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FACT SHEET ON THE PRESIDENT'S MILITARY ORDER

- The Military Order establishes military commissions to try suspected foreign terrorists.
- The Military Order on the "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism" signed today by the President provides an important option for dealing with terrorists.
- The Order applies only to persons who are not citizens of the United States.
- Under the Order, those individuals who the President determines are members of the al Qaida organization, who engage in, plan, or assist terrorist acts directed against the United States or its interests, or who knowingly harbor any such persons may be detained by the Secretary of Defense. The Order further provides for trials of individuals subject to the Order before military commissions.
- Offenses that may be tried before these tribunals include violations of the laws of armed conflict, which include acts of sabotage or terrorism directed against civilian populations, as well as harboring those who engage, aid or conspire to commit such acts.
- When the President determines that an individual is subject to the Order, he will direct that control of that individual be transferred to the Secretary of Defense if the Secretary of Defense does not already have such control.
- The Secretary of Defense may gain control of individuals subject to the Order as a result of U.S. military activities or from a state or federal domestic enforcement agency or a foreign authority.
- The Military Order gives the Secretary of Defense the power to establish the commissions at appropriate times and places, including outside the United States, as well as to prescribe rules and regulations for the conduct of proceedings before them, within broad principles established by the President.
- Military commissions will adequately protect the rights of the accused.
- International terrorists are unlawful belligerents, who engage in acts of violence and armed hostility without authorization from a sovereign nation, without bearing arms openly, and in a manner calculated to inflict deliberate harm on civilian populations. As such, these terrorists are not entitled to the legal protections afforded United States citizens.
- The President's Order nonetheless requires humane treatment of all those to whom the Order applies in a manner consistent with American values.
- The Order provides for the Secretary of Defense to treat individuals without any adverse distinction based on race, color, religion, gender, wealth, or any similar criteria.

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- Individuals subject to the Order will be provided with food, shelter, clothing and medical treatment.
 - They will be permitted to freely exercise their religion, consistent with the requirements of their detention.
 - The Order directs that the accused will receive a full and fair trial, and persons charged will be entitled to be represented by competent counsel.
 - Conviction and sentencing will require the concurrence of at least two-thirds of the members of the commission.
- Military commissions provide important security advantages for the war on terrorism.
- Military commissions may consider a broad range of evidence, including classified intelligence information, which may be peculiarly important in terrorism trials but which might be unavailable to other types of tribunals.
 - Proceedings or portions of proceedings or trial records before military commissions may be appropriately protected from disclosure in order to safeguard national security interests or classified evidence.
 - U.S. military commissions may be convened anywhere in the world, including aboard U.S. vessels in international waters, and may be convened in places and under conditions that will enhance the physical security of proceedings and minimize risks to public safety.
- Military detention and trial by military commission is a longstanding and well-established practice for dealing with unlawful enemy belligerents during wartime.
- The practice of using military commissions to combatants who violate the laws of armed conflict is older than the Republic. It was employed during the Revolutionary War by America's first President: then-General George Washington convened military commissions to try and execute British spies caught behind U.S. lines.
 - President Roosevelt ordered that military commissions be used to try German saboteurs and terrorists who surreptitiously entered the United States during World War II. This practice was specifically upheld by the U.S. Supreme Court in the case of Ex parte Quirin in 1942.
 - Military commissions were also used by President Lincoln during the Civil War to try Confederate spies and saboteurs in circumstances analogous to those confronting the nation now. Cases tried by military commission during the Civil War included that of a confederate soldier who, while in disguise, entered and attempted to set fire to New York City, and a group of confederates who came aboard a merchant steamer in the Port of Panama disguised as peaceful passengers with the purpose of taking over the vessel and converting it into a Confederate cruiser.

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- A military commission was also used to try the conspirators responsible for the assassination of President Lincoln.
- Military commissions were also used extensively during the Mexican War by General Winfield Scott and during the Indian Wars.
- Although the present Order applies only to non-citizens, military commissions have been used even against U.S. citizens committing acts of terrorism on U.S. soil during wartime (as with the Lincoln conspirators), even when the civil courts of the United States were still functioning (as with the German saboteurs apprehended in New York during World War II), and even in the context of unconventional wars (as with the use of military commissions during the Indian Wars).
- There is well-established legal authority supporting the use of military commissions.
- Congress has specifically provided for the use of military commissions for "offenders or offenses that by statute or law of war may be tried by military commissions," 10 U.S.C. § 821, and the President has inherent constitutional authority as Commander-in-Chief to convene such commissions.
- The United States Supreme Court has reviewed and approved the use of military commissions for individuals committing offenses against the law of war. See, e.g., Ex parte Quirin, 317 U.S. 1, 30 (1942) (upholding trial of German saboteurs on U.S. soil); In re Yamashita, 327 U.S. 1 (1946) (upholding trial of Japanese Governor of the Philippines following conclusion of war).
- According to the Attorney General in the wake of the Lincoln assassination, "to unite with banditti, jayhawkers, guerillas, or any other unauthorized marauders is a high offense against the laws of war," and "the offence is complete when the band is organized or joined." 11 U.S. Op. Atty. Gen. at 312.
- Military commissions have routinely been used in the context of armed conflicts short of formally declared wars with foreign nations. See The Prize Cases, 67 U.S. (2 Black) 635 (1862); Montoya v. United States, 180 U.S. 261 (1901); Unlawful Traffic with Indians, 13 Op. Atty Gen. 470 (1871).

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