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# Dignity in Detention: Impact of the Geneva Convention and Contemporary Challenges

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## ABSTRACT

*Geneva Conventions are important instruments of Humanitarian Law. These are essentially 4 treaties and 3 additional protocols which set international standards with respect to humanitarian treatment in war. Currently, this convention has been ratified by 196 countries. This paper would look into the Geneva Convention and the provisions of the Convention. It will detail look into the development of the Geneva Convention and the reasons behind its revision with respect to prisoners of war. The paper will further its various applicability in the world and major breaches of the provisions of the Convention along with its aftermath. It will also look into the effectiveness of the Convention with respect to Prisoners of War in today's context.*

**Keywords:** *International law, Prisoners, War, Rights, Repatriation, Dignity, Breach, Conflict, Enemy, Humane Treatment.*

## I. INTRODUCTION

According to the 1949 Geneva Conventions, one of the most essential principles of international humanitarian law is the repatriation of prisoners of war (POWs). This paper explores the main principles and clauses of the 1949 Geneva Convention, that serves as the cornerstone of protecting the rights and welfare of captured soldiers and governs the repatriation of POWs. The Third Geneva Convention aims at protecting the rights and dignity of prisoners of war during armed conflicts by giving them necessary safeguards against abuse and securing their ultimate safe return to their place of origin. It is a vital international tool for defending the rights of warriors who have been captured by the enemy. The Third Geneva Convention emerged as a response to the atrocities and inhumane treatment of POWs during World War II. Authors often emphasize the need to prevent the repetition of such violations in future conflicts. The basis of international humanitarian law, the 1949 Geneva Convention on the Return of Prisoners of War emphasizes the humane treatment and secure return of captured fighters to their home nations. This framework demonstrates a dedication to safeguarding people's rights and dignity even in the midst of armed conflict, emphasizing the values of humanity and compassion in the

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face of hardship. Many contemporary discussions revolve around the challenges of applying the Convention's principles to modern warfare, such as the treatment of detainees in the context of counter-terrorism operations or irregular conflicts. Controversies surrounding the Convention, such as its interpretation and compliance, are a subject of scholarly debate. Some debates include the use of Guantanamo Bay as a detention facility and debates over the legal status of detainees there.

## **II. GENEVA CONVENTIONS: OVERVIEW**

The Geneva Conventions are extremely significant to world history and the development of various rights at an international scale. The Convention are essentially international humanitarian laws governing crucial aspects of the globe. The Convention mainly comprises of four treaties and three additional protocols. It has set the international legal standards for various international players with regards to humanitarian treatment in war. The Conventions are monumental in establishing a plethora of rights with respect to treatment of wartime prisoners, civilians and military personnel. The Conventions provide provisions for affording protection to the sick and injured and for civilians living near and around the zone of war. People being afforded protection under the Geneva Convention are categorized as 'Protected People'. They have to fulfill the necessary criteria to be classified under the aforementioned heading who are essentially non-combatants. As of now, The Conventions have been ratified by 196 countries.

- The First Convention is "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field"
- The Second Convention is "for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea".
- The Third Convention is "relative to the Treatment of Prisoners of War"
- The Fourth Convention is "relative to the Protection of Civilian Persons in Time of War".

In addition to these, there are three protocols which have, in essence, modified the Conventions. These are ---

Protocol I (1977) "relating to the Protection of Victims of International Armed Conflicts"

Protocol II (1977) "relating to the Protection of Victims of Non-International Armed Conflicts"

Protocol III (2005) "relating to the Adoption of an Additional Distinctive Emblem"

The key points related to POWs under the Geneva Conventions include:

- **Humane Treatment:** POWs must be treated humanely at all times. They are protected against violence, intimidation, insults, and public curiosity.
- **Non-Discrimination:** POWs must be treated without any adverse distinction based on race, nationality, religious beliefs, or political opinions.
- **Protection:** POWs are protected from physical and mental harm, as well as any form of coercion, intimidation, and torture. They cannot be subjected to medical or scientific experiments.
- **Access to Red Cross/Red Crescent:** The International Committee of the Red Cross (ICRC) must be allowed to visit POW camps to ensure that the detainees are being treated in accordance with the conventions.
- **Proper Facilities:** POWs must be held in proper facilities that provide adequate food, clothing, and medical care. They should also have access to religious and intellectual activities.
- **Communication with Families:** POWs are allowed to send and receive letters and cards to and from their families. The detaining power must facilitate this correspondence.
- **Release and Repatriation:** At the end of hostilities, POWs must be released and repatriated without delay. If a POW is unfit for repatriation due to sickness, wounds, or other reasons, they must be treated until fit to travel, after which they must be released.
- **Protection against Public Curiosity:** POWs are entitled to respect for their persons and their honor. Any public curiosity regarding them is prohibited.
- **Respect for Gender and Religion:** POWs must be treated without any adverse distinction based on race, nationality, religious belief, or political opinions. Women must be treated with due regard to their sex, and religious practices must be respected.

### **III. PRISONERS OF WAR**

The relevant aspect with respect to Prisoners of War is the Third Convention under the broad umbrella of Geneva Conventions.

The purpose of the Third Geneva Convention is to ensure the humane treatment and protection of prisoners of war (POWs) during armed conflicts, including both international and non-international armed conflicts.

It plays a fundamental role in protecting the rights and dignity of individuals captured during armed conflicts. It establishes clear guidelines for the treatment of POWs, ensuring that even in

the midst of war, basic human rights are upheld and respected. Adherence to these principles is vital in promoting humanitarian values and preventing unnecessary suffering during times of conflict.

There are strict guidelines for the treatment of prisoners of war (POWs) in the Third Geneva Convention. The 143 articles of the Convention mandate that POWs get humane treatment, suitable housing, and an adequate supply of food, clothing, and medical attention. Its regulations also set rules for work, discipline, leisure, and criminal prosecution.

The Convention provides a clear definition of who qualifies as a prisoner of war. Generally, POWs are individuals belonging to one of the parties in the conflict, including members of the armed forces as well as militias and volunteer corps forming part of such armed forces.

Among the possible POWs are the following as recognized by the Convention:

- Armed forces personnel;
- Volunteer militia, encompassing resistance movements
- People who go with the armed forces.

Specific provisions are as follows: -

Articles 13, 14 and 16: Torture and medical experimentation are prohibited, and prisoners of war must also be shielded from acts of violence, insults, and public curiosity.

Article 17: Prisoners of war must only divulge to their captors their name, rank, birthdate, and military service number.

Article 23: POWs must be treated with the respect owed to their sex

Articles 25–27, 30: Retaliation or discrimination based on race, nationality, religion, political views, or any other factor is prohibited for captors.

Articles 50, 54: Prisoners must live in hygienic, sufficient housing and have the food, clothing, and medical attention required to stay healthy. They cannot be used to "shield" areas from military operations or be kept in battle locations where they are vulnerable to gunfire. They can be obliged to perform civilian tasks in exchange for adequate compensation and decent working conditions.

Articles 70–72, 123: Names of prisoners of war must be forwarded right away to the ICRC's Central Tracing Agency. POWs should be able to communicate with their loved ones and be given relief supplies.

Sections 82, 84: Prisoners may be tried by the courts of their captors and are subject to the laws

of their captors. Fairness, impartiality, and a capable representative for the prisoner are all obligations of the captor.

Articles 109, 110: Returned home or repatriated POWs must be in grave condition.

Article 118: All prisoners of war will be released at the end of the fight and, upon their desire, will be sent home right away.

#### **IV. HISTORY AND ORIGIN**

Since the beginning of time, many civilizations have had different laws of war. Some, like the Babylonians, had impeccable morals, while the Roman Empire and the Mongols were not above destroying entire towns and their inhabitants. Up until Henry Durant showed up, this was the standard. Napoleon II, Napoleon Bonaparte's nephew, was contacted by Genevan businessman Henry Durant to discuss purchasing land for a commercial project. In addition to receiving territory in northern Italy, he saw the devastation caused by the violent Battle of Solferino, one of several battles fought during Italy's unification. This inspired him to document what he had seen and to suggest a way to lessen some of the carnage caused by war: creating a volunteer organisation to teach people to help both civilians and soldiers who had been impacted by the conflict. In order to investigate Durant's proposal, the Red Cross was founded in its early forms. Delegates from sixteen countries met in Geneva in October 1863 to consider the conditions of providing humanitarian aid during the conflict. The outcome was a convention known as the First Geneva Convention, which was ratified by 12 countries.

The Swiss government called for a second convention to review and amend the first Geneva Convention. Protection for injured or taken prisoner of war, as well as protection for the medical staff caring for, transporting, and disposing of the dead and injured, were among the revisions. In order to guarantee that prisoners of war get humane treatment, additional modifications were made in 1929 after it was determined that the 1906 amendments were insufficient following the end of World War I in 1919. The Red Cross was established as the primary impartial body that will guarantee the gathering and sharing of information regarding the deaths and injuries of combatants as a result of the recent modifications that brought regulations pertaining to the day-to-day lives of prisoners.

Despite being a signatory to the 1929 Convention, Germany's Nazi regime continued to commit horrifying atrocities against both civilian and military soldiers during World War II. In order to protect civilians who are not engaged in war, the Geneva Conventions were expanded in 1949. Provisions to safeguard were also introduced by the additional articles.

- Medical staff, resources, and apparatus
- injured and ill citizens who go with the armed forces
- Chapels for the military
- People who defend themselves by taking up arms against invaders

The 1949 Convention provided greater protections for both male and female prisoners of war, including:

- They cannot be subjected to abuse or torture.
- When apprehended, they are only needed to provide their name, rank, birthdate, and serial number.
- They are entitled to appropriate accommodation and sufficient sustenance, and they cannot face discrimination of any kind.
- They are entitled to care packages and communication with family.<sup>3</sup>
- The Red Cross is entitled to go see them and assess their living circumstances.<sup>4</sup>

Additionally, measures were taken to safeguard mothers, children, and injured, ill, and pregnant individuals.

The 1949 Conventions were supplemented with Protocols I and II in 1977. During international armed conflicts, Protocol I strengthened protections for civilians, military personnel, and media. The employment of "weapons that cause superfluous injury or unnecessary suffering" as well as "widespread, long-term, and severe damage to the natural environment" was also outlawed. The International Committee of the Red Cross states that the reason Protocol II was created was because the majority of people killed in armed conflicts since the 1949 Convention were involved in bloody civil wars.

Children should also receive proper care and education, and the following should not be done to them:

- capturing captives
- The Terror
- Pillage

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<sup>3</sup> POWS, WOUNDED AND KILLED SOLDIERS, <https://www.hrw.org/legacy/reports/1991/IRAQ391.htm>

<sup>4</sup> Luisa Vierucci, *Is the Geneva Convention on Prisoners of War Obsolete?: The Views of the Counsel to the US President on the Application of International Law to the Afghan Conflict*, 2 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 866 (2004).

- Slavery Penalties for groups
- Treatment that is demeaning or humiliating

## **V. GROSS BREACHES IN HISTORY**

In the context of contemporary combat, the Geneva Convention has been broken multiple times. The Third Geneva agreement has been violated many times throughout history, even with the explicit guidelines outlined in the agreement. The rights and dignity of POWs, as stipulated by the convention, are being violated in these breaches.

The Second World War prompted the Conventions to be revised. The modifications to the Convention were prompted by the horrific crimes perpetrated against both combatants and non-combatants. On the Eastern Front, German forces captured millions of Soviet soldiers as prisoners of war. Soviet detainees suffered high rates of death as a result of the unforgiving circumstances in German POW camps. Better conditions were granted to some German prisoners of war held by the Allies, particularly in the aftermath of the war when efforts were made to comply with the Geneva Conventions. The Nazis frequently mistreated Soviet prisoners of war who had been taken prisoner by the Germans and refused to acknowledge them as real prisoners. Numerous Soviet prisoners of war perished in captivity as a result of malnutrition, exposure, or execution. Conversely, a great deal of Axis POWs were held by the Soviet Union, and living circumstances in Soviet POW camps were very appalling. Conditions for British, American, Australian, and other Allied prisoners of war in German detention camps varied. While some prisoners of war had comparatively better treatment, others had to endure cruel punishment, insufficient food, and forced work. Forced labor, malnutrition, physical abuse, and medical experiments were among the exceptionally severe conditions that Allied prisoners of war (POWs) captured by the Japanese suffered in the Pacific theater. These harsh circumstances led to the deaths of several prisoners. The Geneva Conventions were widely followed in the treatment of Italian soldiers taken prisoner by the Allies. However, the Japanese soldiers that the Soviet Union seized frequently endured difficult living conditions, and some were not freed until years after the war was over. changed greatly depending on the nation capturing the target and the particulars of the capture during World War II. POWs suffered from extreme cruelty to relatively compassionate treatment; many spent years in captivity and hardship, and in certain cases, were subjected to forced labor or medical experiments. Following the conflict, measures were taken to guarantee POWs' return and to prosecute war criminals and violators of international humanitarian law.

The horrible My Lai Massacre took place on March 16, 1968, during the Vietnam War. In the

hamlets of My Lai and My Khe in Quang Ngai Province, South Vietnam, hundreds of unarmed Vietnamese civilians, including women, children, and elderly people, were massacred by U.S. soldiers. The episode involved the maltreatment and execution of unarmed individuals who could be classified as non-combatants or prisoners of war (POWs) under the Geneva Conventions, notwithstanding the fact that the majority of the victims were civilians. The soldiers in question violated the fundamental principles of distinction and proportionality stipulated in the Geneva Conventions by failing to distinguish between combatants and non-combatants.

All sides to the Bosnian War (1992–1995), including the Bosnian government forces, the Bosnian Serb forces, and the Bosnian Croat forces, captured prisoners of war. Numerous accounts of POWs<sup>5</sup> being abused, tortured, and put to death emerged. Thousands of people endured cruel treatment, torture, and occasionally even death in detention centers.<sup>6</sup>

Both sides captured prisoners of war during the fighting between the Croatian government and insurgent Croatian Serbs. Stories of abuse, forced labor, and POW murder surfaced, especially during offensives and in prison camps.

Both sides captured captives in the Kosovo War (1998–1999), which pitted Serbian forces against the Kosovo Liberation Army (KLA). Minority members of Serbian and Roma descent as well as Kosovo Albanians were allegedly detained as Prisoners. Many endured cruel treatment, torture, and extrajudicial executions.

Regarding the Third Geneva Convention, one of the biggest incidents during the Iraq War was the Abu Gharaib Prison Scandal. The term "Abu Ghraib prison scandal" describes a string of violations of detainees' human rights committed by American military personnel in the early 2000s, mostly in 2003 and 2004 in the Abu Ghraib jail in Iraq. When images of inmates' mistreatment were released to the public in 2004, it brought attention to the abuses and sparked outcry from around the world. Prisoner killings, sexual assault, torture, and physical and psychological abuse were among the atrocities committed in Abu Ghraib. Various sorts of humiliation and degrading punishment were inflicted upon the detainees, including as stress positions, hooding, forced nudity, and fake executions. The controversy brought attention to the Geneva Conventions, which forbid mistreating captives and prisoners of war, as well as

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<sup>5</sup> Geneva Conventions More Crucial Than Ever, Humanitarian Experts Stress, as Security Council Marks Seventieth Anniversary of Key Instruments | UN Press, UN, <https://press.un.org/en/2019/sc13917.doc.htm> (last visited Nov 27, 2023).

<sup>6</sup> Japan, POWs and the Geneva Conventions | American Experience | PBS, <https://www.pbs.org/wgbh/americanexperience/features/bataan-japan-pows-and-geneva-conventions/> (last visited Nov 27, 2023).

fundamental human rights violations. Due to their involvement in the abuses, a number of U.S. military personnel—including both high-ranking officers and low-ranking soldiers—were disciplined and court-martialed. Eleven soldiers were found guilty in 2004 in relation to the abuses; their penalties ranged from fines and rank reductions to incarceration. The scandal had a great deal of negative effects, hurting the standing of both the Bush administration and the US military. In the context of the worldwide War on Terror, it also called into question the procedures and rules pertaining to the treatment of detainees. Due to the incident, there is now more scrutiny on U.S. detention facilities, modifications to military protocols, and a renewed focus on treating prisoners and detainees during armed situations in accordance with international human rights norms and the Geneva Conventions.

Atrocities were also committed during the Syrian War. POWs and captives have been taken by many parties involved in the fighting during the war, which started in 2011 and is still going on today. Human rights issues and accusations of war crimes have been made by the way in which POWs and detainees have been treated during this lengthy and intricate struggle. Detainees in overcrowded, cruel detention facilities have reportedly experienced physical<sup>7</sup> abuse, terrible housing circumstances, and a lack of medical attention. Many people have worked in dangerous conditions as well as been subjected to forced labor. From several prison centers across Syria, numerous charges of torture and mistreatment of detainees have surfaced, including beatings, electrocution, and sexual violence. Humanitarian law and international human rights treaties are flagrantly broken by these acts. Many prisoners have experienced forced disappearances, leaving their relatives in the dark about their locations while they are housed in covert detention centers. Detainees have frequently died while they were in custody, frequently as a result of abuse, poor living conditions, or a lack of medical attention. Long stretches of time have passed without charges or a trial for detainees; in several cases, their detention was motivated only by their religious or political ties. Regarding the treatment of detainees and POWs, the Syrian Civil War has been marked by multiple violations of human rights norms and international humanitarian law. International groups that have been striving to expose these crimes, advocate for the rights of detainees, and push for responsibility and justice include the United Nations and the International Committee of the Red Cross (ICRC). As part of larger peace and reconciliation initiatives in the area, efforts are still being made to free prisoners, reunite families, and handle the issue of missing persons.

Located inside the Guantanamo Bay Naval Base in Cuba, Guantanamo Bay, usually referred to

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<sup>7</sup> *Id.*

as Gitmo or Guantanamo, is a military prison run by the United States. It was involved in the detention of people apprehended during the worldwide War on Terror that ensued after the September 11, 2001 attacks, and this contributed to its international exposure and controversy. The legal standing of the detainees housed at Guantanamo Bay has been one of the main points of debate. Many detainees were first classified by the U.S. administration as "unlawful enemy combatants," a designation that did not correspond to the conventional categories found in the Geneva Conventions. This sparked discussions over whether the captives should have been granted the rights granted to prisoners of war by the Third Geneva Convention. There have been reports of the employment of dubious interrogation methods, such as stress postures, sleep deprivation, waterboarding, and sensory deprivation. Many have questioned some of these methods, arguing that they violate international law by being torture or cruel, inhuman, or humiliating treatment. Conditions of confinement, such as extended periods of seclusion, limited access to natural light, restricted physical activity, and restricted connection with family members, have drawn criticism. These circumstances have drawn criticism for being cruel and maybe infringing the rights of the captives. There are worries about indefinite imprisonment and the lack of due process because numerous detainees have been imprisoned at Guantanamo Bay for protracted periods of time without being charged or having a trial. Some captives were still at Guantanamo Bay as of January 2022, despite assurances that the facility would be closed. Several obstacles have stood in the way of the U.S. governments' attempts to shut down the facility. Legal, political, and security issues both domestically and internationally are among these difficulties.

Numerous complaints and concerns over the treatment of prisoners of war (POWs) and detainees have arisen as a result of the fighting in Ukraine, notably in the eastern areas of Donetsk and Luhansk. The separatist rebels, the Ukrainian armed forces, and at different times, Russian military participation are all involved in the conflict, which started in 2014. Concerns regarding compliance with international humanitarian law, particularly the Third Geneva Convention, have been raised by the way POWs are treated, drawing attention from across the globe. Both separatist organizations<sup>8</sup> and the Ukrainian military forces have taken prisoners during the fighting, including militants and soldiers from the other side. International humanitarian law states that these people should be treated as POWs if they are apprehended. The conditions under which POWs and detainees are housed have drawn criticism. According to reports, some prisoners may have been housed in filthy, overcrowded conditions that go

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<sup>8</sup> Ukrainian prisoners of war say they were tortured at Russian prison, BBC NEWS, Aug. 16, 2023, <https://www.bbc.com/news/world-europe-66453692> (last visited Nov 27, 2023).

against international norms. POWs and detainees have allegedly been mistreated by both sides of the fight. Physical abuse, torture, and denial of fundamental rights are among the accusations, all of which would be against international humanitarian law, particularly the Third Geneva Convention. International groups working to guarantee prisoners of war and detainees get humane treatment include the International Committee of the Red Cross (ICRC). The International Committee of the Red Cross (ICRC) visits prisons to observe circumstances and promote the humane treatment of inmates in accordance with international norms.

There were instances of prisoners of war (POWs) seized by both sides during the Gulf War, which was fought between a coalition of international forces led by the United States and Iraq from August 2, 1990, to February 28, 1991. During and after the war, there was considerable worry about how these POWs would be treated. Reports surfaced regarding torture and abuse of Allied prisoners of war detained by Iraq, especially during the early phases of the battle. Inadequate living circumstances, lack of medical attention, and physical and psychological abuse were experienced by a number of Prisoners. International indignation and doubts about Iraq's compliance with the Geneva Conventions were sparked by the mistreatment of these prisoners of war. Iraq was charged with war crimes following the Gulf War, including the abuse of prisoners of war. The international community supported resolutions passed by the UN Security Council and later measures like sanctions and Iraqi WMD inspections in part because of these charges.

## **VI. RESULT**

This paper explores the importance of the Geneva Conventions. It also looks into the applicability. The convention provides specific guidelines for treating Prisoners of War with dignity. This involves making arrangements for their physically and mental health, safeguarding them from harm, torture, and inhumane treatment, and providing them with access to healthcare. POWs must be treated without any adverse distinction based on race, religion, nationality, political beliefs, or other factors. POWs must get equivalent amount of food, clothes, and housing as the capturing power's armed forces did. POWs may be ordered to undertake certain tasks, but they must be safe and unrelated to the capturing power's military objectives. They have a right to compensation for any work done. The treaty stipulates that they cannot be held captive for an extended period of time as a punishment. The convention allows for the International Committee of the Red Cross (ICRC) to visit POW camps and ensure that the provisions of the convention are being followed. Widespread ratification and acceptance of the Third Geneva Convention has been achieved by numerous nations. A substantial international

effort is being made to guarantee that military men who have been seized during hostilities are treated with respect and humanity. Under international law, a violation of the convention is a war crime.

## **VII. CONCLUSION**

The Geneva Convention is a crucial one. It protects the rights of Prisoners of War on an international scale. It holds countries accountable for their grave misconduct in the context of Prisoners of War. It governs important aspects of international relations and cooperation for safeguarding Prisoners of War and their rights. But, more often than not, these things look better in paper than reality. The practical implementations of these conventions are often not up to the mark. There are grave breaches and atrocities committed by signatories to the Convention. The Geneva Convention, concerning the treatment of prisoners of war, has been a subject of extensive scholarly research and discussion. It remains a crucial legal framework for the protection of individuals captured during armed conflicts, but its application and effectiveness continue to be topics of ongoing debate in the context of evolving warfare and changing geopolitical dynamics.

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