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SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

JAN 19 2002

MEMORANDUM FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Status of Taliban and Al Qaida

(U) Transmit the following to the Combatant Commanders:

~~(S)~~ The United States has determined that Al Qaida and Taliban individuals under the control of the Department of Defense are not entitled to prisoner of war status for purposes of the Geneva Conventions of 1949.

(U) The Combatant Commanders shall, in detaining Al Qaida and Taliban individuals under the control of the Department of Defense, treat them humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions of 1949.

(U) The Combatant Commanders shall transmit this order to subordinate commanders, including Commander, Joint Task Force 160, for implementation.

(U) Keep me appropriately informed of the implementation of this order.

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BY OSD FOIA

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INFORMATION MEMO

28 January 2002

FOR: SECRETARY OF DEFENSE

FROM: Douglas J. Feith, UNDER SECRETARY OF DEFENSE FOR POLICY

SUBJECT: Status of Taliban and Al Qaida Detainees

- On 19 JAN 2002, you directed the Combatant Commanders to treat the detainees “humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions of 1949.”
- I am reviewing an option that would have the Combatant Commanders treat the detainees “as if” the Geneva Conventions applied. [alternate formulation: “in accordance with” the Geneva Conventions – I like this option because it doesn’t leave the implication that we might actually grant them a particular status.]
- Under this option few, if any, changes would be required immediately concerning their treatment, due to the extreme security risk these detainees pose.
- In the future, however, certain changes in their treatment would be required.
 - A determination would be made on an individual basis whether they are unlawful combatants or are given enemy prisoner of war (EPW) treatment. The Joint Interrogation Facility has begun the process to obtain the information necessary to make these determinations.
 - Unlawful combatants are to be treated humanely. Interrogations may be more aggressive than for EPW, though no humiliating, cruel, or degrading treatment or torture is permitted. They are entitled to adequate food, water, and medical care. They are entitled to minimal due process if they are tried, which Military Commissions under the President’s Military Order of November 2001 will likely provide.
 - Those given EPW treatment are to receive the various provisions of the Convention, with some exceptions:
 - Those who no longer pose a threat to the U.S. and who hold no intelligence value to us could be immediately repatriated.
 - Force protection and security are the primary considerations which will determine their treatment. Many provisions are simply

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inapplicable given the threat these detainees pose to the U.S. and to the personnel at Guantanamo – access to scientific and musical instruments and sports outfits, associated with the preparation of their meals, and allowed recreational activities.

- Some provisions may be deemed unnecessary if we provide equivalent benefits – the canteens are unnecessary because we provide all toilet and sundry articles they need (as was our practice during Desert Storm).
- Some provisions may be inapplicable to these particular forces – it's not clear that they had rank insignia or were accustomed to saluting.
- They would, however, be given some benefits we are not currently contemplating – perhaps a monthly advance of pay or allowed to elect prisoner representatives. Additional legal review will be required to determine whether they may be tried by Military Commissions.
- Given the unique and extraordinary nature of the global war on terrorism, and practice of states parties since World War II, some of the provisions of the Geneva Conventions, which envisioned a situation more akin to the EPW camps of World War II, may not be entirely applicable today. If it is determined to treat the detainees "as if" the Geneva Conventions apply, it will be advisable to review each of the provisions to determine if current circumstances and state practice would allow for flexibility in the treatment of the detainees.

COORDINATION: NONE

Prepared By: Douglas J. Feith, USD(P)

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