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Unlawful Combatants or Prisoners of War?: The Ambiguous Language of Guantánamo Bay

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Recommended Citation

Gamer, Maya, "Unlawful Combatants or Prisoners of War?: The Ambiguous Language of Guantánamo Bay" (2021). *Research Days Posters 2021*. 72.

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"Unlawful Combatants or Prisoners of War? The Ambiguous Language of Guantánamo Bay"

An examination of how the “unlawful combatant” designation has impacted detainees’ right to ownership of art produced while detained at Guantánamo

LEGAL BACKGROUND

Who is a “prisoner of war”, and what protections are they entitled to?

The Geneva Convention Relative to the Treatment of Prisoners of War defines prisoners of war (POW) as “members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.”

Protections that POW status includes:

- Protection from “acts of violence or intimidation and against insults and public curiosity” (Article 13)
- Living conditions comparable to those of the detaining power (Article 25)
- Right to elect prisoners’ representatives (Article 79)
- “Respect for their persons and their honour” (Article 14)

POWs are entitled to these protections from the time that “they fall into the power of the enemy and until their final release and repatriation”.

Guantánamo Bay detainees clearly fit into the POW category, and are entitled to protection under it.

METHODOLOGY

The operation of Guantánamo Bay’s detention camp is in violation of international and federal law. However, the U.S. government has used a redefinition of legal language to legitimize Guantánamo’s operation. **How can this redefinition be traced, and how can its current impacts be examined?**

- Analysis of legal instruments and historical records
 - Geneva Convention Relative to the Treatment of Prisoners of War
 - Bush Administration Torture Memos
 - Pentagon press releases
- “Case studies” of contemporary legal questions around detainees’ legal rights and protections

ODE TO THE SEA

An exhibit of detainees’ art demonstrates the implications of “unlawful combatant” status



Statue of Liberty by Muhammad Ansi
<https://www.artfromguantanamo.com/>



Gondola by Moath al-Alwi
<https://www.artfromguantanamo.com/>

- Art classes initially offered at Guantánamo as part of effort to improve facility’s image
- Informal but longstanding policy was to allow for release of art after security clearance process
- 2017 exhibit of detainees’ art “Ode to the Sea” brought media attention to detainees, many understood exhibit as humanizing detainees
- Response prompted Pentagon officials to block art from leaving Guantánamo, assert ownership over art
- Pentagon: “Items produced by detainees at Guantánamo Bay remain the property of the U.S. government.” (Sakrison, 2017)
- November 2017, Miami Herald reports that detainees are being told their art would be incinerated upon detainee release
- Geneva Convention protects against seizing of personal property: “All effects and articles of personal use... shall remain in the possession of prisoners of war” (Article 18)
- “Unlawful combatant” designation allows U.S. government to claim sole ownership of detainees’ art
- Additionally, Pentagon’s assertion violates Berne Convention, *Boumediene v Bush* ruling, U.S. Copyright Law

IMPACT

- U.S. government’s creation and use of “unlawful combatant” designation strips detainees of all federal and international protections
- Bush Administration Torture Memos show that depriving detainees of POW status and treatment is intentional, representative of a larger effort by U.S. government to evade and redefine the rules of war
- “Unlawful combatant” was the first of several redefinitions used by U.S. government to legitimize Guantánamo Bay
- Guantánamo-specific language expanded to include “detainee” instead of “prisoner of war”, “temporary” instead of “indefinite”
- U.S. government maintains control over Guantánamo Bay and larger post-9/11 narrative by calling detainees “unlawful combatants”
- In reality, they have been held for nearly 20 years without being charged with or convicted of a crime and are prisoners of the War on Terror.



Scan to learn more about legal perspectives in the conversation about control of detainees’ artwork

REFERENCES

<https://www.artfromguantanamo.com/>
<https://nsarchive2.gwu.edu/NSAEBB/NSAEBB127/02.01.09.pdf>
<https://nsarchive2.gwu.edu/NSAEBB/NSAEBB127/02.02.07.pdf>
<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=77CB9983BE01D004C12563CD002D6B3E&action=openDocument>
<https://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article185088673.html>

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“UNLAWFUL COMBATANT” EXPLAINED

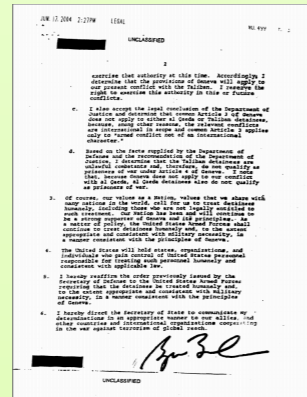
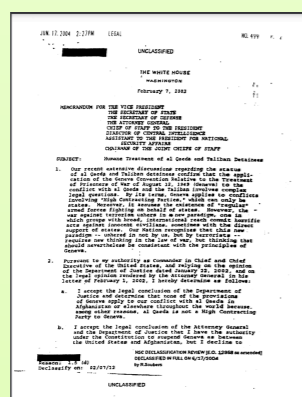
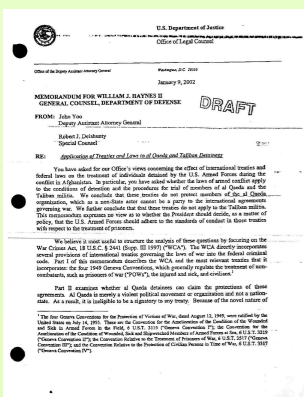
Bush administration memos reveal U.S. government’s efforts to evade Geneva Conventions

John Yoo’s Memo to William J. Haynes

“We conclude that these treaties do not protect members of the al Qaeda organization, which as a non-State actor cannot be a party to the international agreements governing war.”

President Bush’s Directive on Treatment of Detainees

“I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva.”



Yoo’s January 9, 2002 Memo

Bush’s February 1, 2002 Directive