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Monday, April 7, 2003 - 10:00 a.m. EDT

Briefing on Geneva Convention, EPW's and War Crimes

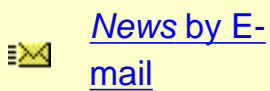
(Also participating in this briefing was W. Hays Parks, Special Assistant to the Army JAG and Pierre-Richard Prosper, U.S. Ambassador-at-Large for War Crimes Issues)

WHITMAN: Good morning and thank you for joining us this morning, both not only here but also in Kuwait as well as Qatar.

This is the first in a series of our briefings on issues that are related to the U.S. military's treatment of enemy prisoners of war. Today, we have two individuals with us, Mr. W. Hays Parks and Ambassador Pierre-Richard Prosper. Mr. Parks is the special assistant to the Judge Advocate General of the U.S. Army for law of war matters. Ambassador Prosper, who joins us from the State Department, is the U.S. Ambassador for War Crimes Issues. Both gentlemen are experts on the law of war and the Geneva Conventions, and they'll be discussing the legal concepts behind them.

We have -- are going to try to take questions once they have a brief presentation, not only from here but also from Kuwait and from Qatar, and we'll see how that works.

Sir?



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PARKS: Well, thank you and good morning. I'll just start with just a very brief statement, part of which I want to talk about the foundation of this topic, the law of war, we're talking about.

The modern law of war as we know it today actually began when President Lincoln commissioned Professor -- Dr. Francis Lieber to write a code for Union forces during the American Civil War. The Lieber Code, as its known -- it was also U.S. Army General Order No. 100, and it was published in 1863 -- that really formed the foundation for everything we have in our modern law of war today. Professor Lieber didn't make it up. He actually went through history to find the practice of nations, and I think that's a very important point here, to understand that this is the way nations feel that they should conduct military operations.

Since the Lieber Code, there have been a number of other conferences: In The Hague in 1899 and 1907; one of the most important treaties to come out of the latter conference was the 1907 Hague Convention number IV for the Conduct of Military Operations on Land. There have been any number of Geneva Conventions for the protection of war victims over the year -- over the years. Today there are four 1949 Geneva Conventions. The first deals with military wounded and sick on the battlefield. The second deals with military wounded, sick and shipwrecked. The third refers to prisoners of war and their protection, and the fourth deals with enemy civilians or civilians in enemy hands. They are still in effect, and I'll mention them just a bit more.

I'll focus on the 1949 Geneva Convention relative to the prisoners -- to the protection of prisoners of war. I'll also focus on Department of Defense policies with respect to the law of war and the current conflict with Iraq and Iraqi violations of the law of war.

With respect to the 1949 Geneva Conventions, they were negotiated after World War II. Out of 194 nations in the world today, 190 are states parties to those 1949 Geneva Conventions. That includes the United States and Iraq. There are more governments states parties to this -- to these conventions than are member nations of the United Nations, giving you an idea of how widely accepted and received they are.

The protections apply when the members of the armed forces of one belligerent nation or their civilians fall into the hands of an enemy belligerent. In the case of prisoners of war, this can happen through capture or surrender to enemy military forces.

The Geneva Convention relative to the protection of prisoners of war, which I -- we normally refer to as the GPW, contains some fundamental protections for prisoners of war. First, prisoners of war must at all times be humanely treated. Humane treatment is the baseline, but POW protections are much more extensive. Any act or omission that causes the death or endangers a prisoner of war is prohibited and is a serious breach of the convention.

Next, prisoners of war must be removed from the battlefield as soon as circumstances permit and at all times protected from physical and mental harm. Prisoners of war must be provided adequate food, shelter and medical aid. Prisoners of war must be protected, particularly against acts of violence or intimidation, and against insults and public curiosity.

If questioned, prisoners of war are required to provide their name, rank, serial number and date of birth. They may not be forced to provide any other information.

Prisoners of war may not be subjected to physical or mental torture. Those who refuse to answer questions may not be threatened, insulted or exposed to any unpleasant or disadvantageous treatment of any kind.

Subject to valid security reasons, prisoners of war are entitled to retain their personal property and protective equipment. These items may not be taken from a prisoner of war unless properly accounted for and receipted.

Representatives from the International Committee of the Red Cross must be permitted access to prisoners of war as soon as practical.

All prisoners of war must be protected against assault, including sexual assault. Female prisoners of war shall be treated with regard due to their gender, and like all prisoners of war, are entitled to respect for their person and their honor.

The United States and Iraq also are parties to the 1949 Geneva Convention on the Wounded and Sick that I mentioned earlier. The title of the convention is also a bit misleading, because it also deals with the protection and respect for enemy and dead on the battlefield. In particular, this convention requires parties to the conflict to protect the dead against pillage and ill treatment, and requires parties to ensure that the dead are honorably interred, their graves respected, and information as to their identity, et cetera, provided to the International Committee of the Red Cross.

Let me talk a little bit about DOD policies and the conflict in Iraq. The United

States and coalition forces conduct all operations in compliance with the law of war. No nation devotes more resources to training and compliance with the laws of war than the United States. U.S. and coalition forces have planned for the protection and proper treatment of Iraqi prisoners of war under each of the Geneva conventions I have identified. These plans are integrated into current operations.

Before describing our policies, I should note that in Operation Desert Storm in 1991, the United States and coalition partners detained 86,743 Iraqi prisoners of war. These Iraqi prisoners of war were given all the protections required by the Geneva conventions.

Our aims and acts are precisely the same in the current conflict. We are providing and will continue to provide captured Iraqi combatants with the protections of the Geneva conventions and other pertinent international laws. In addition, arrangements are in place to allow for representatives from the International Committee of the Red Cross to meet with Iraqi prisoners of war.

With respect to Iraqi violations of the Geneva conventions and other laws of war, the Iraqi regime is not complying with the Geneva conventions. Before turning to a summary of the Iraqi violations, I should note that in Operation Desert Storm, in 1991, the Iraqis mistreated U.S. and coalition prisoners and forces in numerous respects, including physical abuse and torture, forced propaganda statements, food deprivation, denial of International Committee of the Red Cross access until the day of repatriation, and much more.

The Iraqis similarly mistreated Iranian prisoners of war during the eight-year Iran-Iraq war in the 1980s. The Iraqi regime has thus displayed a pattern of systematic disregard for the law of war. Based upon initial reports, including those in the media, it appears Iraq has once again committed violations of the Geneva Conventions and related laws of war. I will mention just three.

First, Iraqi television and Al-Jazeera have aired a lengthy tape of deceased U.S. or coalition service members. I will not describe the tape in detail. Suffice it to say that the tape, made at the direction of the Iraqi regime, shows fundamental violations of the Geneva Convention obligations, to include prohibitions on pillage and ill treatment of the dead, the duty to respect the personal dignity of all captured combatants, and possibly prohibitions against willful killing, torture, inhumane treatment, or the willful causing of great suffering or serious injury to body or health of the POW.

Second, Iraqi television and Al Jazeera have aired a tape of U.S. soldiers

answering questions in humiliating and insulting circumstances designed to make them objects of public curiosity, in violation of the prisoner-of-war convention.

Third, there are reports that the Iraqi regime has sent forces carrying white flags as if to indicate an intention to surrender, repeating an illegal act used by the Iraqi military in the 1991 coalition war to liberate Kuwait, or dressed forces as liberated civilians to draw coalition forces into ambushes. These acts of perfidy -- the term that we use -- are among the most fundamental violations of the law of war, endangering coalition forces and innocent Iraqi civilians.

These are the three obvious Iraqi law-of-war violations. Behind the tapes and initial reports from the field, there are likely to be additional violations.

The position of the United States government is to do everything in its power to bring to justice anyone who, by action or inaction, is responsible for violations of the law of war.

A war crimes investigation by the secretary of the Army to record Iraqi war crimes during the 1990-1991 Persian Gulf conflict resulted in a detailed report. Steps have been taken to begin a similar investigation and information collection effort. Ultimate disposition will depend upon evidence collected, identified violations, and individuals who come under U.S. control.

Thank you very much. At this time I'll turn the mike over to Ambassador Prosper.

PROSPER: Good morning. I'd like to focus on some of the broader war crimes issues and the violations we have been seeing committed by the Iraqi regime, as well as what our policy is relating to these abuses.

I think it's safe to say during the course of hostilities we have seen a systematic pattern of abuses committed by the Iraqi forces, to the extent that we can call them textbook. There has been a complete disregard for the law by the regime, as well as a complete disregard for human life. The Iraqi regime, by blurring the distinction between combatants and civilians, has caused numerous civilian casualties and has put thousands or countless of Iraqi civilians in harm's way. The list of violations that we have seen is long. The Iraqi people are suffering as a result of these abuses.

We know that the Iraqi regime -- the forces have fired mortars and machine gun fire upon civilians as they've tried to flee harm's way and go into coalition forces' control. We have heard countless of -- reports of the use of human shields, where civilians have involuntarily been put in a way -- in harm's way and at times

killed. We know that the Iraqi regime, by fighting in civilian clothes, has blurred the distinction, causing additional harm.

The Iraqi forces have also placed military weaponry in civilian structures, schools, hospitals, mosques and historical landmarks. We've heard reports that ambulances have been used to transport death squads and irregular fighters.

We also know that Iraqi civilians have been forced into combat at gunpoint or also by the threat of death to their family and loved ones. We have received reports of summary executions of military deserters. And as the battle for Baghdad unfolds, we must brace ourselves for additional abuses, because we know that this pattern of atrocities and war crimes is not new. The regime has a long history for the past two decades of inflicting violence and death upon its civilian population.

As a result, we have begun to catalogue the numerous abuses, both past and present that have been committed by the Iraqi regime. Our troops have been given the additional mission of securing and preserving evidence of war crimes and atrocities that they uncover.

As President Bush has stated, war criminals will be prosecuted. The day of Iraq's liberation will also be a day of justice. For any war crimes committed against U. S. personnel, our policy is that we will investigate and we will prosecute. We will also seek to prosecute, where feasible, those who committed or ordered war crimes against U.S. personnel during the Gulf War.

For any war crimes committed against Iraqi people during the course of this conflict, we'll explore the range of options available, work to ensure that justice is achieved for the Iraqi people. For past abuses, past atrocities, it is our view that there should be accountability. We will work with Iraqi people to create an Iraqi-led process that will bring justice for the years of abuses that have occurred.

In short, it is our view that we must reinstate the rule of law within Iraq. We must not tolerate the abuses of the Iraqi regime and deem them as "business as usual." There will be accountability for these abuses.

Thank you.

WHITMAN: Let's go ahead and start with a couple of questions from here, and then we'll go and see if we can't get Qatar and then Kuwait.

Q: Ambassador: Can you explain a little bit more about how the judicial or legal

process might work in a post- conflict Iraq? You said it would be an Iraqi-led process. Could you give us a little more information on who might lead that, who the judges might be, and what sort of form that court might take?

PROSPER: All right. Well, when we're discussing an Iraqi- led process, our primary focus now is for the past abuses. There, what we have been doing is working with Iraqi jurists, some members of the exile community, to create a mechanism that will be able to address these abuses. We will also, at the appropriate time, will have to engage the internal personalities to determine what their views are regarding a tribunal of sorts to address these past abuses. We recognize that there will be a question as to whether or not the system within Iraq has the capacity to address these abuses, therefore, we are prepared to assist in any way we can by providing technical, logistical, human and financial assistance. We also believe that the members of the international community should also step forward and be prepared to assist.

Q: Are there any plans for U.S. military tribunals or commissions to address any of these matters or the possibility of international war crime tribunals? And also, are there plans for trials for the very top leadership -- for Saddam Hussein, for his sons and other members of the top leadership?

PROSPER: I think what's important to understand here, to note, is that there is a timeline between -- of abuses, if you will: The current abuses and the past abuses. The past abuses, again, will be through an Iraqi-led process. We believe that it must have some indigenous roots in order to reinstate the rule of law. For the current abuses, the crimes particularly against U.S. personnel, we believe that we have the sovereign ability and right to prosecute these cases. There is a range of options, ranging from military proceedings to our civilian courts. We are of a view that an international tribunal for the current abuses is not necessary.

PARKS: If I might add to that, there are three traditional statutory bases for trials by the United States: courts martial, military commissions, and federal district court. Obviously, there may be other governments that have an interest as well. The government of Kuwait suffered severely at the hands of the Iraqis in 1990, 1991, and it's entirely possible that the government of Kuwait may have some interest and having some of those persons turned over to them who were involved in the occupation of Kuwait and Kuwait City during that time.

So right now -- our focus right now is on winning the war. And these are the kinds of decisions we're -- basically in what I would call step one; trying to put together -- collect the information, and then have the national leadership make those types of decisions, no doubt with some coordination with some of our

coalition partners.

Q: Can I just follow up the issue of the -- are there plans for the trial of the very top leadership?

PROSPER: Yeah, I think when we're, particularly discussing the abuses of the past as well as the current abuses, we need to look at the leadership. We have put, over the years, a sharp focus on the actions of Saddam Hussein, his sons, individuals such as "Chemical Ali" and others, because by the nature of the regime, we do understand that a lot of the orders for the atrocities came from the top.

MODERATOR: You have a question, sir?

Q: Yeah, can you help us, we've been struggling with this one over the last several days, and that is the issue of in uniform and out of uniform. Just as a specific issue, American forces do operate out of uniform in some settings. In Afghanistan, virtually all of the special operators operated out of uniform. Why is that considered a war crime, or is it only operating out of uniform in combination with other kinds of behavior?

PARKS: Let me first make a slight correction. Most of the Special Forces in Afghanistan operated in uniform, full uniform. There were some who worked in what we referred to as a non-standard uniform that was at least a partial uniform so they could be identified. They also carried their arms openly.

The basic distinction between those types of operations where there was no attempt to conceal their combatant status, and what we're saying with the Fedayeen Saddam in Iraqi is that they are purposely concealing their combatant status, concealing their weapons, wearing no part of a uniform, wearing no distinctive device, in order to engage in acts of treachery or perfidy, as I referred to earlier. They are purposely using the soldiers' -- the U.S. soldiers' respect for civilians as a way to conceal their intent and engage in treacherous killing of coalition forces. So there is a big difference between the two.

STAFF: We'd like to take a question from Qatar, if you can hear us. (Pause.) From Kuwait?

Q: My name is Kabir (ph). I'm a correspondent reporting from -- (inaudible). I have a question concerning those unlawful combatants, Iraqi --- (inaudible).

STAFF: Could you repeat your question, please? We got cut off until just the last

two words.

Q: Repeat it? Okay, I'll repeat my question. It is concerning the unlawful combatants from the Iraqi side. I would like to know how we treat those unlawful combatants once they are taken into coalition custody ? Do you grant them the status of POWs?

PARKS: When someone is captured, they go through a process of being taken from the capturing unit back to a collection unit and ultimately to the higher-level theater prisoner-of-war camps. And Article V of the Prisoner of War Convention, it specifies that if there is any doubt as to the status of a person, that person is entitled to prisoner-of-war protection until his or her status has been determined. That determination can be done by an Article 5 tribunal, which is a tribunal, set up by the military to look at the facts and circumstances of the capture and any other information. They then make a determination or recommendation. Our past practice, in Vietnam as well as in the first Gulf War, was that if at any time there remains any doubt, that person will be entitled to prisoner-of-war status.

In the meantime, we use the Prisoner of War Convention as a basic template for anyone that we hold. We provide them the basic cares and protections that I laid out before, the best housing that we can give them under the circumstances, adequate food, medical care, anything else that they need, and visitations by the International Committee of the Red Cross.

At this point in time, that decision as to whether or not persons are members of the Fedayeen Saddam or whether they are members of the Iraqi regular military has not been fully exploited, because of the ongoing conflict. The British, I understand, have run some Article V tribunals and in some cases have found that some of the people they detained were civilians, and they have been released. So there is a process for doing this.

Q: Would unlawful combatants have a different judicial channel? Do you envision it different than what a soldier would have?

PARKS: That's a very good distinction, I think, that needs to be made. The fundamental difference between an unlawful combatant and the prisoner of war is that a regular soldier, if he kills an enemy soldier, has committed a lawful act. An unlawful combatant, by its term, suggests that this person did not have authority to go onto the battlefield and engage in the killing of enemy soldiers or the attack of military property. So if a person is determined to be an unlawful combatant, he or she can be prosecuted for killing an ordinary soldier. So there would be a judicial process for that person. What that process would be is something that

we've not determined as yet.

Follow on with the question, Kuwait.

Q: Do you have a number of how many prisoners we've taken in the current conflict? And how would that compare with -- (audio break) --

PARKS: If I understood the question to be the number, I do not have that number in front of me, but I believe it's available from Central Command.

Q: Is it your judgment or is it the military's judgment that the United States is now an occupying authority in those portions of Iraq where U.S. forces have moved through? And does that make the United States responsible for the welfare of the civilian population in those areas?

PARKS: The term "military occupation" is one of those that's very, very misunderstood. When you are an infantry company commander, and you're told to take the hill, you physically occupy it. That's military occupation with a smaller -- lower-case "m" and lower-case "o". It certainly does not mean that you have taken over it with the intent to run the government in that area. That's the very clear-cut distinction, that until the -- usually, until the fighting has concluded and is very conclusive, do you reach the point where technically there might be Military Occupation -- capital "M", capital "O" -- and a declaration of occupation is issued. That's a factual determination; it's a determination by the combatant commander in coordination with others, as well. Obviously, we occupy a great deal of Iraq at this time. But we are not, in the technical sense of the law of war, a military occupier or occupation force.

Q: Until hostilities cease?

PARKS: That's going to be a factual determination by the combatant commander in consultation with others.

Q: Two things, really. What sort of penalties might apply to people in senior positions -- senior military commanders, senior government ministers, even Saddam Hussein or his family members, insofar as they're involved in decision-making? And secondly, if you're not going to go to any of the established international tribunals, are you worried of creating the impression or creating an opinion worldwide about victor's justice or even creating martyrs in some form to be used as rallying points in the future?

PROSPER: Well, the range of penalties exists, from -- obviously from

incarceration to the death penalty. It's really dependent on the forum that is ultimately chosen to deal with these issues. Regarding the international tribunal, the only one that obviously is in existence is now the permanent international criminal court, and that court does not have jurisdiction over this conflict, because we are not a party to the treaty and Iraq is not a party to the treaty.

But I think what we must recognize is that any state, when they fall victim to war crimes, has the authority to prosecute these cases. So it's not a victor's justice, it's a fact that by being victimized, if you will, we can prosecute. For the crimes committed against the Iraqi people, we are prepared to work with the Iraqi people, who will have the sovereign right to address these cases as they occur. So it will be, obviously, a collaborative effort, where we can prosecute the crimes committed against us, our coalition partners have that same right and authority, and for the Iraqi people, we are prepared to work with them to achieve justice.

PARKS: Let me offer a couple of other points. I mentioned that we have a statutory basis, three different ones, for prosecution of war crimes. One of the reasons we have that is because we, in a long-term practice, have prosecuted U.S. military personnel when they have engaged in violations of law of war. I can speak personally from this, having done this in Vietnam myself 35 years ago.

Now, if you go back to the history of the post-World War II trials, you'll see that there were, in fact, several different levels. There were the statutory courts at that time, or commissions, depending on whether it was United Kingdom, United States, who was running those. And they tried particular offenses that occurred at a specific level against nationals from their country. For instance, there was an Italian general tried in Italy by a U.S. military commission after World War II for the murder of American prisoners of war. There were international tribunals based upon the November 1st, 1943, Moscow Declaration that ultimately established the Nuremberg tribunals for the trial of the major criminals for which there was no geographic specificity, and then there were some lower levels.

I would point out at the very lowest levels, the one that I identified initially, any number of nations carried those out after World War II -- Australia, New Zealand, China, just about every single one of the Nazi-occupied territories in Europe. So there are a number of levels there, but you go back to that lowest level because we all have courts -- we have an obligation under the conventions to ensure respect for the conventions and for the law of war. Part of our implementation of that is to have tribunals available for prosecution of American service persons should they commit a crime or for those who commit crimes against U.S. military personnel.

STAFF: Can we go back to Kuwait, please?

Q: (Inaudible.)

Q: Is it customary to assemble a war-crimes body of law like this, or do you have to wait until after victory, I think is what he said.

PARKS: Well, certainly there's a standing body of law. We can identify, just as we have, U.S. statutes for civil/criminal violations as well. Then you take the facts and look at them and compare them to what you have as prohibitions under the laws of war. It's going to be done on a case-by-case basis. We don't create a new a body of law here. Now, if the question is are we now assembling something specific for this conflict, I think it's too early to say. Again, our focus at this time is to win, and begin the collection effort, and then make determinations as to disposition as we move along.

PROSPER: I think another point is, it's not necessary to wait till the end of hostilities to begin to look into war crimes violations and prosecutions. I think one of our most recent examples is in the international arena, if you look at the former Yugoslavia, there have been prosecutions that have been occurring while a conflict has been raging. So the law is there on the books and it can be used when the parties are ready to use it.

PARKS: Question in the back.

Q: Yeah, I want to be clear on something you said earlier. Of all the people in custody already, is there anyone who has been designated something other than POW?

PARKS: To the best of my knowledge, the United States has not yet run any Article 5 tribunals. I understand that process is under development, and it will be. At this time, everyone is being treated as a POW.

Q: And one follow-up to that. Was anyone -- anyone who was in custody after the first Gulf War, was anyone prosecuted among the people in custody after the first Gulf War?

PARKS: They were not. We found that of the individuals we had in custody, we had 99.9 percent enlisted personnel. Most of those came off the battlefield rather than from the occupation of Kuwait. The Iraqi officer corps had somehow vanished and was not there, and that's where the primary accountability probably would have been made, particularly for those of the occupation force. So as a

result, they were given the opportunity to repatriate -- be repatriated, which is a process we haven't discussed. It's something we work very closely with the International Committee of the Red Cross to do.

We'll take --

MODERATOR: From Kuwait.

Q: We have no further questions, ma'am.

MODERATOR: Thank you.

PARKS: Yes?

Q: Getting back to Iraqi armed forces have engaged in widespread and systematic violation of the laws of war, does that mean that as a military they are not entitled to the protections that the law of war provides?

PARKS: No, it's -- one of the essential factors in the 1949 Prisoner of War Convention is that regular military forces are entitled to prisoner of war status, even if they violate the law of war. They can be prosecuted for their violations, but they still remain entitled to prisoner of war status.

Q: On the subject of Iraqi Television, two questions. First, is the mere act of photographing a prisoner considered to be humiliating, or is there something about the way that they were photographed? And also, why did you -- several television networks around the world aired that footage. Why did you feel the need to mention Al-Jazeera also?

PARKS: I think it was just a statement of fact, on the last part of that; not singling them out, it just happened to be that they were the ones who I think were -- probably transmitted it most directly.

It's not so much the photography of a prisoner of war, particularly, as you know, with our embedded media; every day, prisoners are being taken on the battlefield. That is a statement of fact. When they are photographed under those circumstances as they're surrendering, as they're receiving medical care, that's a statement of fact. The contrast is -- and in fact, our embedded media and others, I think, have been superb in understanding our ground rules that you will not take photographs in such a way, either hopefully to avoid any positive -- specific identification of the individuals or in the way that would be considered to be humiliating or degrading. The contrast here is that you have the state-owned Iraqi

television forcing prisoners of war in their hands to appear before it for forced interviews, where it's very clear this is an act of intimidation and humiliation. So, there's a very delicate balancing, no question about it.

And as I said, I've been very pleased with the way the embedded media have recognized this. I was watching one of the channels, I guess about a week ago, when an Iraqi soldier came over the horizon with his hands up. He was probably a good 150 meters away from the camera. The embedded journalist and his photographer said, "Look! There's one coming now." And the other one said, "Hey, can we take that picture?" And he said, "Yeah, I think we can, because we can't identify the person." So they understand the ground rules, they've been reinforced to them, they -- and it's been quite good. But that is very distinctive from: I have this prisoner of war in my hands, I'm going to put them on the camera for one reason; that is, to coerce him into making -- going through questions and to be used for propaganda purposes.

Q: Now, once these -- if I can just follow on on that -- once these people are in custody, if you decide to bring people here, put them in Guantanamo Bay, is there anything in the law of war that would prevent the U.S. from allowing somebody to go in and just photograph them in their conditions? Or is that just a matter of U. S. policy to not let people take pictures of prisoners down in Guantanamo?

PARKS: Well, let me back up to the first part of that. We have no plans to send anyone to Guantanamo Bay.

But second, as a matter of policy and our interpretation of the prohibition in Article 13 on humiliating and degrading treatment, we do not allow persons to go into prisoner of war camps to take photographs of them.

Yes, ma'am?

Q: Me?

PARKS: Yes, ma'am.

Q: If I can follow on that. What is the difference? Can you explain the difference, then, between the prisoners of war you're taking in Afghanistan and sending to Guantanamo Bay and these prisoners?

PARKS: Well, there's a substantial difference in the types of conflicts. What we -- we are in the true, pure, traditional international armed conflict, for which the conventions were written. Many of the persons that we captured in Afghanistan

were members of al Qaeda. This goes back to one of the previous questions. They were unprivileged belligerents, and they're not entitled to the complete protection of the law of war. They have -- they're unprivileged belligerents.

At the same time, we are providing that template that I mentioned earlier and providing basic protections for them: meals, lodging, all the items they need -- soap, towels, toothpaste -- medical treatment and visits by the International Committee of the Red Cross. The basic distinction is the one I mentioned before, and that is, as unprivileged belligerents, they do not have the legal right to attack military personnel, whereas now we're engaged -- except for the Fedayeen Saddam, we're now engaged with a regular military force.

Q: Could I follow up on a question from earlier?

PARKS: Yes.

Q: I want to make sure I'm totally clear on this. When it comes to U.S. military uniforms, what is the bare minimum that is required to be considered "in uniform"? Is just wearing one's weapons openly enough?

PARKS: All right. Let me sort of break that in two places. Ninety-nine-point-999 percent of the time, our forces are going to be in full uniform.

In those rare circumstances where you might have someone in the military operating with indigenous personnel, which we saw in World War II in Nazi-occupied Europe and places like that, the basic requirements are that they be under the command of someone responsible for the subordinates; wear some sort of distinctive device, which can be a hat, a scarf, an armband, something like that, an American flag on their body armor; and carry their arms openly; and finally, most importantly -- this is where the contrast comes with the Fedayeen Saddam -- carry out their operations in accordance with the law of war.

Does that help?

Q: So a hat, a scarf, an armband --

PARKS: Are considered the types of things -- if it's something that's distinctive to the forces with whom you're operating. Obviously, you've got a group -- let's say an element of indigenous personnel -- they tend to wear some sort of distinctive device, for their own identification of one another. And that's distinctive from what you see on a traditional international armed conflict conventional battlefield, where you have uniformed forces meeting uniformed forces.

The other factor there is one I mentioned earlier, though, and that is, you are not intending to pose as a civilian.

Q: Going back to the list of countries, you said there is about 190 that are signed up to the conventions. Is Iraq one of those?

PARKS: Yes, it is.

Q: A different topic. Are there plans on any of the Iraqi leadership, if the thought is that they haven't been killed but they're missing, they may have escaped or they're still in hiding, are there plans to hold trials without their presence?

PARKS: The United States, as a matter of policy, generally has not carried out trials in absentia.

Yes, in the back.

Q: There are reports of some foreign fighters being involved in the conflict in Iraq, some actually in uniform, although they may not be Iraqi uniforms. Does that pose any particular legal issue here?

PARKS: It's going to be -- that's something we'd have to answer on a case-by-case basis. If they're fighting in Iraqi uniforms, that's going to be one of the key elements; if they have some sort of association with the Iraqi military. As you may know, in a number of conflicts in the past, for instance, in World War II, we had U.S. forces who joined the Royal Air Force before the United States was in the conflict. If they had been captured, they would have been treated -- entitled to prisoner of war status.

So it's going to be factually dependent on what they're doing at the time of the capture, how they're dressed and what they're doing.

Yes, sir?

Q: And just to clear up a couple of points. If you are an Iraqi civilian and American forces break their way into your home and you open fire on them or they -- I mean, they regard American forces as invading. So if you open fire on American forces and you've been out in your garden, or something, is that -- are they non-combatants, are they unprivileged belligerents for opening fire on forces that are breaking their way into their homes?

PARKS: It's, again, going to be factually determined. If this person has been totally oblivious to the fact that there's been a war going on around his house for the last two weeks, and he happens to be in there and jumps up with his weapon and opens fire, he or she is at risk, obviously. But second, we would go through the factual determination of the Article V Tribunal as to why this happened and the way it happened.

I did hear in the Central Command press briefing this morning that leaflets are being dropped to the Iraqi population saying, "If you have a weapon, put it down, stay away from it so we do not mistake you for an Iraqi Fedayeen Saddam." So, we're doing the best we can to convey to them, do not involve yourself in the hostilities.

Q: And just so I understand, there is not a new body of law or procedures that you are trying to develop to deal with this particular conflict; you will fall back on historical precedent as much as you can?

PARKS: It's not only historical precedent; it is existing law.

Q: And then finally, in your prisoner-of-war holding camps now, are you sorting individuals either by rank or by unprivileged belligerents or people in uniform? Is there any kind of sorting and identification that you are doing?

PARKS: I don't have information as to what's being done at this time. I can tell you that generally when you go through this movement back, collection, sorting process -- and let me say that a part of that is getting as full an accounting of the person that you have as possible so that we can take that information and forward it to the International Committee of the Red Cross, because we want a full accounting of our prisoners of war as well. In that process, the Geneva Convention requires a separation of officers from enlisted. Now, whether there will be later on, as I indicated, this Article V screening when there's doubt as to someone's status, then there may be some additional separation. At this point in time though, I think right now the idea is to provide the protections required by the conventions, the medical treatment required, and then move into this Article V Tribunal phase in the next week or so.

Q: To your knowledge, has Iraq yet allowed the ICRC to meet with any of the coalition POWs?

PARKS: It has not. And I think as I mentioned in my statement, in the course of the 1991 Gulf War, the Iraqis did not permit the ICRC to see U.S. and coalition prisoners of war in their hands until the war had ended and 24 hours out from the

time of repatriation. The ICRC then handled the repatriation of coalition prisoners of war back to their forces and did a superb job.

Q: Could the fact that the United States launched this invasion without U.N. approval -- could that undercut your legal standing for conducting a war crimes tribunal?

PARKS: No. And the law of war, all of it, has taken the traditional view that it doesn't make any difference who started the war. What we do is gauge you upon the conduct of your operations on the battlefield itself. You could be totally justified in what you're doing; if your forces violate the law of war, it's still a violation of the law of war. The four 1949 Geneva Conventions specifically state in there that it doesn't make any difference who started the war, who is the party who was first off or what have you; that in any case, the conventions will apply. That's to sort of keep people from saying, "Well, he started it, and therefore, I don't have to follow the law of war." Regardless of who started the conflict, each side has an obligation to follow the law of war.

Yes, sir?

Q: Do you happen to know what kind of capability U.S. forces in Iraq have for holding POWs? Does each combat unit have a POW capability? Are we anywhere near capacity on that?

PARKS: Well, let me go back to what we did in the first Gulf War, as it is the best example. We have a particular unit, the 800th MP Brigade, that went in and built two camps, nicknamed Bronx and Brooklyn, that were to hold 50,000 prisoners of war each in record time. And as I said, our capacity went up to 86,000 some-odd. The same capabilities are being used today.

As I mentioned, when a soldier captures an Iraqi soldier, he is trained to turn him over to his superiors -- disarm him, turn him over to his superiors, move him back to the initial collection point, which may be at the battalion level. From the battalion level, they could be moved back to the division or corps level, ultimately -- and at the corps level, they will then go through the initial processing. In the old days, this was soldiers with little tags and stubby pencils. Today, it's laptop, which is what we used in the first Gulf War. After that initial processing, they are then moved back to the theater collection point, and that's where the detailed processing goes on.

We have that initial processing at corps level, too, because we have a split in the route they will take. Those who are wounded or requiring medical care go one

route. Those who are otherwise able-bodied go -- continue on back to the straight prisoner of war camp.

Once the theater processing is accomplished, those reports are sent back here to the National Prisoner of War Information Center, which is run under the Army Operations Center. Those lists are all collated, put together and we ensure that we have proper identification, the best information we can get from that. And thereafter, that information is forwarded by the United States government to the International Committee of the Red Cross.

Q: Is it safe to assume that whatever judicial process the Iraqis develop here in a post-war situation, that it will have fairly heavy American input? Would you try to use the body of Iraqi law in order to conduct any sort of criminal proceedings?

PROSPER: Well, the degree of input has yet to be determined, because what we have been doing is working with the opposition group, the exiled community of jurists, and we have been able to reach a basic understanding of what the requirements are and what a specialized approach or chamber could look like. But what has yet to occur is discussions with some of the internal personalities, who may have additional ideas or opinions on the framework. But I think it's safe to say that the -- any process that is created can rely upon the body of international law as well as the body of Iraqi law that exists. So I expect that once we move into the post-conflict setting, a lot of these issues will become clearer, we'll see the degree of U.S. participation or international participation that is necessary.

PARKS: I understand that Central Command is up now. They have a question, but it's audio only.

Q: Gentleman, Paul Martin here, from World News and Features and the Washington Times. I'm interested to know two things. One is the role of the gentleman they now call -- well, Uday -- well, let's go to Uday. Uday Hussein, obviously, was in charge of the occupation of Kuwait last time around, and has been responsible for the irregular forces whose behavior in Basra and others has given rise to suggestions that his troops are behaving in an illegal way. And are you targeting him for war crimes tribunals? And will you be looking back at his record in Kuwait, or just looking at this current war? That's the first question.

Secondly, looking at the images we've seen of prisoners being taken there, hoods have been put over their heads when they've been arrested, and they seem to have been disoriented or pushed about a bit in the process of taken away. Is that legal or illegal?

PARKS: Let me take two parts of that. The first part, we do have a very detailed record of our investigation that was conducted in 1990, '91, of the Iraqi occupation of Kuwait, and that certainly is available, should this individual be in our custody or the custody of others at the end of the conflict.

Second, on the hooding, it is a standard procedure in most militaries to either blindfold or hood prisoners at the time of capture because every soldier is trained that the best time to attempt escape is at the time of capture. So the idea is, first, not to give them the opportunity to escape, and second, not to have them -- give them the opportunity to collect military intelligence in the event they should escape. Obviously, the hooding is one method for doing that; the other I mentioned is blind-folding. They obviously can still breathe. It's not a matter of trying to abuse them in any way, it's a standard security procedure for most militaries, if not all, upon capture.

Ambassador?

PROSPER: And also, since '91, we have been looking at the actions of the various members of the regime, including Uday. For the past few years, we have done additional work of documenting his role in the abuses that occurred throughout the Gulf War and throughout the term of the regime. We will obviously be looking at any actions that he had during the course of this current conflict. But I think it's safe to say that he is among those, the top tier people that we're most interested in, and seeing accountability for his actions.

MODERATOR: Okay, this will have to be your last question.

Q: Are either of you able to speak to this talk about whether or not tear gas, the use of tear gas by U.S. forces would be a violation of any of the laws of war or chemical weapons conventions? Is that --

PARKS: I can speak to that. The 1993 Chemical Weapons Convention prohibits the use of riot-control agents as a method of warfare. It's not a precisely defined term. The United States has an executive order that suggests that riot-control agents can be used for defensive purposes to save lives. That's a very long-standing executive order.

It gives a few examples in there. One is combat search and rescue. The others are rioting prisoners of war. A third example is, if in fact an enemy placed civilians in front of it, to advance on your lines. There is a very careful process for the decision as to whether or not riot control agents may be used on the battlefield, requiring presidential authorization, which may be delegated to the combatant

commander. But it's not something that we do lightly.

MODERATOR: Thank you very much. We appreciate your coming.

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