

Memorandum

From Comd Legal

To: GOC

Article 5 Tribunals and Questioning of PW's

1. I attended the PWHO again today to speak to my SO2 and to review the process that had been put in place to review the PW who claim to be civilians.
2. I was able to sit in on a so called tribunal which was nothing of the sort. It consisted of three doctors who had been given the task for the day of determining the status of PW's. They had no knowledge of the categories of combatants under the Geneva Conventions nor did they make adequate enquiry and, in the case I watched, released the PW. Both myself and the Int Corps observer had no doubt that the PW was lying and, legally, he should have remained a PW until proper inquiry has been made.
3. I subsequently stopped the process and have now arranged for three teams x three officers to review the process starting from tomorrow morning. The teams consist of one lawyer, one Field Security SNCO and a regular officer who will determine whether there is a doubt as to the status of a PW. If there is doubt, he or she will remain a combatant until an Article 5 tribunal can be convened and there is evidence on which it can make its inquiry. On the other hand, if it is absolutely clear that the PW is a civilian and there is no doubt as to his or her status, then he can be released.
4. In addition to the above, a data base of all "initial assessments" will be made and certification of all PW's who are released [REDACTED]. The three teams will take approximately one week to review the eight hundred prisoners who are now claiming civilian status.
5. As I explained in my previous memo, PW have protected status in International Law, and this protection can only be removed after proper inquiry. If the process is deficient we risk violating this protected status and the inquiry must be conducted properly. At the same time, there is the force security issue and I have little doubt that the process adopted to date has not assisted force security. I have spoken to CO QDG who is happy with the process I have put in place.
6. Finally, I visited the JFIT and witnessed a number of PW who were hooded and in various stress positions. I am informed that this is in accordance with British Army Doctrine on tactical questioning. Whereas it may be in accordance with British Army doctrine, in my opinion, it violates International Law. Prisoners of War must at all times be protected against acts of violence or intimidation and must have respect for their persons and their honour (Articles 13,14 GC III). I accept that tactical questioning may be permitted but this behaviour clearly violates the Convention.

[REDACTED]
N J Mercer

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Comd Legal

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29th March 2003