

September 6, 2005

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To: SECDEF

Fr: Gordon England



Subj: Treatment for All Detainees

Don,

- A proposed DoD Directive, "The Department of Defense Detainee Program," is in preparation. You asked that I review issues related to the treatment of detainees and make recommendations.
- Several meetings have been held to discuss the issue with broad OSD and Service representation.
- Central issue:
 1. Should DoD adopt the policy language from Common Article 3 of the Geneva Convention (words only - not the Article itself) or
 2. Should DoD describe and adopt a new minimum standard for treatment?
- Pros and Cons of each approach attached.
- Approach 1. (Common Article 3) favored by Service Chiefs, Chairman, JAGs, Maples, Geren, Waxman, Edelman and England.

Approach 2. Favored by GC and Cambone.
- Military is very strong in support of Approach 1, Common Article 3 language.
- Recommended approach is language from Common Article 3, but will likely need to be socialized within the Administration and may need your active personal support if the Department decides to go in that direction.



OSD 18148-05

COMMON ARTICLE 3 TREATMENT FOR ALL DETAINEES

PROS

- Not Article 3 but only the language from Article 3
- Results in clearer guidance because it codifies existing US/military practice, training and procedures. US already a signatory.
- Bolsters support now and in the future with Coalition Partners who embrace Article 3.
- Would help US international reputation and credibility regarding detainees.

CONS

- Looks like a duck, etc. May import unintended interpretations from other countries, NGOs, courts. **Also**, US War Crimes Statute includes Common Article 3 adherence.
- Some terms are vague and subject to interpretation.
- “Rewards” non-Geneva adherents like Al-Qaeda, although Al-Qaeda would still not be entitled to POW protections/privileges.

