

INFORMATION PAPER

DETENTION OF CIVILIANS

During operations ISO OPOD COBRA II, TF IH units will be required to restrain, detain and possibly release civilian internees (CI) and other detainees (OD). Regardless of the situation, TF IH units will comply with the law of war and act in a manner consistent with the humanitarian principles of international law.

1. Definitions:

a. Civilian internee (CI): a person who is interned during armed conflict or occupation if he is considered a security risk, needs protection or has committed an offense (insurgent, criminal) against the detaining power. A CI is protected according to the Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War.

b. Other detainee (OD): a person in the custody of the US armed forces who has not been classified as an EPW, a retained person (RP) or a CI. ODs are treated as EPWs until a legal status is ascertained by competent authority.

c. Probable cause: a reasonable certainty that a crime has been committed or is being committed and that person to be detained has committed, is committing or is aiding another to commit the offense.

d. Reasonable basis: under the circumstances that exist at the time, sufficient facts upon which a reasonable person would rely to make a decision.

e. Retained person (RP): an enemy who falls within one of the following categories: a person who is a member or the medical service of an enemy armed force; a medical person exclusively engaged in searching, collecting, transporting or treating the wounded or sick, preventing disease or administering a medical unit or establishment; a chaplain; or a member of the International Federation of Red Cross and Red Crescent Societies.

f. Serious crime: for the purposes of detention, is any crime considered to be a felony under u.s. law; an offense punishable by confinement of one year or more under the UCMJ; or is a violation of the law of war. The definition includes, but is not limited to, murder, rape, robbery, arson, assault, burglary, larceny or destruction of property with a value in excess of five hundred dollars, or conspiracy, solicitation or acting as an accomplice to one of these offenses. The V Corps SJA may approve additional crimes for which detention is authorized.

2. Detention:

a. TF IH units are authorized to detain civilians who are believed to possess information important to, or are interfering with, mission accomplishment. Unless directed otherwise by a more senior commander, the decision to detain civilians is the responsibility of the senior U.S. soldier on the scene.

1. Coalition forces are authorized to stop all civilian traffic and search all

vehicles for weapons, explosives, cell phones and other communications devices, GPS, maps, note pads, cameras, uniforms and other identifiable enemy equipment, and evidence of any activity posing a threat to coalition forces, including intelligence gathering.

2. Adult males present on the battlefield during the hours of darkness will be detained unless, in the judgment of the senior leader on the scene, they are positively identified as posing no threat to coalition forces. The detention of adult males present on the battlefield after dark is essential to the security of coalition forces and to the safety of adult males who are not members of paramilitary forces and might otherwise be engaged as a declared hostile force. Evacuate to the nearest collection point for immediate interrogation.

b. Coalition forces may also detain civilians if they:

1. obstruct the progress of u.s. or coalition forces whether by demonstration, riot, or other means;
2. enter or attempt to enter, without authority, any area controlled by u.s. or coalition forces;
3. commit, attempt, conspire, threaten or solicit another to commit or aid or abet in the commission of a crime; or
4. have been detained pursuant to a warrant, order or indictment issued by competent authority.

c. Commanders are also authorized to take action to prevent looting. Authorized actions include:

1. detention of persons observed in the act, or reasonably suspected, of looting;
2. placement of areas or locations off-limits;
3. establishment of checkpoints that confirm the identity and residence of persons in order to permit them to enter specified areas;
4. use of non-lethal munitions.
5. Use of necessary, graduated force to detain persons observed in the act, or reasonably suspected, of looting is authorized. **DEADLY FORCE IS NOT AUTHORIZED. WARNING SHOTS ARE NOT PERMITTED TO STOP LOOTING.**

d.. Commanders of brigade and larger units, commanders of internment facilities or detention centers or the v corps PMO may approve temporary detention of an individual for up to 21 days if he has probable cause to believe the person satisfies one or more of the criteria of paragraph 2.a.

e. Initial detention will be automatically terminated at 21 days, unless a review is conducted by military magistrate or other competent legal authority as designated by v corps or the TF IH SJA. A record of the review will be maintained by the staff judge advocate.

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f. Continued detention may be directed if the hearing authority determines, upon probable cause, that the detainee has or will commit a serious crime and is awaiting judicial proceedings and the confinement is necessary because it is foreseeable that the detainee will not appear at trial, pretrial hearing, or investigation, or the detainee will commit a serious crime and less severe forms of restraint are inadequate.

g. The hearing officer could also direct continued detention, if he determines, upon probable cause, that the CI or OD fits into Category A listed below.

h. Thereafter, circumstances of detention will be reviewed every 30 days using the standard in paragraph 2-d or the individual's status has been determined by competent authority such as an article 5 tribunal.

i. While U.S. forces will apply the same standards of humanitarian treatment to all detainees, U.S. forces may, for operational and security reasons, classify and segregate detainees based upon the following categories. Designated release authorities may also use these categories to assist them in determining whether they should or should not release particular detainees.

1. Category A consists of civilian non-combatants whose names are contained on the "black list," who are the subject of any warrants, orders or indictments issued the united states or any internantional tribunal; who are suspected of a violation of the law of war; or who are members of the following international terrorist organizations, or any groups/cells/facilities associated therewith: AL QAIDA, ANSAR ISLAM (AI), TALIBAN, ASBAT AL-ANSAR, EGYPTIAN ISLAMIC GROUP (AKA GAMAAT AL-ISLAMIYYA), HAMAS, HIZBALLAH/ISLAMIC JIHAD ORGANIZATION, AL AQSA MARTYRS BRIGADE, HARAKAT UL MUJAHIDIN, LASHKAR E TAYYIBA, PALESTINIAN ISLAMIC JIHAD, EGYPTIAN ISLAMIC JIHAD, JEMAAH ISLAMIYAH, AND THE ISLAMIC MOVEMENT OF UZBEKISTAN.

2. Category B consists of civilian non-combatants who pose a serious threat to U.S. forces, other protected persons, key facilities, or property designated mission-essential; obstruct the progress of coalition forces whether by demonstration, riot or other means; enter or attempt to enter, without authority, any area controlled by coalition forces; commit or attempt to commit any of the following criminal offenses: assault upon any member of coalition forces; murder, rape, kidnapping, arson, aggravated assault; any crime involving a suspect who has been previously detained by v corps; any crime in which a weapon was used in the commission of the crime, and/or any other serious criminal conduct, including aiding or abetting those who commit the above listed offenses, or conspiring to commit the above listed offenses.

3. Category C consists of civilian non-combatants who steal or loot or attempt to steal or loot coalition or protected property, commit or attempt to commit any of the following offenses: burglary, housebreaking, larceny, looting, driving under the influence of alcohol or drugs, prostitution, destruction of property, simple assault,

harassment, use or possess illegal drugs, possess stolen property, commit or attempt to commit auto theft, carjacking, including aiding or abetting

4. Category D consists of civilian non-combatants who have valuable intelligence information important to mission accomplishment. This category also includes personnel who, through non-violent means, obstruct or attempt to obstruct military operations, commit curfew violations, are drunk and disorderly, commit traffic violations, and/or commit any offense in violation of administration orders.

j. Standard of treatment: U.S. forces will treat all CI and OD in a manner consistent with the humanitarian standards of treatment and protections accorded to EPWs pursuant to the principles outlined in Geneva convention III. U.S. forces will protect CI and OD from physical harm and against insults and public curiosity. U.S. forces will provide CI and OD with protective facilities and instruct them in the procedures to follow in the event of nuclear, biological or chemical attack.

k. Commanders at all levels are responsible to ensure proper handling and treatment of CI and OD. Commanders must ensure that all personnel under their commands understand that CI and OD are not EPW, that they will be processed and housed separately and that they will not be co-mingled.

l. Commander, 18th MP brigade will establish those rules and procedures necessary for the safe and efficient operation of collection points, internment facilities and detention centers. This includes procedures and rules necessary for the proper administration of discipline within the facilities.

3. Rules of engagement:

a. U.S. forces may use force in a manner consistent with the rules of engagement in effect at the time if they are acting in order to defend themselves and their units, enforce facility rules or procedures, protect detainees or prevent detainees from escaping.

b. A commander's inherent authority and obligation to use all necessary means available and to take all appropriate action in self-defense of the commander's unit and other us and coalition forces in the vicinity is not, however, limited. A commander must consider the assigned mission, the current situation, higher commanders' intent and all other available guidance in determining the level of force required for mission accomplishment. Use of force will be proportional in that it should be reasonable in intensity, duration and magnitude, based on all facts known to the commander at the time.

c. With respect to CI and OD, the use of force, including deadly force is authorized to respond to hostile acts, demonstration of hostile intent or to prevent the commission of crimes involving death or serious bodily harm and to prevent "Category A" and "Category B" detainees from escaping.

d. With regard to the use of force to prevent an escape, deadly force is a last resort after all other reasonable means have failed.

4. Transfer of detainees: No detainees will be transferred to the control of another coalition partner without SECDEF approval.

5. Property seizure: complete the property seizure form for any civilian or personal property seized. Provide one copy to detainee and keep one copy with seized property.
