



UNITED STATES MILITARY ASSISTANCE COMMAND  
VIETNAM



# COMMAND INFORMATION

Office of Information

Pamphlet Number 14-16

October 1966

## Application of the Geneva Prisoner of War Convention In Vietnam

This is Part I of a two-part paper on the Geneva Conventions. Part II will deal with rights of prisoners.

### INTRODUCTION

Shortly after World War II, representatives from 60 nations completed work on four international conventions designed to insure that both military personnel and civilians who fall into the hands of the enemy in time of war or any other armed conflict would receive humane treatment.

The four "Geneva Conventions for the Protection of War Victims" have been either signed or acceded to by all of the Free World Forces presently engaged in the conflict in Vietnam. The Conventions constitute a treaty obligation which has the force of law.

The four Conventions provide for: (1) the protection of the sick or wounded in the field, (2) the protection of the sick or wounded at sea, (3) the treatment of prisoners of war, and (4) the treatment of civilians in time of war.

### SOURCES OF THE GENEVA CONVENTIONS

The Conventions are based on: (1) principles of humanitarian law, (2) the law and customs of war as recognized in international law, (3) certain rules from the old Hague Conventions of 1899 and 1907, (4) the 1919 Geneva Convention relative to the treatment of prisoners of war, and (5) the experiences of two world wars.

### APPLICABILITY OF THE PRISONER OF WAR CONVENTION

The Prisoner of War Convention constitutes a body of humanitarian law which is primarily concerned with the protection of the individual who has been removed from combat and who can no longer protect himself. It is not concerned with political differences between nations.

Often the question is asked, "Since there has been no formal declaration of war in Vietnam, does the Prisoner of War Convention apply at all?" The answer is an emphatic, "Yes." Article 2 recognizes the possibility of hostilities without a declaration of war. It provides that the entire Convention becomes fully applicable in any "armed conflict," even when war has not been formally declared.

On 10 August 1965, Secretary of State Dean Rusk sent a letter to Geneva in which he officially announced the position of the United States. This letter stated that the United States would apply all the provisions of the Geneva Conventions in Vietnam and that we would expect the other parties to the conflict to do likewise. This announcement was followed by a similar letter dated 11 August 1965 to Geneva from the Government of Vietnam (GVN). On 8 February 1966 at the conclusion of the Honolulu Conference President Johnson and Prime Minister Ky published a Joint Statement, Point Nine of which reaffirmed each nation's determination to adhere to the Prisoner of War Convention. All other Free World Forces have agreed fully to apply the Conventions.

Although North Vietnam officially acceded to the Conventions in June of 1957, the communists in Hanoi have consistently refused to recognize their application to the Vietnam conflict. They have refused to allow the delegates of the International Committee of the Red Cross (ICRC) to enter North Vietnam to oversee the handling of prisoners of war held by the communists. In South Vietnam delegates of the ICRC are present and are making regular inspections of the prisoner of war camps. They also are assisting the GVN in the administration of the Conventions.

The Viet Cong have been heard from indirectly on the subject. Their position appears to be that the fighting in Vietnam is strictly an internal "civil war" and therefore international law does not apply.

## PROBLEMS IN APPLYING THE GENEVA CONVENTIONS IN VIETNAM

Many problems arise because we are attempting to apply a conventional Convention to an unconventional war. Certain provisions in the PW Convention are based on World War I and World War II experiences. The drafters envisioned soldiers in uniform, enemy lines, belligerents, neutrals and all the trappings of conventional warfare.

The failure of the enemy to follow the rules also makes it difficult for our side to comply with certain provisions. For example, the Conventions contemplate that each side will evacuate its sick and wounded along predetermined routes, each side first giving notice to the other through a neutral "protecting power" of the specific routes to be used. Neither North Vietnam nor the Viet Cong have allowed any other nation to act as a protecting power, thus these provisions cannot be observed.

## DETERMINATION OF PW STATUS

The Viet Cong seldom wear uniforms and enemy lines are difficult to define. The PW Convention is difficult to apply when the enemy soldier, clad in black pajamas and a coolie hat, wraps his weapon in oil cloth, buries it in a rice paddy during the day and becomes a soldier only at night. Article 4 provides that guerrilla fighters are entitled to prisoner of war status provided they follow certain fundamental rules of warfare:

1. They must be commanded by a person responsible for the acts of his subordinates.
2. They must wear a fixed distinctive sign recognizable at a distance.
3. They must carry arms openly.
4. They must conduct their operations in accordance

with the laws and customs of war.

According to Article 4 a guerrilla must meet all four of these conditions before he is entitled to PW status. Seldom does a Viet Cong prisoner meet all the requirements.

In Vietnam, however, the United States has chosen to apply not only the letter of the law but also the spirit of the Geneva Conventions, which were designed to protect the individual who can no longer protect himself. In keeping with this spirit the United States is extending prisoner of war treatment to all Viet Cong and to all members of regular North Vietnamese units, whether captured in combat or not, as long as they are not criminals, spies, saboteurs, or terrorists.

International law always has denied PW status to criminals, spies, saboteurs and terrorists. The Conventions provide that even those persons, who do not qualify as prisoners of war, must be given humane treatment and a fair trial. When such persons are captured by U. S. Forces they are segregated from prisoners of war and turned over to the GVN for trial.

To aid in making the determination as to who is entitled to PW status and who will be turned over to the GVN for committing a criminal act, MACV Directive 20-5 sets forth procedures for convening tribunals at the division or separate brigade level in accordance with Article 5 of the Prisoner of War Convention. These tribunals are limited to a determination of the captured individual's status; they do not award punishments of any kind.

## **THE HANDLING OF PRISONERS OF WAR IN VIETNAM**

Prior to the buildup of Free World Forces in Vietnam, U. S. fighting men were performing an advisory role alongside Vietnamese forces. Prisoners were captured by Vietnamese units and were processed entirely through Vietnamese channels.

Today large U. S. combat units are conducting combined operations in Vietnam. MACV has established its own system for the evacuation and processing of persons captured in combat. Prisoners captured by U. S. Forces are evacuated through U. S. channels until final delivery at a Vietnamese PW camp.

Prisoners captured by U. S. Forces must be disarmed, searched and carefully guarded. They also must be treated humanely and with the respect due them as human beings. They must be protected from torture, humiliation, degrading treatment, reprisals, or any act of violence. They must be provided with adequate shelter, food, clothing, and medical attention.

They should be tagged and evacuated from the combat zone to a place of safety as soon as possible. They may keep their personal effects except weapons or items which have significant military value such as maps or other military documents.

Persons detained by U. S. personnel are eventually classified in one of four categories:

1. Innocent civilians
2. Prisoners of war
3. Returnees
4. Civil defendants

Innocent civilians are released and returned to their homes.

Prisoners of war are evacuated through U. S. channels directly to a GVN prisoner of war camp.

Returnees are turned over to the GVN where they receive favored treatment under the Chieu Hoi program.

Civil defendants are released to the appropriate GVN civil authorities for possible trial and punishment under the laws of Vietnam.

(MACV Directive 190-3 sets forth the policy which will be followed in the handling, processing and evacuation of these four categories of detained persons.)

## **PRISONER OF WAR CAMPS IN VIETNAM**

PW camps administered in accordance with the requirements of the Geneva Conventions are presently in operation or under construction in each corps area in Vietnam. These camps are operated by the GVN. U. S. PW advisory teams are assigned to these camps to furnish guidance and advice to GVN operating personnel.

## **THE IMPORTANCE OF COMPLYING WITH THE GENEVA CONVENTIONS**

First and foremost we must show the world that we observe the humanitarian principles for which our nation stands. Second, by observing international law and showing due respect for our treaty obligations we discredit our enemies who have thus far disregarded their international obligations. Third, by affording prisoners of war the best possible treatment we induce more enemy soldiers to defect and surrender. Fourth, we discredit communist propaganda which tells their soldiers they will be shot if they allow themselves to be captured by the Americans. Fifth, prisoners of war are extremely valuable sources of intelligence. A well-treated prisoner is much more likely to cooperate with his captors than one who has been mistreated. We must realize that the manner in which we treat prisoners of war will have, hopefully, a direct influence on the treatment received by our personnel who are in the hands of the enemy.

## **CONCLUSION**

The Free World Forces are observing both the letter and the spirit of the Geneva Conventions in Vietnam.

The carrying out of our treaty obligations begins with the individual who captures a member of the enemy forces. Every member of the U. S. Armed Forces in Vietnam carries with him the pocket card, "The Enemy in Your Hands." By following the rules set forth on this card the American fighting man demonstrates to all peoples of all nations that he observes not only the letter, but also the spirit of the Geneva Conventions.

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## **REFERENCES**

- MACV Directive 20-5, Prisoners of War—Determination of Status, 21 Sep 66
- MACV Directive 190-3, Evacuation of Prisoners of War (PWs), 24 May 66
- MACV Directive 381-11 (C), Intelligence Procedures for Handling, Processing and Exploitation of Captives, Returnees, Suspects and Documents (U) 5 Mar 66
- FM 19-40, Enemy Prisoners of War and Civilians, August 1964
- FM 27-10, The Law of Land Warfare, July 1956
- DA Pam 20-151, Lectures of the Geneva Convention of 1949, April 1958.
- MACV Pocket Card, The Enemy in Your Hands.