

**Testimony of W. Hays Parks
before the Senate Committee on Governmental Affairs**

April 10, 2003

Thank you for inviting me to testify on this very important subject.

You have asked me to comment on the 1949 Geneva Convention Relative to the Protection of Prisoners of War, commonly referred to by the acronym "GPW," Department of Defense policies with respect to that Convention in the current conflict with Iraq, and Iraqi violations of the Convention.

Geneva Convention Background

The GPW was negotiated after World War II. Out of 194 nations in the world, 190 are States parties, including the United States and Iraq. More governments are States Parties to this convention than Member States of the United Nations, making it one of the most widely accepted treaties. The protections of the Convention apply when the members of the armed forces of one belligerent nation "fall into the hands" of an enemy belligerent. This can happen through capture or surrender to enemy military forces.

The Geneva Convention provides the following fundamental protections for POWs:

- POWs 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 POW is prohibited and is a serious breach of the Convention.
- POWs must be removed from the battlefield as soon as circumstances permit and at all times protected from physical and mental harm.
- POWs must be provided adequate food, shelter and medical aid.
- POWs must be protected, particularly against acts of violence or intimidation and against insults and public curiosity.
- If questioned, POWs are required to provide their name, rank, serial number, and date of birth. They may not be required or forced to provide any other information.
- POWs 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, POWs are entitled to retain their personal property and protective equipment. These items may not be taken from a POW unless properly accounted for and receipted.
- Representatives from the International Committee of the Red Cross must be permitted access to POWs as soon as practical.
- All POWs must be protected against assault, including sexual assault. Female POWs shall be treated with the regard due to their gender and, like all POWs, are entitled to respect for their person and their honor.

In addition to the GPW, there are other Geneva Conventions relevant to the current conflict. In particular, the United States and Iraq are both parties to the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. The title of this Convention is a bit misleading because it also provides protection for the dead. 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, etc., provided to the International Committee of the Red Cross.

DOD Policies in Conflict with 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 law of war than the United States.

Both the United States and Iraq are parties to the GPW, which the United States fully observes in this conflict. The U.S. and Coalition Forces have planned for the protection and proper treatment of Iraqi POWs 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 POWs. These Iraqi POWs were given all of 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 currently in progress to allow for representatives from the International Committee of the Red Cross to meet with Iraqi POWs. This will take place as soon as their security can be assured.

Iraqi Violations of the Geneva Conventions and Related Laws of War

Unfortunately, the Iraqi regime is not complying with the Geneva Conventions. Before turning to a summary of the Iraqi violations, I should note that in Desert Storm in 1991, the Iraqis mistreated U.S. and Coalition forces in numerous respects, including physical abuse and torture, forced propaganda statements, food deprivation, denial of ICRC access until the day of repatriation, and much more. The Iraqis similarly mistreated Iranian POWs during the 8-year Iran-Iraq war in the 1980s. The Iraqi regime has thus displayed a pattern of systematic disregard for the laws of war.

Based upon briefings and reports in the media, it appears that 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 understand that some of you have seen the tape; I will not describe it in any detail. Suffice it to say that this tape, which was apparently made with the consent or at the direction of the Iraqi regime, shows fundamental violations of the Geneva Convention obligations, including prohibitions on pillage and ill-treatment of the dead, the duty to respect the personal dignity of all captured combatants, and possibly the prohibition against willful killing, torture, inhumane treatment, or the willful causing of great suffering or serious injury to body or health of a 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 GPW.
- 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 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” are among the most fundamental violations of the law of war, endangering Coalition forces and innocent Iraqi civilians.

These are 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 fundamental violations of the law of war.

The Secretary of the Army investigated and recorded Iraqi war crimes during the 1990-1991 Persian Gulf War. 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.