

Current Class: UNCLASSIFIED  
 Current Handling: n/a  
 Document Number: 2003STATE207094

Channel: n/a

&lt;&lt;&lt;&gt;&gt;

RELEASED IN FULL

ORIGIN EUR-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	CIAE-00	INL-00	DODE-00
	DOTE-00	SRPP-00	EB-00	FAAE-00	FBIE-00	UTED-00	VC-00
	TEDE-00	INR-00	IO-00	JUSE-00	LAB-01	L-00	VCE-00
	AC-01	DCP-01	NSAE-00	NSCE-00	OIC-02	DHS-00	OPIC-01
	PA-00	TFBI-00	PRS-00	ACE-00	P-00	SP-00	STR-00
	TEST-00	TRSE-00	USIE-00	R-00	PRM-00	DRL-00	G-00
	SAS-00	SWCI-00	/006R				

207094

SOURCE: KODAKA.017013

DRAFTED BY: EUR/RPM:GFREDERICK -- 05/16/03 67291

APPROVED BY: EUR/RPM:JYOUNG

L/HRR:FGAFFNEY

-----85A365 170154Z /38

O 170150Z JUL 03

FM SECSTATE WASHDC

TO USMISSION USOSCE IMMEDIATE

UNCLAS STATE 207094

E.O. 12958: N/A

TAGS: OSCE, PHUM, UN,

SUBJECT: OSCE GUIDANCE ON MILITARY COMMISSION

REF: EMAIL FREDERICK-SOBOTKA JULY 14

1. IN RESPONDING TO STATEMENTS AND/OR ON THE RULES  
 RELATING TO MILITARY JUDICIAL COMMISSIONS AND THE RULE OF  
 LAW IN THE U.S. AT THE OSCE PC, POST MAY DRAW FROM THE  
 FOLLOWING TEXT.

2. BEGIN POINTS:

MILITARY COMMISSIONS

WE HAVE RECEIVED ODIHR'S INQUIRY AND WILL PROVIDE A WRITTEN  
 RESPONSE IN DUE COURSE.

TRIAL BY MILITARY COMMISSION IS A COMMON AND WELL-  
 ESTABLISHED PRACTICE RECOGNIZED BY INTERNATIONAL LAW.

THE U.S. HAS USED MILITARY COMMISSIONS SINCE THE  
 REVOLUTIONARY WAR, INCLUDING IN THE MEXICAN-AMERICAN WAR,  
 THE U.S. CIVIL WAR, AND WWII. THE EUROPEANS ALSO USED  
 MILITARY COMMISSIONS EXTENSIVELY IN THE 19TH AND 20TH

Current Class: UNCLASSIFIED

Page: 1

UNITED STATES DEPARTMENT OF STATE  
 REVIEW AUTHORITY: ARCHIE M BOLSTER  
 DATE/CASE ID: 04 NOV 2004 200303827

UNCLASSIFIED

DOS-002696

CENTURIES, INCLUDING IN WWI AND WWII.

AS A MATTER OF HISTORIC PRECEDENT, THE U.S. AND ITS EUROPEAN ALLIES HAVE CONVENED MILITARY COURTS OR

COMMISSIONS PRIMARILY IN CONNECTION WITH WAR-RELATED OFFENSES.

THE THIRD GENEVA CONVENTION OF 1949 EXPRESSLY CREATES A PRESUMPTION THAT PRISONERS OF WAR "SHALL BE TRIED ONLY BY A MILITARY COURT" UNLESS THE EXISTING LAW OF THE DETAINING COUNTRY EXPRESSLY PERMITS ITS CIVIL COURTS TO TRY A MEMBER OF ITS OWN ARMED FORCES.

U.S. MILITARY COMMISSIONS, IF CONVENED, WOULD BE STATUTORILY AND CONSTITUTIONALLY AUTHORIZED. THE UNIFORM CODE OF MILITARY JUSTICE EXPRESSLY RECOGNIZES THE JURISDICTION OF MILITARY COMMISSIONS.

THE MILITARY COMMISSIONS WILL BE IMPARTIAL. THEY WILL PROVIDE FULL AND FAIR TRIALS. WE BELIEVE THAT THE PROCEDURES FOR THE COMMISSIONS PROVIDE APPROPRIATE DUE PROCESS SAFEGUARDS. THEY ARE CONSISTENT WITH FUNDAMENTAL INTERNATIONAL STANDARDS GOVERNING CRIMINAL TRIALS.

THEY ARE CONSISTENT WITH THE PROCEDURAL SAFEGUARDS FOUND IN THE GENEVA CONVENTIONS OF 1949 AND ARTICLE 75 OF PROTOCOL 1 OF 1977 TO THE GENEVA CONVENTIONS. (THE UNITED STATES IS NOT A PARTY TO THE PROTOCOL.)

ALTHOUGH THE RULES ADDRESS A DIFFERENT BODY OF LAW, THEY ARE ALSO CONSISTENT WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

(NOTE: BELOW ARE MORE DETAILED POINTS ON THE PROCEDURES, FROM 02 STATE 20095. IT WOULD BE PREFERABLE FOR THE USG TO ADDRESS THESE, AS APPROPRIATE, IN THE WRITTEN RESPONSE RATHER THAN IN TOMORROW'S INTERVENTION):

IN PARTICULAR, THE PROCEDURES INCLUDE THE FOLLOWING:

- THE PRESUMPTION OF INNOCENCE
- CHOICE OF MILITARY AND CIVILIAN COUNSEL
- THE HIGH STANDARD OF PROOF OF GUILT BEYOND A REASONABLE DOUBT
- THE DEATH PENALTY CAN ONLY BE IMPOSED BY A UNANIMOUS DECISION OF A 7-MEMBER PANEL
- REVIEW BY AN IMPARTIAL, 3-MEMBER PANEL (POSSIBLY INCLUDING CIVILIANS WHO ARE TEMPORARILY COMMISSIONED)

THE ACCUSED IS NOT REQUIRED TO TESTIFY, AND NO ADVERSE INFERENCE MAY BE DRAWN FROM A REFUSAL TO TESTIFY.

THE ACCUSED MAY PRESENT EVIDENCE IN HIS DEFENSE AND MAY CROSS-EXAMINE WITNESSES PRESENTED BY THE PROSECUTION.

PROCEEDINGS WILL BE OPEN TO THE PUBLIC "TO THE MAXIMUM EXTENT PRACTICABLE" (BUT THEY CAN BE CLOSED TO PROTECT NATIONAL SECURITY AND OTHER INTERESTS). AT ALL TIMES, INCLUDING IN ANY CLOSED PROCEEDINGS, THE ACCUSED WILL BE REPRESENTED BY COUNSEL.

THE PROSECUTION WILL PROVIDE THE ACCUSED WITH ACCESS TO EVIDENCE THE PROSECUTION INTENDS TO INTRODUCE AT TRIAL AND WITH ACCESS TO EVIDENCE KNOWN TO THE PROSECUTION THAT IS INCONSISTENT WITH THE ALLEGED GUILT OF THE ACCUSED.

THE REVIEW PANEL HAS THE AUTHORITY TO RETURN THE CASE FOR FURTHER PROCEEDINGS IF A MAJORITY OF ITS MEMBERS HAVE A DEFINITE AND FIRM CONVICTION THAT A MATERIAL ERROR OF LAW OCCURRED.

END POINTS.  
POWELL

NNNN