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United States Department of State

Washington, D.C. 20520

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March 26, 2003

INFORMATION MEMORANDUM

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TO: The Secretary

FROM: L - William Howard Taft, IV *WHT*  
S/WCI - Pierre-Richard Prosper *RP*

SUBJECT: Photographing POWs and the Geneva Conventions

Summary

[Redacted Summary Content]

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Discussion

[Redacted Discussion Content]

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Writing in the Independent yesterday, Sir Adam Roberts of Oxford (one of the leading law of war scholars) points out that there is no general or unambiguous answer to the question of whether all photographs are prohibited. He correctly points out that "the actual practice seen in modern war may be the best guide. If a practice is accepted by other states it may come to be considered legal. Experience shows that there is seldom any rooted objection to the publication of photos showing a crowd of soldiers in the act of surrender, especially if the soldiers are not individually identifiable. Some pictures of Iraqi soldiers surrendering, published in the last few days, have fitted this pattern and have caused little comment."

In addition to the practice of States, the ICRC has had a major influence of interpreting Article 13. During the 1991 Gulf War, it took rather rigid positions on photographing POWs and the United States took exception to some of the interpretations. In recent years, however, the ICRC has been less legalistic and has focussed on preserving the integrity and dignity of individuals under detention. The ICRC is generally of the view that Article 13 requires parties to a conflict to avoid publication of images that show prisoners of war in degrading or humiliating positions or allow the identification of individual POWs (especially since there could be retribution against the families of individuals who surrender or are captured). The ICRC can be expected to protest images of POWs kneeling, being held in restraints or being mistreated in any way.

The United States has traditionally protested acts such as the parading of American POWs (as in Hanoi in 1966) or exposing POWs on television. For example, President George Bush described the "brutal parading" of Allied pilots by Iraq in January 1991 as a violation of the Geneva Conventions. In a formal protest, the United States stated that "... unlawful coercion and misuse of prisoners of war for propaganda purposes, the failure to respect their honor and well-being, and the subjection of such individuals to public humiliation" were violations of the Geneva Conventions. The United States has also protested about the treatment of American POWs in connection with the Kosovo air campaign and of course the recent events in Iraq.

However, the United States is at times accused of violating Article 13, in particular in connection with Guantanamo. Several photographs were published of the in-processing of the detainees. These photos displayed detainees kneeling with heads lowered, blindfolded and restrained. Subsequently, there were many press-originated photos taken from a distance. An airman on board a transport plane also took unauthorized pictures that were later circulated widely on the Internet and picked up by the press.

After the strong international criticism of the Guantanamo photographs, DOD issued specific guidelines on the kind of photographs that would be permitted. [REDACTED]

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[REDACTED] The Guantanamo guidelines state that "the policy of limiting photography is in accord with treating detainees consistent with the principles of the Geneva Conventions. This is not a change in policy; it is in conformity with long-standing U.S. policy, procedure, and practice."

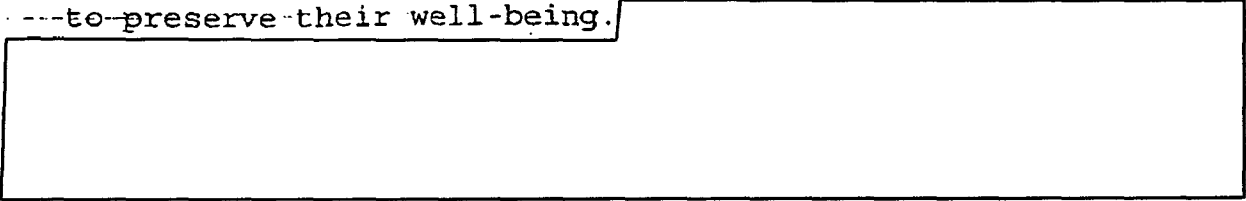
Similar guidelines have been issued in connection with embedded news media and the conflict in Iraq. They provide that "no photographs or other visual media showing an enemy prisoner of war or detainee's recognizable face, nametag or other identifying feature or item may be taken." It also prohibits "still or video imagery of custody operations or interviews with persons under custody."

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U.S. military regulations generally prohibit "group, wide area or aerial photographs" of POWs or POW facilities unless authorized by an appropriate military commander.

Finally, it should be noted that some of the families of captured POWs have in the past commented that at least the photographs have shown that their loved ones were still alive and thus that making public the photographs has some value in some circumstances. It also puts pressure on Iraq to preserve their well-being.



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