



POLICY

~~SECRET~~

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

SECDEF HAS SEEN

FEB 05 2002

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Feith
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ACTION MEMO
SECRETARY OF DEFENSE

FOR: SECRETARY OF DEFENSE

DepSec Action InfoFROM: Douglas J. Feith, Under Secretary of Defense for Policy AF 1/29/02

SUBJECT: Foreign Government Access to Detainees at Guantanamo (U)

(U) The purpose of this memorandum is to obtain your approval on the following issues:

1. (U) DoD Policy on Foreign Government Access

(b)(1)

(b)(1)

→ SD
Our proposed policy
makes clear that
there will be no
foreign visitors (other
than the ICRC)

(b)(1)

who
are
private
people
that
no
lawyer
family
member
et al

(U) We have discussed the draft policy guidance with the interagency and have incorporated their views as appropriate.

(U) To ensure smooth implementation of the access policy, we should ensure it is disseminated to all DoD components. The memorandum for your signature at TAB A will accomplish that and designate an appropriate point of contact.

RECOMMENDATION: Approve policy guidance and sign memorandum at TAB A.

DoJ Fei

Approve DR Disapprove _____ Other _____

Go 1 Feb 1

CLASSIFICATION: SECRET
 CONTROLLING INSTRUCTIONS: SECRET
 DOWNGRADING INSTRUCTIONS: SECRET

DOWNGRADE TO CONFIDENTIAL WHEN
SEPARATED FROM SECRET ENCLOSURE

SPL ASSISTANT DI RITA 1/20
 SR MA GIAMBRASIAN 1/20

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0604-0088

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(b)(1)

RECOMMENDATIONS:

- A. Pre-approve access by government officials of NATO member countries and Australia, consistent with the policy guidance.

Approve *[Signature]* Disapprove _____ Other _____

- B. Authorize the Deputy Secretary of Defense to approve, case-by-case, access by other governments that make requests, consistent with the policy guidance.

Approve *[Signature]* Disapprove _____ Other _____

COORDINATION: TAB C.

Attachments:
As Stated

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

DOWNGRADE TO CONFIDENTIAL WHEN
SEPARATED FROM SECRET ENCLOSURE

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0604-00PP



~~FOR OFFICIAL USE ONLY~~

THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
COMMANDER, U.S. CENTRAL COMMAND
COMMANDER, U.S. SOUTHERN COMMAND
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Foreign Government Access to Detainees at U.S. Naval Base
Guantanamo Bay

All requests by foreign governments for access to their nationals detained at U.S. Naval Base Guantanamo Bay, Cuba, in connection with Operation Enduring Freedom will be processed as set out in the attached policy guidance. Please ensure this guidance is distributed within your organization.

The Under Secretary of Defense for Policy shall execute this policy for the duration of Operation Enduring Freedom, or until otherwise directed. The point of contact for further information regarding this policy is the Office of the Deputy Assistant Secretary of Defense for Stability Operations, OASD (SOLIC) (b)(6)

(b)(6) or (b)(6)

D. A. [Signature]



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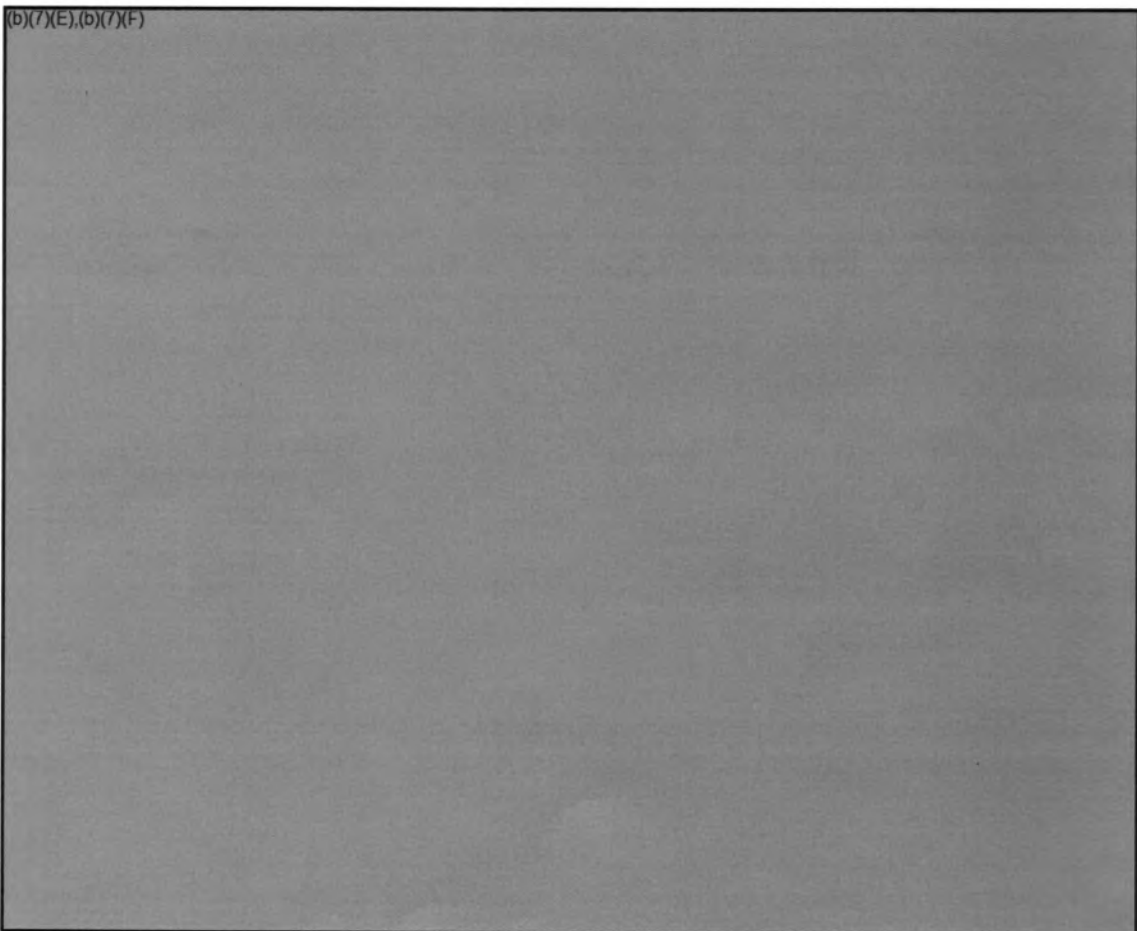
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FOREIGN ACCESS TO DETAINEES POLICY GUIDANCE

Providing access to detainees at U.S. Naval Base Guantanamo Bay by official representatives of foreign governments can, in select cases, serve two key U.S. objectives: (1) obtaining intelligence information, and (2) furthering criminal investigations and prosecutions. All requests for access to detainees at Guantanamo will be assessed in terms of how such access furthers these objectives and reinforces coalition support for Operation Enduring Freedom. There will be no foreign visits from non-government officials, with the exception of the International Committee of the Red Cross.

(b)(7)(E),(b)(7)(F)

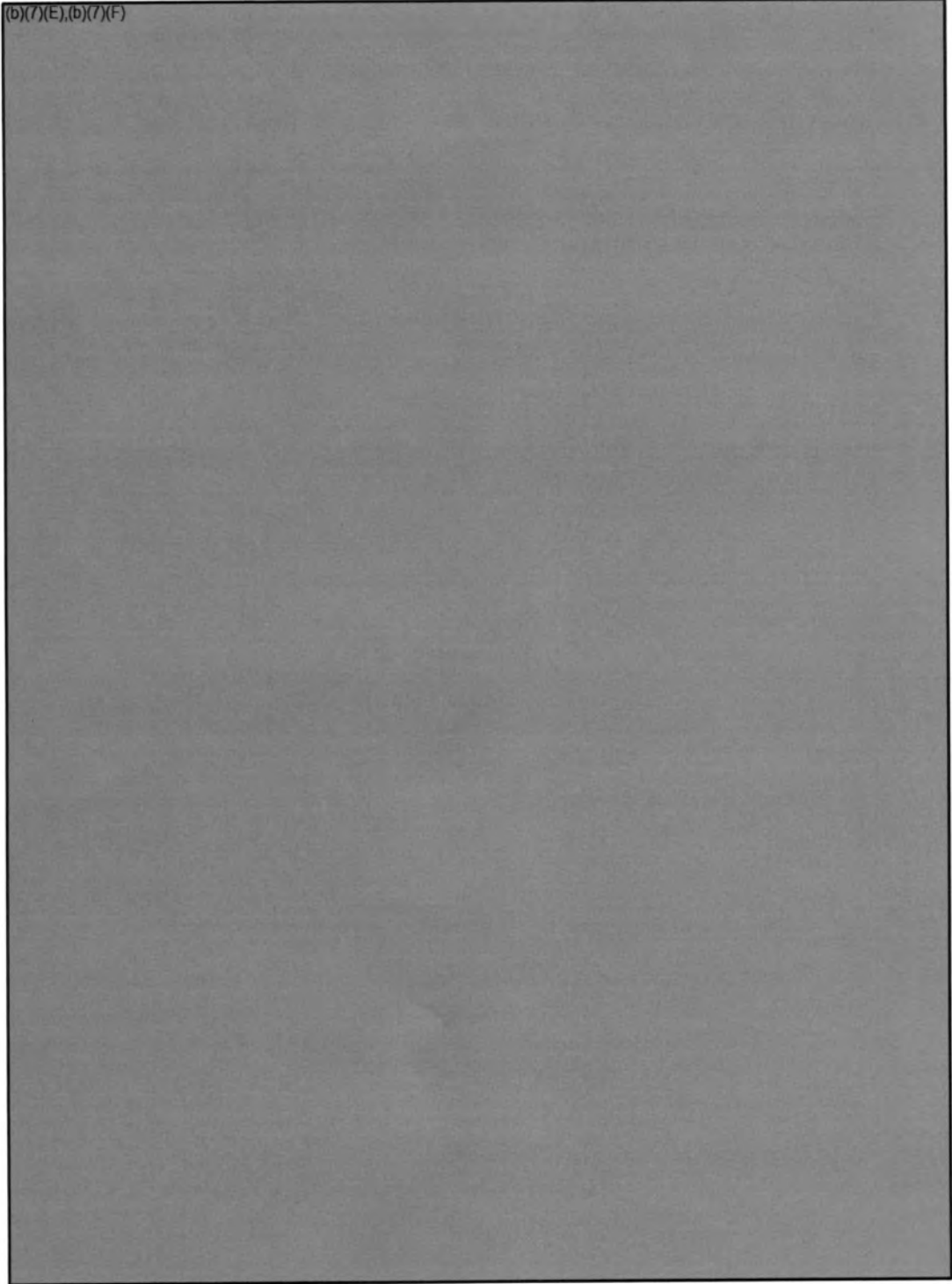


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~~FOR OFFICIAL USE ONLY~~

(b)(7)(E), (b)(7)(F)



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COORDINATION:

Principal Deputy General Counsel	Mr. Dell'Orto	28JAN02
Director, Joint Staff	LTG Abizaid	29JAN02
Principal Deputy Assistant Secretary of Defense for International Security Affairs	Mr. Flory	28JAN02
Principal Deputy Assistant Secretary of Defense for International Security Policy	Mr. Trachtenberg	28JAN02

0604-0088

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2

THE WHITE HOUSE

WASHINGTON

February 7, 2002

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
CHIEF OF STAFF TO THE PRESIDENT
DIRECTOR OF CENTRAL INTELLIGENCE
ASSISTANT TO THE PRESIDENT FOR NATIONAL
SECURITY AFFAIRS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Humane Treatment of al Qaeda and Taliban Detainees

1. Our recent extensive discussions regarding the status of al Qaeda and Taliban detainees confirm that the application of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva) to the conflict with al Qaeda and the Taliban involves complex legal questions. By its terms, Geneva applies to conflicts involving "High Contracting Parties," which can only be states. Moreover, it assumes the existence of "regular" armed forces fighting on behalf of states. However, the war against terrorism ushers in a new paradigm, one in which groups with broad, international reach commit horrific acts against innocent civilians, sometimes with the direct support of states. Our Nation recognizes that this new paradigm -- ushered in not by us, but by terrorists -- requires new thinking in the law of war, but thinking that should nevertheless be consistent with the principles of Geneva.
2. Pursuant to my authority as Commander in Chief and Chief Executive of the United States, and relying on the opinion of the Department of Justice dated January 22, 2002, and on the legal opinion rendered by the Attorney General in his letter of February 1, 2002, I hereby determine as follows:
 - a. I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva.
 - b. I accept the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to

~~CONFIDENTIAL~~

~~Reason: 1.5 (d)~~

~~Authorized for release on 02/07/02~~

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~~CONFIDENTIAL~~

2

exercise that authority at this time. Accordingly, I determine that the provisions of Geneva will apply to our present conflict with the Taliban. I reserve the right to exercise this authority in this or future conflicts.

- c. I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 applies only to "armed conflict not of an international character."
 - d. Based on the facts supplied by the Department of Defense and the recommendation of the Department of Justice, I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war.
- 3. Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.
 - 4. The United States will hold states, organizations, and individuals who gain control of United States personnel responsible for treating such personnel humanely and consistent with applicable law.
 - 5. I hereby reaffirm the order previously issued by the Secretary of Defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.
 - 6. I hereby direct the Secretary of State to communicate my determinations in an appropriate manner to our allies, and other countries and international organizations cooperating in the war against terrorism of global reach.

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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.

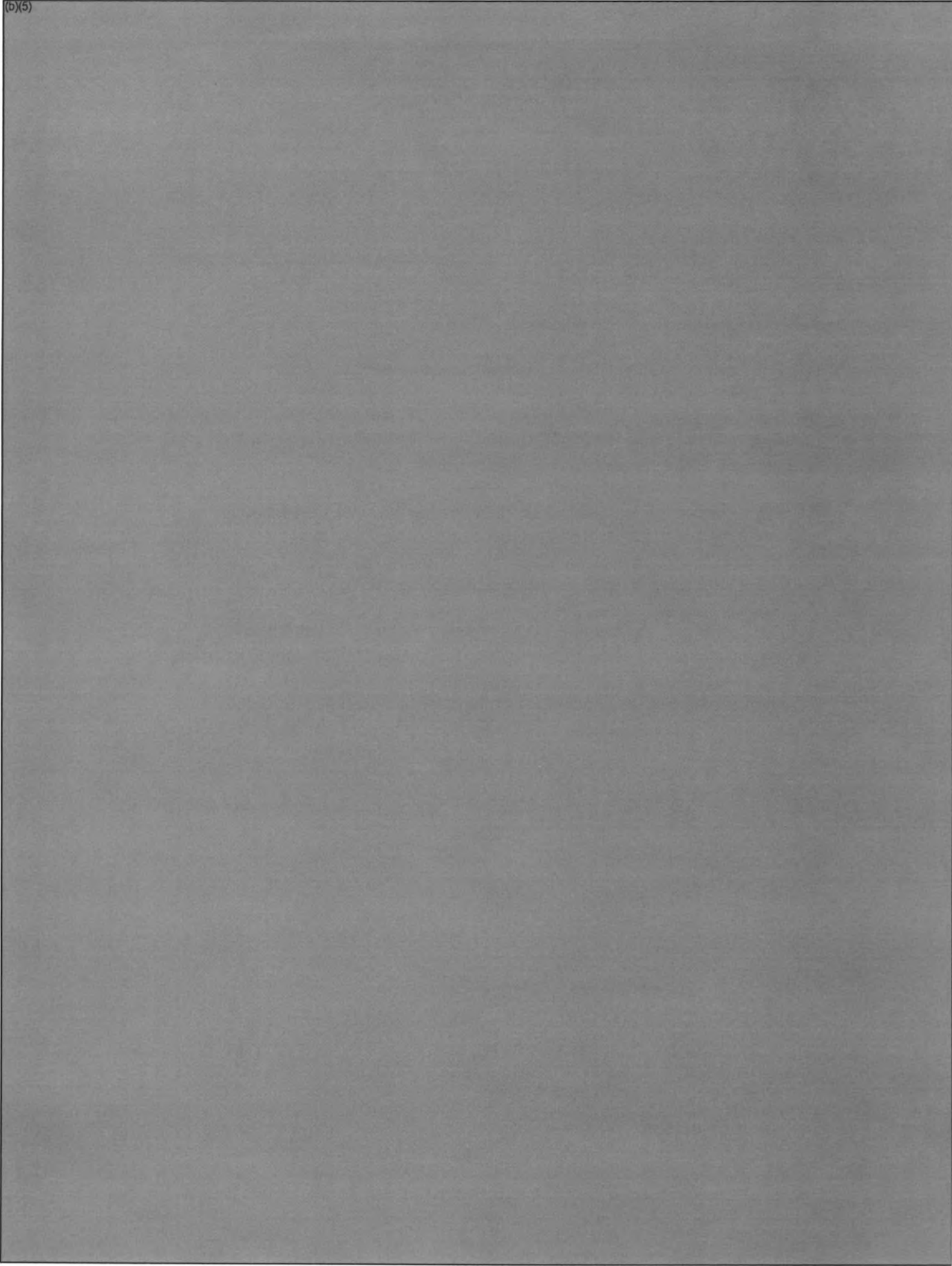
(U) The Combatant Commanders shall transmit this order to subordinate commanders, including Commander, Joint Task Force 160, for implementation.

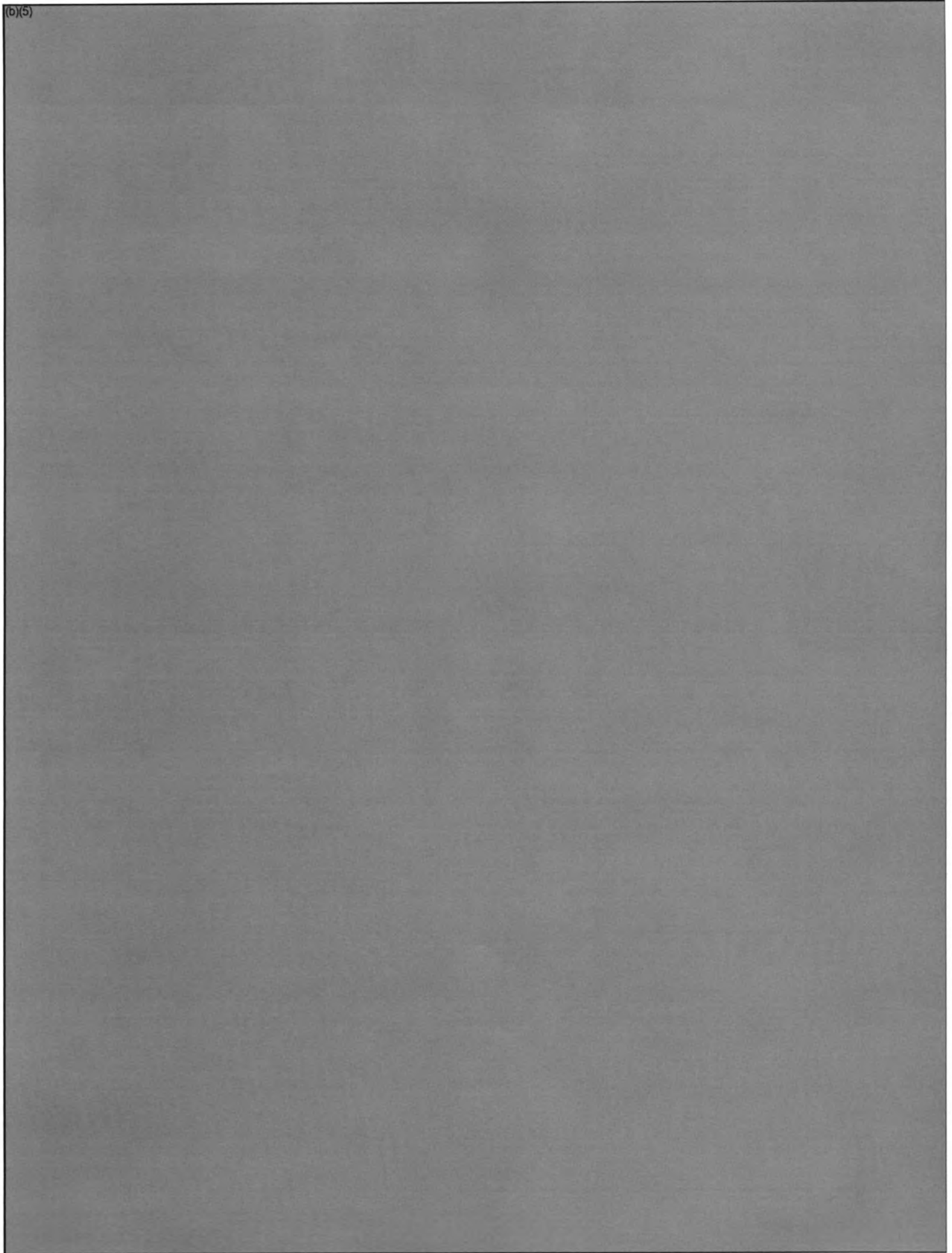
(U) Keep me appropriately informed of the implementation of this order.

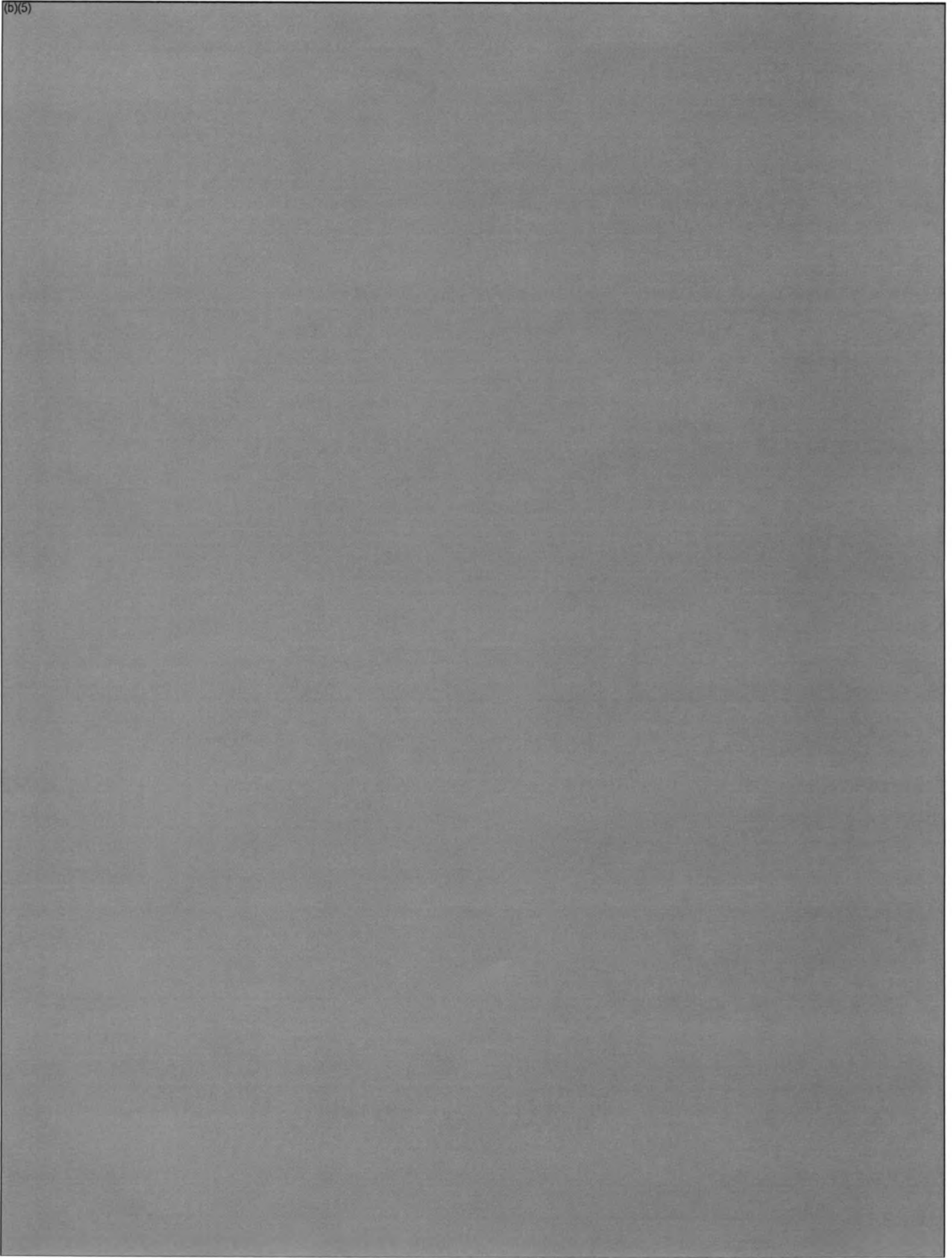
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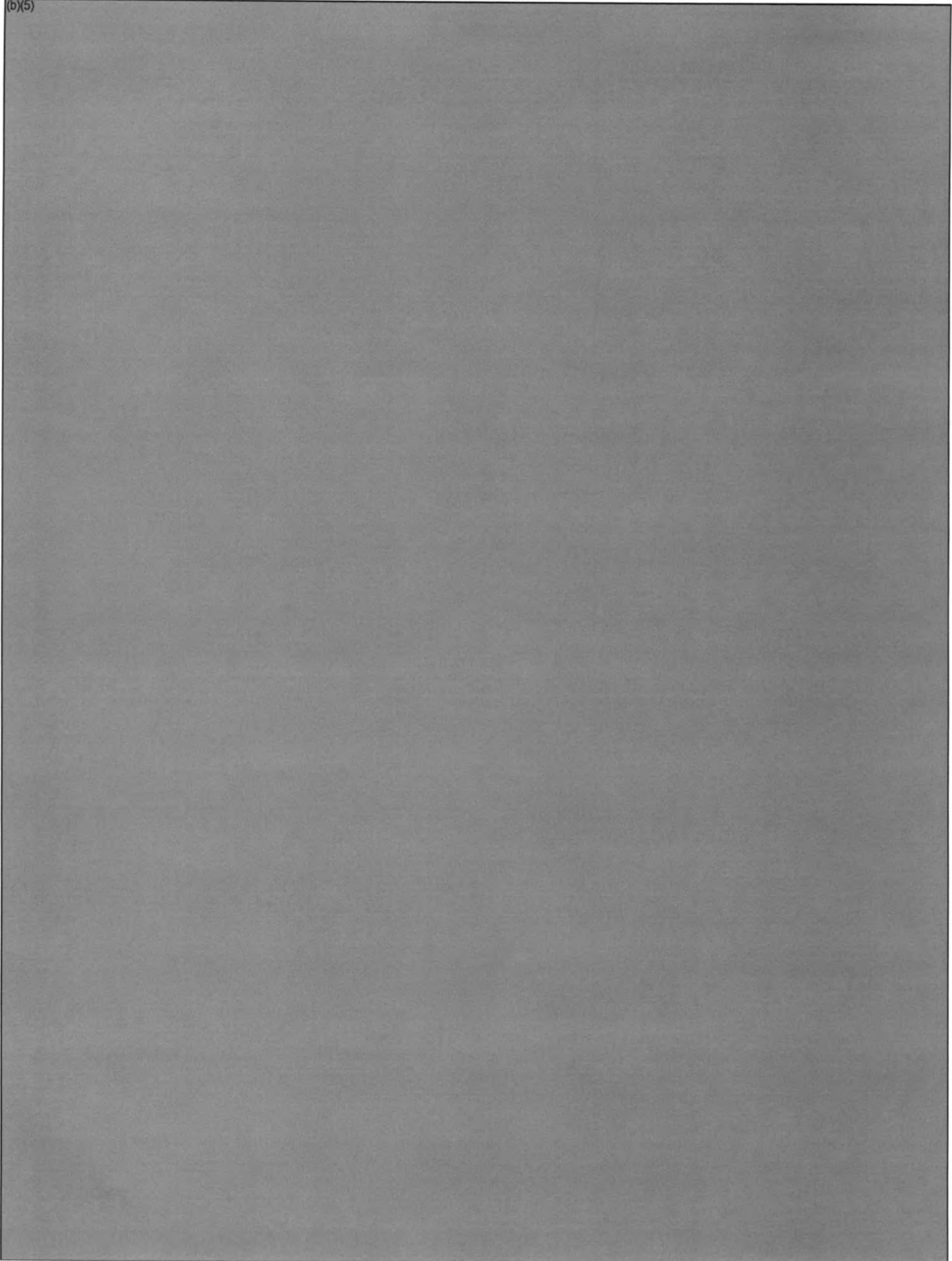


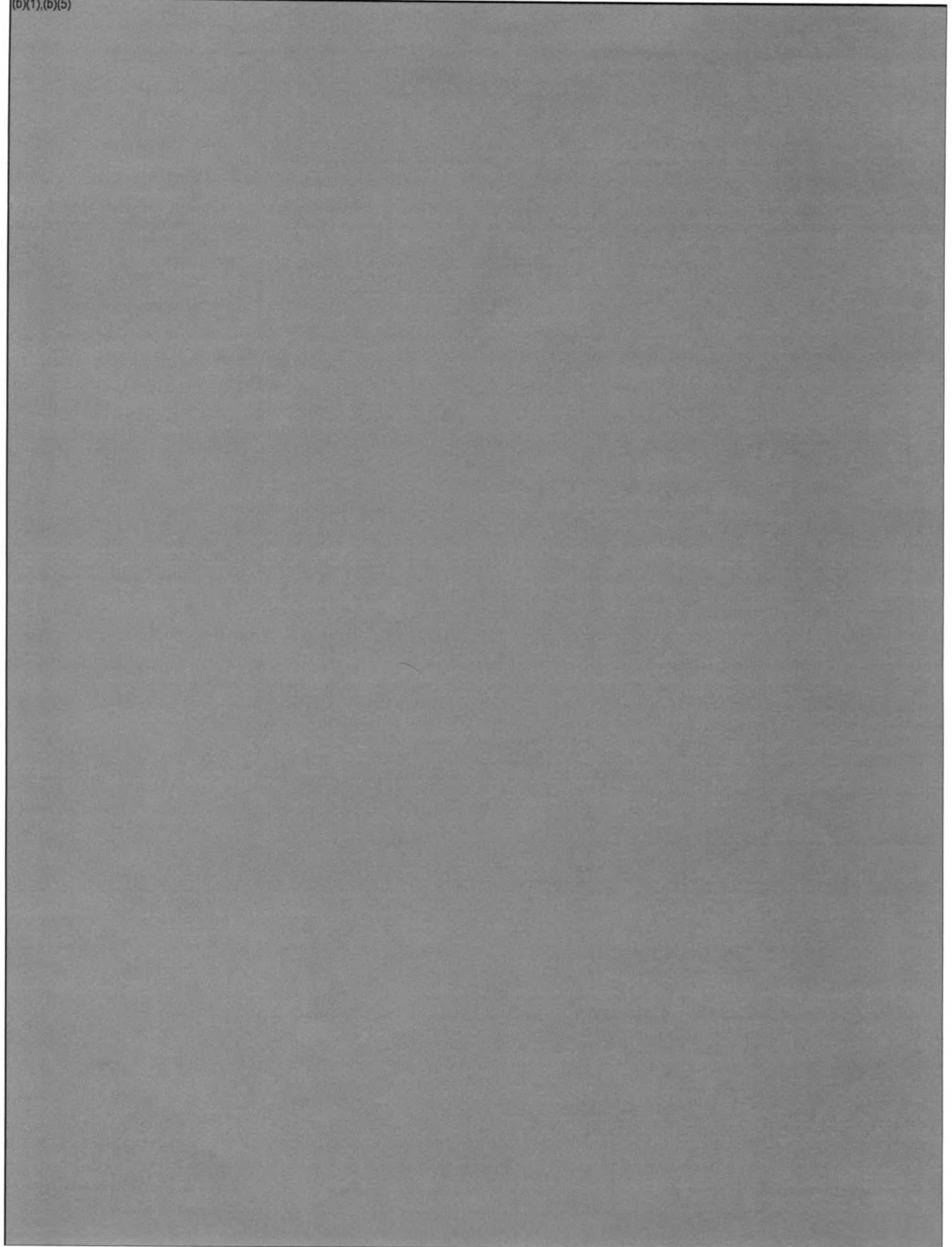
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Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12
August 1949.

Part I : General provisions

ARTICLE 5

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation. Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

INTERNATIONAL HUMANITARIAN LAW



articles

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Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12
August 1949.

Part I : General provisions

ARTICLE 4

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention:

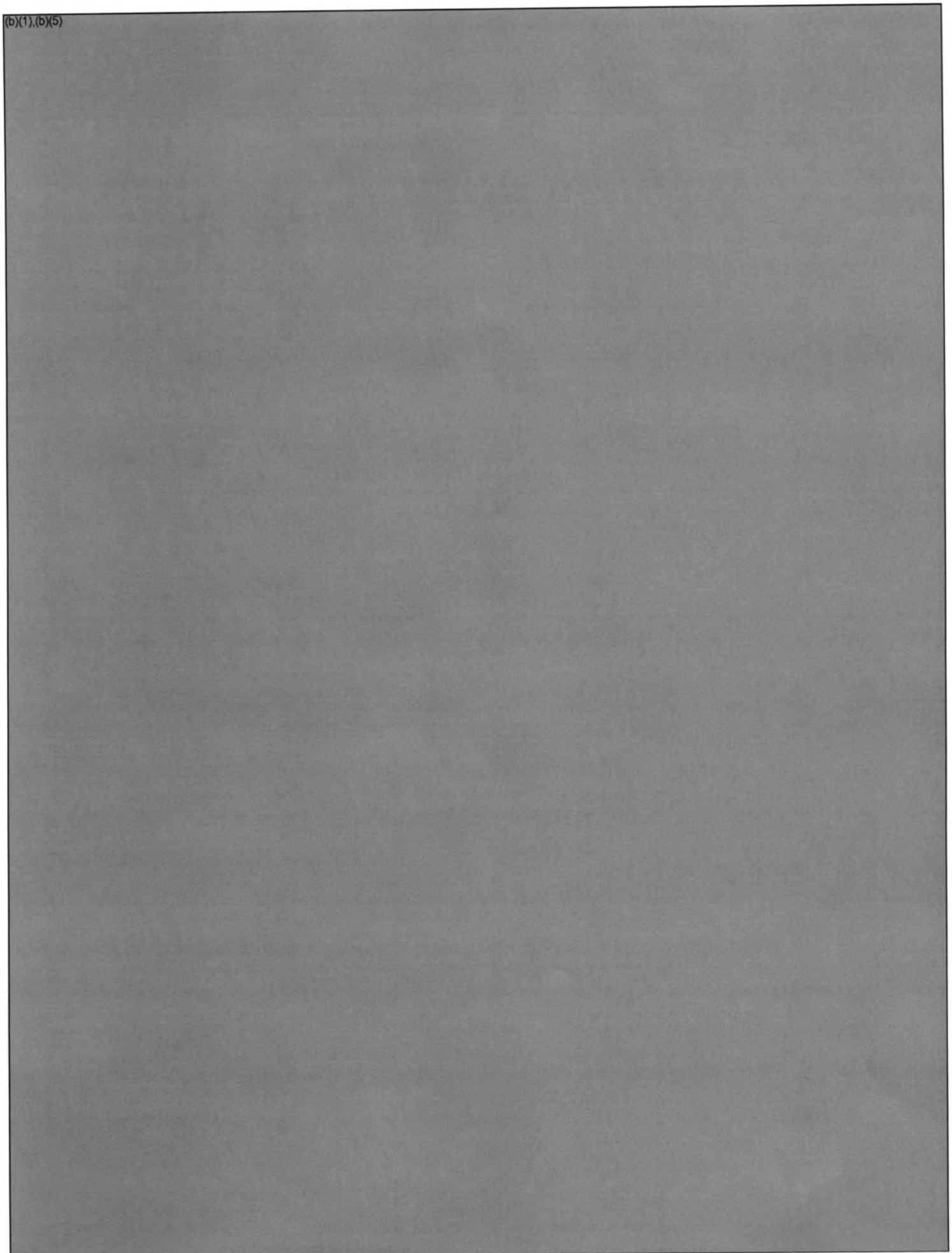
(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

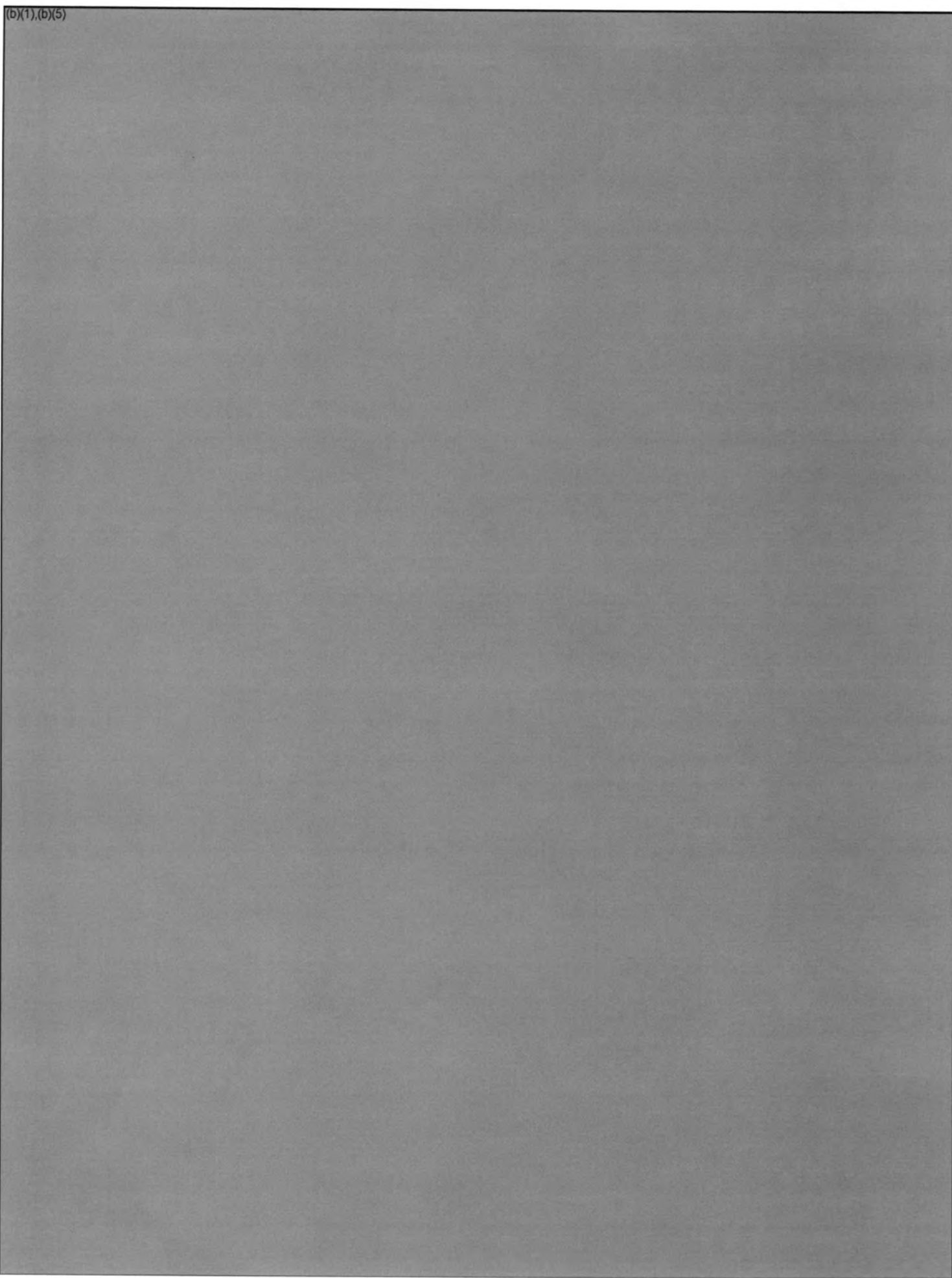
(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

INTERNATIONAL HUMANITARIAN LAW

0604-0090







articles



Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12
August 1949.

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(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

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B. The following shall likewise be treated as prisoners of war under the present Convention:

(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

I N T E R N A T I O N A L H U M A N I T A R I A N L A W

0604-0090



articles

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Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12
August 1949.

Part I : General provisions

ARTICLE 5

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INTERNATIONAL HUMANITARIAN LAW

6604-0090

~~CONFIDENTIAL~~

THE WHITE HOUSE

WASHINGTON

February 7, 2002

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
CHIEF OF STAFF TO THE PRESIDENT
DIRECTOR OF CENTRAL INTELLIGENCE
ASSISTANT TO THE PRESIDENT FOR NATIONAL
SECURITY AFFAIRS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Humane Treatment of al Qaeda and Taliban Detainees

1. Our recent extensive discussions regarding the status of al Qaeda and Taliban detainees confirm that the application of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva) to the conflict with al Qaeda and the Taliban involves complex legal questions. By its terms, Geneva applies to conflicts involving "High Contracting Parties," which can only be states. Moreover, it assumes the existence of "regular" armed forces fighting on behalf of states. However, the war against terrorism ushers in a new paradigm, one in which groups with broad, international reach commit horrific acts against innocent civilians, sometimes with the direct support of states. Our Nation recognizes that this new paradigm -- ushered in not by us, but by terrorists -- requires new thinking in the law of war, but thinking that should nevertheless be consistent with the principles of Geneva.
2. Pursuant to my authority as Commander in Chief and Chief Executive of the United States, and relying on the opinion of the Department of Justice dated January 22, 2002, and on the legal opinion rendered by the Attorney General in his letter of February 1, 2002, I hereby determine as follows:
 - a. I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva.
 - b. I accept the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to

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~~Reclassified on 02/07/12~~

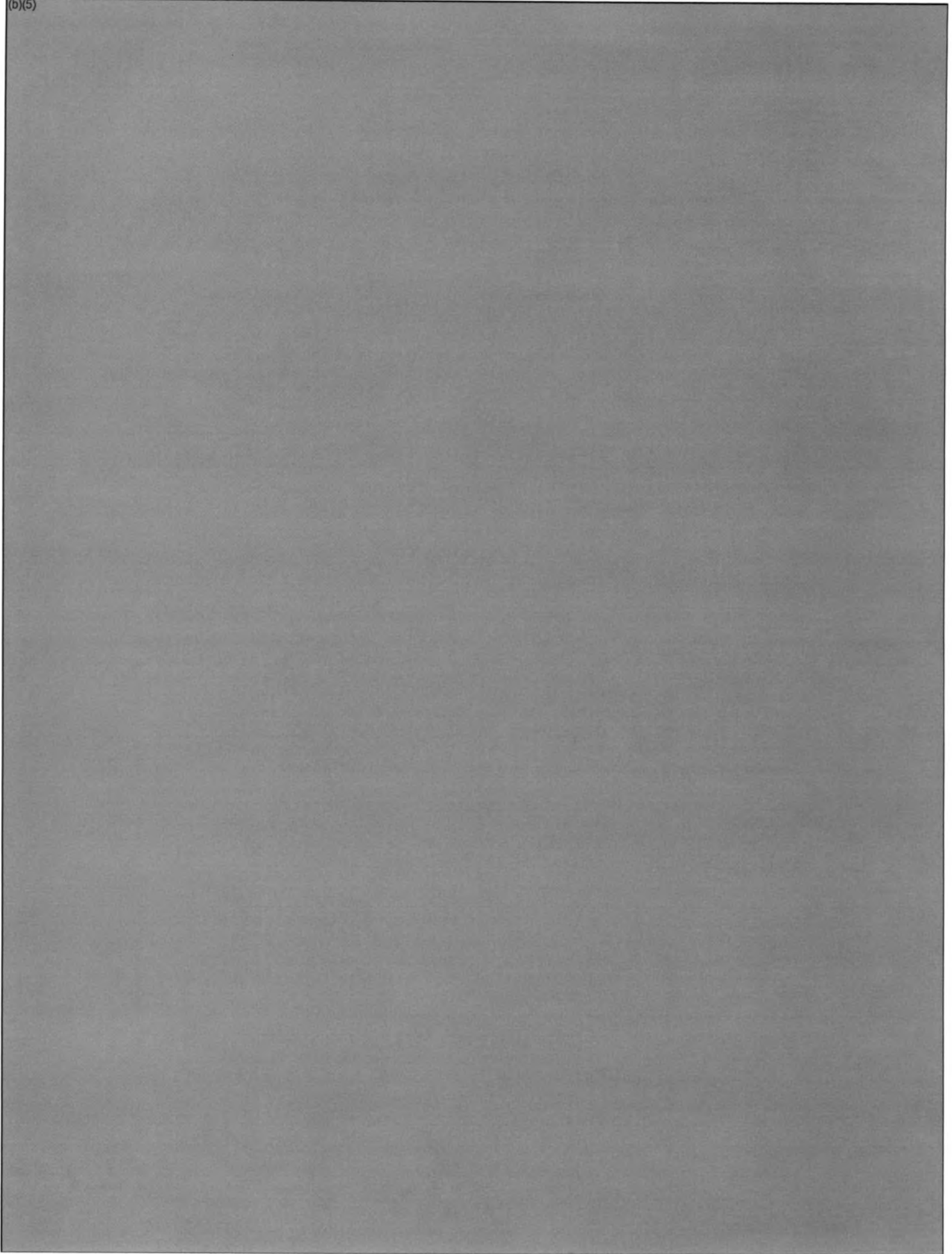
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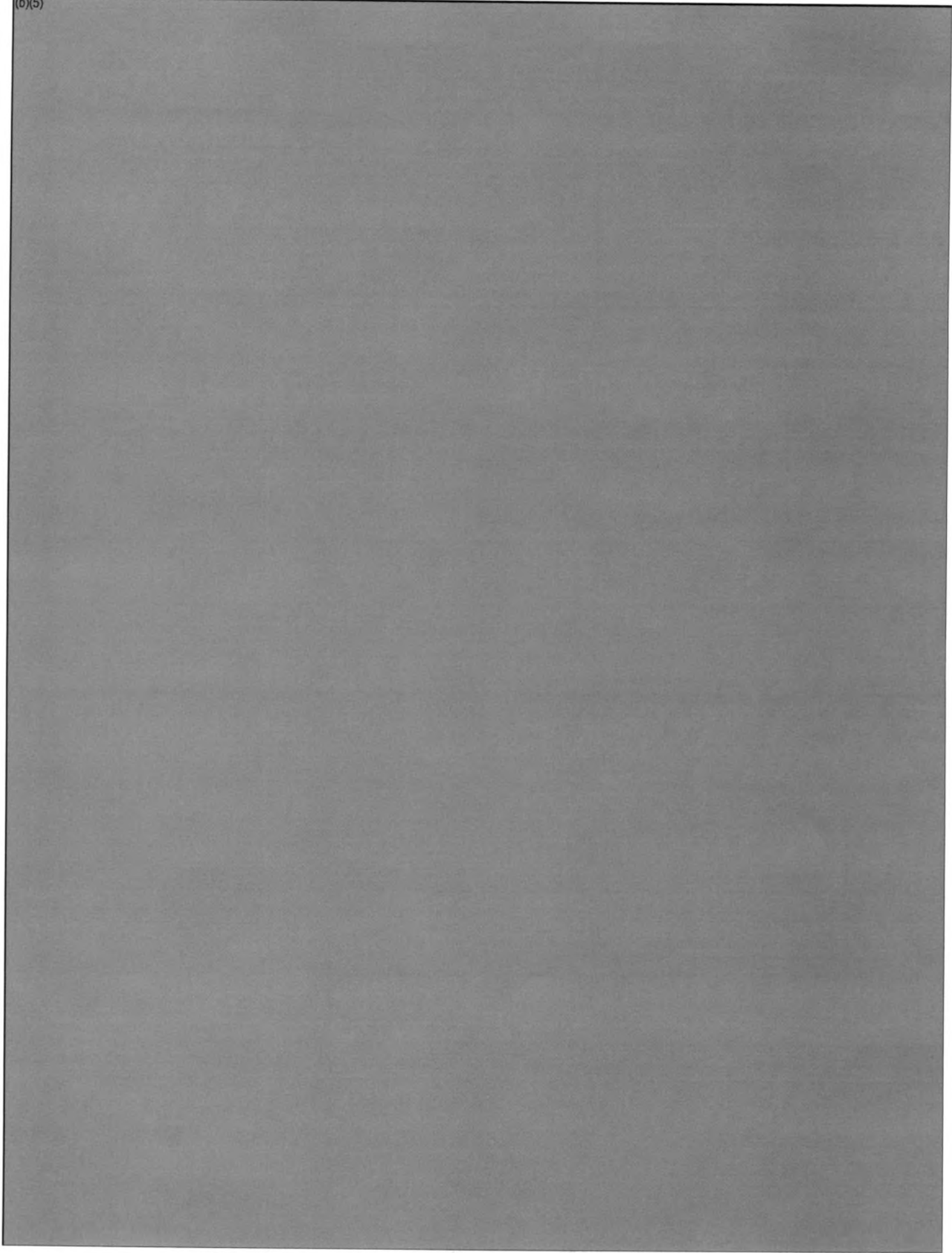
exercise that authority at this time. Accordingly, I determine that the provisions of Geneva will apply to our present conflict with the Taliban. I reserve the right to exercise this authority in this or future conflicts.

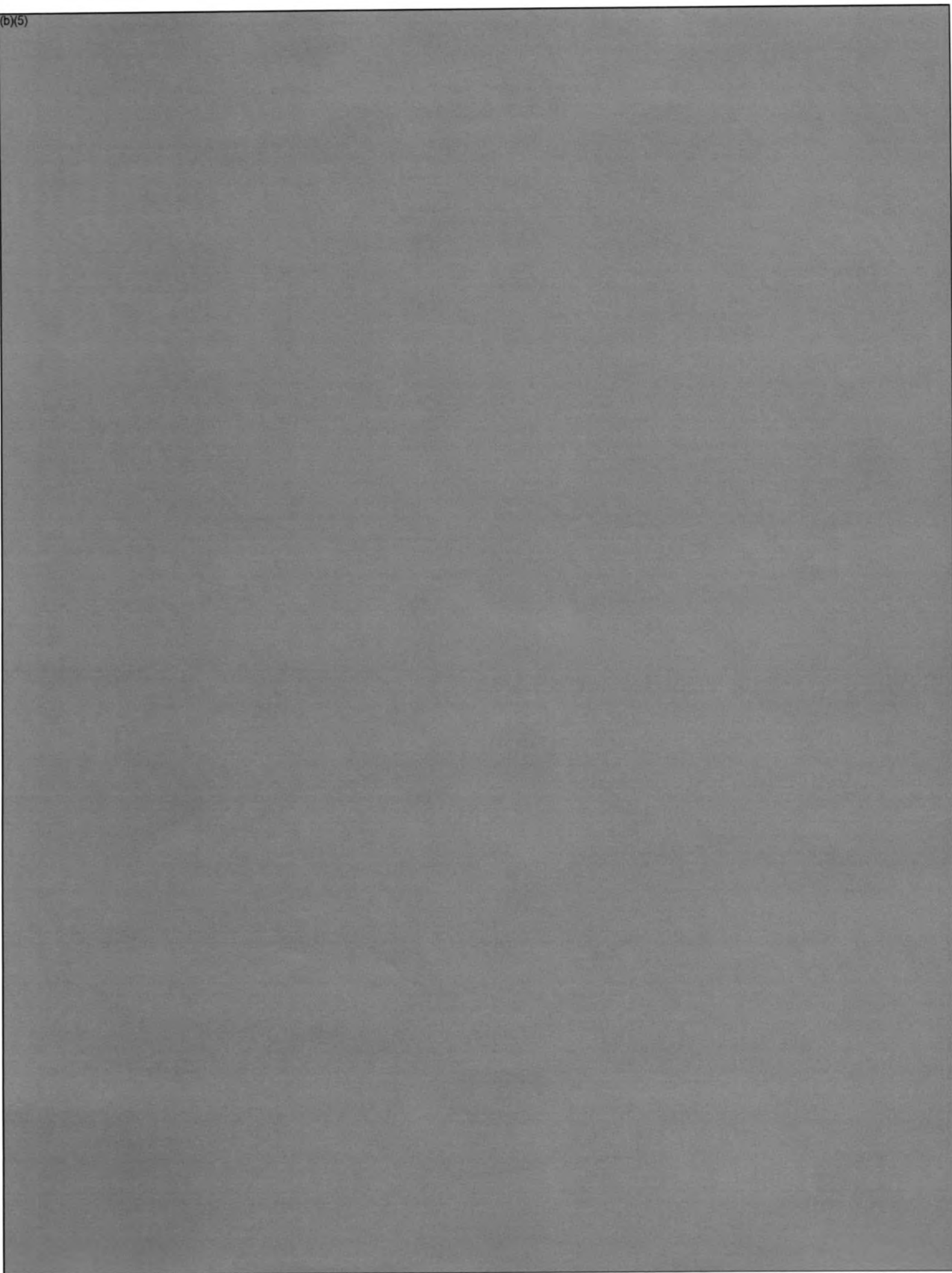
- c. I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 applies only to "armed conflict not of an international character."
 - d. Based on the facts supplied by the Department of Defense and the recommendation of the Department of Justice, I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war.
3. Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.
 4. The United States will hold states, organizations, and individuals who gain control of United States personnel responsible for treating such personnel humanely and consistent with applicable law.
 5. I hereby reaffirm the order previously issued by the Secretary of Defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.
 6. I hereby direct the Secretary of State to communicate my determinations in an appropriate manner to our allies, and other countries and international organizations cooperating in the war against terrorism of global reach.

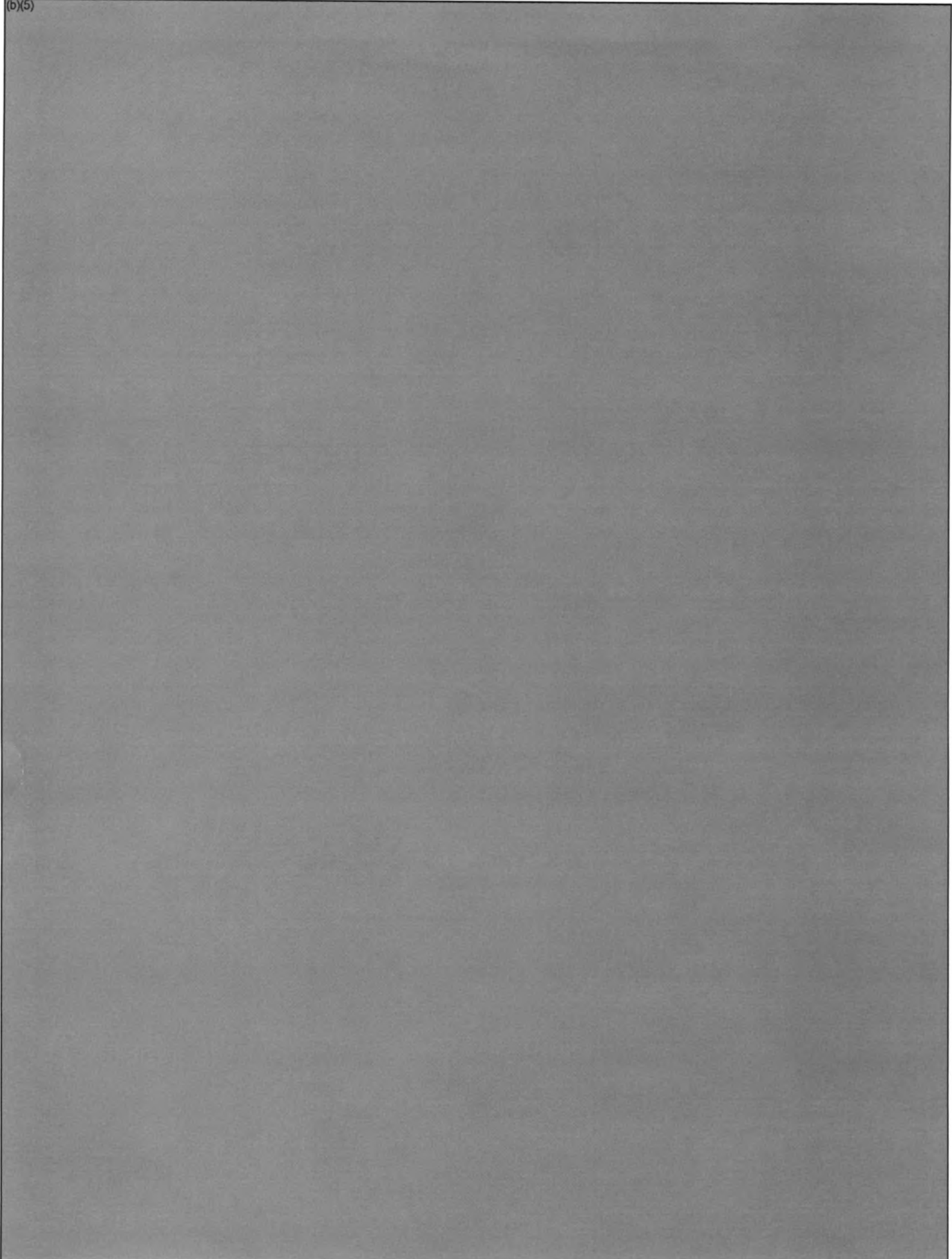


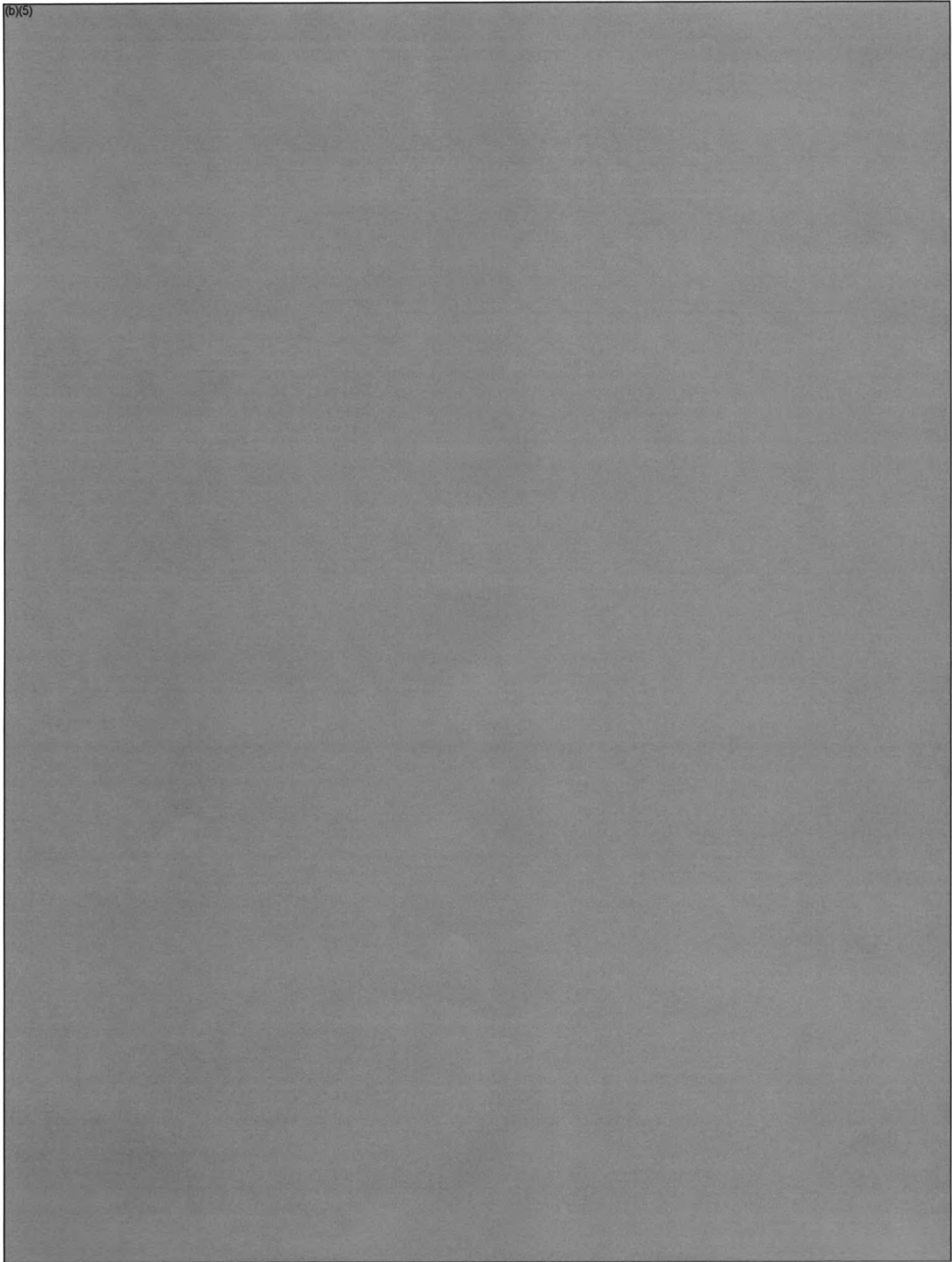
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OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-2500

I-02/003782-PK

SPECIAL OPERATIONS/
LOW-INTENSITY CONFLICT

ACTION MEMO

FOR: UNDER SECRETARY OF DEFENSE FOR POLICY

FROM: Robert Andrews, Principal Deputy Assistant Secretary of Defense for
Special Operations and Low-Intensity Conflict

SUBJECT: Detainee Transfer Policy (U)

(S) This memo seeks your approval, for release and promulgation, of the policy statement and guidelines for transferring detainees to the control of other governments.

(S) On 23 February SECDEF approved the guidelines in draft for interagency coordination. We completed that coordination on 15 March. Changes made by the interagency, though refining and clarifying, did not substantially change the guidelines. We added the overarching policy statement at the request of Elliott Abrams, National Security Council.

(S) On 20 March Deputies indicated full concurrence with the policy statement and guidelines. To promulgate the policy to the field, we need a signed memo directing transfer actions be handled in accordance with the approved policy guidance.

RECOMMENDATION: Sign attached memo.

COORDINATION: Tab A

Attachments:
As Stated

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

DECLASSIFIED BY : USD(P)
DATE : 02/25/2008

~~SECRET~~

~~CLASSIFIED BY : ASD/SECDEF~~
~~Declassify on: OADR~~
~~Declassify on: OADR~~

0604-0096



POLICY

~~SECRET~~

THE UNDER SECRETARY OF DEFENSE
2100 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2100



APR 1 2002

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Policy Statement and Guidelines for Transfer of Detainees under US
Department of Defense Control to Foreign Government Control

Transfers of detainees under US Department of Defense control, in connection with the global war on terrorism, to foreign government control shall be conducted in accordance with the attached policy guidance approved by the Secretary of Defense. My office will lead the implementation of this policy in coordination with appropriate components for the duration of Operation Enduring Freedom, or until otherwise directed.

Attachment:
As stated

Douglas J. Feith

~~SECRET~~

~~CLASSIFIED BY: [REDACTED]~~
~~EXEMPT FROM GDS~~
~~DECLASSIFY ON: OADR REQUEST~~



0604-0047

**Policy Statement on Transfer of Detainees under
US Department of Defense Control to
Foreign Government Control**

The US has interests in not retaining control over large numbers of detainees from the war against terrorism. The objective of the US transfer 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, to the maximum extent reasonably possible, that transferring a detainee out of US government control will not increase the risk of further attacks on the United States or US interests.

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 (b)(1)

(b)(1) to protect US security interests. We will work to make these determinations as to each detainee as quickly 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.

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)

(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)

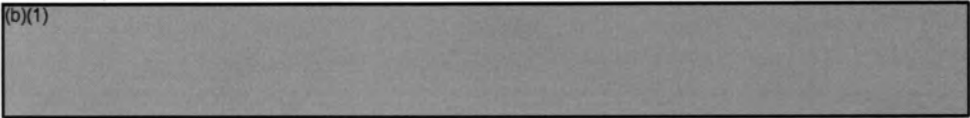
(b)(1) to protect US security interests.

(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,

- 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>Da J Dell'Orto as edited</i> Mr. Dell'Orto	21 Feb 02 19 Feb 02
Joint Chiefs of Staff	LTG Abazaïd	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

Da J Dell'Orto
as edited

3/29/02

0604-0098



SPECIAL OPERATIONS/
LOW-INTENSITY CONFLICT

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

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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)

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Policy Statement on Transfer of US Detainees to Foreign Government Control

1 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 ^{on} 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) to protect US security interests. We will endeavor to make these determinations as to each detainee as ^{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.

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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 *2/11/02*

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)

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~~Classified by [redacted] on [redacted]~~
~~Declassify on [redacted]~~
~~Authority [redacted]~~



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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.

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(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; 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)
- 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)
- will not transfer the detainee out of its control without US consent;
- is not a state sponsor of terrorism; and,

- (b)(1)

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(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)

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COORDINATION PAGE
Reference Tab A: Detainee Transfer Policy

OGC	<i>Da J Dell'Orto as edited</i> Mr. Dell'Orto	<i>21 Feb 02</i> 19 Feb 02
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ISA	Mr. Rodman	8 Feb 02
ISP		No response

* We further suggest - and understand that USD(P)¹⁰⁰ 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*

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RUEACMC/CMC WASHINGTON DC
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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/USCINSTRAT 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
RUCKMAA/COMMARFORLANT NORFOLK VA
RUHPHMS/COMMARFORPAC CAMP H M SMITH HI
RUCBCLF/CINCLANTFLT NORFOLK VA
RHHMBRA/USCINCPACFLT HONOLULU HI
RUEOBBA/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/COMSACCENT 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//
RUEAIAA/DIRSNA FT GEORGE G MEADE MD
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RHMFISS/DISA WASHINGTON DC

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RUEKDIA/DIA WASHINGTON DC
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RUEMANA/DDC NEW CUMBERLAND PA
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SECTION 01 OF 02
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3 (U) DISCUSSION

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(U) GUIDELINES

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DEFINITIONS

(U) The following definitions are applicable to this guidance:

1. An "enemy combatant" (EC) for purposes of this guidance is defined as any person that US or allied forces could properly detain under the laws and customs of war. For purposes of this conflict, an EC includes, but is not necessarily limited to, a member or agent of al Qaeda, the Taliban, or another international terrorist organization against which the United States is engaged in armed conflict.
2. "Under DoD Control" means that the individual is either in the physical control of DoD or, if in the physical control of another agency, has been designated by the President or his designee for transfer to DoD control.
3. "Release" is the process by which an individual, who has been determined no longer to pose a threat to the United States or US interests, is released to a foreign government with no promise, in return, for continued detention.
4. "Conditional release" is the release of an EC who has been determined no longer to pose a threat to the United States or US interests, under a promise or agreement of that EC not to take up arms, or participate in further fighting, against the United States or its allies in exchange for freedom.
5. "Transfer" is the process by which the control of an individual is transferred to a foreign government with the promise that certain conditions will be fulfilled, usually including the promise of continued detention as an EC until returned to US control or until his release is authorized by the United States.

PROCESS

(U) Unless otherwise directed by the Secretary of Defense, within 90 days of a detainee being brought under DoD control, the detaining combatant commander, or his designee, shall review the initial determination that the detainee is an EC. Such review shall be made based upon all available and relevant information available on the date of review and may be subject to further review based upon newly discovered evidence or information.

(U) The detaining combatant commander or his designee shall produce a written assessment regarding the detainee's EC status based upon his review of all available and relevant information concerning the detainee. The review shall be administrative in nature and shall not be deemed to create any right, benefit, or privilege, substantive or

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procedural, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person. The detaining combatant commander shall be guided by the following:

- (a) The detaining combatant commander shall consider all relevant and reasonably available information, including any new information that has been identified since the initial status determination.
- (b) If necessary to make a proper review, the detaining combatant commander may interview witnesses, provided they are reasonably available and such interviews would not affect combat, intelligence gathering, law enforcement, or support operations.
- (c) The detaining combatant commander may, at his discretion, convene a panel of commissioned officers to review the available evidence and reach a recommended determination.

(U) After the initial 90-day status review, the detaining combatant commander shall, on an annual basis, reassess the status of each detainee.

(U) If, as a result of a periodic EC status review (90-day or annual), a detaining combatant commander concludes that a detainee may no longer meet the definition of an EC, the detaining combatant commander shall identify that detainee for possible release or transfer as appropriate.

(S) A detainee may also be considered for possible release, conditional release, or transfer when:

- (S) Department of Defense, State or Justice, or the Central Intelligence Agency, receives an official request from a foreign government for the release of a detainee or the transfer of a detainee to its control;
- (S) Department of Defense, State or Justice, or the Central Intelligence Agency, initiates a proposal to release or transfer an EC;
- (S) A combatant commander, who has been authorized by the Secretary of Defense to conduct operations that may result in the detention of personnel or to take control of detained personnel, recommends release or transfer of a detainee under his control; or,
- (S) The Secretary of the Army, consistent with reference (C), recommends the release or transfer of a detainee following the conduct of a criminal investigation.

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(S) When any element of the Department of Defense initiates or receives from the Department of State or Justice, or from the Central Intelligence Agency, a request for release or transfer of a detainee under DoD control, it shall forward the request to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict.

- (S) The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall notify the Secretary of the Army, the General Counsel of the Department of Defense, the Director of the Joint Staff, and the designated point of contact for detainee transfer matters at the Departments of State and Justice and at the Central Intelligence Agency of the request.

(S) When a request conflicts with the requirements of a combatant commander or the Criminal Investigation Task Force (or DoD lead for criminal investigations for the region, when directed) concerning a particular detainee, the Secretary of the Army and the Director of the Joint Staff shall advise the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict when the case can be ready for interagency consideration. The process for determining readiness for interagency consideration shall be conducted in a manner consistent with paragraphs below concerning instances when a combatant commander or the Secretary of the Army identifies a detainee for release or transfer.

(S) In the case of release, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, in conjunction with the General Counsel of the Department of Defense, shall assess whether the detainee should still be detained as an EC or should be released (including whether any conditions should apply to his release, e.g., under a conditional release or other agreement).

(U) Recommendations for release or transfer, coordinated with the Department of State, Department of Justice and the Central Intelligence Agency as appropriate, shall be made to the Secretary of Defense or his designee for decision.

(U) In addition to other responsibilities prescribed herein, the Secretary of the Army and relevant combatant commanders shall assess detainees for potential release (including under conditional release or other agreements) or transfer on a comprehensive and ongoing basis.

(S) When a combatant commander or the Secretary of the Army identifies a detainee for possible release or transfer to foreign government control, as set out in reference (A):

- (S) If the detaining combatant commander recommends release or transfer, he shall notify the Commander of the Criminal Investigation Task Force (or DoD lead for criminal investigations for the region, when directed) and forward a completed detainee file to the Director of the Joint Staff for review. The

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detainee file shall include all supporting documentation to provide the information specified in paragraphs 1, 2.a.-d., 3.a., 3.b., and 3.d. of Annex A.

- (S) If the Commander of the Criminal Investigation Task Force (or the DoD lead for criminal investigations for the region, when directed) recommends release or transfer, he shall prepare the file and forward to the Secretary of the Army the completed detainee file including all supporting documentation to provide the information specified in paragraphs 1, 2.e., 3.b. and 3.c. of Annex A.
- (S) If the case is under review and the file is not complete, the Secretary of the Army, or the Director of the Joint Staff, as appropriate, shall inform the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict of the status of the file.
- (S) In cases where a detaining combatant commander and/or the Commander of the Criminal Investigation Task Force (or the DoD lead for criminal investigations for the region, when directed) recommend release or transfer of a detainee, based on their respective mandates, the recommendation package shall include the following:
 - (S) the detainee file complete with all supporting documentation necessary for the Interagency Experts Group to make an informed recommendation (use information specified in the TAB to this document);
 - (S) any conditions the detaining combatant commander or the Commander of the Criminal Investigation Task Force (or the DoD lead for criminal investigations for the region, when directed) believes are necessary for the detainee to be held by a foreign government; and
 - (S) an assessment of the threat the detainee poses to the United States or US interests, and a recommendation concerning how to address that threat – with all supporting documentation so the Interagency Experts Group can make an informed recommendation (use information specified in Annex A to this document).
- (S) The Secretary of the Army and the Director of the Joint Staff shall provide completed files with all supplementary materials and recommendations to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict.
- (S) The Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict has responsibility

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for reviewing each file for administrative completeness and ensuring each is consistent with current policy guidance.

(S) The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall provide completed files of detainees identified for possible release or transfer to foreign government control to the representatives of the following DoD organizations, at a minimum, for review and a recommendation on whether the case is appropriate for a coordinated release determination or further review by the Interagency Experts Group on Detainees (Interagency Experts Group):

- (S) the Office of the Secretary of the Army,
- (S) the Office of the General Counsel of the Department of Defense, and
- (S) the Joint Staff.

(S) Note: If the case is determined at this point as not appropriate for review by the Interagency Experts Group, the case shall be returned to the Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict for further action.

(S) The Interagency Experts Group consists of representatives from the Departments of Defense, State and Justice, and the Central Intelligence Agency, who are charged by their respective agencies with the review of cases involving the possible release or transfer of detainees. A representative of the Department of Defense shall chair the Interagency Experts Group.

(S) The Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall provide to the Interagency Experts Group all the pertinent DoD information relevant to their consideration of each case proposed for release or transfer.

(S) Representatives to the Interagency Experts Group will evaluate each case and recommend to their respective Deputies or, as appropriate, Principals, appropriate disposition of the detainee based on their assessment of the considerations in reference (A). As required, the case will be returned to the Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict for further action.

- (S) The Interagency Experts Group will evaluate cases based upon information in the packages and other information they may have developed on the cases. Specifically, the Interagency Experts Group will evaluate information pertaining to the (b)(1) [redacted] and the

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threat the detainee poses to the United States and US interests. The Interagency Experts Group will either develop the recommendations on disposition of the detainee for recommendation by Deputies (or Principals, as appropriate) or refer the case back to the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict for additional information.

- (S) Consistent with reference (A), the Interagency Experts Group also will assess and recommend appropriate conditions that should be applied to the release or transfer of a detainee.

(S) The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall ensure that a written copy of the decision of the Secretary of Defense or his designee on release or transfer in each instance is provided to DoD Correspondence Control Division and the Director of the Joint Staff for appropriate dissemination and implementation.

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RESPONSIBILITIES

Under Secretary of Defense for Policy

(S) Maintain oversight of the policy and guidelines for release or transfer of detainees to the control of a foreign government.

Assistant Secretary of Defense for Special Operations and Low Intensity Conflict

(S) Responsible for overall development, coordination and promulgation of DoD policies and plans related to the possible release or transfer of persons detained in connection with the war on terrorism.

(S) Serve as the focal point for proposals for release or transfer of detainees and be responsible for forwarding the files to and informing other agencies of cases as appropriate.

- (S) Notify the Secretary of the Army, the General Counsel of the Department of Defense, and the Director of the Joint Staff of any request for release or transfer of a detainee to the control of a foreign government.
- (S) Notify the requesting agency of case status and actions pending when a case is proposed for consideration and when a case cannot be completed expeditiously.
- (S) Monitor progress of proposed cases for release or transfer and provide a case status report to the Secretary of the Army, the General Counsel of the Department of Defense, and the Director of the Joint Staff twice each month.

(S) Direct the Detainee Policy Group to support the administrative functions associated with the detainee release or transfer determination process.

(S) Provide an appropriate lead DoD representative to the Interagency Experts Group.

(S) Notify the Department of State, Office of War Crimes Investigations, of the detainee's location at the time the detainee is transferred to foreign government control or released.

(S) Take appropriate action when a case under consideration for transfer or release is returned by the Interagency Experts Group for further action.

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Detainee Policy Group within the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict

(S) Review each detainee file to ensure all documentation on the following is included:

- (S) basic administrative data;
- (S) personnel and medical record;
- (S) summary of the detaining combatant commander's EC status review;
- (S) complete record of the results of intelligence interrogations, reports and summaries on the detainee and (b)(1) (b)(1)
- (S) record of criminal investigation interviews, reports and summaries on the detainee, and a statement assessing the sufficiency of the law enforcement investigation;
- (S) a legal opinion regarding the proposed recommended disposition of each case, including a review of any proposed actions by the receiving government pursuant to its laws;
- (S) an assessment of the threat the detainee poses to the United States or US interests;
- (S) a recommendation from the detaining combatant commander and/or (as appropriate) the Commander of the Criminal Investigation Task Force (or the DoD lead for criminal investigations for the region, when directed) regarding (b)(1) (b)(1) any stipulations or conditions connected with such recommendation, and an assessment of any threat to the United States posed by the detainee;
- (S) a report of detainee conduct from the detaining combatant commander; and
- (S) any available assessments made by the Departments of Defense, State and Justice, and the Central Intelligence Agency, of the applicable foreign government's willingness and capability, including under its domestic legal system, to meet the conditions of any potential transfer.

(S) Ensure each file is consistent with current policy guidance.

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- (S) Make detainee files expeditiously available to the Interagency Experts Group and no later than five working days before the group convenes, if a meeting is scheduled to consider a particular case or group of cases, unless this requirement cannot be met due to extraordinary circumstances. In that case, detainee files should be provided to the group as far in advance of its meeting as possible.
- (S) Establish the procedures and agenda for the Interagency Experts Group meetings.
- (S) Compile and maintain the records of deliberations by the Interagency Experts Group, record decisions, and prepare the final recommendation to the Deputy Secretary of Defense or Secretary of Defense, as appropriate.
- (S) Maintain records of Deputies' and/or Principals' recommendations and the decision of the Secretary of Defense or his designee in each case and promulgate as appropriate.
- (S) Create a compendium of all records relating to assessments of the detainees' ongoing threat to the United States and US interests.
- (S) Maintain a record of any foreign government request for release or transfer, and notify the Interagency Experts Group of the pending request when the file is forwarded for consideration.
- (S) Take action as requested by the Interagency Experts Group when a case under consideration for release or transfer is returned for further action.

Assistant Secretary of Defense for Public Affairs

(U) Monitor the public affairs aspects of potential and actual detainee transfers or releases, provide public affairs policy guidance as appropriate in coordination with the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict and the General Counsel of the Department of Defense, and provide coordination of public affairs matters with other Federal Departments and Agencies as appropriate.

General Counsel of the Department of Defense

(S) Review and advise on all legal matters associated with possible release (including under conditional release or other agreements) or transfer of detainees, including with respect to the drafting and approval of international agreements, and the assessment of matters relating to criminal investigations and prosecutions of detainees.

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Director of the Joint Staff

- (S) Ensure appropriate coordination with combatant commanders and Services on matters affecting detainee release or transfer. Such coordination, where possible, will include notification to both the detaining combatant commander and the combatant commander into whose area of responsibility a detainee is to be transferred or released.
- (S) Notify the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict when requests for release or transfer of a detainee are made before interrogations, interviews and investigations are complete and advise when/if the case can be prepared for release or transfer consideration.
- (S) Forward combatant commanders' recommendations on detainee release (including under a conditional release or other agreement) or transfer to the Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict for processing with any supplementary materials and recommendations.

Combatant Commanders

- (S) Consistent with reference (A) and when authorized to conduct operations in the war on terrorism that may result in the detention of personnel, compile relevant information concerning detainees under their control whom they intend to propose for release (including under a conditional release or other agreement) or transfer to the control of a foreign government, and ensure, as appropriate, that the status of each detainee under their control is reassessed on an annual basis.

Secretary of the Army

- (S) Notify the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict when he receives requests for release or transfer of a detainee before (b)(1) complete and advise when/if the case can be prepared for consideration for release (including under a conditional release or other agreement) or transfer.
- (S) Provide the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict a review and recommendation of cases to be considered for release or transfer.

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Commander of the Criminal Investigation Task Force or DoD lead for criminal investigations for the region, when directed by Secretary of Defense

(S) Provide detainee information related to criminal investigations, as appropriate, for review by the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, the General Counsel of the Department of Defense, the Director of the Joint Staff, and the Interagency Experts Group.

Interagency Experts Group

(S) Provide any relevant information to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict bearing on a determination whether a detainee should continue to be detained as an EC and whether a detainee should be released or transferred.

(S) Evaluate each case of proposed transfer or release in accordance with the applicable policy guidance and make recommendations to the Deputies or Principals as appropriate. Each agency represented will make a recommendation to its respective Deputy or Principal and provide recommendations for appropriate conditions, if any, for release or transfer.

(S) Return to the Detainee Policy Group in the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict any case that requires further action before considering the detainee for release or transfer, or any cases of detainees posing a continued threat to the United States or US interests.

National Detainee Reporting Center

(U) When directed by the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, provide information on release or transfer of detainees as appropriate to the International Committee of the Red Cross.

EXECUTION OF TRANSFER

(S) The US Government will facilitate air movement of detainees to approved foreign governments. Movement of detainees to appropriate destinations will be by groups whenever possible. The Department of Defense or other agencies, as appropriate, will provide in-transit security for detainees being transferred on US Government aircraft. Except in extraordinary circumstances, aircraft transferring detainees will not stop in the United States or US territories.

(S) DoD shall maintain control and accountability of detainees until they are transferred to the designated foreign government.

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(S) The manifest for flights transporting detainees for release or transfer shall identify, at a minimum, the following information on each detainee:

- (S) name;
- (S) internment serial number (ISN);
- (S) nationality; and
- (S) physical and mental condition.

(S) The manifest shall be used as an official receipt of release or transfer. U.S. Transportation Command shall provide the National Detainee Reporting Center a copy of the manifest.

(S) The detaining combatant commander responsible for detention prior to detainee movement for release or transfer shall:

- (S) ensure all detainees are medically screened for flight and transfer. Sick, wounded, or infirm detainees will not be transferred until certified "fit for movement" by competent medical authorities;
- (S) ensure copies of the detainee's medical records accompany him when he is transferred or released.

(S) Unless otherwise provided (e.g., through a reimbursement agreement with the receiving government), the Department of Defense shall fund the activities necessary for Department of Defense to effect the release or transfer of detainees to the control of another government.

(S) The personal effects and property of detainees approved for release or transfer shall be moved with the detainee. Appropriate US Government officials will retain effects offering continued intelligence or law enforcement value (or otherwise determined necessary for retention), or transfer them to the appropriate foreign government authority.

(S) Detainees shall be transferred under security conditions deemed appropriate by the transferring and receiving combatant commanders until released/transferred to other authority. Detainees shall be provided a copy of the conditional release agreement or other such agreement that they sign prior to their release or transfer.

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ANNEX A

[Outline of required information on a detainee whose release or transfer to the control of a foreign government is under consideration by the Interagency Experts Group]

EXECUTIVE SUMMARY FOR [NAME/PHOTO]:

1. Personal Information:

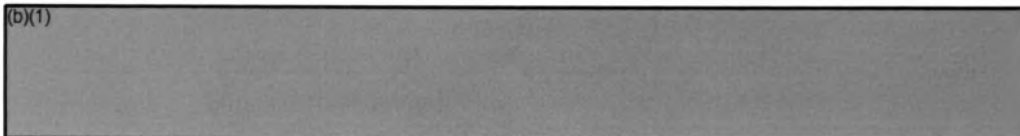
- a. Internment Serial Number:
- b. Citizenship:
- c. Date Of Birth:
- d. Medical/Psychiatric Records:
- e. Personnel Record:

2. Detention Information:

- a. Circumstances and place of capture:
- b. Basis for screening in detainee:
- c. Summary of conduct while in detention:
- d. Summary of intelligence interrogations and reports:
- e. Summary of law enforcement interviews and reports:

3. Assessments and Recommendations:

- a. EC status assessment.

(b)(1) 

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(b)(1)



d. Combatant commander's and the Commander of the Criminal Investigation Task Force (or DoD lead for criminal investigations for the region) recommendation based on an assessment of the threat the detainee poses to the United States or to US interests (supporting documentation appended).

(b)(1)



4. Conclusions:

a. Whether the proposed release or transfer will constitute a threat to the United States or US interests.

b. Whether continued detention of this individual is required for a US criminal investigation or prosecution.

(b)(1)



d. Legal basis to support the transfer or release (including conditional release).

(b)(1)



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0604-0101

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DEPARTMENT OF DEFENSE
JOINT TASK FORCE 170
QUANTANAMO BAY, CUBA
APO AE 09860



JTF-J2

11 October 2002

MEMORANDUM FOR Commander, Joint Task Force 170

SUBJECT: Request for Approval of Counter-Resistance Strategies

1. ~~(S//NF)~~ PROBLEM: The current guidelines for interrogation procedures at GTMO limit the ability of interrogators to counter advanced resistance.

2. ~~(S//NF)~~ Request approval for use of the following interrogation plan.

a. Category I techniques. During the initial category of interrogation the detainee should be provided a chair and the environment should be generally comfortable. The format of the interrogation is the direct approach. The use of rewards like cookies or cigarettes may be helpful. If the detainee is determined by the interrogator to be uncooperative, the interrogator may use the following techniques.

(1) Yelling at the detainee (not directly in his ear or to the level that it would cause physical pain or hearing problems)

(2) Techniques of deception:

(a) Multiple interrogator techniques.

(b) Interrogator identity. The interviewer may identify himself as a citizen of a foreign nation or as an interrogator from a country with a reputation for harsh treatment of detainees.

b. Category II techniques. With the permission of the OIC, Interrogation Section, the interrogator may use the following techniques.

(1) The use of stress-positions (like standing), for a maximum of four hours.

(2) The use of falsified documents or reports.

(3) Use of the isolation facility for up to 30 days. Request must be made to through OIC, Interrogation Section, to the Director, Joint Interrogation Group (JIG). Extensions beyond the initial 30 days must be approved by the Commanding General. For selected

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JTF 170-J2

SUBJECT: Request for Approval of Counter-Resistance Strategies

detainees, the OIC, Interrogation Section, will approve all contacts with the detainee, to include medical visits of a non-emergent nature.

(4) Interrogating the detainee in an environment other than the standard interrogation booth.

~~(5) Deprivation of light and auditory stimuli.~~

(6) The detainee may also have a hood placed over his head during transportation and questioning. The hood should not restrict breathing in any way and the detainee should be under direct observation when hooded.

(7) The use of 26-hour interrogations.

(8) Removal of all comfort items (including religious items).

(9) Switching the detainee from hot rations to MREs.

(10) Removal of clothing.

(11) Forced grooming (shaving of facial hair etc...)

(12) Using detainees individual phobias (such as fear of dogs) to induce stress.

c. Category III techniques. Techniques in this category may be used only by submitting a request through the Director, JIG, for approval by the Commanding General with appropriate legal review and information to Commander, USSOUTHCOM. These techniques are required for a very small percentage of the most uncooperative detainees (less than 3%). The following techniques and other aversive techniques, such as those used in U.S. military interrogation resistance training or by other U.S. government agencies, may be utilized in a carefully coordinated manner to help interrogate exceptionally resistant detainees. Any of these techniques that require more than light grabbing, poking, or pushing, will be administered only by individuals specifically trained in their safe application.

(1) The use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family.

(2) Exposure to cold weather or water (with appropriate medical monitoring).

(3) Use of a wet towel and dripping water to induce the misperception of suffocation.

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~~SECRET/NOFORN~~

JTF 170-J2

SUBJECT: Request for Approval of Counter-Resistance Strategies

(4) Use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing.

3. (U) The POC for this memorandum is the undersigned at X3476.


JERALD PHIFER
LTC, USA
Director, J2

~~SECRET/NOFORN~~



DEPARTMENT OF DEFENSE
JOINT TASK FORCE 170
GUANTANAMO BAY, CUBA
APO AE 09380



JTF 170-CG

11 October 2002

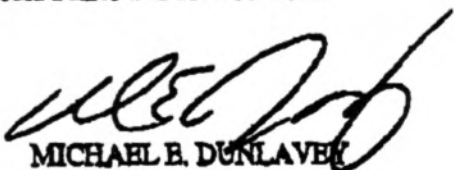
MEMORANDUM FOR Commander, United States Southern Command, 3511 NW 91st
Avenue, Miami, Florida 33172-1217

SUBJECT: Counter-Resistance Strategies

1. Request that you approve the interrogation techniques delineated in the enclosed Counter-Resistance Strategies memorandum. I have reviewed this memorandum and the legal review provided to me by the JTF-170 Staff Judge Advocate and concur with the legal analysis provided.
2. I am fully aware of the techniques currently employed to gain valuable intelligence in support of the Global War on Terrorism. Although these techniques have resulted in significant exploitable intelligence, the same methods have become less effective over time. I believe the methods and techniques delineated in the accompanying J-2 memorandum will enhance our efforts to extract additional information. Based on the analysis provided by the JTF-170 SJA, I have concluded that these techniques do not violate U.S. or international laws.
3. My point of contact for this issue is LTC Jerald Phifer at DSN 660-3476.

2 Encls

1. JTF 170-J2 Memo,
11 Oct 02
2. JTF 170-SJA Memo,
11 Oct 02


MICHAEL E. DUNLAVY
Major General, USA
Commanding

0604-0107

~~SECRET//NOFORN~~

DEPARTMENT OF DEFENSE
JOINT TASK FORCE 170
GUANTANAMO BAY, CUBA
APO AE 09360



JTF-J2

11 October 2002

MEMORANDUM FOR Commander, Joint Task Force 170

SUBJECT: Request for Approval of Counter-Resistance Strategies

1. ~~(S//NF)~~ PROBLEM: The current guidelines for interrogation procedures at GTMO limit the ability of interrogators to counter advanced resistance.

2. ~~(S//NF)~~ Request approval for use of the following interrogation plan.

a. Category I techniques. During the initial category of interrogation the detainee should be provided a chair and the environment should be generally comfortable. The format of the interrogation is the direct approach. The use of rewards like cookies or cigarettes may be helpful. If the detainee is determined by the interrogator to be uncooperative, the interrogator may use the following techniques.

(1) Yelling at the detainee (not directly in his ear or to the level that it would cause physical pain or hearing problems)

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(a) Multiple interrogator techniques.

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(1) The use of stress-positions (like standing), for a maximum of four hours

(2) The use of falsified documents or reports.

(3) Use of the isolation facility for up to 30 days. Request must be made to through OIC, Interrogation Section, to the Director, Joint Interrogation Group (JIG). Extensions beyond the initial 30 days must be approved by the Commanding General. For selected

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0604-0107

~~SECRET//NOFORN~~

INTERROGATIONS
Operation Enduring Freedom Related

- A. October 11, 2002, Request for Approval of Counter-Resistance Strategies ~~(S//NF)~~
- B. October 11, 2002, Legal Brief on Proposed Counter-Resistance Strategies ~~(S//NF)~~
- C. October 19, 2002, Assessment by the Jordanian General Intelligence Directorate of Interrogation Techniques at Camp Delta ~~(S//NF)~~
- D. October 25, 2002, Counter-Resistance Techniques ~~(S//NF)~~
- E. December 2, 2002, General Counsel action memo to SECDEF on Counter-Resistance Techniques ~~(S//NF)~~
- F. November 12, 2003, DASD/SOPS action memo to ASD/SOLIC on JSAP for Interrogation Information flow to SECDEF ~~(S//NF)~~
- G. June 2, 2003, Letter of Promulgation Regarding SECDEF Guidance on Interrogation Techniques ~~(S//NF)~~
- H. June 2, 2003, Commander USSOUTHCOM letter to SECDEF on implementation of interrogation techniques ~~(S//NF)~~
- I. May 15, 2003, CJCS action memo to SECDEF on Interrogation Techniques in the War on Terrorism ~~(S//NF)~~
- J. June 17, 2003, Interrogation Techniques Doctrine ~~(S//NF)~~
- K. April 1, 2003, memo on Annex E, USCENTCOM OPLAN 1003V ~~(S//NF)~~
- L. April 1, 2003, memo on DepSec Questions on Transfer Process ~~(S//NF)~~
- M. April 2, 2003, Draft memo to Commander, USSOUTHCOM on Additional Counter-Resistance Techniques in the War on Terrorism ~~(S)~~
- N. April, 5, 2003, CJCS action memo to SECDEF on Interrogation Techniques in the War on Terrorism ~~(S)~~
- O. April 10, 2003, PDASD/SOLIC memo to SECDEF on Interrogation Methods for GTMO ~~(S//NF)~~

~~SECRET//NOFORN~~

~~Classified by [redacted] on [redacted] at [redacted] (S//NF)~~
~~Declassify on: [redacted] (S//NF)~~
~~Declassify on: [redacted] (S//NF)~~

~~SECRET//NOFORN~~

- P. April 15, 2003, SECDEF memo to Commander, USSOUTHCOM on Counter-Resistance Techniques in the War on Terrorism ~~(S)~~
- Q. March 6, 2003, Draft Working Group Report on Detainee Interrogations in the Global War on Terrorism ~~(S//NF)~~
- R. February 26, 2003, General Counsel of the Navy memo to ASD/SOLIC on Proposed Interrogation Strategy ~~(S//NF)~~
- S. April 4, 2004 DIA Policy for Interrogation Operations ~~(S//NF)~~
- T. April 7, 2004, Use of Special Interrogation Technique for Detainee Abdullah al-Sharbi ~~(S//NF)~~
- U. May 4, 2004, Joint Staff Information Paper on Contract Intelligence and Interrogator Personnel ~~(S//NF)~~

INTERROGATIONS
Operation Iraqi Freedom Related

- A. March 27, 2002, Target Profiles of Terrorists for US Tactical Debriefing ~~(S//REL
OR ACSI NZ)~~
- B. March 26, 2003, Draft Whether to publicly disclose the names of Iraqi EPWs (U)
- C. March 25, 2003 Briefing on Interrogation Operations in Iraq ~~(S//NF)~~
- D. March 17, 2003, Post-Conflict Iraq and Interrogations ~~(S//NF)~~
- E. March 7, 2003, Post-Conflict and Interrogations ~~(S//NF)~~

DECLASSIFIED BY : USD(P)
DATE : 02/25/2008

~~SECRET//NOFORN~~

~~Classified by: Thomas M. O'Connor, HSB (S//NF)~~
~~Declassify on: (S), (S), (S) and (S)~~
~~Declassify on: May 13, 2014~~


~~SECRET//NOFORN~~

JTF 170-J2

SUBJECT: Request for Approval of Counter-Resistance Strategies

(4) Use of ~~mild, non-injurious physical contact~~ such as grabbing, poking in the chest with the finger, and light pushing.

3. (U) The POC for this memorandum is the undersigned at X3476.


JERALD PHIFER
LTC, USA
Director, J2

~~SECRET//NOFORN~~

0604-0107

~~SECRET//NOFORN~~

JTF 170-J2

SUBJECT: Request for Approval of Counter-Resistance Strategies

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(4) Interrogating the detainee in an environment other than the standard interrogation booth.

(5) ~~Deprivation of light and auditory stimuli.~~

(6) The detainee may also have a hood placed over his head during transportation and questioning. The hood should not restrict breathing in any way and the detainee should be under direct observation when hooded.

(7) The use of 20-hour interrogations.

(8) ~~Removal of all comfort items (including religious items).~~

(9) ~~Switching the detainee from hot rations to MREs.~~

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(3) Use of a wet towel and dripping water to induce the misperception of suffocation.

~~SECRET//NOFORN~~

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15

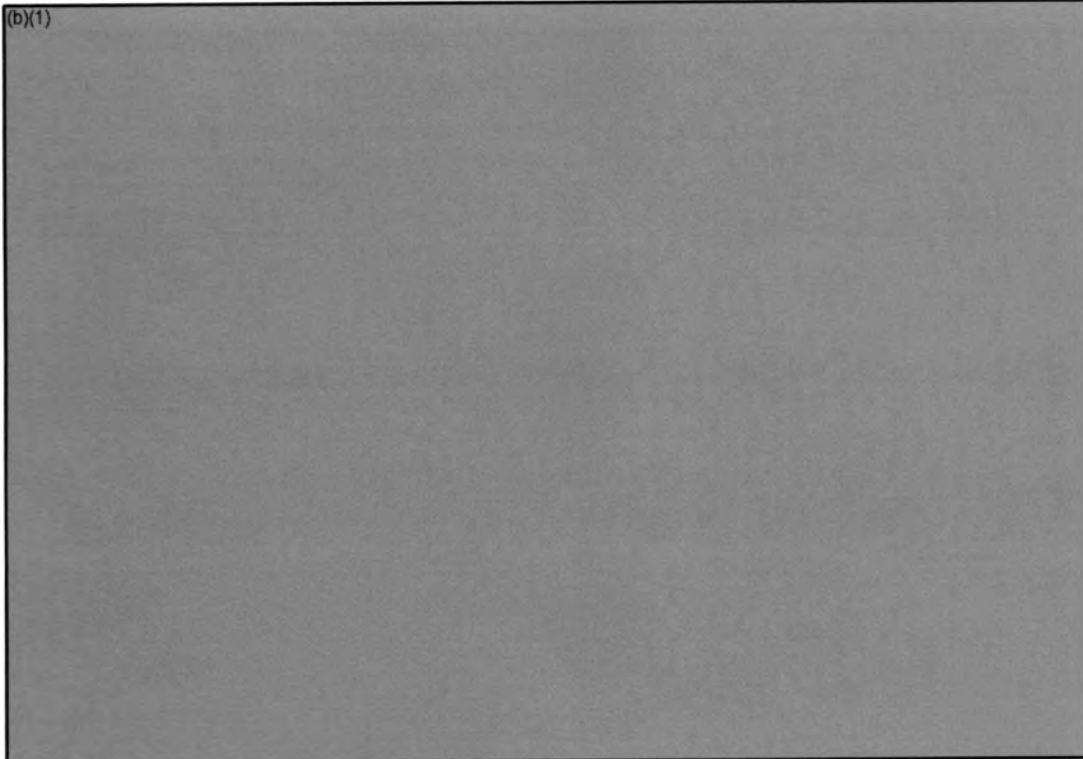
ACTION MEMO

03/015549-SO

FOR: Thomas W. O'Connell, Assistant Secretary of Defense for (SO/LIC)

FROM: Paul Butler, Deputy Assistant Secretary for (SOPS) jmb tw 11/12/03

SUBJECT: (b)(1)



Approve _____ Disapprove _____ Other _____

Attachments:

As stated

Prepared by: (b)(6)

~~SECRET//NOFORN~~

~~Classified by: Paul Butler, D-155 (SOPS)~~
~~Reason: 1.1 (a), (b), (c) and (d)~~
~~Declassify on: OADR 03/0155~~

0604-0112

~~SECRET NOFORN~~

INFO MEMO

FOR: SECRETARY OF DEFENSE

FROM: General Richard B. Myers, CJCS

SUBJECT: Interrogations

(b)(1)



COORDINATION: NONE

\ Attachments:
As stated

Prepared By: MG  USA; Director, J-2, 

~~Classified By: MG [Redacted]~~
~~Reason: 1.1 (b)~~
~~Declassify On: N/A~~

~~NOT RELEASABLE TO
FOREIGN ENTITIES~~

~~SECRET NOFORN~~

0112

JOINT STAFF ACTION PROCESSING FORM

CLASSIFICATION ~~SECRET NOFORN~~

ACTION NUMBER SJS 03-06906

CJCS

THRU DJS _____

ORIG SUSPENSE 10 Nov 03

SUBJECT /SF-593/ Interrogations

EXECUTIVE SUMMARY

(b)(1)

2. Discussion.

(b)(1)

Recommendation. CJCS sign memo at TAB.

ENDNOTE

¹ SJS 03-06906

COORDINATION

NAME	AGENCY	DATE	NAME	AGENCY	DATE
	J2			J1	
				LC	
			<i>CLANULL</i>	ASD/SOL	<i>10/14/03</i>
				USD(I)	
				U	

AO/J/DIV/EXT

(b)(6)

Date Prepared: 7 Nov 03

CLASSIFICATION

~~SECRET NOFORN~~

CLASSIFICATION/DECLASSIFICATION INSTRUCTIONS

~~Classified by _____~~
~~Declassify on _____~~
~~Declassify on _____~~

0112

October 30, 2003

593

TO: Gen. Dick Myers

CC: Paul Wolfowitz
Doug Feith
Steve Cambone

FROM: Donald Rumsfeld *DR*

SUBJECT: Interrogations

(b)(5)



Thanks.

DHR:dh
103003-12

.....
Please respond by

11/12/03

0112