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Questions for the Secretary of State
From Ben Barber, American Legion Magazine

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Question 1: Why was the decision made to deny detainees at the U.S. Naval Station, Guantanamo Bay, Cuba, "prisoner of war" status?

Answer: By its terms, the Geneva Convention on prisoners of war applies only to conflicts between "High Contracting Parties", which can only be sovereign states. It assumes that such states will use "regular armed forces" or other organized military units subject to their military command and disciplinary system, and will honor their commitment to follow the laws and customs of war.

The situation here is very different. In this case, many of the detainees belong to a foreign terrorist organization known as al Qaida. Al Qaida is not a High Contracting Party and does not belong to the armed force of any High Contracting Party.

Rather, al Qaida is an independent network of terrorists who fight unconventionally and do not adhere to the laws and customs of war. The law requires combatants to target only military objects and personnel, and to distinguish themselves from non-combatants, but al Qaida does just the opposite. Rather, al Qaida targets and attacks civilians specifically and in clear violation of the letter and spirit of the law of armed conflict, which seeks as its primary purpose to protect innocent civilians. Its leader, Osama bin Laden, has declared that he will continue to kill American civilians and whoever supports them. To accomplish that unlawful objective, al Qaida uses "sleepers" who feign civilian status while planning and conducting attacks against civilians. In addition, al Qaida carries out its attacks by perfidious means that are legally forbidden, including hijacking fully loaded civilian aircraft and crashing them into unlawful civilian targets.

Al Qaida is neither a High Contracting Party nor an organized military unit fighting for a High Contracting Party. Even if it were, it fails to meet the most basic criteria under the Geneva Convention, including by flagrantly and systematically violating the laws and customs of war. Its members therefore are not covered by the provisions of the Convention and are not entitled to POW status.

Although the Taliban are covered by the treaty, Taliban detainees are not entitled to POW status because they do not fit the legal criteria for lawful combatants under Article 4 of the treaty. This is because the Taliban fighters in detention did not wear proper insignia, were not commanded by a proper military authority with an internal disciplinary system that enforces the laws of war, and systematically violated the laws and customs of war. Moreover, the Taliban enabled al Qaida to pursue its terrorist agenda by providing it with a safehaven and tactical support. Its members are therefore not entitled to the legal privileges and protections that the United States owes to law-abiding soldiers who fight honorably for a High Contracting Party.

Regardless of the detainees' legal status under the Geneva Convention, the United States is treating and will continue to treat all detainees humanely and consistent with the principles of the Geneva Convention. This means that they will not be subject to torture or other inhumane treatment and that the United States will continue to provide them with adequate food and water, excellent and specialized medical care, new clothes, shoes,

shelter, sleeping pads and blankets, showers and toiletries, an opportunity to worship, and access to representatives of the International Committee of the Red Cross.

Question 2: Could U.S. troops serving overseas be affected by the decision to deny detainees in Guantanamo Bay, Cuba "prisoner of war" status?

Answer: U.S. troops serving overseas during armed conflicts would clearly be entitled to prisoner of war status under the Geneva Conventions. This is because U.S. troops are subject to proper command with an internal disciplinary system, wear proper uniforms or other insignia, carry their arms openly, and adhere to the laws and customs of war. The President is following the requirements of the law and has reaffirmed the United States' commitment to the Geneva Conventions. We continue to expect our adversaries to do the same, and would insist upon law of war protections for any U.S. troops that might fall into enemy hands.

Question 3: What does it mean when U.S. officials say the detainees are to be held under the Geneva Conventions even though not granted POW status?

Answer: The United States has the authority during an armed conflict to detain individuals who take up arms against us, regardless of whether such individuals are entitled to POW status. In this case, the detainees are being held on the basis of their having taken part in hostilities against the United States in an armed conflict in which the United States is engaged. Thus, they are being held because they are enemy combatants. The customary laws of armed conflict give the U.S. the right to detain these combatants at least until the conclusion of hostilities. These actions are entirely consistent with the 1949 Geneva Conventions. The individuals being detained at Guantanamo are being treated humanely consistent with the principles of the Geneva Conventions.

Treatment is what is important. The ICRC has a presence at GTMO to monitor United States treatment of the detainees, and is being allowed to meet privately and individually with each of them.

We have a careful process in place to screen the people taken to Guantanamo. They were screened at least twice before they were transferred. They were screened by US armed forces before they were taken to Kandahar, and they were interviewed a second time in Kandahar.

Our ongoing screening process has left no doubt that the detainees do not belong to any of the categories enumerated in Article 4 of the Convention. We are continuing to question each of the detainees in Guantanamo to obtain more information, and are prepared to review individual cases should any doubt arise.

Question 4: How do you respond to foreign criticism of the decision not to grant POW status, especially by the International Committee of the Red Cross in Geneva?

Answer: The European Parliament agreed that "the prisoners currently held at the U.S. base in Guantanamo do not fall precisely within the confines of the Geneva

Conventions.” The core provisions of the Geneva Conventions and the criteria for lawful combatants are designed to ensure that military personnel continue to distinguish themselves from civilians, thereby maintaining the fundamental distinction between soldiers and innocent bystanders. Moreover, the provisions on prisoners of war are designed to preserve the honor and dignity of lawful soldiers. Members of law-abiding and organized military units receive this special treatment because they continue to represent their country in lawful armed conflict and in a lawful capacity. That is why under the provisions of the convention they are allowed as prisoners to continue to wear their uniforms, hold rank, organize and have representation, receive pay, have access to a canteen, live in quarters as favorable as the detaining power, and have the right to not be punished after a successful escape.

A careful reading of the Prisoners of War Conventions leads to the conclusion that its provisions do not apply to terrorists who are engaged in an activity that is fundamentally at odds with the Conventions. Nor is it intended to protect a military organization that systematically fails to follow the legal requirements set forth in Article 4. Bestowing Prisoner of War status on detainees who do not meet the clear requirements of the law would undermine the rule of law by giving equal protections and privileges to all combatants regardless of their respect for the law. The Geneva Conventions and the laws and customs of war exclude from POW coverage those combatants who fight for terrorist organizations or military units that employ unlawful means and methods of warfare.

Question 5: What can you say or do to ensure that this situation will not undermine established international norms for treatment of war prisoners?

Answer: The U.S. remains committed to the Geneva Conventions and proud of its 50 years of compliance. We are ensuring that the detainees are being treated humanely consistent with the Geneva Conventions.

The detainees are provided three meals a day that total 2600 calories & meet religious dietary requirements. They have daily opportunities to shower and exercise.

The detainees are not subjected to physical or mental abuse or cruel treatment of any sort. U.S. personnel who come in contact with the detainees and who are within the detention area are not armed as called for by the Conventions.

Doctors patrol through facilities to provide easy access to additional comforts, like aspirin. The detainees have full medical service, including examinations, rehabilitative surgery, care by internal medicine, pulmonary and other specialists, dental checkups and work, eye examinations and eyeglasses, and proper medications, including antibiotics.

In the short period of custody many of the detainees have seen their health dramatically improve, and they have gained weight.

The detainees are housed in temporary, individual open-air shelters that protect them from the elements that are appropriate to the mild climate until more long-term structures can be completed. They are provided sleeping pads and appropriate clothing and shoes. They have correspondence materials and can send four postcards and two letters per month.

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The detainees have the freedom to worship and are called to prayer with the assistance of a Muslim chaplain. They also have the opportunity to raise concerns about their conditions, including by meeting individually and privately with representatives of the International Committee of the Red Cross.

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