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TO AMEMBASSY CANBERRA IMMEDIATE

UNITED STATES DEPARTMENT OF STATE
 REVIEW AUTHORITY: HARRY R MELONE
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INFO ALL DIPLOMATIC AND CONSULAR POSTS PRIORITY

UNCLAS STATE 024988

E.O. 12958: N/A

TAGS: PTER, KWAC, PREL

SUBJECT: GENEVA CONVENTIONS AND STATUS OF DETAINEES

REFTELS: STATE 6135 (NOTAL), STATE 20095 (NOTAL)

1. THIS CABLE REQUIRES ACTION BY GENEVA. GENEVA SHOULD DELIVER THE POINTS AT PARA. 4 BELOW TO ICRC PRESIDENT KELLENBERGER. REMAINING ACTION ADDRESSEES MAY WISH TO DELIVER THE TALKING POINTS AT PARA. 4 BELOW ORALLY AT A SENIOR LEVEL OF THE HOST GOVERNMENT. THEIR RESPECTIVE WASHINGTON EMBASSIES HAVE ALREADY BEEN INFORMED. INFO ADDRESSEES SHOULD USE THESE POINTS ON AN "IF ASKED" BASIS. THIS CABLE DOES NOT CHANGE USG POLICY REGARDING ACCESS TO DETAINEES AT GUANTANAMO SET FORTH IN REFTELS.

BACKGROUND

2. THE FOLLOWING FACT SHEET WAS ISSUED BY THE WHITE HOUSE ON FEBRUARY 7, 2002.

STATUS OF DETAINEES AT GUANTANAMO

UNITED STATES POLICY

. THE UNITED STATES IS TREATING AND WILL CONTINUE TO TREAT ALL OF THE INDIVIDUALS DETAINED AT GUANTANAMO HUMANELY AND, TO THE EXTENT APPROPRIATE AND CONSISTENT WITH MILITARY NECESSITY, IN A MANNER CONSISTENT WITH THE PRINCIPLES OF THE THIRD GENEVA CONVENTION OF 1949.

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. THE PRESIDENT HAS DETERMINED THAT THE GENEVA CONVENTION APPLIES TO THE TALIBAN DETAINEES, BUT NOT TO THE AL-QAIDA DETAINEES.

. AL-QAIDA IS NOT A STATE PARTY TO THE GENEVA CONVENTION; IT IS A FOREIGN TERRORIST GROUP. AS SUCH, ITS MEMBERS ARE NOT ENTITLED TO POW STATUS.

. ALTHOUGH WE NEVER RECOGNIZED THE TALIBAN AS THE LEGITIMATE AFGHAN GOVERNMENT, AFGHANISTAN IS A PARTY TO THE CONVENTION, AND THE PRESIDENT HAS DETERMINED THAT THE TALIBAN ARE COVERED BY THE CONVENTION. UNDER THE TERMS OF THE GENEVA CONVENTION, HOWEVER, THE TALIBAN DETAINEES DO NOT QUALIFY AS POWS.

. THEREFORE, NEITHER THE TALIBAN NOR AL-QAIDA DETAINEES ARE ENTITLED TO POW STATUS.

. EVEN THOUGH THE DETAINEES ARE NOT ENTITLED TO POW PRIVILEGES, THEY WILL BE PROVIDED MANY POW PRIVILEGES AS A MATTER OF POLICY.

ALL DETAINEES AT GUANTANAMO ARE BEING PROVIDED:

- . THREE MEALS A DAY THAT MEET MUSLIM DIETARY LAWS;
- . WATER;
- . MEDICAL CARE;
- . CLOTHING AND SHOES;
- . SHELTER;
- . SHOWERS;
- . SOAP AND TOILET ARTICLES;
- . FOAM SLEEPING PADS AND BLANKETS;
- . TOWELS AND WASHCLOTHS;
- . THE OPPORTUNITY TO WORSHIP;
- . CORRESPONDENCE MATERIALS, AND THE MEANS TO SEND MAIL;
- . THE ABILITY TO RECEIVE PACKAGES OF FOOD AND CLOTHING, SUBJECT TO SECURITY SCREENING.

THE DETAINEES WILL NOT BE SUBJECTED TO PHYSICAL OR MENTAL ABUSE OR CRUEL TREATMENT. THE INTERNATIONAL COMMITTEE OF THE RED CROSS HAS VISITED AND WILL CONTINUE TO BE ABLE TO VISIT THE DETAINEES PRIVATELY. THE DETAINEES WILL BE PERMITTED TO RAISE CONCERNS ABOUT THEIR CONDITIONS AND WE WILL ATTEMPT TO ADDRESS THOSE CONCERNS CONSISTENT WITH SECURITY.

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HOUSING. WE ARE BUILDING FACILITIES IN GUANTANAMO MORE APPROPRIATE FOR HOUSING THE DETAINEES ON A LONG-TERM BASIS. THE DETAINEES NOW AT GUANTANAMO ARE BEING HOUSED IN TEMPORARY OPEN-AIR SHELTERS UNTIL THESE MORE LONG-TERM FACILITIES CAN BE ARRANGED. THEIR CURRENT SHELTERS ARE REASONABLE IN LIGHT OF THE SERIOUS SECURITY RISK POSED BY THESE DETAINEES AND THE MILD CLIMATE OF CUBA.

POW PRIVILEGES THE DETAINEES WILL NOT RECEIVE. THE DETAINEES WILL RECEIVE MUCH OF THE TREATMENT NORMALLY AFFORDED TO POWS BY THE THIRD GENEVA CONVENTION. HOWEVER, THE DETAINEES WILL NOT RECEIVE SOME OF THE SPECIFIC PRIVILEGES AFFORDED TO POWS, INCLUDING:

- . ACCESS TO A CANTEEN TO PURCHASE FOOD, SOAP, AND TOBACCO;
- . A MONTHLY ADVANCE OF PAY;
- . THE ABILITY TO HAVE AND CONSULT PERSONAL FINANCIAL ACCOUNTS;

THE ABILITY TO RECEIVE SCIENTIFIC EQUIPMENT, MUSICAL INSTRUMENTS OR SPORTS OUTFITS.

MANY DETAINEES AT GUANTANAMO POSE A SEVERE SECURITY RISK TO THOSE RESPONSIBLE FOR GUARDING THEM AND TO EACH OTHER. SOME OF THESE INDIVIDUALS DEMONSTRATED HOW DANGEROUS THEY ARE IN UPRISINGS AT MAZAR-E-SHARIF AND IN PAKISTAN. THE UNITED STATES MUST TAKE INTO ACCOUNT THE NEED FOR SECURITY IN ESTABLISHING THE CONDITIONS FOR DETENTION AT GUANTANAMO.

BACKGROUND ON GENEVA CONVENTIONS. THE THIRD GENEVA CONVENTION OF 1949 IS AN INTERNATIONAL TREATY DESIGNED TO PROTECT PRISONERS OF WAR FROM INHUMANE TREATMENT AT THE HANDS OF THEIR CAPTORS IN CONFLICTS COVERED BY THE CONVENTION. IT IS AMONG FOUR TREATIES CONCLUDED IN THE WAKE OF WWII TO REDUCE THE HUMAN SUFFERING CAUSED BY WAR. THESE FOUR TREATIES PROVIDE PROTECTIONS FOR FOUR DIFFERENT CLASSES OF PEOPLE: THE MILITARY WOUNDED AND SICK IN LAND CONFLICTS; THE MILITARY WOUNDED, SICK AND SHIPWRECKED IN CONFLICTS AT SEA; MILITARY PERSONS AND CIVILIANS ACCOMPANYING THE ARMED FORCES IN THE FIELD WHO ARE CAPTURED AND QUALIFY AS PRISONERS OF WAR; AND CIVILIAN NON-COMBATANTS WHO ARE INTERNED OR OTHERWISE FOUND IN THE HANDS OF A PARTY (E.G., IN A MILITARY OCCUPATION) DURING AN ARMED CONFLICT.

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3. ADDITIONAL BACKGROUND FOR POSTS' USE: PLEASE NOTE THE DECISION REGARDING STATUS OF THE DETAINEES HAS NO/NO EFFECT ON THE PROCEDURES FOR GAINING ACCESS (REFTELS). THE POLICY CONTINUES TO BE THAT ACCESS IS GRANTED AT GTMO UPON APPROVAL BY DOD ONLY FOR LAW ENFORCEMENT AND INTELLIGENCE PURPOSES. FORMAL REQUESTS SHOULD BE MADE TO THE PM WORKING GROUP AND SHOULD INCLUDE A DESCRIPTION OF THE LAW ENFORCEMENT OR INTELLIGENCE RELATED POSITION HELD BY THE GOVERNMENT OFFICIALS SEEKING ACCESS.

4. TALKING POINTS

-- THE U.S. HAS TREATED AND WILL TREAT ALL TALIBAN AND AL QAIDA DETAINEES HUMANELY AND CONSISTENT WITH THE PRINCIPLES OF THE GENEVA CONVENTION.

-- THE PRESIDENT'S FEBRUARY 7 DECISION ON TALIBAN AND AL QAIDA DETAINEES CONCERNED THE APPLICABILITY OF THE GENEVA CONVENTION. AFTER CHAIRING TWO MEETINGS OF THE NSC ON THE ISSUE, PRESIDENT BUSH HAS DECIDED THAT THE GENEVA CONVENTION APPLIES TO TALIBAN DETAINEES, BUT NOT THE AL QAIDA DETAINEES.

-- AL QAIDA IS A FOREIGN TERRORIST GROUP AND CANNOT BE CONSIDERED A STATE PARTY TO THE GENEVA CONVENTION. ITS MEMBERS THEREFORE ARE NOT COVERED BY THE GENEVA CONVENTION AND CANNOT HAVE POW STATUS UNDER IT.

-- IN CONTRAST, AFGHANISTAN IS A PARTY TO THE GENEVA CONVENTION. ALTHOUGH WE HAVE NOT RECOGNIZED THE TALIBAN AS THE LEGITIMATE AFGHAN GOVERNMENT, THE PRESIDENT DETERMINED THAT TALIBAN MEMBERS ARE COVERED BY THE TREATY BECAUSE AFGHANISTAN IS A PARTY TO THE CONVENTION.

-- UNDER ARTICLE 4 OF THE CONVENTION, HOWEVER, TALIBAN DETAINEES ARE NOT ENTITLED TO POW STATUS. THEY DO NOT FALL WITHIN ANY OF THE CATEGORIES OF PERSONS SET FORTH IN ARTICLE 4 WHO QUALIFY FOR POW TREATMENT.

-- THE GENEVA CONVENTION REQUIRES A TRIBUNAL ONLY IF THERE IS "ANY DOUBT". THE U.S. HAS NO DOUBT THAT THE AL QAIDA AND TALIBAN DETAINEES [BEING HELD IN GUANTANAMO] ARE NOT POWS.

-- THIS DECISION DOES NOT AFFECT TREATMENT OF THE

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DETAINEES. THEY HAVE BEEN AND WILL BE TREATED HUMANELY AND RECEIVE: THREE MEALS A DAY, MEDICAL CARE, CLOTHING, SHELTER, SHOWERS, AND THE OPPORTUNITY TO WORSHIP. THE INTERNATIONAL COMMITTEE OF THE RED CROSS CAN VISIT EACH DETAINEE PRIVATELY, A RIGHT ACCORDED ONLY TO POWS.

-- THE WAR ON TERRORISM IS A NEW TYPE OF WAR NOT ENVISIONED WHEN THE GENEVA CONVENTION WAS SIGNED IN 1949. IN THIS WAR, GLOBAL TERRORISTS TRANSCEND NATIONAL BOUNDARIES, AND INTENTIONALLY TARGET THE INNOCENT.

-- THE PRESIDENT HAS MAINTAINED THE UNITED STATES' COMMITMENT TO THE GENEVA CONVENTION, WHILE RECOGNIZING THAT THE CONVENTION SIMPLY DOES NOT COVER EVERY SITUATION IN WHICH PEOPLE MAY BE CAPTURED OR DETAINED BY MILITARY FORCES, AS WE SEE IN AFGHANISTAN TODAY. HE ARRIVED AT A

JUST, PRINCIPLED, AND PRACTICAL SOLUTION TO A DIFFICULT ISSUE.

-- THE U.S. REMAINS COMMITTED TO THE GENEVA CONVENTION AND PROUD OF ITS 50 YEARS OF COMPLIANCE WITH THE CONVENTION. WE ARE ALSO OPEN TO DISCUSSING WITH OTHER NATIONS THE POSSIBILITY OF A NEW INSTRUMENT CONCERNING THE TREATMENT OF DETAINED PERSONS IN CONFLICTS NOT ENVISIONED IN 1949.

-- THIS DECISION SHOULD HAVE NO LEGAL OR PRACTICAL EFFECT ON U.S. ARMED FORCES, WHICH ARE A REGULAR ARMED FORCE THAT COMPLIES WITH THE LAWS AND CUSTOMS OF WAR.

5. PRESS STATEMENT

FEBRUARY 7, 2002

STATEMENT BY THE PRESS SECRETARY

THE JAMES S. BRADY BRIEFING ROOM

1:40 P.M. EST

MR. FLEISCHER: I HAVE AN ANNOUNCEMENT TO MAKE. TODAY PRESIDENT BUSH AFFIRMS OUR ENDURING COMMITMENT TO THE IMPORTANT PRINCIPLES OF THE GENEVA CONVENTION. CONSISTENT WITH AMERICAN VALUES AND THE PRINCIPLES OF THE GENEVA CONVENTION, THE UNITED STATES HAS TREATED AND WILL

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CONTINUED TO TREAT ALL TALIBAN AND AL QAEDA DETAINEES IN GUANTANAMO BAY HUMANELY AND CONSISTENT WITH THE PRINCIPLES OF THE GENEVA CONVENTION.

THEY WILL CONTINUE TO RECEIVE THREE APPROPRIATE MEALS A DAY, EXCELLENT MEDICAL CARE, CLOTHING, SHELTER, SHOWERS, AND THE OPPORTUNITY TO WORSHIP. THE INTERNATIONAL COMMUNITY OF THE RED CROSS CAN VISIT EACH DETAINEE PRIVATELY.

IN ADDITION, PRESIDENT BUSH TODAY HAS DECIDED THAT THE GENEVA CONVENTION WILL APPLY TO THE TALIBAN DETAINEES, BUT NOT THE AL QAEDA INTERNATIONAL TERRORISTS.

AFGHANISTAN IS A PARTY TO THE GENEVA CONVENTION. ALTHOUGH THE UNITED STATES DOES NOT RECOGNIZE THE TALIBAN AS A LEGITIMATE AFGHANI GOVERNMENT, THE PRESIDENT DETERMINED THAT THE TALIBAN MEMBERS ARE COVERED UNDER THE TREATY BECAUSE AFGHANISTAN IS A PARTY TO THE CONVENTION.

UNDER ARTICLE 4 OF THE GENEVA CONVENTION, HOWEVER, TALIBAN DETAINEES ARE NOT ENTITLED TO POW STATUS. TO QUALIFY AS POWS UNDER ARTICLE 4, AL QAEDA AND TALIBAN DETAINEES WOULD HAVE TO HAVE SATISFIED FOUR CONDITIONS: THEY WOULD HAVE TO BE PART OF A MILITARY HIERARCHY; THEY WOULD HAVE TO HAVE WORN UNIFORMS OR OTHER DISTINCTIVE SIGNS VISIBLE AT A DISTANCE; THEY WOULD HAVE TO HAVE CARRIED ARMS OPENLY; AND THEY WOULD HAVE TO HAVE CONDUCTED THEIR MILITARY OPERATIONS IN ACCORDANCE WITH THE LAWS AND CUSTOMS OF WAR.

THE TALIBAN HAVE NOT EFFECTIVELY DISTINGUISHED THEMSELVES FROM THE CIVILIAN POPULATION OF AFGHANISTAN. MOREOVER, THEY HAVE NOT CONDUCTED THEIR OPERATIONS IN ACCORDANCE WITH THE LAWS AND CUSTOMS OF WAR. INSTEAD, THEY HAVE KNOWINGLY ADOPTED AND PROVIDED SUPPORT TO THE UNLAWFUL TERRORIST OBJECTIVES OF THE AL QAEDA.

AL QAEDA IS AN INTERNATIONAL TERRORIST GROUP AND CANNOT BE CONSIDERED A STATE PARTY TO THE GENEVA CONVENTION. ITS MEMBERS, THEREFORE, ARE NOT COVERED BY THE GENEVA CONVENTION, AND ARE NOT ENTITLED TO POW STATUS UNDER THE TREATY.

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INTERNATIONALLY TARGET THE INNOCENT. THE PRESIDENT HAS MAINTAINED THE UNITED STATES' COMMITMENT TO THE PRINCIPLES OF THE GENEVA CONVENTION, WHILE RECOGNIZING THAT THE CONVENTION SIMPLY DOES NOT COVER EVERY SITUATION IN WHICH PEOPLE MAY BE CAPTURED OR DETAINED BY MILITARY FORCES, AS WE SEE IN AFGHANISTAN TODAY.

HE ARRIVED AT A JUST, PRINCIPLED AND PRACTICAL SOLUTION TO A DIFFICULT ISSUE. THE PRESIDENT DID SO BECAUSE, AS AMERICANS, THE WAY WE TREAT PEOPLE IS A REFLECTION OF AMERICA'S VALUES. THE MILITARY OPERATES UNDER A CODE OF

CONDUCT THAT UPHOLDS THESE VALUES, BASED ON THE DIGNITY OF EVERY INDIVIDUAL.

THE AMERICAN PEOPLE CAN TAKE GREAT PRIDE IN THE WAY OUR MILITARY IS TREATING THESE DANGEROUS DETAINEES. THE CONVENTION REMAINS AS IMPORTANT TODAY AS IT WAS THE DAY IT WAS SIGNED, AND THE UNITED STATES IS PROUD OF ITS 50-YEAR HISTORY IN COMPLIANCE WITH THE CONVENTION.

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