

Detainee Operations: An Evolving Paradigm

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Overview

The purpose of this article is to clear up the confusion that has surrounded detainee operations in the contemporary operating environment (COE). During Operation Desert Storm, the 93d Military Police Battalion processed more than 50,000 Iraqi enemy prisoners of war (EPWs). During this conflict, the lines of battle were easily distinguishable. The boundaries separating brigades, divisions, and corps operating in-theater were clear, providing commanders with a simple battlespace to conduct their operations. Accordingly, the flow of captured prisoners proceeded almost seamlessly to the rear.

In contrast, Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) changed the complexity of the entire EPW/detainee mission. The term “noncontiguous battlefield” quickly became a part of the military’s language. The definition of the COE as it relates to detainees became clouded and confused. At the center of the confusion were the following unsettled questions:

- Are these detainees entitled to the rights and privileges afforded by the Geneva Conventions?
- Should detainees be referred to as persons under control, unprivileged belligerents, or enemy combatants?

Soon, the United States Army Military Police School (USAMPS) will release Field Manual Interim (FMI) 3-19.40, accompanied by a revised training support package, which will cut through the confusion and describe the approved policy and doctrinal shifts in the near future.

EPW Versus Detainee

In the simplest of terms, the Geneva Conventions indicate that an EPW must meet the following criteria:¹

- Is under the command of a person responsible for his subordinates.
- Has fixed, distinctive signs that are recognizable at a distance.
- Carries arms openly.
- Conducts operations according to the laws and customs of war.²

The Soldiers detained during Operation Desert Storm qualified as EPWs because they fit those criteria. However, the enemy we now face in the Global War on Terrorism (GWOT) often does not meet those criteria. In February 2002, President Bush determined that “...Common Article 3 of Geneva (12 August 1949) does not apply to either Al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and Common Article 3 applies only to ‘armed conflict not of an international character.’” However, the President emphasized that it is the policy of this nation “...to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.”³

The 2001 version of FM 3-19.40 did not clearly define individuals such as members of Al Qaeda or the Taliban, nor did it indicate in which category such individuals should be placed. The same terms used during the Cold War and Operation Desert Storm were still being applied in the new century. However, as the GWOT began, adjustments to doctrine had to be made. The most recent edition of Department of Defense Directive 2310.1 indicates that all categories of persons who fall under Department of Defense control are called detainees.⁴ Under the definition portion of this directive, we find the three traditional Geneva categories of EPW, civilian internee, and retained persons, plus another category—enemy combatant. Thus, the term enemy combatant describes individuals detained during the GWOT. Specifically, the directive defines an enemy combatant as any person that US or

allied forces could properly detain under the laws and customs of war. For purposes of the war on terrorism, the term enemy combatant shall mean an individual who was part of or supporting Taliban or Al Qaeda forces or associated forces that are engaging in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.⁵

Detainee Flow and Timelines

The previous doctrine stipulated that EPWs were to be evacuated to the rear through a series of collection points and holding areas. Military police and Army doctrine familiarized us with terms and procedures such as division forward collection point, division central collection point, and corps holding area. However, as the doctrine expanded to accommodate the growing nonlinear and noncontiguous environment, many of the linear terms used during previous conflicts were no longer applicable to the COE. In addition, the holding of EPWs/detainees for 24 or 72 hours at a given collection point or holding area was reevaluated based on the COE in Afghanistan and Iraq. The emerging doctrine will now show an initial detainee collection point (IDCP) at the brigade combat team level, a detainee holding area (DHA) at the unit of employment or division level, and a theater internment facility (TIF) at the theater level. Beyond the TIF is the strategic internment facility (SIF) in Guantanamo Bay, Cuba, where selected enemy combatants are interned.

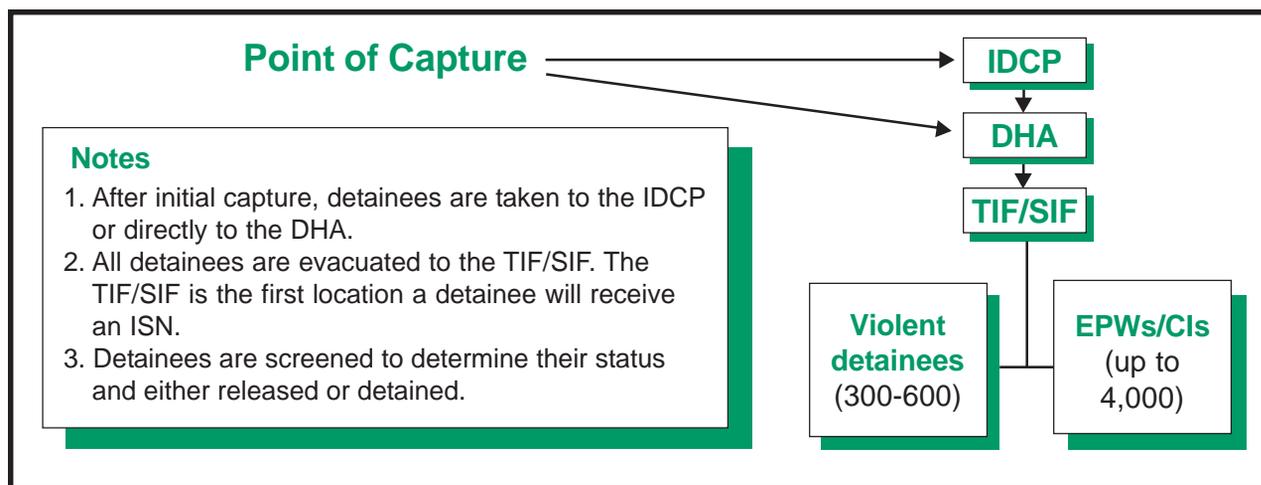
The doctrine will also reflect that timelines are no longer a critical factor when moving a detainee to a DHA or an internment facility. The duration of stay at each echelon is driven by security, operational conditions, and the availability of transportation. For example, the exploitation of intelligence from a detainee at the tactical level may require the holding

unit to maintain the detainee for an unspecified time. Yet, critically central to this process is the ongoing accountability of property and the detainee at each echelon. Furthermore, the humane treatment of detainees remains consistent throughout all echelons of command, regardless of the amount of time the detainee remains in internment.

Capture Tags, Serial Numbers, and Property Accountability

The serial number from the Department of Defense (DD) Form 2745, *Enemy Prisoner of War (EPW) Capture Tag*, is the only recognized identification number used until a detainee receives an internment serial number (ISN). The capturing or transporting unit must complete the DD Form 2745 when it transfers the detainee to a military police-controlled IDCP or DHA. In turn, the military police must not release a capturing or transporting unit until the unit renders a completed DD Form 2745. Military police at each echelon may have to assist the capturing or transporting unit to properly fill out the DD Form 2745. Experience from OEF and OIF shows that military police often provided space at collection points or holding areas for the capturing or transporting unit to fill out the proper forms. The detainee receives an ISN when his information is entered into the Detainee Reporting System (DRS). The DRS requires the input of the number from the DD Form 2745. Capturing and transporting units should not use field-expedient capture tags. Simply making up numbers for a detainee or erasing serial numbers from capture tags causes problems for tracking and accounting for detainees. The DRS cross-references the ISN and the DD 2745 serial number.

This leads to the challenge of property accountability. As US forces transition command and control (C2) of operations to the Iraqi government, one of the critical areas for consideration is the transfer



of the detainees' property (or evidence), much of it intended for future criminal prosecution. Accordingly, at the point of capture, the capturing or transporting unit must annotate on Department of the Army (DA) Form 4137, *Evidence/Property Custody Document*, property that was found on the detainee and pass the document to the military police at a collection point or holding area. As with the DD Form 2745, the military police can help the capturing or transporting unit complete the form. Failure to accomplish this task violates the chain of custody and leaves military and civilian authorities in a void as to the circumstances of the detainees' capture.

The ISN replaces the serial number from the DD Form 2745 capture tag at the TIF. TIF personnel immediately forward the detainee's ISN information via the theater detainee reporting center (normally located at the TIF) to the national detainee reporting center, which subsequently passes the information to the International Committee of the Red Cross for the monitoring of that detainee's status at the international level.

Military Police/Military Intelligence Roles and Responsibility

During the events of the last year, the relationship between military police and military intelligence personnel has drawn much attention. For example, there was considerable uncertainty between both branches about each other's roles, limitations, and command authority across detainee operations. In an effort to fix the situation, multiple changes and revisions were made to doctrine and policy, culminating with the publication of FMI 3-19.40. Among other things, FMI 3-19.40 stipulates that the senior military police officer at each echelon will be in charge of all assets operating within the IDCP, DHA, or TIF. Medical personnel, the staff judge advocate, human intelligence collectors, and other assets report (either through an operational control [OPCON] or tactical control [TACON] relationship) to the senior military police officer at each echelon when operating within an area where detainees are held. Currently, at the brigade level, the C2 relationship is TACON. Above

that echelon, the C2 relationship established is OPCON. However, intelligence and medical priorities will be established by military intelligence and medical personnel and not by the military police commander or staff.

Another new term now emanating in Army doctrine is "commander, detainee operations" (CDO). The CDO is the single authority who has responsibility over all echelons where detainee operations occur. He writes the policy and enforces the standards for the Army forces or joint task force commander. A CDO can be placed at essentially any echelon, depending on the size of the operation. For example, at the theater level, the internment/resettlement battalion commander could assume the role of the CDO when there is only one internment facility located within the theater. In other situations where there are multiple TIFs, the commander of the military police command will fill the role of the CDO.

Summary

FMI 3-19.40 should be available in the very near future. The Office of the Provost Marshal General, the Military Intelligence Center, the Medical Center, and many others have made critical contributions to its completion. Their collective interest is that it meet the needs of the military police officer in the field conducting detainee operations.

Note: Policy and doctrine products regarding detainee operations have yet to be approved and published as this article is written. The contents of the article are subject to change, based on final approval.

Endnotes

¹ Geneva Convention (III) Relative to the Treatment of Prisoners of War, 12 August 1949.

² Field Manual Interim 3-19.40, *Internment/Resettlement Operations*, (to be published).

³ "Humane Treatment of Al Qaeda and Taliban Detainees," February 7, 2002 Memorandum, President George W. Bush.

⁴ DOD Directive 2310.1, *Department of Defense (DOD) Detainee Program*, (to be published).

⁵ Ibid.