

KL 37A

**LEGAL AUTHORITY:** Persons currently being detained by the American military contingent of the MNF-I are subject to the protections afforded under international law, as enunciated in DOD Joint Instruction, "Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees," AR 190-8; OPNAVINST 3461.6; AFJI 31-304; and MCO 3461.1 (1 Oct 97). This joint instruction/regulation enunciates DOD policy, procedures, and responsibilities for the administration, treatment, employment, and compensation of "Enemy Prisoners of War" (EPW), "Retained Personnel" (RP), Civilian Internees (CI) and "Other Detainees" (OD) in the custody of U.S. Armed Forces. It specifically implements international law, both customary and codified, relating to EPW, RP, CI, and ODs which includes those persons held during military operations other than war. The principal treaties underlying the joint instruction/regulation are:

- (1) The 1949 Geneva Convention Relative to the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GWS);
- (2) The 1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GWS SEA);
- (3) The 1949 Geneva Convention Relative to the Treatment of Prisoners of War (GPW); and
- (4) The 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC), and in the event of conflicts or discrepancies between this regulation and the Geneva Conventions, the provisions of the Geneva Conventions take precedence.

As articulated in joint instruction/regulation AR 190-8, OPNAVINST 3461.6, AFJI 31-304, and MCO 3461.1, U.S. policy, relative to the treatment of Enemy Prisoners of War, Civilian Internees and Retained Personnel in the custody of the U.S. Armed Forces, is that "(a)ll persons captured, detained, interned, or otherwise held in U.S. Armed Forces custody during the course of conflict will be given humanitarian care and treatment from the moment they fall into the hands of U.S. forces until final release or repatriation." Further, "(a)ll persons taken into custody by U.S. forces will be provided with the protections of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (GPW) until some other legal status is determined by competent authority." (emphasis added) (para. 1-5(a)(1-2) In this regard, the instruction/regulation specifically notes:

*"Photographing, filming, and video taping of (Enemy Prisoners of War), (Civilian Internees) and (Retained Personnel) for other than internal Internment Facility administration or intelligence/counterintelligence purposes is strictly prohibited. No group, wide area or aerial photographs of (Enemy Prisoners of War),*

(Civilian Internees) and (Retained Personnel) or facilities will be taken unless approved by the senior Military Police officer in the Internment Facility commander's chain of command." (emphasis added)(para. 1-5(d))

*"In the interest of national security, and the protection of the prisoners from public curiosity, and in adherence to the GPW and GC, EPW, CI, RP and other detainees will not be photographed as per paragraph 1-5d. Interviews of EPW, CI, RP and other detainees by news media will not be permitted.* Requests for media access to EPW, CI, or other detainee internment facilities will be coordinated through the Public Affairs Office, and the Staff Judge Advocate, and approved by the first commander who exercises General Court Martial Convening Authority over the internment facility. Requests for exception to policy will be forwarded through command channels to HQDA (SAPA-PP), Washington, D.C. 20310-4420." (emphasis added)(para. 1-9)

(b)(5)

