detainee; we called them Prisoners of War or Enemy Prisoners of War. Why the change in terminology? Is it because we know without a doubt that Prisoners of War require protection under the provisions of the Geneva Convention? A detainee, in my opinion is not even the correct term. How about international criminal? Does that not more correctly define what they are?

When Lt. Col. West fired that round next to the Iraqi’s head did he harm him? No, he put the fear of God in him, resulting in him spilling valuable information that undoubtedly saved lives. Was this an aggressive means of interrogation? Yes, but for some reason I do not think the Iraqi would have come forward with the information over a cup of chai tea. Was he wrong according to the letter of the law? The Staff Judge Advocates Office thought so, and effectively ended the career of a distinguished leader. I am willing to bet the Soldiers of that battalion have another view on this situation. They supported their leader and would walk into battle under his command again without question. So what does a leader do in this day and age, when put into the same situation? If they value their career more than their Soldiers lives, it is an easy answer. If they do not it is not so easy. This forces leaders to make choices that have serious
consequences, or walk in a very gray area. Asymmetric warfare is not black and white, if it were we would be having victory parades down the main streets of every major city in the United States right now. Instead, we actively engaged all over the world in this war on terrorism.

So how do we ease this burden on our leaders? The American people need to lobby the leaders of our country to pass laws to support and protect military personnel trying to get the job done. They need to put pressure on the government to bring this war to an end with a quick and decisive victory, by giving those leaders the ability to make those tough decisions. I agree that methods that serve no purpose other than cruelty do exist, and we need to abolish those. However when a proven technique is available to extract information from a terrorist that will save lives, the gloves need to come off. We give our leaders an awesome responsibility, maybe it is time we gave them all the tools needed to accomplish their mission.

I believe we have capable and moral leaders, whose conscience will prevent decisions that would result in actions of unnecessary force or undue cruelty to another human being, without cause.

Torture is an extreme term, I believe that we need to aggressively interrogate terrorist and use the means at our disposal to extract the intelligence needed to win this war and save American lives. We need to quit playing word games, be upfront with the American people and the world and let them know that we will hunt down and destroy terrorism world wide with everything in our arsenal. We have stated as much but continue to dance around the issues considered not politically correct. The terrorist only understand force and violence of action. We need to ensure they understand that we are in this to win. Intelligence is time sensitive; we neither have the time or the convenience to extract it by less than aggressive means. If not extracted in a timely manner it proves to have little value. If that is the approach we take there is
little need to bother with interrogation at all. I totally agree with adhering to the Geneva Convention when in an armed conflict with another sovereign nation, but feel it is ill-equipped to deal with the complexity of asymmetric warfare and the world’s terrorist threat. We are not currently conducting combat operations against countries of Iraq, Afghanistan, or the Philippines. Instead we are working alongside them trying to defeat the terrorist threat that has proved to be such a destructive force in their countries. We have full support of their governments in conducting combat operations within their borders to defeat this worldwide threat. We treated Saddam Hussein in accordance with the articles of the Geneva Convention; he was the leader of sovereign nation. There is evidence he supported terrorism, but he himself was not a terrorist. His Soldiers were uniformed combatants and we treated them as such. These are both examples of prisoners of war in the classic sense. If we capture Osama Bin Laden tomorrow should we treat him as a Soldier or as a mass murderer? If we believe he possesses credible information about an impending attack, should we protect him under the articles of the Geneva Convention?
References