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MILITARY COMMISSIONS

Background

(U) On November 13, 2001, President Bush issued a Military Order authorizing trial of detainees by military commission and requiring the Secretary of Defense to issue regulations governing the conduct of such commissions. On March 21, 2002, after interagency review and consultations with government and outside experts, the Secretary of Defense issued the regulations in Military Commission Order No. 1.

- (U) Military commissions are well-established in U.S. law and practice, as well as international law and practice.
- (U) The U.S. used military commissions in the Revolutionary War, the Mexican-American War, the American Civil War, World War II, and the U.S. Supreme Court has upheld the practice in several cases. Europeans have used military commissions since at least the 19th century. They used them extensively following WWI and WWII, but apparently have not used them in recent years.
- (U) The Allies tried thousands of individuals in national military commissions after WWII, and in the International Military Tribunal at Nuremberg.
- (U) Since WWII, the U.S. has improved its system of military justice by increasing procedural safeguards and eliminating command influence.
- (U) DOD's recently issued regulations provide procedural safeguards, including appellate review, consistent with U.S. and international law.
- (U) The regulations are consistent with international humanitarian law standards, including the fair trial provisions in the 1949 Geneva Conventions and the 1977 Protocols (the US is not a party to the Protocols, but accepts Article 75 on fair trials as customary international law). The Int'l Covenant on Civil and Political Rights is not part of international humanitarian law, but the regulations nonetheless satisfy its basic requirements.
- (U) The President has not yet designated any individuals for trial by military commission.

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