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USA: Applying Common Article 3 is only one step

A new memorandum from US Deputy Secretary of Defense Gordon England instructing officials in the Department of Defense to ensure that all their personnel adhere to the requirements of Common Article 3 of the Geneva Conventions is a welcome step in the right direction. It is only one step, however.

Only last month, Amnesty International called on President George W. Bush to withdraw or substantially rewrite his memorandum of 7 February 2002 in which Common Article 3 was sidelined (<http://web.amnesty.org/library/Index/ENGAMR510932006>). In effect, Deputy Secretary England's memorandum of 7 July 2006 amounts to at least a partial reversal of the administration's four-and-a-half-year-old policy of denying detainees held in US custody in the "war on terror" the protections of Common Article 3 of the Geneva Conventions.

The Deputy Secretary's instruction would only cover those held in Department of Defense custody, thereby once again exempting other agencies such as the CIA, allegedly responsible for secret detentions, unlawful renditions, and torture or other cruel, inhuman or degrading treatment in the "war on terror".

Clearly, a decision to apply Common Article 3 to detainees in military custody is only one partial step. Full protections under international human rights and humanitarian law must also be applied in the case of all detainees wherever they are held and by whichever agency.

The *Hamdan v. Rumsfeld* ruling of 29 June by the US Supreme Court, which is what has prompted the Deputy Secretary's memorandum, punctured a central tenet of the USA's "war on terror" by finding in favour of the applicability of Common Article 3. The case involved Yemeni detainee Salim Ahmed Hamdan, one of a number of detainees in Guantánamo facing trial by military commissions, bodies created by President Bush under a Military Order he signed on 13 November 2001. Amnesty International has urged the US administration not to look to resurrect the military commissions in other forms, or by other means, for example by Congressional authorization.

Something that has been overlooked so far by the administration is the *Hamdan* majority's reference to the fair trial rights enshrined in the International Covenant on Civil and Political Rights. The Supreme Court referred to this treaty's fair trial standards as 'basic protections', something with which Amnesty International would agree. The organization once again urges the US government to apply these protections.

Amnesty International reiterates that all those held in Guantánamo should be brought to fair trial without further delay in US courts or released with full protections. The Guantánamo facility should be closed. All other detentions must be brought fully into compliance with international humanitarian and human rights law. All secret detentions must be ended. All detainees should have access to families, to legal counsel, to

judicial review of the lawfulness of their detention, and released if they are not to be brought to fair trial.

In the “war on terror”, the US administration has sought not only to bypass Geneva Convention protections, but international human rights law protections as well. This has included the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), and the International Covenant on Civil and Political Rights (ICCPR). The USA ratified the ICCPR in 1992 and the Convention against Torture two years later.

In Geneva in May, the UN Committee Against Torture rejected the USA’s notion that the Convention against Torture did not apply to detainees in US custody outside US territory. Next week, the USA will appear in front of the UN Human Rights Committee. Amnesty International and other organizations have sent briefings to the Committee including on concerns that the USA has not applied the ICCPR extraterritorially, as the Committee itself has previously said must be done.

It is surely time for a bigger change in US policy. The administration’s rejectionist attitude to international law and standards has been followed by serious abuses and has led to serious damage to the USA’s human rights credibility.

Background

Article 3 common to the four Geneva Conventions reflects customary international law. Its provisions have been determined by the International Court of Justice as constituting ‘a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts’. As early as 1949, the Court called its protections ‘elementary considerations of humanity’. Common Article 3 holds that trials may only be carried out under “regularly constituted courts affording all the judicial guarantees... recognized as indispensable by civilized peoples”. It also prohibits torture, cruel, humiliating or degrading treatment.

There is evidence that the rejection of Geneva Convention protections by the US administration may have been part of a possible attempt to exempt US agents from prosecution for war crimes under US law. Subsequently, human rights violations by the USA in the “war on terror” have been systemic. For more than two years, Amnesty International has been calling for a full commission of inquiry into all aspects of the USA’s “war on terror” detention and interrogation policies and practices, including renditions and secret detentions.

In a recent memorandum to the US administration, Amnesty International stressed that as a matter of central importance, not least in the context of the “war on terror”, the need for the US administration to ensure that when officials speak of the USA’s commitment to humane treatment, what they mean at least meets international law and standards. This has clearly not been the case to date. US officials have authorized and condoned interrogation techniques and detention conditions that violate international norms and yet at the same time have claimed to be committed to treating detainees humanely.

For further information, see: *Memorandum to the US Government on the report of the UN Committee Against Torture and the question of closing Guantánamo*, 23 June 2006, <http://web.amnesty.org/library/Index/ENGAMR510932006>