

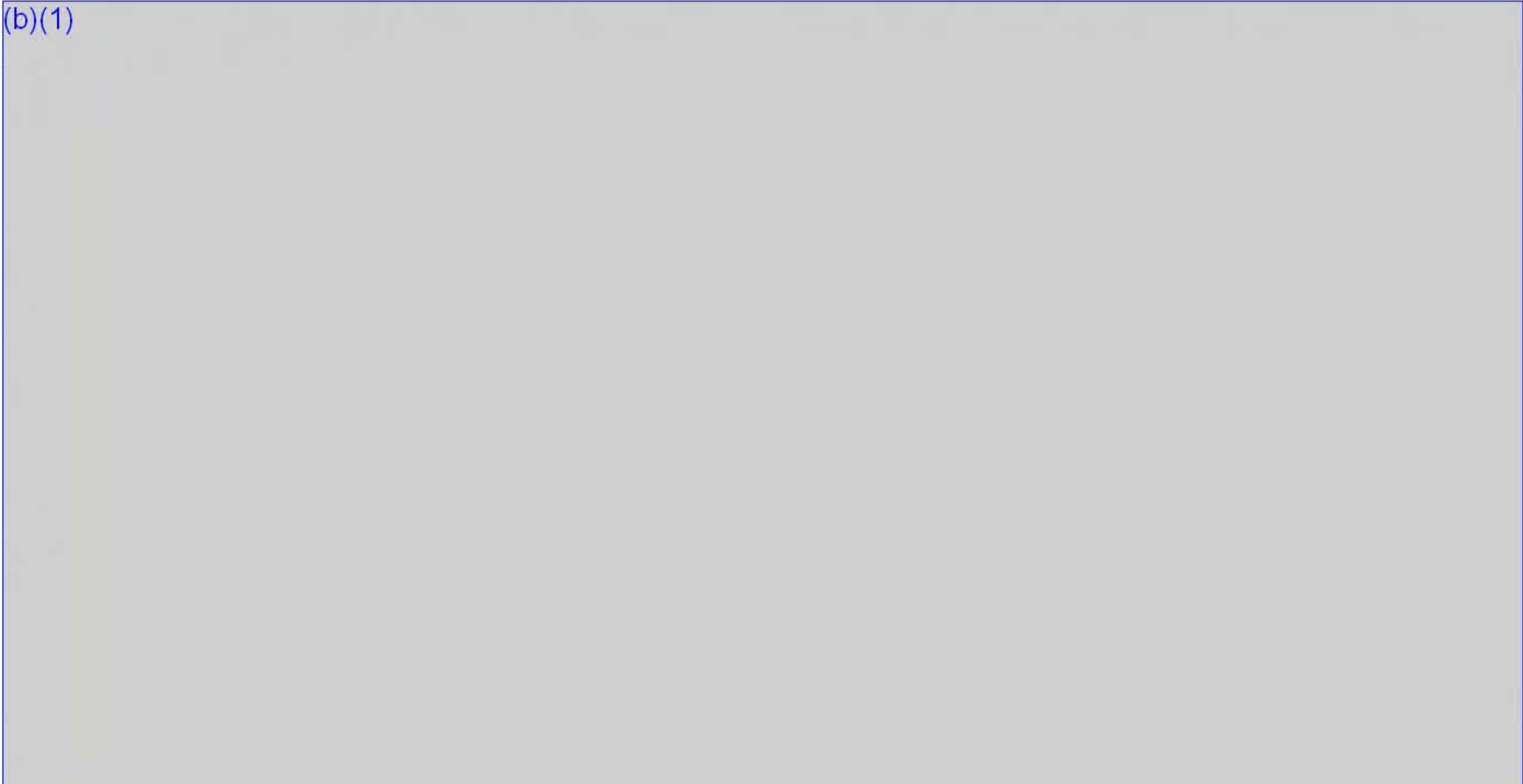
Subject: Applicability of the Geneva Conventions to “Ghost Detainees” in Iraq

Purpose. To provide information about the law applicable to “Ghost Detainees.”

Key Points.

- (U) The Geneva Conventions apply to Security Internee (SI) held in Iraq.
- (U) Normally, the ICRC has the right to go to all places where protected persons are detained.
 - However, in certain circumstances, the Geneva Civilians Conventions (GCC, art. 143) allows a Detaining Power to prohibit the ICRC to visit a SI.
 - The reason to deny a visit must be “for reasons of imperative military necessity.”
 - The Detaining Power must determine it to be an exceptional measure and it must only be of a temporary nature.
- (U) The GCC also permits holding a SI who participated in activities hostile to the security of the occupying power if required by “absolute military security.”
 - Specific examples are spies and saboteurs
 - Persons who have committed such acts are considered to have forfeited the rights of communication.
 - This does not release the Detaining Power from its obligation to notify the ICRC of the detention.

(b)(1)





DETAINEE SENIOR LEADERSHIP OVERSIGHT COUNCIL

**Office of Detainee Affairs
Briefing for all OSD Components**

F/J-019 Detainee Message

(U) RECOMMENDATION/OBSERVATION

- How do we communicate what were doing to inspire confidence in our soldiers?
- Is the broader message of what happened in the investigations getting out?

(U) CURRENT ASSESSMENT:

- Council needs to decide what is a proper forum/way ahead/ or TF to deal with the problem. USD(P) is willing to coordinate with OSD(PA) once a strategy is developed to execute the strategy.

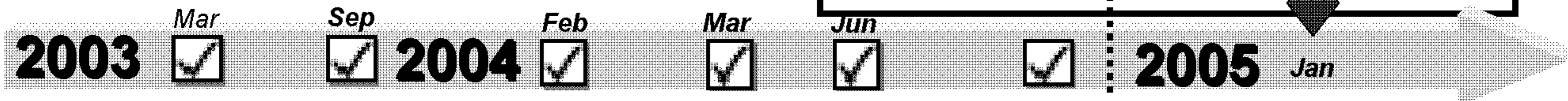
OPR: OSD(PA)/USD(P)

OCR: USD(P)

(U) FIX/ACTION/CHANGE:
Fix: Need to better communicate the changes we have made and the actions taken.

Action: Develop communications plan?

Change:

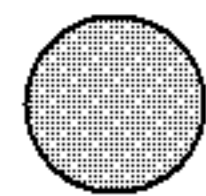


S-001 Policy Alignment w/ Geneva

(U) RECOMMENDATION/OBSERVATION

- Need to further define policy for DoD and other government agencies to align with Geneva Conventions

(U//~~FOUO~~) CURRENT ASSESSMENT:



- Defining policy is “easy” – question is resolving our own internal conflicts over intelligence missions and international perceptions of our legal obligations.
- Priority for ODA – development of “tiger team” to directly address how to define future policy objectives and harmonize positions between other detainee and perceptions of rights to traditional EPW’s.

OPR: USD(P)

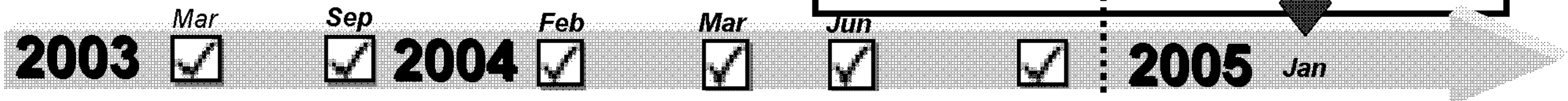
OCR: USD(P)

(U) FIX/ACTION/CHANGE:

Fix: Develop DoD Policy or NSPD.

Action: Form team to examine specific policy issues regarding GC and detention operations. Draft DoD Policy, DoDD, and NSPD (along with inter-agency) to address specific issues.

Change: Development of “grand strategy” for detention that is GC compliant and addresses national security objectives.

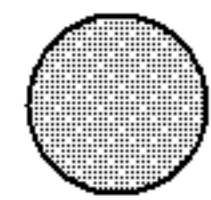


S-003 Filling Personnel Requirements

(U) RECOMMENDATION/OBSERVATION

- Need more professional linguists, interrogators, human intelligence, counter-intelligence, corrections police and behavioral scientists

(U) CURRENT ASSESSMENT:



- Met with representatives of P&R to discuss recommendations (January 05).
- They are developing strategy and will report back to ODA before next SLOC meeting.
- ODA assisting ASD(HA) in development of hiring program/track for Behavioral scientists.

OPR: USD (P&R)

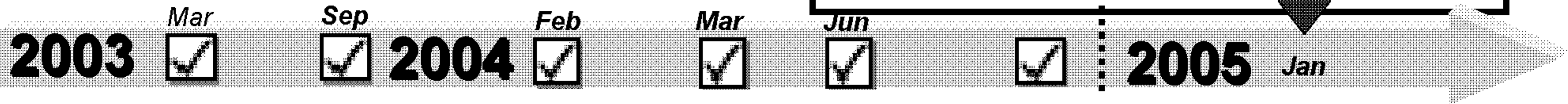
OCR: USD(P)

(U) FIX/ACTION/CHANGE:

Fix: Develop action plan to recruit more linguists, intelligence analysts, and other personnel to support detention operations.

Action: Develop action plan for recruiting and retaining people with necessary skill.

Change: GWOT mission will be better staffed and provide for efficacy in intel and interrogation missions.



S-001 Policy Alignment w/ Geneva

(U) RECOMMENDATION/OBSERVATION

- Need to further define policy for DoD and other government agencies to align with Geneva Conventions

(U//~~FOUO~~) CURRENT ASSESSMENT:

- Defining policy is “easy” – question is resolving our own internal conflicts over intelligence missions and international perceptions of our legal obligations.
- Priority for ODA – development of “tiger team” to directly address how to define future policy objectives and harmonize positions between other detainee and perceptions of rights to traditional EPW’s.

OPR: USD(P)

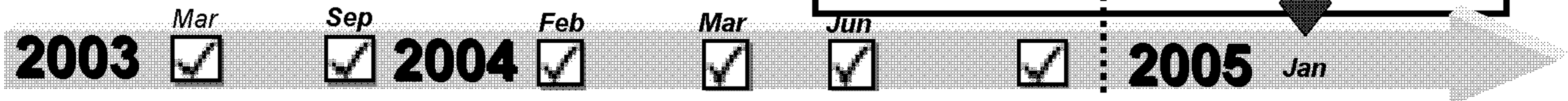
OCR: USD(P)

(U) FIX/ACTION/CHANGE:

Fix: Develop DoD Policy or NSPD.

Action: Form team to examine specific policy issues regarding GC and detention operations. Draft DoD Policy, DoDD, and NSPD (along with inter-agency) to address specific issues.

Change: Development of “grand strategy” for detention that is GC compliant and addresses national security objectives.

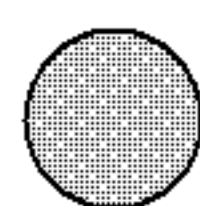


S-006 Interrogation Policy

(U) RECOMMENDATION/OBSERVATION

- Well-documented policy and procedures on approved interrogation techniques

(U) CURRENT ASSESSMENT:



- USD(I) has designated their Policy and Strategy office to develop DoD Interrogation Policy

OPR: USD (I)

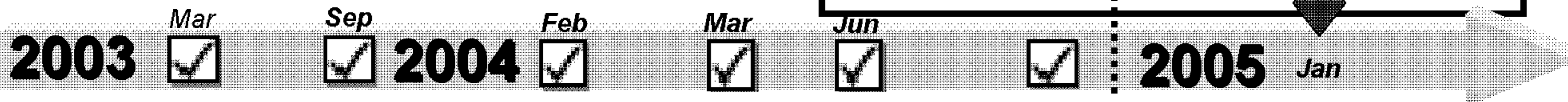
OCR: USD(P)

(U) FIX/ACTION/CHANGE:

Fix: Issue DOD Interrogation Policy

Action: USD(I) designated their Policy and Strategy office to develop and coordinate DoD Interrogation Policy

Change: USD(I) policy will serve as policy guidance for interrogation – recommendation satisfied in developing “well documented” policy.



S-008 DOD/OGA Guidelines

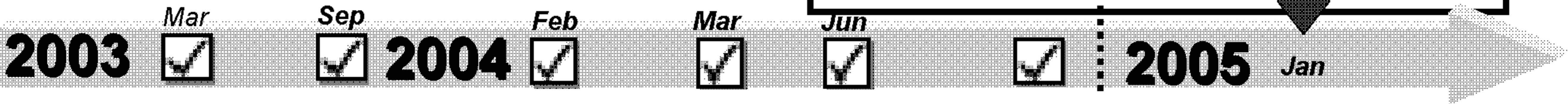
(U) RECOMMENDATION/OBSERVATION

- Clearer guidelines for the interaction of OGA's with the Department of Defense in detention and interrogation operations must be defined

(U) CURRENT ASSESSMENT:

- • USD(I) is reviewing in development of the DoD policy.
- Promulgation of interrogation policy under development. Policy will address relationships of OGA's and DOD directorates and agents.

OPR: USD (I)
OCR: USD(P)



(U) FIX/ACTION/CHANGE:

Fix: Issue DOD Interrogation Policy

Action: USD(I) will promulgate policy that defines relationships between OGA's and DOD agents.

Change: Ambiguity resolved.

S-012 Impartial Rapid Reporting to the Sec Def

(U) RECOMMENDATION/OBSERVATION

- The Secretary of Defense should ensure the effective functioning of rapid reporting channels for communicating bad news to senior Department of Defense leadership

(U) CURRENT ASSESSMENT:

- Proposal to fast-track information to the Secretary was approved 13 Dec 04.

OPR: USD (P&R)

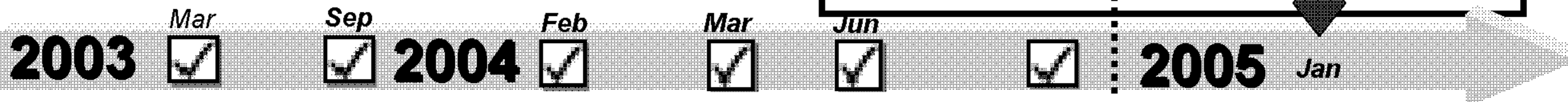
OCR: USD (P)

(x) FIX/ACTION/CHANGE:

Fix: Joint adaptation of procedures such as the Air Force special notification process.

Action: Office to fast-track has been “stood up” – headed by Richard McGraw; still working space and employment/resource issues, but, office is functioning.

Change: No change from last meeting



S-014 Additional Training of Medical Personnel

(U) RECOMMENDATION/OBSERVATION

- Need training for medical personnel on reporting abuse. Medical personnel need to be trained with better field treatment techniques

(U) CURRENT ASSESSMENT:

- Medical ethics policy in final stages of promulgation. Directly addresses reporting violations.
- Currently discussing with ASD(HA) development tracks regarding treatment and non-treatment medical ops. (ODA/USD(I)/OGC/HA)

OPR: USD (HA)

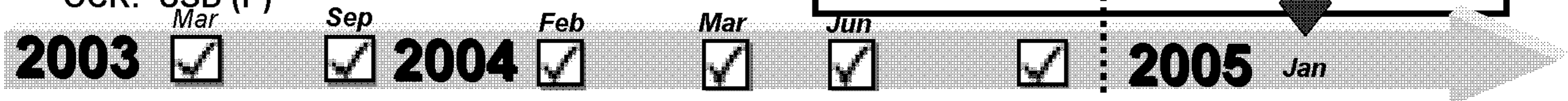
OCR: USD (P)

(x) FIX/ACTION/CHANGE:

Fix: Provide structured training to Medical Personnel on Detainees matters

Action: USD(P) working with ASD(HA) in development of medical training policy.

Change: Detainees are given excellent medical care and doctors have clear methods for carrying out their obligations.



GS-001 Law of War Treaties

(U) RECOMMENDATION/OBSERVATION

- Harmonizing policies and treaties with allies

(U) CURRENT ASSESSMENT:

- ODA's assessment is that no policy is in conflict with our international or treaty obligations. All policies that have been issued since the beginning of GWOT were thoroughly examined by the DoDGC before issuance.
- International perceptions and analysis of the choices made at the SECDEF and POTUS level have created disagreements where the law is silent or has contradictory guidance.
- The nature of GWOT has produced unique situations that need *better* guidance based upon what we have learned – lessons that can be applied to creating better policy as well as better international relations with our allies.

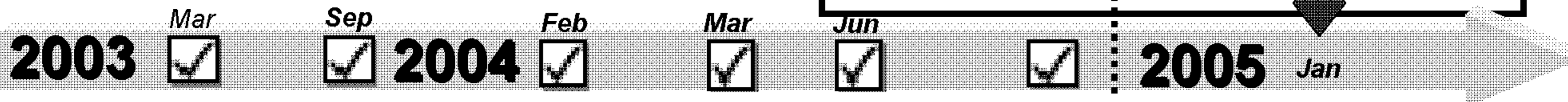
OPR: USD (P)
OCR: USD (P)

(U) FIX/ACTION/CHANGE:

Fix: Review all current policies and regulations w/ regard to allies

Action: ODA is currently revising all DoDD and policies and will assist ARMY in the revisions of AR 190-8 and other documents as requested.

Change: Revision of Detainee Operations Policy as well as issuance of larger "covering" policies will demonstrate how DoD operations satisfy international treaty obligations.



GS-002 Partial Immunity Program

(U) RECOMMENDATION/OBSERVATION

- Develop limited program designed to encourage disclosure of any remaining abuses

(U) CURRENT ASSESSMENT:

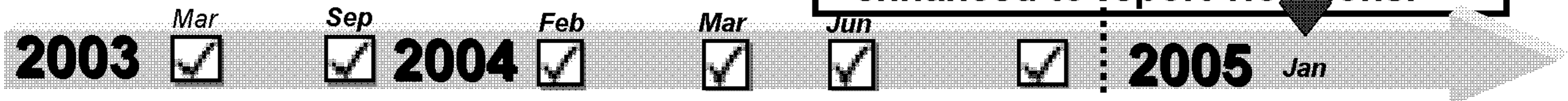
- Mechanisms currently exist to report/disclose abuses.
- Greater command emphasis needed in how to use existing reporting channels
- OSD is working with P&R (Health Affairs) to address training requirements for reporting abuse.
- OGC has addressed this in its revision of the DoDD on "law of war".
- ODA will be reporting to Congress 2X a year on violations reported to the SECDEF.

OPR: USD (P)/DoD OGC
OCR: USD (P)

(U) FIX/ACTION/CHANGE:
Fix: Develop and implement appropriate training and update related DoDD and Regs

Action: ODA will be assisting on the revision of AR 190-8 w/ Army. OGC is revising 5100.77 to reflect changes in US law and requirements on reporting. Other OSD components are issuing their own reporting policies (e.g. ASD(HA) medical ethics policy.)

Change: Mechanisms will be enhanced to report violations.



GS-004 Review of Manual for Courts-Martial and UCMJ

(U) RECOMMENDATION/OBSERVATION

- Review for adequacy with respect to detainee abuse (similar to post-Aberdeen)

(U) CURRENT ASSESSMENT:

- Do not believe task is properly assigned to OSD/USD(P) request reassignment as USD(P) has no authority over UCMJ or to evaluate adequately

OPR: Do not believe USD(P) has authority.

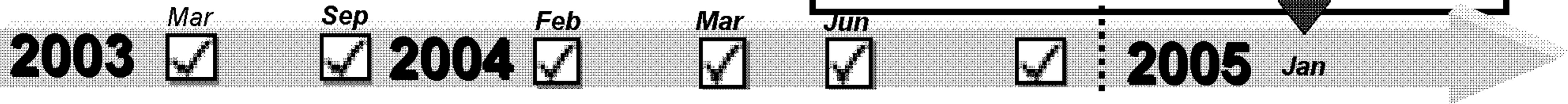
OCR: Do not believe USD(P) has oversight.

(U) FIX/ACTION/CHANGE:

Fix:

Action:

Change:



GS-005 Review of JCS activity under Goldwater-Nichols

(U) RECOMMENDATION/OBSERVATION

- Review for adequacy with respect to detainee abuse (similar to post-Aberdeen)

(U) CURRENT ASSESSMENT:

- Do not believe task is properly assigned to OSD/USD(P) request reassignment as USD(P) has no authority

OPR: Do not believe USD(P) has authority.

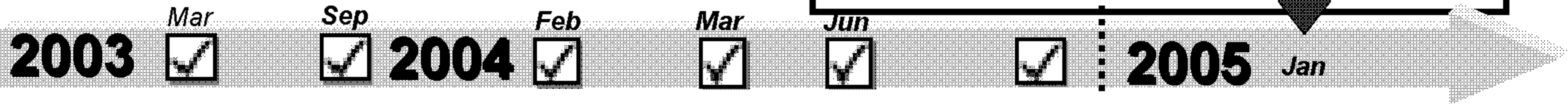
OCR: Do not believe USD(P) has oversight.

(U) FIX/ACTION/CHANGE:

Fix:

Action:

Change:



GS-009 Sufficiency of Ongoing Investigations

(U) RECOMMENDATION/OBSERVATION

- Is the scope of ongoing investigations sufficient to address issues to satisfy all interests

(U) CURRENT ASSESSMENT:

- Church was charged with this mandate – to make a formal determination.
- OSD is supporting all DoD investigations
- 13 investigations – 8 major, 5 operational.
- New investigation opened – SOUTHCOM response to FOIA FBI allegations.

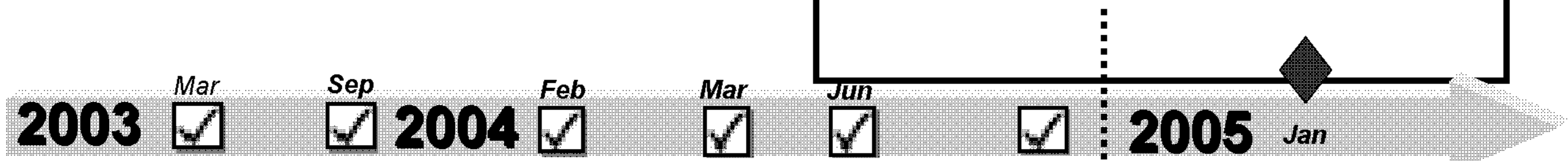
OPR: USD (P)
OCR: USD (P)

(U) FIX/ACTION/CHANGE:

Fix:

Action:

Change:



GS-011 Congress Questions on “Ghost Detainees”

(U) RECOMMENDATION/OBSERVATION

- Congress question: “What is a *Ghost Detainee* and how many have there been?”

(U) CURRENT ASSESSMENT:

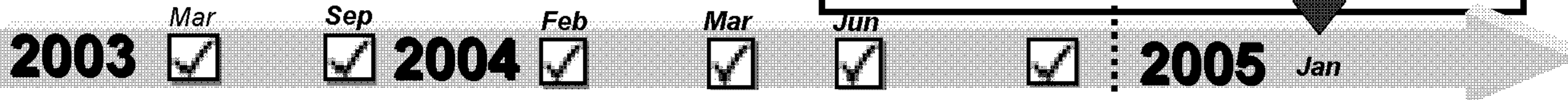
- ODA has addressed this issue with the SECDEF as well as USD(I) and OGA’s.
- The SECDEF has briefed this issue publicly regarding the *one* detainee who was held without prompt registration with the ICRC.
- It is DoD policy to promptly register all detainees.
- ODA & USD(P) officials have briefed Congress on this issue – we are preparing for upcoming hearings on issue.
- To the extent required, ODA will work with OGC and USD(I) to resolve any remaining issues on this sensitive matter.

OPR: USD (P)
OCR: USD (P)

(U) FIX/ACTION/CHANGE:
Fix: Adequately brief Congress regarding “Ghost Detainee” issue.

Action: Classified briefings with Congress.

Change: Congress question answered.



GS-013 Role of Medical Personnel in Abuse

(U) RECOMMENDATION/OBSERVATION

- To what extent, if any, did medical personnel participate in or fail to report alleged abuse

(U) CURRENT ASSESSMENT:

- Action is under review.
- USD(P) has been working closely with USD(P&R) (Health Affairs) in examining the legal, ethical, and practical elements of Medical personnel interaction w/ detainees.
- Worked with HA to draft medical ethics policy – awaiting SECDEF approval for ASD(HA) to issue.
- Tiger team of USD(I) USD(P) and ASD(HA) reviewing the use of behavioral sciences in lawful interrogations.

(x) FIX/ACTION/CHANGE:

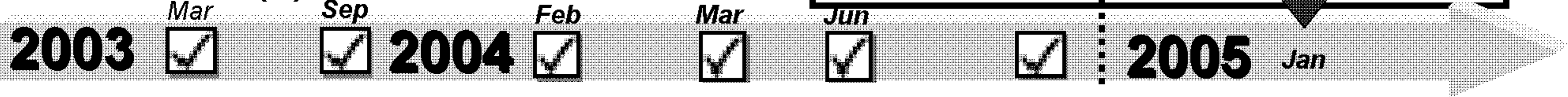
Fix: Issue Policy Guidance on role of medical personnel in Detainee Operations

Action: Develop DoD Policy Guidance

Change: Defined role of medical personnel

OPR: USD (P)

OCR: USD (P)



GS-015 Interagency Coordination and Harmonization

(U) RECOMMENDATION/OBSERVATION

- Task force to review streamlining interagency process to support GWOT

(U) CURRENT ASSESSMENT:

- USD (P) does not see an actionable recommendation
- USGs Detainee Policy is an governed through the interagency process (PCC, DC, and PC)
- ODA routinely engages DOS, DOJ, NSC, and DHS on issues on GWOT and detention. Not sure that "the system is broken" when analyzing Church's recommendation.

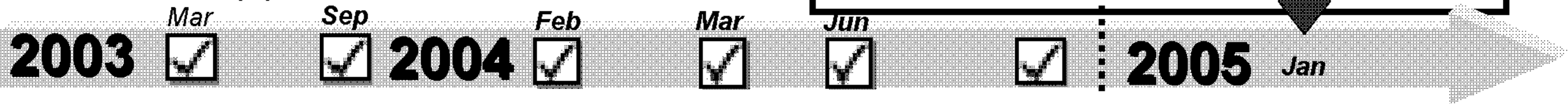
(U) FIX/ACTION/CHANGE:

Fix:

Action:

Change:

OPR: USD (P)
OCR: USD (P)



GS-016 Develop Policy for Joint Interagency Detainee Ops

(U) RECOMMENDATION/OBSERVATION

- Common guidance is required where multiple agencies (e.g. DoD, FBI, CIA) perform joint/combined interrogations, common guidance is required.

(U) CURRENT ASSESSMENT:

- USDI is addressing Joint Interagency roles in the DoD Interrogation process

OPR: USD (I)

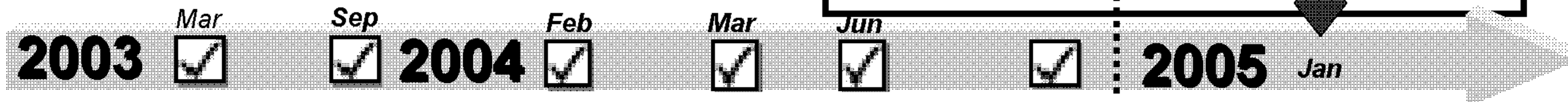
OCR: USD (P)

(U) FIX/ACTION/CHANGE:

Fix: Issue common guidance.

Action: Interagency coordination of interrogation policy.

Change: Common practices for all engaged in intelligence gathering.



F-019 Contracting Shortfalls to Training

(U) RECOMMENDATION/OBSERVATION

- The contracting system failed to ensure that properly trained and vetted linguist and interrogator personnel were hired to support operations at Abu Ghraib.

(U) CURRENT ASSESSMENT:

- Issue will be addressed by the Joint Task Force Policy Charter between OSD and ARMY
- Issue has been discussed with P&R to develop a plan for training and vetting linguists in contract work.

OPR: Joint Policy Task Force

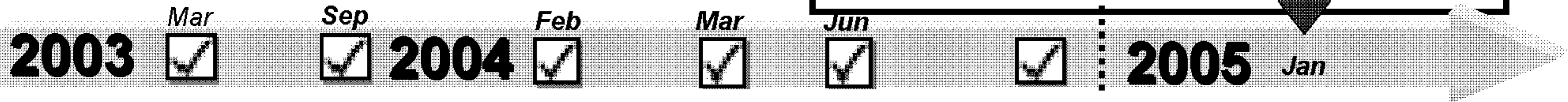
OCR: USD (P)

(U) FIX/ACTION/CHANGE:

Fix: DoD should establish policy on the use of contract interrogators for all services

Action: Working w/ ASAALT to establish clear standards in SOW

Change: Policy/Training



F-023 DoD Enforcement of Procedures Conducted by OGA

(U) RECOMMENDATION/OBSERVATION

- DoD must enforce adherence by OGA with established DoD practices and procedures while conducting detainee interrogation operations at DoD facilities

(U) CURRENT ASSESSMENT:

- USD(I) responsible for inter-agency coordination on intelligence issues. They have been developing policy to address the concerns of DoD when OGA's are engaged in law/intelligence activities.

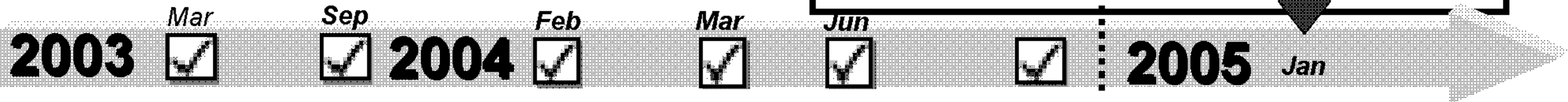
OPR: USD (I)
OCR: USD (P)

(x) FIX/ACTION/CHANGE:

Fix: DoD Policy Emphasis

Action: Issue Policy guidance and update existing MOUs

Change: Clearly defined OGA role in interrogation of DoD detainees



R-055 *Align the Release Process of Security Internees w/ DoD Policy*

(U) RECOMMENDATION/OBSERVATION

- The release process for security internees is not consistent with DoD Policy.

(U) CURRENT ASSESSMENT:

- USD (P) will coordinate with OSD, Army and other service components to harmonize policies and issue new guidance viz. 2320.1 and AR 190-8

OPR: USD (P)

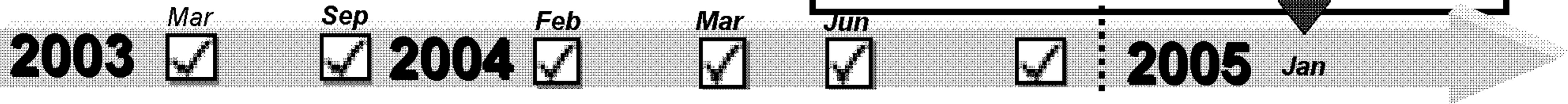
OCR: USD (P)

(U) FIX/ACTION/CHANGE:

Fix: Policy alignment required

Action: Align policy

Change: Issue new DoDD directives and rewrite 190-8 to reflect changes



T-011 Standardized Accountability Practices in Detention Facilities

(U) RECOMMENDATION/OBSERVATION

- Accountability practices throughout any particular detention facility must be standardized and in accordance with applicable regulations and international law.

(U) CURRENT ASSESSMENT:

- USD (P) does not think this is an OSD matter and requests reassignment to JCS or Army. Accounting for detainees is prescribed under AR190-8 (PWIC) with ARMY as executive agent.

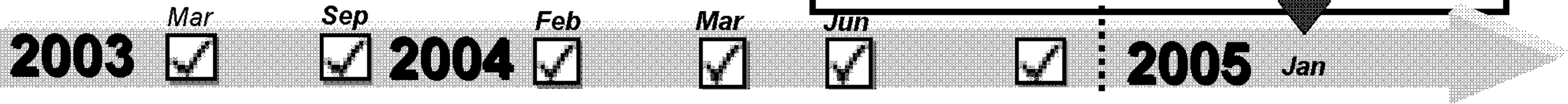
OPR: USD (P)
OCR: USD (P)

(x) FIX/ACTION/CHANGE:

Fix:

Action:

Change:



F-008 Adopt One DoD Policy on Interrogation

(U) RECOMMENDATION/OBSERVATION

- Adopt one DoD policy for interrogation, within the framework of existing doctrine, adhering to the standards found in doctrine, and enforce that standard policy across DoD.

(U) CURRENT ASSESSMENT:

- USD(P) is working with USD(I) to complete develop and publish DoD policy on interrogation

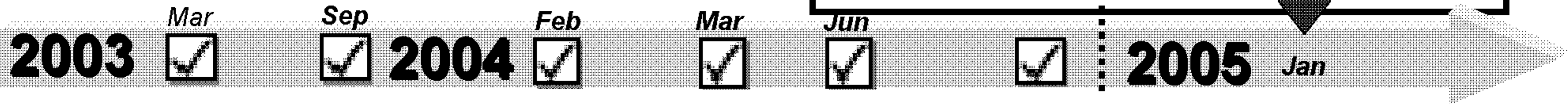
OPR: USD (I)
OCR: USD (P)

(U) FIX/ACTION/CHANGE:

Fix: USD (I) develop interrogation policy

Action: USD(I) has lead on policy development

Change: Harmonized policy.



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RHRMDAB/COMUSNAVCENT//N3//

RUCJICL/COMUSMARCENT HQ MACDILL AFB FL//G3//COS/G5//

RUCKMAA/COMMARFORLANT NORFOLK VA

RUCBCLF/CINCLANTFLT NORFOLK VA

RUEOBBA/COMUSCENTAF SHAW AFB SC//A3/A5//

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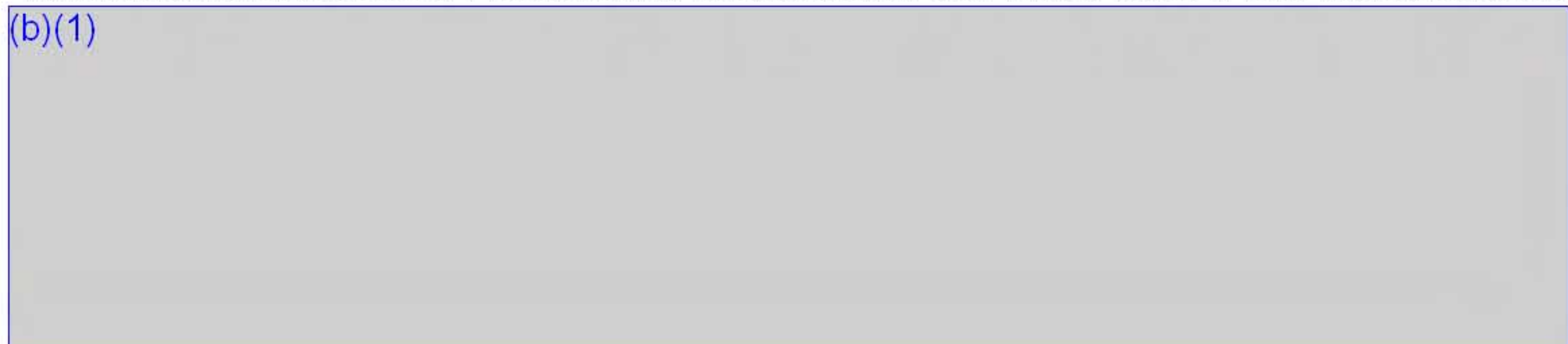
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RUEAIIA/CIA WASHINGTON DC
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RUEADLA/DLA FT BELVOIR VA//D/J-3/J-341//
RHMFSS/DLA FT BELVOIR VA//D/J-3/J-341//
RHMFSS/DSCP PHILADELPHIA PA
RHMFSS/DSCP PHILADELPHIA PA
RUEADLA/DLSC FT BELVOIR VA
RUEADLA/DCMA FT BELVOIR VA
RHMFSS/DCMA FT BELVOIR VA
RUEMANA/DDC NEW CUMBERLAND PA
RUEAAMC/CDRAMC ALEXANDRIA VA
RHMFSS/CDRAMC ALEXANDRIA VA
RUCOWCZ/COMLANTAREA COGARD PORTSMOUTH VA
RHMFSS/COMLANTAREA COGARD PORTSMOUTH VA
RUCKMEA/CG II MEF
RHMFSS/CG II MEF
RUCOGCA/COMNAVBASE GUANTANAMO BAY CU

~~SECRET~~

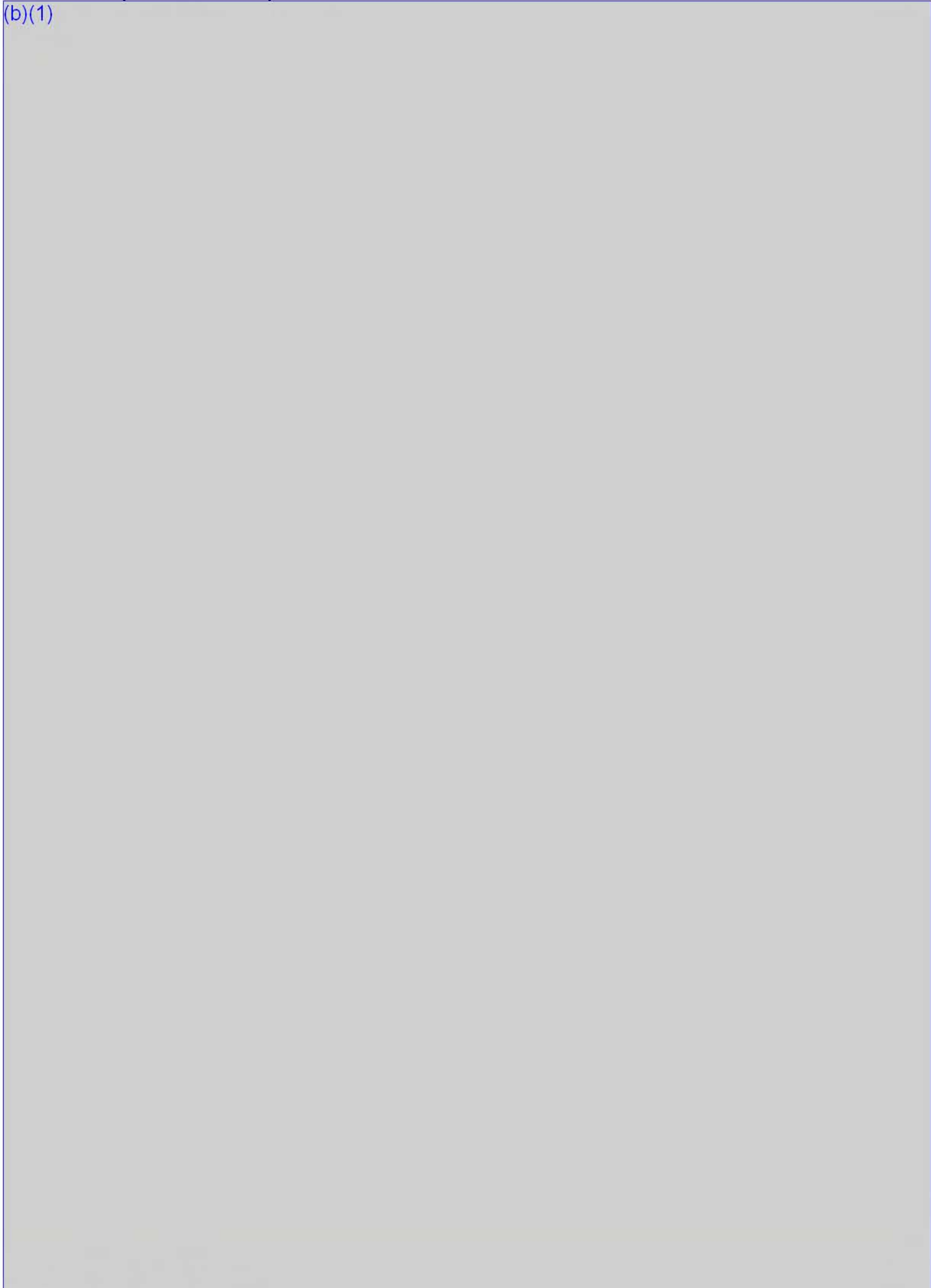
OPER/ENDURING FREEDOM//
MSGID/ORDER/CJCS//
REF/A/WARNORD/CJCS/220040ZDEC01/-/NOTAL//
REF/B/MSG/USCINCSO/272050ZDEC01//
AMPN ~~(S)~~ REF A IS CJCS WARNING ORDER DIRECTING USCINCSO TO
PROVIDE COMMANDER'S ESTIMATE FOR PREPARATION TO USE NAVAL
BASE, GUANTANAMO BAY (GTMO), CUBA, AS AN EXTENDED DETAINEE
HOLDING FACILITY. REF B IS USCINCSO COMMANDER'S ESTIMATE.
ORDTYP/EXORD/CJCS//
TIMEZONE/Z//
NARR ~~(S)~~ THIS IS AN EXECUTE ORDER. THE SECDEF HAS APPROVED
USCINCSO'S CONCEPT IN COMMANDER'S ESTIMATE FOR NAVAL BASE,
GUANTANAMO BAY (GTMO), CUBA, DETAINEE OPERATIONS (REF B) WITH
MODIFICATIONS AND DIRECTS USCINCSO TO PREPARE FOR OPERATION OF

(b)(1)



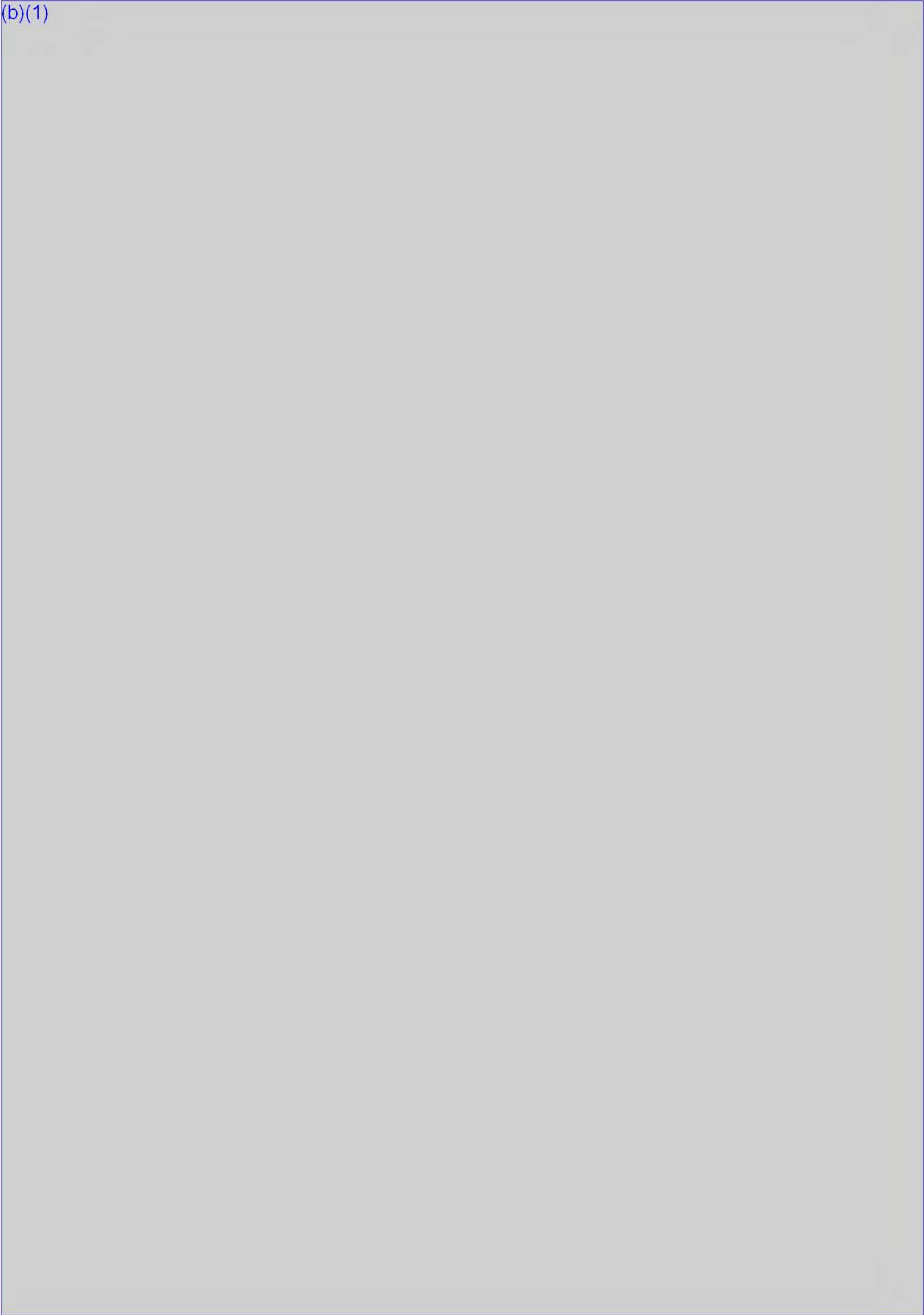
GENTEXT/SITUATION/

(b)(1)



A. (U) TASKINGS
(1) (U) USCINCSO

(b)(1)



(b)(1)



(b)(1)

(S) (U) USCINCPACOM

(b)(1)