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C O N F I D E N T I A L STATE 071656

E.O. 12958: DECL: 03/17/2008

TAGS: PHUM, AORC

SUBJECT: POINTS RE: NON-USE OF TORTURE OR OTHER CRUEL
PUNISHMENT

CLASSIFIED BY: IO PDAS J. SWIGERT REASON 1.5 (D).



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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: SHARON E AHMAD
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2. (SBU) IF-ASKED GUIDANCE.

KEY POINTS ON DETAINEE TREATMENT

Z THE UNITED STATES DOES NOT PERMIT, TOLERATE, OR CONDONE TORTURE. PERIOD. PRESIDENT BUSH REAFFIRMED THIS TO U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS SERGIO VIEIRA DE MELLO ON MARCH 3RD OF THIS YEAR. TORTURE IS A VIOLATION OF U.S. LAW. ALLEGATIONS OF TORTURE ARE THOROUGHLY INVESTIGATED.

Z THIS FUNDAMENTAL PRINCIPLE REMAINS TRUE DESPITE THE ATROCITY COMMITTED AGAINST OUR PEOPLE ON SEPTEMBER 11, 2001, BY THOSE WHO OBSERVED NO INTERNATIONAL LEGAL NORMS, WHO DISREGARDED THE LAW OF ARMED CONFLICT, AND WHO HAD NO REGARD FOR THE LIVES OF THOUSANDS OF INNOCENT AMERICANS OR THE ANGUISH OF THEIR FAMILIES.

Z DETAINEES IN U.S. CONTROL GET EXCELLENT MEDICAL CARE. SINCE DETENTION OPERATIONS BEGAN WE HAVE TREATED WOUNDS SUSTAINED IN BATTLE AND RELIEVED PAIN AND SUFFERING THAT PRE-DATES DETENTION. ALL DETAINEES ARE TREATED CONSISTENT WITH APPLICABLE UNITED STATES LAW AND INTERNATIONAL LAW AGAINST TORTURE, DESPITE THE TOTAL DISREGARD FOR ALL OF THESE, AS WELL AS BASIC STANDARDS OF HUMAN DECENCY, ON THE PART OF OUR ATTACKERS.

Z THE UNITED STATES IS STRONGLY COMMITTED TO PROTECTING AND ADVANCING HUMAN RIGHTS. OUR DETAINEE POLICY IS NO EXCEPTION. WE HAVE BEEN A CLEAR AND CONSISTENT OPPONENT OF TORTURE THROUGHOUT THE WORLD. WE HAVE BEEN VOCAL ON THIS ISSUE AND UNWAVERING IN OUR EFFORTS TO URGE GOVERNMENTS TO STOP THE PRACTICE.

Z A NUMBER OF DETAINEES ARE SENIOR AL-QA'IDA OPERATIVES OR OTHERS COMMITTED TO KILLING AMERICANS AND OTHERS. THEY HAVE BEEN, AND WILL CONTINUE TO BE, QUESTIONED AGGRESSIVELY IN ORDER TO PROTECT THE LIVES OF AMERICANS AND OTHERS. HOWEVER, U.S. GOVERNMENT PERSONNEL ARE NOT PERMITTED TO TORTURE DETAINEES OR PARTICIPATE IN TORTURE BY OTHERS. THEY CONDUCT THEMSELVES IN A MANNER THAT COMPLIES WITH APPLICABLE LAW.

Z FALSE AND IRRESPONSIBLE ALLEGATIONS THAT THE UNITED STATES IS TORTURING DETAINED ENEMY COMBATANTS TRIVIALIZE THE

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REAL TORTURE, WHETHER OF POLITICAL ENEMIES, MEMBERS OF DIFFERENT ETHNIC GROUPS, OR THOSE SIMPLY BRAVE ENOUGH TO SPEAK THEIR MINDS UNDER TOTALITARIAN REGIMES, THAT STILL IS ALL TOO COMMON IN MANY COUNTRIES AROUND THE WORLD.

Z DETAINEES IN THE WAR ON TERRORISM ARE NOT CRIMINALS AWAITING TRIAL ON CRIMINAL CHARGES. THEY ARE ENEMY COMBATANTS. THE RIGHT OF STATES TO DETAIN THEIR ATTACKERS, AND THOSE AFFILIATED WITH THEM, FOR THE DURATION OF A CONFLICT IS UNCHALLENGED. THE DETENTION OF AN ENEMY COMBATANT IS NOT AN ACT OF PUNISHMENT BUT ONE OF SECURITY AND MILITARY NECESSITY. IT SERVES THE IMPORTANT PURPOSE OF PREVENTING AN ENEMY COMBATANT FROM CONTINUING TO FIGHT AGAINST US. THE CRIMINAL JUSTICE SYSTEM SIMPLY IS NOT RELEVANT TO ENEMY COMBATANTS DETAINED IN A WAR.

Z IN ANY CASES WHERE THE UNITED STATES TRANSFERS DETAINEES TO OTHER COUNTRIES FOR DETENTION, WE SEEK AND RECEIVE ASSURANCES THAT DETAINEES WILL NOT BE TORTURED.

(IF ASKED ABOUT SPECIFIC TRANSFEREE COUNTRIES)

Z I WILL NOT DISCUSS SPECIFIC DETAILS CONCERNING ANY TRANSFER OF DETAINEES TO THIRD COUNTRIES IN THE WAR ON TERRORISM.

SUGGESTED RESPONSES TO SPECIFIC QUESTIONS (IF ASKED)

NOTE: RESPONSES IMMEDIATELY BELOW IS FOR USE IF ASKED ABOUT CONDITIONS AT GUANTANAMO.

CAN YOU ASSURE US CATEGORICALLY THAT AL-QA'IDA AND TALIBAN DETAINEES AT GUANTANAMO ARE CONSISTENTLY TREATED HUMANELY AND IN FULL ACCORD WITH THE GENEVA CONVENTION AND ALL OTHER INTERNATIONAL LAW?

Z AS OUR GOVERNMENT HAS PREVIOUSLY STATED, THE UNITED STATES ARMED FORCES HAVE TREATED, AND WILL CONTINUE TO TREAT, ALL 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, EVEN THOUGH NEITHER AL-QA'IDA NOR TALIBAN DETAINEES AT GUANTANAMO ARE ENTITLED TO POW STATUS.

Z EVEN THOUGH THE GUANTANAMO DETAINEES ARE NOT ENTITLED TO POW RIGHTS AND PRIVILEGES, THEY ARE PROVIDED, AS A MATTER OF POLICY, MANY PRIVILEGES SIMILAR TO POWS. AS EXAMPLES, ALL DETAINEES AT GUANTANAMO ARE PROVIDED: THREE MEALS A DAY THAT MEET MUSLIM DIETARY REQUIREMENTS; ADEQUATE SHELTER AND WATER;

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EXCELLENT MEDICAL AND DENTAL CARE ON A PAR WITH THAT PROVIDED TO U.S. ARMED FORCES; CLOTHING AND SHOES; SHOWERS, SOAP, AND TOILET ARTICLES; THE OPPORTUNITY TO WORSHIP; AND THE MEANS TO SEND AND RECEIVE MAIL, SUBJECT TO SECURITY SCREENING.

Z SINCE DETENTION OPERATIONS BEGAN WE HAVE TREATED WOUNDS SUSTAINED IN BATTLE AND TREATED AILMENTS IN DETAINEES THAT PRE-DATE CAPTURE.

Z THE GUANTANAMO DETAINEES ARE NOT SUBJECTED TO PHYSICAL OR MENTAL ABUSE OR CRUEL TREATMENT.

Z THE INTERNATIONAL COMMITTEE OF THE RED CROSS HAS VISITED AND WILL CONTINUE TO BE ABLE TO VISIT THE DETAINEES.

Z DETAINEES MAY RAISE CONCERNS ABOUT THEIR CONDITIONS AND WE ATTEMPT TO ADDRESS THOSE CONCERNS CONSISTENT WITH SECURITY AND OPERATIONAL REQUIREMENTS.

IS THIS TRUE FOR ALL U.S. DETAINEES ANYWHERE IN THE WORLD?

Z I AM NOT GOING TO GO FURTHER INTO THE DETAILS OF U.S. AND ALLIED EFFORTS TO FIGHT THE WAR ON TERRORISM, INCLUDING OUR DETENTION POLICIES.

Z THE UNITED STATES NEITHER PERMITS, CONDONES, NOR TOLERATES TORTURE, WHICH WOULD BE A VIOLATION OF U.S. LAW.

HOW DO YOU RESPOND TO SPECIFIC ALLEGATIONS THAT DETAINEES ARE SUBJECTED TO SLEEP DEPRIVATION, BEING FORCED TO STAND FOR LONG PERIODS OF TIME, AND HAVING BRIGHT LIGHTS SHINED ON THEM?

Z AGAIN, I AM NOT GOING TO DISCUSS THE DETAILS OF HOW WE FIGHT THE WAR ON TERRORISM. U.S. GOVERNMENT PERSONNEL ARE NOT PERMITTED TO TORTURE DETAINEES OR PARTICIPATE IN TORTURE BY OTHERS. THEY CONDUCT THEMSELVES IN A MANNER THAT COMPLIES WITH APPLICABLE LAW.

DOES THE UNITED STATES DELIBERATELY HAND OVER DETAINEES TO FOREIGN POWERS KNOWING THEY WILL BE TORTURED DURING INTERROGATIONS?

Z IN CASES WHERE THE UNITED STATES TRANSFERS DETAINEES TO OTHER COUNTRIES FOR DETENTION OR QUESTIONING ON OUR BEHALF, WE SEEK AND RECEIVE ASSURANCES THAT DETAINEES WILL NOT BE TORTURED.

(IF ASKED ABOUT SPECIFIC TRANSFEREE COUNTRIES)

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Z I WILL NOT DISCUSS ANY SPECIFIC DETAILS ABOUT THE CONDUCT OF THE WAR ON TERRORISM, INCLUDING DETAILS CONCERNING ANY TRANSFER OF DETAINEES TO THIRD COUNTRIES.

IF THE UNITED STATES REFUSES TO CHARGE DETAINEES WITH CRIMES, AREN'T YOU LEGALLY REQUIRED TO RELEASE THEM?

Z THE UNITED STATES AND ITS COALITION PARTNERS ARE AT WAR WITH AL-QA'IDA AND ITS SUPPORTERS; A WAR WHICH WE DID NOT START. INTERNATIONAL LAW HAS LONG RECOGNIZED THE RIGHTS OF STATES TO DEFEND THEMSELVES AND DETAIN ENEMY COMBATANTS UNTIL THE CESSATION OF HOSTILITIES. THIS HAS BEEN THE PRACTICE OF THE U.S. AND ITS ALLIES IN EVERY MODERN WAR.

Z IN THIS, AS IN ALL WARS, IT IS IMPOSSIBLE TO PREDICT WHEN HOSTILITIES WILL END. DESPITE OUR EFFORTS, AL-QA'IDA AND ITS SUPPORTERS CONTINUE TO ATTEMPT TO ATTACK U.S. CITIZENS AND INTERESTS, OUR FRIENDS AND ALLIES.

Z AL-QA'IDA AND ASSOCIATED TERRORIST GROUPS STILL PRESENT A VERY REAL THREAT TO U.S. CITIZENS, SPECIFICALLY TARGETING CIVILIANS, AND CONTINUE TO WAGE WAR AGAINST US.

Z THE UNITED STATES HAS THE RIGHT UNDER INTERNATIONAL LAW - AND THE RESPONSIBILITY UNDER OUR CONSTITUTION - TO PROTECT AND DEFEND OUR PEOPLE AGAINST FURTHER ATTACKS.

Z OUR ACTIONS IN THE WAR ON TERRORISM, INCLUDING CONTINUED DETENTION OF ENEMY COMBATANTS, BENEFIT NOT ONLY OUR PEOPLE, BUT ALL PEOPLE WHO COULD BECOME TARGETS.

Z SOME HAVE ERRONEOUSLY CLAIMED THAT THE UNITED STATES IS VIOLATING DOMESTIC AND INTERNATIONAL LAWS THAT PROHIBIT THE "INDEFINITE" DETENTION OF INDIVIDUALS WITHOUT TRIAL. THIS FAULTY ASSUMPTION HAS LED SOME TO PRESSURE THE U.S. GOVERNMENT TO EXPEDITE INTERROGATIONS AND INVESTIGATIONS, AND QUICKLY DECIDE THE FATE OF ALL ENEMY COMBATANTS. THERE IS BROAD AUTHORITY UNDER THE LAWS AND CUSTOMS OF WAR TO DETAIN ENEMY COMBATANTS, WITHOUT ANY REQUIREMENT TO BRING CRIMINAL CHARGES WHILE HOSTILITIES LAST. CRIMINAL LAW PROVISIONS, WHETHER IN THE U.S. OR ELSEWHERE, SIMPLY ARE NOT RELEVANT HERE.

Z AL-QA'IDA IS A TERRORIST ORGANIZATION, UNLAWFULLY ENGAGED IN AN ARMED CONFLICT TARGETING CIVILIANS AND MILITARY PERSONNEL AND OBJECTS AROUND THE WORLD. AL-QA'IDA'S CONDUCT FLAGRANTLY VIOLATES EVEN THE MOST FUNDAMENTAL LAWS AND

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CUSTOMS OF WAR. IN ADDITION TO UNLAWFULLY TARGETING CIVILIANS, AL-QA'IDA'S METHODS AND MEANS OF WAGING WAR ARE AT ODDS WITH EVERY REQUIREMENT APPLICABLE TO LAWFUL ARMED FORCES.

Z WE CANNOT HAVE AN INTERNATIONAL LEGAL SYSTEM IN WHICH HONORABLE SOLDIERS WHO ABIDE BY THE LAW OF ARMED CONFLICT AND ARE CAPTURED ON THE BATTLEFIELD MAY BE DETAINED AND HELD UNTIL THE END OF A WAR, BUT TERRORISTS WHO VIOLATE THE LAW OF ARMED CONFLICT MUST BE RELEASED AND ALLOWED TO CONTINUE THEIR BELLIGERENT, UNLAWFUL, OR TERRORIST ACTIVITIES. SUCH A LEGAL REGIME WOULD SIGNAL TO THE INTERNATIONAL COMMUNITY THAT IT IS ACCEPTABLE FOR ARMIES TO BEHAVE LIKE TERRORISTS.

WHY DOES THE UNITED STATES STILL REFUSE TO GRANT ALL DETAINEES "POW STATUS?" DOESN'T THIS VIOLATE ARTICLES 4 AND 5 OF THE THIRD GENEVA CONVENTION?

Z MEMBERS OF THE TALIBAN AND AL-QA'IDA ARE NOT ENTITLED TO PRISONER OF WAR STATUS UNDER THE THIRD GENEVA CONVENTION. THAT PRIVILEGE EXTENDS ONLY TO SOLDIERS WHO THEMSELVES OBSERVE THE LAW OF ARMED CONFLICT AND COMPLY WITH THE PROVISIONS OF THE GENEVA CONVENTIONS.

Z IT IS IMPORTANT TO THE RULE OF LAW THAT WE NOT ACCORD AL-QA'IDA AND THE TALIBAN, OR ANY OTHERS WHO FAIL TO ABIDE BY THE LAW OF ARMED CONFLICT, THE RIGHTS AND PRIVILEGES OF THOSE WHO DO. DOING SO WOULD DISSERVE THE WORLD'S INTERESTS BY DIMINISHING THE PRINCIPLES EMBODIED IN THE GENEVA CONVENTIONS AND COULD EVEN ENCOURAGE ARMIES TO BEHAVE LIKE TERRORISTS.

Z NONETHELESS, DETAINEES ARE KEPT SAFE, AND ARE PROVIDED WITH EXCELLENT MEDICAL CARE AND NUTRITION. DESPITE WHAT THE TERRORISTS DID TO INNOCENT AMERICANS AND OTHERS - AND ARE CONSTANTLY PLOTTING TO DO AGAIN - U.S. GOVERNMENT PERSONNEL ARE NOT AUTHORIZED OR PERMITTED TO TORTURE THEM.

Z THE US WILL NOT WAVER IN ITS COMMITMENT TO PROTECT ITS CITIZENS, FRIENDS, AND ALLIES. WE WANT TO FIND THOSE INDIVIDUALS RESPONSIBLE FOR PAST ATTACKS, PREVENT FUTURE ATTACKS, AND DEFEAT TERRORISM AND TERRORIST ORGANIZATIONS, INCLUDING AL-QA'IDA AND ITS SUPPORTERS.

QUESTIONS HAVE BEEN RAISED ABOUT SPECIFIC CASES OF MISTREATMENT, INCLUDING THE REPORTED DEATHS OF TWO DETAINEES UNDER U.S. CONTROL IN AFGHANISTAN

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Z U.S. OFFICIALS INVESTIGATE REPORTS OF MISTREATMENT OR INJURIES TO DETAINEES.

Z ON DECEMBER 17, 2002, THE UNITED STATES ANNOUNCED THAT IT HAD INITIATED AN INVESTIGATION INTO THE DEATHS OF TWO DETAINEES HELD BY U.S. ARMED FORCES IN AFGHANISTAN. THIS INVESTIGATION IS ONGOING AND WE WILL NOT DISCUSS ANY DETAILS ABOUT IT.

Z U.S. ARMED FORCES ARE WELL TRAINED IN THE PROPER TREATMENT OF DETAINEES.

- - - - -
WHY HAVE SOME DETAINEES BEEN RELEASED? WILL MORE DETAINEES BE RELEASED?

Z AS APPROPRIATE, THE UNITED STATES MAY RELEASE INDIVIDUALS WHO NO LONGER POSE A THREAT TO OUR COUNTRY OR OUR INTERESTS, OR WHO OTHERWISE NO LONGER REQUIRE DETENTION UNDER U.S. CONTROL.

Z DEFENSE SECRETARY RUMSFELD HAS STATED HIS INTENTION NOT TO HOLD ANYONE LONGER THAN NECESSARY. TO THAT END, OUR DEPARTMENT OF DEFENSE HAS PROCEDURES IN PLACE TO ASSESS, SYSTEMATICALLY AND PERIODICALLY, THE GUANTANAMO DETAINEE POPULATION AND DETERMINE, AMONG OTHER THINGS, IF CONTINUED DETENTION IS NECESSARY FOR EACH INDIVIDUAL.

Z THE DEPARTMENT OF DEFENSE HAS ALREADY APPROVED THE RELEASE OF A NUMBER OF DETAINEES AT THE GUANTANAMO BAY DETENTION FACILITY AND ANTICIPATES THAT THERE WILL BE ADDITIONAL DETAINEE RELEASES IN THE FUTURE.

Z IT IS IMPORTANT TO STRESS THAT THE DOD ASSESSMENT PROCESS IS DELIBERATE, THOROUGH, AND TIME-CONSUMING. FUNDAMENTALLY, WE MUST ENSURE THAT THE RELEASE OF AN ENEMY COMBATANT DOES NOT CREATE A SECURITY RISK TO THE UNITED STATES, ITS ALLIES, OR OTHERS. WE WILL ABIDE BY APPLICABLE U.S. LAW AND THE LAW OF ARMED CONFLICT, AS APPLICABLE, BUT WE WILL NOT COMPROMISE THE SECURITY OF AMERICANS OR OTHERS WHO MIGHT FALL VICTIM TO INTERNATIONAL TERRORISTS RELEASED PREMATURELY.

Z PRIOR TO ANY RELEASE, CONSISTENT WITH MILITARY REQUIREMENTS, THE DEPARTMENT OF DEFENSE GENERALLY NOTIFIES THE RECEIVING STATE AND THE ICRC IN ORDER TO ENABLE THEM TO MAKE NECESSARY ARRANGEMENTS PRIOR TO THE DETAINEES, DEPARTURE FROM GUANTANAMO.

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Z BEYOND THAT, THE U.S. GOVERNMENT WILL NOT DISCUSS
SPECIFIC TRANSFERS OR RELEASES SO AS TO MAINTAIN THE SAFETY
AND PRIVACY OF THOSE WHO HAVE BEEN DETAINED AND THE SECURITY
OF U.S. OPERATIONS IN THE WAR ON TERRORISM.

- - - - -
IF DETAINEES ARE RELEASED, DOES THAT SUGGEST THAT THEY
SHOULDN'T HAVE BEEN DETAINED IN THE FIRST PLACE?

Z NO. THE DETAINEES WERE CAPTURED DURING AN ARMED
CONFLICT BECAUSE THEY WERE ENEMY COMBATANTS. THEIR CAPTURE
AND DETENTION ON THAT BASIS IS PROPER. DURING THEIR
DETENTION, WE ASSESS - AMONG OTHER THINGS - THEIR POTENTIAL
TO REMAIN A THREAT TO U.S. SECURITY, AVAILABLE INFORMATION
CONCERNING WHETHER THEY MAY HAVE ENGAGED IN THE COMMISSION OF
WAR CRIMES, AND THEIR POTENTIAL TO SUPPORT OR PARTICIPATE IN
FUTURE ACTS OF TERRORISM OR COMBATANT ACTIVITIES. BASED ON
THESE AND OTHER CONSIDERATIONS, WE HAVE CONCLUDED THAT SOME
COULD BE RELEASED UNDER CERTAIN CONDITIONS.

Z THOSE DETAINED AT GUANTANAMO WERE SENT THERE FOR A
REASON. AS WE HAVE STATED NUMEROUS TIMES, WHEN THE ARMED
CONFLICT ENDS, AND/OR AN ENEMY COMBATANT IS DETERMINED TO NO
LONGER POSE A THREAT, AND HAS NO MORE INTELLIGENCE OR LAW
ENFORCEMENT INFORMATION OF VALUE, HE WILL BE RELEASED OR
TRANSFERRED TO THE CONTROL OF ANOTHER GOVERNMENT.
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