

GUIDELINES FOR TRANSFER OF DETAINEES TO FOREIGN GOVERNMENT CONTROL

DISCUSSION

(S) These guidelines apply to detainees under US Department of Defense control (i.e., those meeting the screening criteria) in connection with the global war on terrorism.

(S) If we hold detainees ourselves, we have high confidence that they will not escape or otherwise be set free, except on our terms. As a result they are not able to commit terrorist acts against the United States, our friends, allies or deployed forces. Although risks and costs attend US retention of detainees, at stake are the lives of US citizens that may be lost in another terrorist attack.

(b)(1) [Redacted]

(S) These guidelines aim to enable the United States to reduce the number of individuals under US control without unduly increasing risks to US security interests.

GUIDELINES

(S) The US Government will normally consider transfer of a detainee to the control of another country only after the United States determines that US control of that detainee no longer is necessary for (b)(1) [Redacted] (b)(1) [Redacted] to protect US security interests.

(S) Following interrogation and criminal investigation, detainees will be sorted into categories, such as:

- retain for US criminal or military prosecution;
- retain at least until the end of hostilities (but keep disposition under review) because of the high risk they present to US interests should they become free;
- retain as material witness;
- transfer for prosecution by a foreign government;
- transfer for detention by a foreign government until end of hostilities; or,

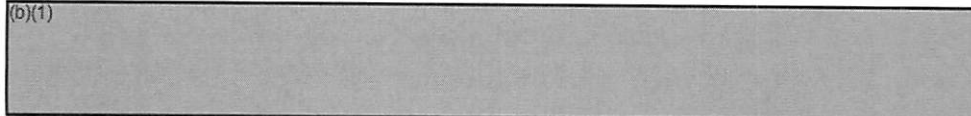
0604-0098

- transfer to a foreign government without condition; or, by exception, as otherwise mutually agreed by the US Government and the foreign government.

(S) Decisions on transfer of a detainee shall be informed by:

- an assessment of the risk to US security interests posed by the particular individual:

• (b)(1)



- assessment of the strength of any law enforcement case that the United States or another government might undertake;
- weight to be given to the particular foreign government's request for a detainee, taking into account foreign policy factors such as effect of the decision on its future military or law enforcement cooperation;
- legal issues related to the ability of the United States to continue to hold the detainee; and,
- potential applicability of any extradition treaty or agreement.

(S) Before a detainee can be released from US control, decisions on transfer of the detainee to the control of a foreign government must be made based on a US Government assessment of relevant factors, such as whether the foreign government:

- has a legal basis to obtain control of and maintain control over the detainee, particularly for law enforcement purposes;
- will initiate prosecution with a reasonably good chance of success, will exert itself to maintain confinement, will detain the individual until the end of hostilities, or will ensure that the individual will not be permitted to become a threat to the United States;

• (b)(1)



- will provide assurances that it will treat the detainee humanely, will provide basic due process rights, and will not persecute the detainee on account of his race, religion, nationality, membership in a social group, or political opinion;

- (b)(1) [Redacted]

- (b)(1) [Redacted]

- is cooperating with the United States in law enforcement and/or military matters;

- is not a state sponsor of terrorism; and,

- (b)(1) [Redacted]

(U) Information on transfers of detainees may be provided as appropriate to the International Committee of the Red Cross.

PROCESS

(S) A US Government decision to transfer a detainee involves legal, investigative, intelligence, operational, and foreign policy assessments. It requires Departments of Defense, State, and Justice, and Central Intelligence Agency joint analysis and recommendations based on factual information, policy considerations, and legal authorities.

(S) An interagency experts group of representatives from the Departments of Defense, State, and Justice and the Central Intelligence Agency will evaluate each case of proposed transfer.

- DOD will chair the experts group with a Deputy Assistant Secretary level representative. The group will meet on a regular basis to review particular cases and requests from foreign governments for the transfer of particular detainees.
- Each agency will provide representatives (at the appropriate level and with the appropriate expertise).
- State Department will have responsibility to communicate on these matters as between the US Government and foreign governments. It will receive requests

from foreign governments for transfer of detainees, and will communicate requests from the US Government to foreign governments. The State Department will forward such requests from foreign governments to the experts group for consideration. In the event of a need to negotiate terms with or obtain assurances from foreign governments, the State Department will lead such efforts, with full participation from interested agencies.

- US Government agencies recommending transfer of a detainee will provide their recommendations to the experts group, through their representative, for the group's consideration.

~~(S)~~ The experts group will make recommendations for higher-level review. The decision to negotiate with a foreign government or to approve a recommended transfer (including a release) will be made by Deputies, or, as appropriate, by Principals.

COORDINATION PAGE
Reference Tab A: Detainee Transfer Policy

| | | |
|-----------------------|--|------------------------|
| OGC | <i>DJ Dell'Orto as edited</i> Mr. Dell'Orto | 21 Feb 02 19 Feb 02 |
| Joint Chiefs of Staff | LTG Abazaid | 19 Feb 02 |
| ISA | Mr. Rodman | 8 Feb 02 |
| ISP | | No response |

* We further suggest - and understand that USD(P)^{as} intends to upon SECDEF approval of the guidelines - that the guidelines be coordinated with Departments of State and Justice and the CIA. *We further note*

Interagency

Deputies Committee

20 Mar 02

Further Coordination
OGC

DJ Dell'Orto
as edited

3/29/02

0604-0098



SPECIAL OPERATIONS/
LOW-INTENSITY CONFLICT

~~SECRET~~
OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-2500

EF835 L 14 B 28 31.3

MAR 12 2002

I-02/003933-PK

INFO MEMO

FOR: UNDER SECRETARY OF DEFENSE FOR POLICY

FROM: Michael H. Mobbs, Policy Advisor to the Under Secretary of Defense
for Policy *MHM*

SUBJECT: Detainee Transfer Policy

Steve Hadley may call you regarding our draft Guidelines for Transfer of Detainees to Foreign Government Control (Guidelines), which is in interagency coordination.

Although the Guidelines have been received favorably in the interagency, John Bellinger of the NSC staff told me today that Steve, on reviewing the guidelines, asked for clarification of our overall policy objectives on detainee transfers.

Attached for your information is a policy statement we have drafted in response to Steve's request. This statement will be added at the beginning of the Guidelines.

COORDINATION: None.

Attachments:
As Stated

Prepared by: LTC (b)(6) SO/LIC Detainee Task Force, (b)(6)

~~SECRET~~

~~_____~~
~~_____~~
~~_____~~

MAR 14 2002 / 0845
0098

Policy Statement on Transfer of US Detainees to Foreign Government Control

The objective of ^{the US transfer} this policy is to reduce the number of individuals under US control in the course of the Global War on Terrorism, consistent with the national security, (b)(1) interests of the United States. In executing this policy, our paramount goal is to ^{ensure} assure, to the maximum extent reasonably possible, that transferring a detainee out of US government control ^{is} not likely to increase the risk of further attacks on the United States or US interests.

The US has its interests in not retaining large numbers of detainees from the war against terrorism

The US Government normally will consider transfer of a detainee to the control of another government only after the United States determines that US control of that detainee no longer is necessary for (b)(1)

(b)(1) to protect US security interests. We will endeavor to make these determinations as to each detainee as ^{quickly} expeditiously as possible, although we anticipate that making these determinations will be a lengthy process in most cases.

Determining whether a detainee should be transferred to foreign government control involves legal, investigative, intelligence, operational, and foreign policy assessments. The attached guidelines will be used to assist in making these assessments and reaching a determination in each case.

~~SECRET~~



OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000



ACTION MEMO

02/001653-PK

POLICY

FOR: SECRETARY OF DEFENSE

DepSec Action _____

FROM: Douglas J. Feith, Under Secretary of Defense for Policy *2/21/02*

SUBJECT: Detainee Transfer Policy (U)

This memo seeks your approval of guidelines for case-by-case decisions on transferring detainees to the control of other governments. (Tab A)

As you will see from the guidelines, transfer of a detainee to the control of another government should be considered only after the United States determines that US control of that detainee is no longer necessary for US intelligence or law enforcement purposes or to protect US security interests.

US Government decisions to transfer a detainee involve legal, investigative, intelligence, operational and foreign policy assessments, which require joint analysis and recommendations by Departments of Defense, State, and Justice, and the Central Intelligence Agency.

Recommendation: Approve the policy guidelines for transfer of detainees.

Approve _____ Disapprove _____ Let's Discuss _____

Prepared by: LTC (b)(6) SO/LIC Stability Operations (b)(6)

~~SECRET~~

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~
~~CONFIDENTIAL~~



0098

GUIDELINES FOR TRANSFER OF DETAINEES TO FOREIGN GOVERNMENT CONTROL

DISCUSSION

(S) If we hold detainees ourselves, we have high confidence that they will not escape or otherwise be set free, except on our terms. As a result they are not able to commit terrorist acts against the United States. Although risks and costs attend US retention of detainees, at stake are the lives of US citizens that may be lost in another terrorist attack.

(b)(1)

(S) These guidelines enable the United States to reduce the number of individuals under US control without unduly increasing risks to US security interests.

GUIDELINES

(S) The US Government will consider transfer of a detainee to the control of another country only after the United States determines that US control of that detainee no longer is necessary for (b)(1) to protect US security interests.

(S) Following interrogation and criminal investigation, detainees will be sorted into categories, such as:

- retain for US prosecution;
- retain because of the high risk they present to US interests should they become free;
- transfer for prosecution by another government;
- transfer for detention by another government until end of hostilities; or,
- transfer to another government for release.

(S) Decisions on transfer of a detainee shall be informed by:

- an assessment of the risk to US security interests posed by the particular individual;

- (b)(1) [Redacted]

- assessment of the strength of any law enforcement case that the United States or another government might undertake; and,

- applicability of any extradition treaty or agreement.

(S) Before a detainee can be released from US control, decisions on transfer of the detainee to the control of another government must be made based on a US Government assessment that the relevant foreign government:

- has a proper law enforcement purpose and legal basis to obtain control of and maintain control over the detainee, unless there is no basis to keep the individual in detention (e.g., he has not engaged in wrongdoing);

- will exert itself to maintain pre-trial confinement;

- will initiate prosecution with a reasonably good chance of success, or will hold the individual until the end of hostilities;

- (b)(1) [Redacted]

- will treat the detainee humanely and will not persecute the detainee on account of his race, religion, nationality, membership in a social group, or political opinion;

- (b)(1) [Redacted]

- will not transfer the detainee out of its control without US consent;

- is not a state sponsor of terrorism; and,

- (b)(1) [Redacted]

(U) Transfers of detainees will be coordinated, as appropriate, with the International Committee of the Red Cross.

PROCESS

(S) A US Government decision to transfer a detainee involves legal, investigative, intelligence, operational, and foreign policy assessments. It requires Departments of Defense, State, and Justice, and Central Intelligence Agency joint analysis and recommendations based on factual information.

(S) An interagency experts group of representatives from the Departments of Defense, State, and Justice, and the Central Intelligence Agency, will evaluate each case of proposed transfer.

- DOD will chair the experts group with a Deputy Assistant Secretary level representative. The group will meet on a regular basis to review particular cases and requests from foreign governments for the transfer of particular detainees.
- Each agency will provide representatives (at the appropriate level and with the appropriate expertise).
- State Department will have responsibility to receive requests from foreign governments for transfer of detainees. The State Department shall forward such requests to the experts group for consideration.
- US Government agencies recommending transfer of a detainee will provide their recommendations to the experts group, through their representative, for the group's consideration.

(S) The experts group will make recommendations for higher-level review. The decision to approve a recommended transfer will be made by the Deputies' Committee, or, as appropriate, by the Principals' Committee.

Prepared by: LTC (b)(6) SO/LIC Stability Operations, (b)(6)

COORDINATION PAGE
Reference Tab A: Detainee Transfer Policy

| | | |
|-----------------------|---|-------------------------------|
| OGC | <i>D. J. Dell'Orto</i> Mr. Dell'Orto | <i>21 Feb 02</i> 19 Feb 02 |
| Joint Chiefs of Staff | LTG Abazaid | 19 Feb 02 |
| ISA | Mr. Rodman | 8 Feb 02 |
| ISP | | No response |

* We further suggest - and understand that USD(P)^{so} intends to upon SECDEF approval of the guidelines - that the guidelines be coordinated with Departments of State and Justice and the CIA. *W. J. ...*
note

0098

RATSZYUW RUEKJCS8001 1071404-SSSS--RUEKCHP.
ZNY SSSSS
R 171400Z APR 02
FM CJCS WASHINGTON DC
TO RUCJACC/USCINCCENT MACDILL AFB FL
RUFGNOA/USCINCEUR VAIHINGEN GE
RHMFISS/USCINCEUR VAIHINGEN GE
RUCBACM/USCINCJFCOM NORFOLK VA
RHMFISS/USCINCJFCOM NORFOLK VA
RHHMUNA/USCINCPAC HONOLULU HI
RUMIAAA/USCINCSO MIAMI FL
RUPEUNA/USCINCSpace PETERSON AFB CO
RUCQSOC/USCINCSOC MACDILL AFB FL
RHMFISS/USCINCSOC MACDILL AFB FL
RHCUAAA/USCINCTrans SCOTT AFB IL
RHMFISS/USCINCTrans SCOTT AFB IL
INFO RHEHWSR/WHITE HOUSE SITUATION ROOM WASHINGTON DC
RUEKJCS/SECDEF WASHINGTON DC
RUEHC/SECSTATE WASHINGTON DC
RUEADWD/CSA WASHINGTON DC
RUENAAA/CNO WASHINGTON DC
RUEAHQA/CSAF WASHINGTON DC

PAGE 02 RUEKJCS8001 [REDACTED]
RUEACMC/CMC WASHINGTON DC
RULSJGA/COMDT COGARD WASHINGTON DC
RUFGNOA/USCINCEUR VAIHINGEN GE//ECCS//
RHMFISS/USCINCEUR VAIHINGEN GE//ECCS//
RUCBACM/USCINCJFCOM NORFOLK VA//J2/J3/J33/J4/J5/SJA//
RHMFISS/USCINCJFCOM NORFOLK VA//J2/J3/J33/J4/J5/SJA//
RHHMUNA/USCINCPAC HONOLULU HI//J2/J3/J4/J5/SJA//
RUMIAAA/USCINCSO MIAMI FL//J2/J3/J4/SJA//
RUPEUNA/USCINCSpace PETERSON AFB CO//J2/J3/J4/J5/SJA//
RUCQSOC/USCINCSOC MACDILL AFB FL//SODC//
RHMFISS/USCINCSOC MACDILL AFB FL//SODC//
RUCUSTR/USCINCSTRAT OFFUTT AFB NE//CC/CS//
RHCUAAA/USCINCTrans SCOTT AFB IL//TCJ3-J4/TCJ3-OD/TCMD//
RHMFISS/USCINCTrans SCOTT AFB IL//TCJ3-J4/TCJ3-OD/TCMD//
RULSJGA/COMDT COGARD WASHINGTON DC//G-O/G-OP/G-OPD/
RULSJGA/G-OPF/G-W//
RUFDAAA/CDRUSAREUR HEIDELBERG GE//J2/J3/J4/J5/SJA//
RUEOEGA/COMUSARCENT (FWD) DOHA KU
RHRMAKS/COMUSNAVCENT//N2/N3/N4/J5//
RUCJICL/COMUSMARCENT HQ MACDILL AFB FL//G2/G3/COS/G5/SJA//

PAGE 03 RUEKJCS8001 [REDACTED]
RUCKMAA/COMMARFORLANT NORFOLK VA
RUHPHMS/COMMARFORPAC CAMP H M SMITH HI
RUCBCLF/CINCLANTFLT NORFOLK VA
RHHMUNA/USCINCPACFLT HONOLULU HI
RUEOBA/COMUSCENTAF SHAW AFB SC//A2/A3/A4/A5/SJA//
RHCUAAA/HQ AMC SCOTT AFB IL//CC/CV/DO/LG//
RHCUAAA/HQ AMC TACC SCOTT AFB IL//CC/CV/XOO/XOP//
RHMFISS/HQ AMC TACC SCOTT AFB IL//CC/CV/XOO/XOP//

RHCUMAC/HQ AMC TACC COMMAND CENTER SCOTT AFB IL//XOO/XOX/XOS//
RUEASRT/COMUSARCENT-CDRUSATHIRD FT MCPHERSON GA//AFPD-DT//
RUCJICS/COMSOCCENT MACDILL AFB FL//SOJ2/SOJ3/SOJ5/SOJA//
RHDIAAA/HQ ACC LANGLEY AFB VA//C/CV/DO/DOO/DOX/XP/XPMP/CAT//
RUEASRB/CDRFORSCOM FT MCPHERSON GA//AFOP-CAT//
RUEASRB/FORSCOM FT MCPHERSON GA//G2/G3/G5//
RUDHAAA/CDRINSCOM FT BELVOIR VA
RUEOEGA/CJTF KUWAIT
RUEOEEC/CJTF SWA//J2/J3/J5/CC/SJA/CFACC//
RUEAIIA/DIRSNA FT GEORGE G MEADE MD
RUEJDCA/DISA WASHINGTON DC
RHMFISS/DISA WASHINGTON DC

PAGE 04 RUEKJCS8001 [REDACTED]
RUEKDIA/DIA WASHINGTON DC
RUEAIIA/CIA WASHINGTON DC
RUEAWJA/DEPT OF JUSTICE WASHINGTON DC
RULSDMK/DEPT OF TRANSPORTATION OFC OF THE SEC WASHINGTON DC//
S1/S60/X-1//
RUCNFB/FBI WASHINGTON DC
RUCOBRR/LANTNAVFACENCOM NORFOLK VA
RHMFISS/LANTNAVFACENCOM NORFOLK VA
RUEADLA/DLA FT BELVOIR VA//D/J2/J3/J5/J341/SJA//
RHMFISS/DLA FT BELVOIR VA//D/J2/J3/J5/J341/SJA//
RHMFISS/DSCP PHILADELPHIA PA
RHMFISS/DSCP PHILADELPHIA PA
RUEADLA/DLSC FT BELVOIR VA
RUEADLA/DCMA FT BELVOIR VA
RHMFISS/DCMA FT BELVOIR VA
RUEMANA/DDC NEW CUMBERLAND PA
RUEAAMC/CDRAMC ALEXANDRIA VA
RHMFISS/CDRAMC ALEXANDRIA VA
RHMFISS/COMLANTAREA COGARD PORTSMOUTH VA
RUWDQAA/COMPACAREA COGARD ALAMEDA CA
RHFJKWA/DIRJIATF EAST KEY WEST FL

PAGE 05 RUEKJCS8001 [REDACTED]
RUWICBA/CG I MEF
RHMFISS/CG I MEF
RUCKMEA/CG II MEF
RHMFISS/CG II MEF
RUCOGCA/COMNAVBASE GUANTANAMO BAY CU
BT

[REDACTED] SECTION 01 OF 02
MSGID/GENADMIN/CJCS//

(b)(1)



(b)(1)

PAGE 06 RUEKJCS8001

(b)(1)

(b)(1)

3 (II) DISCUSSION

(b)(1)

PAGE 08 RUEKJCS8001

(b)(1)

(b)(1)

.. (U) GUIDELINES

(b)(1)

PAGE 09 RUEKJCS8001

(b)(1)

(b)(1)

BT
#0001

NNNN
<[^^^]> 04/17/2002 2243 <[^^^]>