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Abu Ghraib: Prisoner Abuse in the Light of Islamic and International Laws

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Abstract: This study analyses the prisoner abuse at Abu Ghraib in the light of Islamic and International laws. Using documentary sources, the paper argues that Islamic law is far superior than the International law as enshrined in the Geneva Conventions and the United Nations Charter on the treatment of prisoners of war. It found the abuse of the prisoners at Abu Ghraib a routine operation carried out in obedience to orders issued by the higher authorities. The photographs portraying images of dehumanization in Abu Ghraib is unacceptable either in Islamic or international law.

The Abu Ghraib prison is in Abu Ghraib, an Iraqi city 32 km (20 mi) west of Baghdad. It has been used by the U.S.-led coalition occupying Iraq as a detention facility. The prison was holding more than 7,000 detainees in early 2004 when the United States military's torture and humiliation of detainees was revealed in a series of photographs published in worldwide news media. The story included photographs depicting the torture of prisoners, and resulted in a substantial political scandal within the U.S. and other countries.

President George W. Bush decried the acts and argued along with others in the U.S. administration that prison abuses were isolated acts committed by low-ranking staff and are not acceptable practices in the U.S. Army. A great majority of people in the world, however, believe that those were either ordered or implicitly condoned by higher authorities in the Bush administration. This raises two important questions: What is the exact nature of this abuse? More

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importantly, how repugnant is this abuse in both Islamic and international laws on the treatment of prisoners of war and civilian prisoners? To explore these questions, this study explains and compares the Islamic law derived from the Qur'ān and the *Sunnah* (the acts and deeds of the Prophet, SAW) and international law based on the Geneva Conventions and the United Nations Charter on the treatment of prisoners of war. In the light of these two laws, this study examines the nature of the abuse and torture of the prisoners at the Abu Ghraib prison.

Islamic Law

Before the arrival of Islam, there was no clear rule on the treatment of prisoners of war. Combatants or noncombatants captured during war were either slaughtered or enslaved by their captors. Little discrimination was made between combatants and civilians. In most cases, the captured women were raped and children were butchered or sold. It was Prophet Muḥammad (SAW) who in the light of Qur'ānic injunctions laid down rules relating to the prisoners of war and implemented these in political and military activities.¹ These rules were later formalized to encompass laws on the conditions for peace and neutrality. Imām Abū Ḥanīfah is considered to have given a series of lectures on “The Muslim Laws of War and Peace,” which were later compiled by one of his students, Muḥammad Ibn Ḥasan al-Shaybānī, in 804, entitled *Introduction to the Laws of Nations*.²

Traditionally Muslim scholars distinguished between *dār al-Islām* and *dār al-ḥarb*, literally translated as abode of peace and abode of war. In the former territories, Islam dominates, *sharī'ah* prevails and Muslims are free and secure. In the latter, Islam does not dominate and divine will is not observed. A person becomes a prisoner of *dār al-Islām* only after being captured in one of three lawful wars: defensive, sympathetic and punitive. A defensive war is initiated in response to an invasion of *dār al-Islām*. The Prophet (SAW) is reported to have said, “Whoever fights in defense of his person and his property is a martyr, whoever is killed in defense of his family and is killed is a martyr, and whoever is killed for the cause of God is a martyr.”³ A sympathetic war is initiated when Muslims living in *dār al-ḥarb* persuade a Muslim nation to emancipate them from a tyrannical ruler. The verse 4:74 of the Qur'ān obligates Muslims “to

fight in the cause of Allah (SWT).”⁴ The punitive war is directed against organised apostates, rebellions, international highway robbery and those who break treaties. In these wars, a combatant may be killed or may surrender and become a prisoner of war. It is forbidden to kill noncombatants who become prisoners of war. Noncombatants include women, children, elderly hermits, the physically disabled, the insane and the like. The Muslim commander is required to take all precautions to spare them from the violence and terror inherent in war.⁵

Islamic law regarding the treatment of prisoners of war is part of the whole system of Islamic ethics, which places the utmost importance on the preservation of human dignity and rights. This principle extends from the rights of the unborn child to those of women, the elderly, non-Muslims living in Muslim countries and enemies captured as prisoners of war. Each human being has an inherent value and distinction as God’s creation. In principle, Islam forbids targeting civilians and those who do not contribute to war.⁶ A Muslim fighter can only target those who attack him and wage war against his country. If there is a war between Muslims and non-Muslims and the non-Muslim army kill Muslim captives, only in that case it is allowed that captives be killed in return, in conformity with the injunction: “whoever then acts aggressively against you, inflict injury on him according to the injury he has inflicted on you and be careful [of your duty] to Allah....” (*Sūrah al-Baqarah*, 2: 194). It is unacceptable to kill civilians or those who oppose war. The Prophet (SAW) and Muslim Caliphs after him constantly advised the Commanders in all battles not to kill monks, civilians or whoever surrenders and decides to leave the battle. Fighting in Islam, therefore, is to be resorted to only under exceptional circumstances and it must be limited to the warring parties.

The laws regulating the treatment of prisoners call on Muslims to “take heed of the recommendation to treat the prisoners fairly.”⁷ According to the Qur’ānic verse 42:4 and *Sunnah* of the Prophet, execution of prisoners of war is forbidden unless the individual is found guilty of war crimes upon trial. These crimes must exceed the prisoner’s legal right to belligerency and bitter enmity against Islam.⁸ In addition, a prisoner cannot be held liable for any damage he inflicts on Muslim life and property during war. Islam holds

individuals responsible for gross violations of human dignities, such as the killing of innocents. Prisoners of war are not to be humiliated or degraded in any way. They have the right to maintain their human dignity and be protected from sexual, emotional and physical abuse.

Islam has set down several obligatory rules regarding the rights of prisoners during war. Prisoners are to be not only treated fairly but also fed at no cost and provided with necessary health care.⁹ Clothing as well as sanitary facilities must be provided. The Prophet (SAW) also instructed his companions to shelter their prisoners from the summer sun and provide them with water to drink. The basis of this obligation also comes from the Qur'ānic verse 76:8, which reads, "as to the righteous...they feed, for the love of Allah, the indigent, the orphan, and the captive."¹⁰ There are some *aḥādīth* (pl. of *ḥadīth*, the sayings of the Prophet, SAW) that obligate Muslim commanders to relieve prisoners of any discomfort, treat them for their illnesses and enable them to complete wills for their property which the state must communicate to its enemy. The mother, the child and the relatives must be allowed to stay together. They cannot be separated or split apart. A prisoner can be punished for violating administrative rules, but that punishment must be commensurate with the violation. For example, an escaped prisoner who is later captured cannot be tried for escaping. He could be punished for the minor offence of breaching parole, unless he is killed during the process of fleeing. Under all circumstances, the Islamic state bears the burden of responsibility for the treatment of prisoners who are captured during war.¹¹

Islamic law also dictates certain specific procedures for the exchange and release of prisoners of war. Exchange of Muslim prisoners was a common practice by the Prophet (SAW). During the course of the transfer, the Muslim state is responsible for the safe passage of the prisoners. Prisoners of war also must be released gratuitously. This could occur at any point during the course of a war or at least by the end of a war. Both the state and the commander are authorized to release a prisoner of war. Thousands of prisoners were freed following the Battle of Ḥunayn, with no ransom collected. In fact, the Prophet (SAW) himself compensated "all those who were not willing to part with their booty of slaves" out of the public treasury.¹²

In brief, Islam confers the following rights on combatants: 1) No one should be burned alive or tortured with fire; 2) Wounded soldiers who are neither fit to fight nor actually fighting should not be attacked; 3) Prisoners of war should not be killed; 4) It is prohibited to kill anyone who is tied up or in captivity; 5) Residential areas should not be pillaged, plundered or destroyed, nor should Muslims touch the property of anyone except those who are fighting against them; 6) Muslims must not take anything from the general public of the conquered country without paying for it; 7) The corpses of the enemy must not be disgraced or mutilated; 8) The corpses of the enemy should be returned; 9) Treaties must not be broken; 10) Muslims are prohibited from opening hostilities without properly declaring war against the enemy, unless the adversary has already started aggression against them.¹³

Thus, the Qur'ān clearly stresses the obligations upon Muslims to fight in self-defence without transgressing the limits set by Allah (SWT). During and after a war, if any soldier seeks asylum, Muslims should not only grant him asylum but also escort such enemies to a place of security. However, it is to be noted that although the Qur'ān warns Muslims repeatedly and in the strongest possible language not to commit aggression against anyone under any circumstances, it does emphatically urge Muslims to stand up and fight as best they can once they are aggressed upon. They are not to turn the other cheek or engage in appeasement. Jamal Badwai comments:

Even when the Qur'ān speaks about defensive war, it never glorifies it or calls it 'Holy'; rather, it is described as something which is inherently hated. However, as a last resort, it may be better than doing nothing in the face of aggression or oppression.... *Jihād* is used in the *context of prayers*, doing righteous deeds and *self-purification*; *inward Jihād* or struggle against evil inclinations within oneself (emphasis added).¹⁴

International Law

The Geneva Convention of 1949 and the UN Convention Against Torture form the foundation of international law in matters of war. The Convention focuses on the treatment of enemy forces as well as civilians living in occupied territories. There are four conventions:

Convention I addresses the treatment of wounded and sick soldiers in the battlefield. Convention II deals with the treatment of wounded and sick soldiers at sea. Convention III includes the treatment of soldiers who are prisoners of war. Convention IV regulates the treatment of civilians during war. The UN Convention Against Torture addresses the issue of torture on prisoners of war. It prohibits torture or any such abuses on persons detained during war.

The 1949 Geneva Convention clearly lists the various individual rights and duties of prisoners as follows:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) Taking of hostages; (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment; (d) The passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.¹⁵

The Geneva Convention strictly prohibits “mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment” (Article 3). Also, those persons who are detained without trial have the right to be “treated with humanity” (Article 5). Article 14 of the Convention declares:

Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men. Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

Furthermore, for those who are no longer taking an active part in hostilities, there shall be “respect for their persons, their honour.... They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity” (Article 27). Moreover, “no physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them” (Article 31). The captors are “prohibited from taking any measure of such a character as to cause the physical suffering...of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment [and] mutilation...but also to any other measures of brutality whether applied by civilian or military agents” (Article 32). The Detaining Power is prohibited from adopting any “measures of intimidation” (Article 33).¹⁶

The Detaining Power is obligated not only to treat prisoners fairly but also to supply sufficient food, water and tobacco in quantity and quality, to keep prisoners in good health and prevent the loss of weight or the development of nutritional deficiencies. The detaining power can demand labour from the prisoners but there must be dignity in the labour. The Detaining Power should also provide clothing, underwear and footwear to the prisoners of war in sufficient quantities. Moreover, it is obliged to take all sanitary measures necessary to ensure the cleanliness and hygienic condition of camps and to prevent epidemics.¹⁷

The UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, adopted in 1984, barred torture which it defined in its first article as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him...information or a concession, punishing him for an act he...has committed or is suspected of having committed or intimidating or coercing him.”¹⁸ The very next article of the convention explicitly states, “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”¹⁹ Thus, the UN prohibits, in addition to other war crimes listed above, “torture or inhuman treatment...wilfully causing great suffering and serious injury to body or health” (Article 147). Some forms of abuse can

constitute crimes against humanity under international law if they involve attacks on civilians or persecution on such grounds as race, religion or nationality.²⁰

The Detaining Power is further obliged to assemble prisoners of war in camps or camp compounds according to their nationality, language and customs so that such prisoners are not separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent. Prisoners of war may be interned only in premises located on land that guarantees hygiene and healthfulness. They shall not be interned in penitentiaries, except in particular cases that are justified by the interest of the prisoners themselves. Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate. The Detaining Power will notify prisoners of war of the laws and regulations allowing or forbidding them. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified are bound by their personal honour. Prisoners of war may be partially or wholly released on parole.²¹

In brief, international law establishes the following guidelines regarding prisoners of war: (i) Prisoners shall be in the custody of the belligerent state, and not that of any individual; (ii) Except for officers, the detaining state can exact labour from them; (iii) The detaining state is responsible for their maintenance, which will be subject to repatriation; (iv) They shall be subjected to humane treatment; (v) They shall obey the laws of the detaining state; (vi) They shall be permitted to perform their religious rites; (vii) Their wills shall be executed; (viii) They should not be exposed to brutality to procure information useful for the conduct of operations; (ix) They should be released and repatriated without delay after the cessation of active hostilities.²²

A Comparison

The preceding discussion indicates similarities between Islamic and international laws regarding the treatment of prisoners of war. It appears as if the international law is derived from the Islamic law. In fact, Islamic law supersedes modern international law in some respects as follows:

First, international law recommends facilities for prisoners of war that are equivalent to those of the detaining state.²³ However, the modern history of warfare, does not bear any such evidence. Ideally, facilities include all the living conditions of the soldiers, but in practice, enemy soldiers are not provided with such living conditions. Abu Ghraib is a prime example.

Second, according to both Islamic and international law, the Detaining Power is obliged to feed prisoners with such food that is necessary for maintaining their good health. In the history of modern warfare, these standards are rarely met. Prophet Muḥammad (SAW), however, established such a tradition. He directed his soldiers to be content with dates, while providing prisoners with bread in case of scarcity.²⁴ Placed in its historical context, this seemingly inconsequential concession takes on greater significance.

Third, according to international law, the Detaining Power can demand labour from prisoners of war. Captured prisoners may be ordered to do physical labour inside the prison. Islamic law, however, forbids any kind of forced labour for prisoners of war. Demanding labour from prisoners is considered a breach in treating prisoners “humanely” and “fairly.”

Fourth, according to international law, the Detaining Power may ask the enemy state to pay for the cost of maintaining prisoners of war once everything is settled and international relations are normalized. Islamic law, however, does not require that the cost of prisoner maintenance be repatriated. Once a peace treaty is signed, prisoners of war return home without any payment from the enemy state.

Finally, as per the Geneva Convention, it is expected that the signatories to the Geneva Convention receive similar treatment from their enemy. Indeed, according to international law, the entire treaty is based on reciprocity. Islamic law, on the contrary, obligates Muslim states to adhere unilaterally to the principles of the treaty, regardless of the enemy state’s action.²⁵ In fact, the only legal alteration in a Muslim state’s policy would be that it could resort to slavery. More significantly, Islamic law’s jurisdiction is not limited to states; it can embrace the full range of political actors of history and those not yet envisioned.

The requirement for unilateral adherence draws to another fundamental difference between Islamic law and international law with regard to the methods of sanction. International law is the sole guarantor for enforcing multilateral treaties. The sanction for violation is state directed and is usually no more than a lessening of diplomatic credibility. Certainly, a violation carries long-term consequences in terms of a state's ability to locate partners for future treaties. Treaties based on ethical principles carry some type of long-term moral sanction. In the contemporary world, however, there are no states, barring a few, whose actions are regulated by religious or ethical norms to the extent that their transgression would entail a violation of that state's laws. In the Muslim Community of Nations, besides the weight of international law, there are two other kinds of potential sanctions. The first is a worldly sanction, which suggests that the Islamic state's leaders will be deemed illegitimate and may theoretically be forced to abdicate their positions by the Muslim community. A second, and more penetrating sanction is the possibility of punishment in the after life. As aptly put by one scholar, "Spiritual and conscientious inducing and deterring factors are more effective than temporal persuasions and prohibitions."²⁶ In other words, Allah's (SWT) sanction is far more persuasive than any form of earthly sanction.

Thus, it appears that the laws regarding the treatment of prisoners of war and civilians captured during war appeared in the Qur'ān in the seventh century, much before the birth of the Geneva Convention in 1949. Later, international law incorporated the rights of prisoners during the course of their captivity enlisted originally in the Qur'ān and *Sunnah* (acts and deeds of the Prophet, SAW). With regard to the rights of prisoners during war, international law is not only indebted to Islam but also in some cases Islamic law is broader in scope than International law. In the final analysis, Islamic law carries a more convincing sanction. The failure to treat prisoners properly brings the legal authority and credibility of the Muslim leader into direct question.

The Abu Ghraib Torture

During the rule of Saddam Hussein, Abu Ghraib was one of the world's most notorious prisons. After the American occupation of

Iraq, Abu Ghraib became a U.S. military prison. Most of the prisoners had been picked up in random military sweeps and at highway checkpoints. In April 2004, the American TV channel, CBS, showed several photographs of prisoner abuse during *60 Minutes*. The photographs speak for themselves. In one, Private England, with a cigarette dangling from her mouth, “is giving a jaunty thumbs-up sign and pointing at the genitals of a young Iraqi, who is naked except for a sandbag over his head, as he masturbates.”²⁷ Three other Iraqi prisoners are shown as hooded and naked, with their hands reflexively crossed over their genitals. Another prisoner has his hands at his sides. In another photograph, England stands arm in arm with Specialist Graner while grinning and giving the thumbs-up behind a cluster of seven naked Iraqis, knees bent, piled clumsily on top of each other in a pyramid. There is another photograph showing Graner and a female soldier smiling in front of a cluster of naked prisoners who are also piled in a pyramid. Then, another female soldier is taking photographs of a cluster of hooded soldiers. Another photograph shows a kneeling, naked, unhooded male prisoner performing oral sex on another male prisoner, who is naked and hooded. Two Iraqi faces that appear in the photographs are those of dead men. There is the bloodied body of another prisoner who is wrapped in cellophane and packed in ice. There is a photograph of an empty room splattered with blood.²⁸

Major General Antonio M. Taguba was given the responsibility of investigating the scandal. He completed a fifty-three-page report in 2004. Taguba found that there were numerous instances of “sadistic, blatant, and wanton criminal abuses” at Abu Ghraib between October and December of 2003. Taguba reported that this systematic and illegal abuse of detainees was perpetrated by soldiers of the 372nd Military Police Company and members of the American intelligence community. Taguba’s report listed some of the wrongdoings:

breaking chemical lights and pouring the phosphoric liquid on detainees; pouring cold water on naked detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell; sodomizing a detainee with a chemical light and perhaps a broom stick, and using military

working dogs to frighten and intimidate detainees with threats of attack, and in one instance actually biting a detainee.²⁹

General Taguba further found that Abu Ghraib was filled beyond capacity, which contributed to the poor living conditions of the prisoners. Taguba reported that there were gross differences between the actual number of prisoners on hand and the number officially recorded. A lack of proper screening also meant that many innocent Iraqis were wrongly detained for an indefinite period. Taguba reported that more than half of the civilian inmates at Abu Ghraib were deemed not to be a threat to society and, therefore, they should have been released.³⁰

The problems inside the Army prison system in Iraq were not outside the knowledge of the senior commanders. Taguba reported that there were at least a dozen officially reported incidents involving escapes, attempted escapes and other serious security issues that were investigated by officers of the 800th M.P. (Military Police) Brigade. Some of the incidents had led to the killing or wounding of inmates and M.P.s, and resulted in a series of “lessons learned” inquiries within the brigade.

Karpinski, the officer in charge, invariably approved the reports and signed orders calling for changes in day-to-day procedures, but Taguba found that she did not follow up, doing nothing to ensure that the orders were carried out. Taguba suggested that if she had followed up, “cases of abuse may have been prevented.” According to Taguba’s report, Karpinski was rarely seen at the prison she was supposed to be running. The report also indicated many administrative problems inside the military administration. According to the report, the soldiers were “poorly prepared and untrained...prior to deployment, at the mobilization site, upon arrival in theater, and throughout the mission.”³¹

The abuse of the prisoners at Abu Ghraib seemed almost routine operation. At an Article 32 hearing (the military equivalent of a grand jury) held on April 9, 2004, in the case against Sergeant Frederick at Camp Victory near Baghdad, one of the witnesses, Specialist Matthew Wisdom, an M.P., told the courtroom what happened when he and other soldiers delivered seven prisoners, hooded and bound, to the so-called “hard site” at Abu Ghraib. Wisdom expressed:

“SFC Snider grabbed my prisoner and threw him into a pile. ... I do not think it was right to put them in a pile. I saw SSG Frederic, SGT Davis, and CPL Graner walking around the pile hitting the prisoners. I remember SSG Frederick hitting one prisoner in the side of its [*sic*] ribcage. The prisoner was no danger to SSG Frederick.... I left after that.”

When Wisdom returned later, he testified: “I saw two naked detainees, one masturbating to another kneeling with its mouth open. I thought I should just get out of there. I didn’t think it was right...I saw SSG Frederick walking towards me, and he said, ‘Look what these animals do when you leave them alone for two seconds.’ I heard PFC England shout out, ‘He’s getting hard.’” Wisdom testified that he told his superiors what had happened and assumed that “the issue was taken care of.” He said, “I just didn’t want to be part of anything that looked criminal.”³²

Joseph M. Darby, an M.P. who emerged during the Article 32 hearing against SSG Frederick, made the abuses public. He said that on one occasion, Frederick “had punched a detainee in the chest so hard that the detainee almost went into cardiac arrest.” Gary Myers, who was one of the military defence attorneys, told that his client’s defence would be that he was carrying out the orders of his superiors and, in particular, the directions of military intelligence. He said, “Do you really think a group of kids from rural Virginia decided to do this on their own? Decided that the best way to embarrass Arabs and make them talk was to have them walk around nude?” Frederick wrote several letters and e-mails to family members informing them that the military intelligence teams, which included C.I.A. officers, linguists, and interrogation specialists from private defence contractors, were the dominant force inside Abu Ghraib. In a letter written in January 2004, he commented:

I questioned some of the things that I saw...such things as leaving inmates in their cell with no clothes or in female underpants, handcuffing them to the door of their cell—and the answer I got was, ‘this is how military intelligence (MI) wants it done.’ MI has also instructed us to place a prisoner in an isolation cell with little or no clothes, no toilet or running water, no ventilation or window, for as much as three days.³³

The military intelligence officers were very satisfied and “encouraged and told us, ‘great job,’ they were now getting positive results and information,” Frederick wrote. “CID has been present when the military working dogs were used to intimidate prisoners at MI’s request.” At one point, Frederick told his family, he pulled aside his superior officer, Lieutenant Colonel Jerry Phillabaum, the commander of the 320th M.P. Battalion, and asked about the mistreatment of prisoners. “His reply was ‘Don’t worry about it.’”³⁴

All these photographs portray images of great dehumanization that is unacceptable in either Islamic or international law. Homosexual acts are against Islamic law, and it is humiliating for men to be naked in front of other men. Bernard Haykel, a professor of Middle Eastern Studies at New York University, pointed out, “Being put on top of each other and forced to masturbate, being naked in front of each other—it’s all a form of torture.”³⁵ The American government reviewed the prison system in Iraq and came to the conclusion that there were potential human rights, training and manpower issues system-wide that needed immediate attention.

As the international furore grew, senior military officers, and President Bush himself, insisted that the actions of a few did not reflect the conduct of the military as a whole. Taguba’s report, however, insisted on collective wrongdoing and the failure of Army leadership at the highest level. The picture he drew of Abu Ghraib was one in which Army regulations and Geneva Conventions were routinely violated, and in which much of the day-to-day management of the prisoners was abdicated to Army military intelligence units and civilian contract employees. Under the fourth Geneva Convention, an occupying power can jail civilians who pose an “imperative” security threat, but it must establish a regular procedure for ensuring that only civilians who remain a genuine security threat be kept imprisoned. Prisoners have the right to appeal any internment decision and have their cases reviewed.³⁶ *Human Rights Watch* complained to Secretary of Defence Donald Rumsfeld that civilians in Iraq remained in custody month after month with no charges brought against them. Abu Ghraib had become, in effect, another Guantanamo.³⁷

It does not take a congressional commission to determine that the photos of Abu Ghraib are examples of “outrages upon personal

dignity” and, therefore, a violation of the Geneva Conventions. Even a commoner understands that the treatment of the prisoners was cruel and humiliating. One of the most famous pictures is of a hooded prisoner, Satar Jabar, standing on a box with electrical wires connected to various parts of his body. Satar Jabar (charged with carjacking, not terrorism) was reportedly told that he would be electrocuted if he fell off the box.³⁸ Although the Army claimed that the wires were not live and that the prisoner at no time faced actual electrocution, only the threat thereof, the prisoner himself later stated in an interview after his release that the wires were live and electric shocks were applied many times.³⁹ If the prisoner believed the deception and was sincerely convinced that he faced the possibility of execution, then the situation would seem to constitute “mental suffering,” as defined in the Convention.⁴⁰ The motivation of the act would also appear to obtain a confession or to intimidate and coerce him.⁴¹ The actions shown in this photograph and most of the others would appear to constitute “other acts of cruel, inhuman or degrading treatment or punishment” proscribed by Article 16 of the Convention Against Torture.⁴²

In addition, the International Committee of the Red Cross stated in its February 2004 confidential report that the prisoners were systematically “subjected to a variety of harsh treatments...which in some cases tantamount to torture.”⁴³ Some legal experts said that the United States could be obligated to try some of its soldiers for war crimes under the Third and Fourth Geneva Conventions. Prisoners of war and civilians detained in a war may not be treated in a degrading manner, and violation of that section is a “grave breach” of international law.⁴⁴ In a report on prisons in Iraq, the Army’s Provost Marshal, Major General Donald J. Ryder, admitted, on November 5, 2003, that the conditions under which prisoners were held sometimes violated the Geneva Conventions. Some of the accused soldiers’ families or attorneys made clear that the practices at Abu Ghraib were directed by higher ranking military officers or by the Central Intelligence Agency.⁴⁵ Even the U.S. War Crimes Act of 1996 makes it a federal crime to violate certain provisions of the Geneva Convention. Any American, military or civilian, who commits a “grave breach” of the Geneva Convention will be punished according to this Act.⁴⁶ The Geneva Convention defines “a grave breach” as the deliberate “killing, torture or inhuman

treatment” of detainees. Violations of the War Crimes Act that result in death carry the death penalty.⁴⁷

Amnesty international also disclosed that many female prisoners were beaten, threatened with rape, and subjected to humiliating treatment and long periods of solitary confinement. Many others were subjected to sleep deprivation, prolonged standing and exposure to loud music and bright lights, apparently intended to cause disorientation. America, as a detaining power, was required to ensure that conditions and standards in all of its internment facilities satisfy section IV of the Fourth Geneva Convention, which sets out standard for detainees, including in relation to food, hygiene, and the provision of medical attention, as well as contact with the outside world.⁴⁸

According to Article 119 of the Fourth Geneva Convention, internees may not be punished other than by fines, discontinuance of privileges, fatigue duties not exceeding two hours daily, and confinement. Article 119 further dictates, “In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee’s age, sex and state of health.”⁴⁹ The Fourth Geneva Convention considers torture or ill-treatment as a violation of international human rights treaties.

Conclusion

By any standard, all the images showing detainees being tortured and ill treated by U.S. soldiers at Abu Ghraib violated both Islamic and international laws. The subsequent military investigation led by Major General Antonio Taguba found that American forces were responsible for the “systematic” and “illegal abuse of detainees” and concluded that soldiers had “committed egregious acts and grave breaches of international law at Abu Ghraib.”⁵⁰ The worldwide disclosure of abuses of the prisoners compelled the American government to court-martial a number of the U.S. prison guards, mostly from lower echelons of the military. The White House denied any role or responsibilities of those higher up the chain of command. By clearing four of the five officers overseeing prison operations in Iraq during the scandal, the Bush administration has heightened the impression of a whitewash. The Pentagon is essentially closing the book on the Abu Ghraib scandal, but that will not make it go away.

The photographs of prisoners in numerous humiliating poses will not easily be erased from the minds of the people around the world.

Abu Ghraib represents a stretch of moral high ground that Americans will never be able to regain. Through these photographs of prisoner abuse at Abu Ghraib, ordinary Americans have seen the reality and the results of interrogation techniques the C.I.A. has propagated and practiced for nearly half a century. The American citizens can join the international community in repudiating a practice that more than any other represents a denial of democracy. In its desperate search for security, the United States can continue its clandestine torture of terror suspects in the hope of gaining good intelligence without negative publicity. The mistreatment at Abu Ghraib may, however, have done little to further American intelligence. The use of force or humiliation on prisoners is invariably counterproductive. It is clear from the photographs of prisoners in Abu Ghraib that these detentions have had enormous consequences not only for imprisoned civilian Iraqis, many of whom have had nothing to do with the growing insurgency, but also for the reputation of America in the world. The final safety in “a democracy that decisions filtered down through this long process stand less a chance of being wrong than ones decided, once and for all, at the top”⁵¹ does not hold true in the most acclaimed largest democracy in the world—the United States of America—during the Bush administration in the Iraq war.

Notes

1. For a clear explanation of Islam and the basic tenets of *sharī'ah* read Abdul Rashid Moten, *Political Science: An Islamic Perspective* (London: McMillan, 1996); and L. John Esposito, *Islam: The Straight Path* (New York: Oxford University Press, 1988).
2. Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins Press, 1955), 36.
3. R. Syed Hassan, *The Reconstruction of Legal Thought in Islam* (Lahore: Law Publishing Company, 1971), 171.
4. Ibid.
5. Khadduri, *War and Peace in the Law of Islam*, 171.

6. Mohammad Tallat Al Ghunaimi, *The Muslim Conception of International Law and the Western Approach* (The Hague: Martinus Nijhoff, 1968).

7. Mohammad Hamidullah, *Muslim Conduct of State* (Lahore: Sh. Mohammad Ashraf, 1961), 215.

8. Mian Rashid Ahmad Khan, *Islamic Jurisprudence* (Karachi: Mirror Press, 1977), 222. Also see A.M. Khoja, *Elements of Islamic Jurisprudence* (Karachi: Mirror Press, 1977).

9. Relating how the companions complied strictly with the Prophet's instructions on treating prisoners of war, one of the prisoners of the Battle of Badr, Ḥuzayr ibn Ḥumayr, said: "I was with one of the Anṣārī families, after being taken as captive. Whenever they had lunch or dinner, they used to give me preference by providing me with bread while they'd eat only dates, in compliance with the Prophet's order to treat prisoners well." Another, Thamāmah ibn Athal, was taken prisoner and brought to the Prophet, who said, "Be good to him in his captivity." When the Prophet (SAW) went home, he asked that any food in his house be collected and sent to Thamāmah. Later, the Prophet (SAW) approached him respectfully and enquired whether Thamāmah could ransom himself: "What have you, Thamāmah?" He replied, "Actually I have a lot going for me. If you kill me, you kill a man whose blood will surely be avenged. If you are generous, then you are generous to a man who knows how to be grateful. If you are after money, then ask of me whatever amount you like." The Prophet (SAW) left him and on the second day when he approached him, Thamāmah said basically the same thing. On the third day, the Prophet (SAW) said, "Let Thamāmah go."

10. Abdullah Yusuf Ali trans., *The Meaning of the Glorious Qur'ān* (London: Nadim and Co., 1976), 580.

11. Hamidullah, *Muslim Conduct of State*, 214.

12. Hassan, *The Reconstruction of Legal Thought in Islam*, 176. Also see A. Abdullahi An-Na'im, *Toward an Islamic Reformation* (Syracuse, N.Y.: Syracuse University Press, 1990).

13. A.A. Mawdudi, *Human Rights in Islam* (London: The Islamic Foundation, 1980).

14. Qur'ān, 22:77-78; 29:4-7. See also, Jamal Badawi, "Muslims and Non-Muslims Relations," paper presented at an International Conference on Islam and Terrorism, organised by International Islamic University Malaysia, Kuala Lumpur, August 2004.

15. See Office of the United Nations High Commissioner for Human Rights, "Geneva Convention relative to the Treatment of Prisoners of War" [Online]

available from www.unhcr.ch/html/menu3/b/91.htm, accessed December 28, 2006.

16. Ibid.

17. Ibid.

18. See “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” [Online] available from www.hrweb.org/legal/cat.html, accessed December 30, 2006.

19. Ibid.

20. Ibid.

21. See Office of the United Nations High Commissioner for Human Rights, “Geneva Convention relative to the Treatment of Prisoners of War.”

22. Geneva Convention 1949, Articles 118-119. Hassan, *The Reconstruction of Legal Thought in Islam*, 177.

23. Ibid.

24. Ibid., 178.

25. For an explanation of how the universality of Islam should result in unilateral adherence to *siyar*, regardless of enemy behaviour, see Rudolph Peters, *Jihād in Medieval and Modern Islam* (Leiden: Brill, 1977).

26. Hamidullah, *Muslim Conduct of State*, 17.

27. M. Seymour Hersh, “Torture at Abu Ghraib,” *The New Yorker Magazine*, May 10, 2004.

28. Ibid.

29. Ibid.

30. Ibid.

31. The “Taguba Report” on Treatment of *Abu Ghraib* Prisoners in Iraq, “Article 15-6 Investigation of the 800th Military Police Brigade” [Online] available from <http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html>, accessed November 12, 2006.

32. Ibid. See also, Amnesty International, United States of America, “Human dignity denied: Torture and accountability in the ‘war on terror,’” October 27, 2004, Amnesty Index: AMR 51/145/2004.

33. “US Marines Plead Guilty to Prisoner Abuse,” *The Guardian*, June 3, 2004.

34. Ibid.

35. Quoted in Hersh, "Torture at Abu Ghraib."

36. Amnesty International, "Iraq: Amnesty International calls for an investigation into death in custody of nine men," July 14 (2005), AI Index: MDE 14/017/2005.

37. Amnesty International wrote a letter to Donald Rumsfeld, US Secretary of Defence on December 17, 2004 complaining human rights abuses. See *Human Rights Watch*, "The New Iraq? Torture and Ill-Treatment of Detainees in Iraqi Custody," 17, no. 1 (January 2005), (D).

38. Amnesty International, "Iraq: In Cold Blood: Abuses by Armed Groups," July 25, 2005, AI Index: MDE 14/009/2005.

39. Ibid.

40. Ibid.

41. Ibid.

42. Ibid.

43. F. John Burns, "To Halt Abuses, U.S. Will Inspect Jails Run by Iraq," *New York Times*, December 14, 2005.

44. Torture or inhuman treatment is a "grave breach" of the Fourth Geneva Convention according to Article 147. Grave breaches are war crimes according to international law, as reflected in the Rome Statute of the International Criminal Court (Article 8 (2-ii)). The Geneva Conventions were fully applicable in Iraq during the occupation until the handover of power on 28 June 2004. Cruel treatment and torture in non-international armed conflict are also war crimes under the Rome Statute of the International Criminal Court (ICC).

45. Audrey Gillan, "Soldiers in Iraq abuse case sent to prison," *The Guardian*, February 26 (2005).

46. Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 11: "...the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights.

47. Torture or inhuman treatment is a grave breach of the Fourth Geneva Convention according to Article 147. Grave breaches are war crimes according to international law, as reflected in the Rome Statute of the International Criminal Court (Article 8 (2-ii)). The Geneva Conventions were fully applicable in Iraq during the occupation until the handover of power on June 28, 2004.

Cruel treatment and torture in non-international armed conflict are also war crimes under the Rome Statute of the International Criminal Court (ICC).

48. Although the Fourth Geneva Convention no longer applies to the situation of Iraq, the MNF have referred to its standards. In the letter by Colin Powell attached to Security Council Resolution 1546, it is stated that “the forces that make up the MNF are and will remain committed at all times to act consistently with their obligations under the law of armed conflict, including the Geneva Conventions.”

49. Human Rights Watch, “The New Iraq: Torture and ill-treatment of detainees in Iraqi custody,” 17, no.1 (January 2005), (D).

50. The “Taguba Report” on Treatment of *Abu Ghraib* Prisoners In Iraq, article 15-6 “Investigation of the 800th Military Police Brigade.”

51. J. Peter Pham, “Law, Human Rights, Realism and the ‘War on Terror,’” *Human Rights and Human Welfare*, No. 4 (2004): 93.