Detention and Internment

ICRC IHL Workshop
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Order of March

- Authorities to Detain
- Standards of Treatment
- Detainee Processing
- The Role of Detention in the Development of the Rule of Law

Where do we get the Authority to Detain?

- International Law
- Domestic Law
- Implied Authority
- Categorization of the Conflict (type of person – type of conflict)
Authorities Addressing Detention

- Common Article 2 Conflict
  - GC III – POW's
    - Art 4 – who qualifies for protection
    - If in doubt, treat as POW
  - GC IV – Civilians
    - Article 4 – In the hands of...
    - Interned Civilians Part III, sec IV
  - AP I – Arts. 44 (Combatants and POWs), 45 (Protection of persons who have taken part in hostilities), 75 (Fundamental Guarantees)

Common Article 3 Conflict

- First Look to Common Article 3 Itself
- Domestic Law
  - US Domestic Law
    - AUMF
    - Hamdan
    - Al Bihani
    - NDAA
  - Host Nation Domestic Law
- International
  - United Nations Security Council Resolutions
  - AP II

Standards of Treatment

- EO 13491
- AP 1450
- Detainee Treatment
  - Act of 2006
  - DoD Directive 2310.01E
- Common Article 3

HUMANE TREATMENT
Detainee Processing

• Historical Case Studies
  – Iraq (Operation Iraqi Freedom, Operation New Dawn)
  – Afghanistan (International Security Assistance Force – ISAF)

Afghanistan Detention Processing
Processing Detainees from the Point of Capture

- The Five S’s and T
  - Search
  - Silence
  - Segregate
  - Safeguard
  - Speed to safe area/rear
  - Tag (detention tag/detainee evidence packet)

Authority to Detain – ISAF Specific


Unit Level Detainee Processing

- Unit Level Processing
  - Detention Authority
  - Legal Responsibilities
  - Practical Implications
- Unit Level Detainee Review Boards
  - The Players
  - The Standards
  - The Objective
Unit Level Detainee Processing (cont.)

- The Use of Local Shuras at the tactical level
  - Informal Requirement
  - Practical Implications

Transfer of Detainees to Afghan National Security Forces

- The UNAMA Report on Afghan Detention
- The Afghan National Army
- The Afghan National Police
- Local Police
- The National Directorate of Security

The Role of the Saranwal

- Direct Coordination between Unit and Saranwal
- The role of Security and Logistics
- The Charging Decision Timeline
- The ISAF Timeline
Detainee Interrogation

- The Debate
- The Law
- Approved Approaches

Pillars of Interrogation

- Climate
- Guidance
- Execution/Compliance

The Dust Has Settled

- Detainee Treatment Act of 2005
- Field Manuel (FM)2-22.3 (2006)
- Executive Order 13491 (Ensuring Lawful Interrogations) (2009)
FM 2-22.3: Approved Techniques

1) Direct approach
2) Incentive approach
3) Emotional love
4) Emotional hate
5) Fear-up
6) Fear-down
7) Pride and ego-up
8) Pride and ego-down
9) Emotional futility
10) We know all
11) File and dossier
12) Establish your identity
13) Repetition
14) Rapid fire
15) Silence
16) Change of scenery
17) Mutt and Jeff*
18) False flag*
19) Separation*

* Require special approval

Theater Level Detainee Processing

• The DFIP – the Detention Facility in Parwan
• The Detainee Review Board
• Transfers to the JCIP – the Justice Center in Parwan

The Detainee Review Board

• The Voting Members (3)
• The Recorder (Judge Advocate) (Non-Voting)
• The Legal Advisor (Judge Advocate)
• The Detainee’s Representative
• The Detainee
• Witnesses
Detainee Review Board Process

4,057 DRB's Completed (4k/year; 420/month; 18/day)

14 Days from Point of Capture
Transfer to DFIP

Convening Intelligence and Evidence Concur

Continued Internment

Prosecute

Reintegrate

Release

Detainee Assistance Centers located throughout Afghanistan. Provide Liaison, collect letters of support for detainees, and coordinate for witnesses. 1444 letters 2308 witnesses

Transfers to the JCIP

- Detainee cases identified for prosecution during the DRB may be transferred to the Afghan system at the JCIP
- More than 300 Trials Completed
- Convicted detainees held in an Afghan section of the Detention Facility in Parwan

Detention Operations and Rule of Law Development

- The role of Security in Rule of Law Development
- Is US run detention sustainable? Desirable?
- Measures of Effectiveness v. Measures of Performance (MOE's v. MOPs)
- More than Cops, Courts and Corrections – but detention operations touch on all of these key aspects of Rule of Law Development