

Cuba, Status of Captured “Guerrillas”

N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Chapelle, D., “*How Castro Won,*” in Greene, T.N. (ed.), *The Guerrilla – And How to Fight Him: Selections from the Marine Corps Gazette*, 1965, p. 233. Also cited in Walzer, M., *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York, Basic Books, 1977, 360 pp.]

That same evening, I watched the surrender of hundreds of *Batistianos* from a small-town garrison. They were gathered within a hollow square of rebel Tommy-gunners and harangued by Raul Castro:

“We hope that you will stay with us and fight against the master who so ill-used you. If you decide to refuse this invitation – and I am not going to repeat it – you will be delivered to the custody of the Cuban Red Cross tomorrow. Once you are under Batista’s orders again, we hope that you will not take arms against us. But, if you do, remember this:

“We took you this time. We can take you again. And when we do, we will not frighten or torture or kill you ... If you are captured a second time or even a third ... we will again return you exactly as we are doing now.”

Discussion

1. Under IHL, do those participating in hostilities in a non-international armed conflict, if captured, receive prisoner-of-war status? What could Raul Castro have done with those captured here? May they be convicted for having fought for the wrong cause?
2. Is what he did lawful? Do his actions even go beyond the law applicable in international armed conflicts?
3.
 - a. Does IHL protect a prisoner of war’s duty of allegiance towards the power on which he depends? May a Detaining Power allow a prisoner of war to violate this duty? May it encourage him to do so? (GC III, Art. 87 ^[2])
 - b. If a prisoner of war changes his allegiance and professes, of his own free will, allegiance to the Detaining Power, does he lose his rights under Convention III? May he be allowed to enroll in the armed forces of the (former) Detaining Power? (GC III, Arts 7 ^[3], 23 ^[4], 52 ^[5] and 130 ^[6])
4. According to IHL, may prisoners of war again take up arms once they have been repatriated? (GC I, Art. 14 ^[7]; GC III, Art. 117 ^[8]) If they do so, what is their fate if they are recaptured?
5. What are the risks and advantages of doing what Raul Castro did? Will it facilitate his victory?
6. Is the role assigned here to the Cuban Red Cross appropriate? Would it have been more appropriate for the International Committee of the Red Cross to perform this function? Why? (Statutes of the International Red Cross and Red Crescent Movement, Arts 3 and 5 [See Statutes of the International Red Cross and Red Crescent Movement

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