

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2006/07/10/us-pentagon-applies-geneva-rules-detainees>

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The Bush administrations belated decision to recognize the applicability of the Geneva Conventions to terrorism suspects in military custody is a step forward, Human Rights Watch said today. But because the Pentagon memorandum that codifies the change does not extend to detainees held by the Central Intelligence Agency (CIA), it represents only partial compliance with the recent U.S. Supreme Court decision in *Hamdan v. Rumsfeld*.

The Pentagons decision to apply the Geneva rules to anyone captured on the battlefield is welcome news for soldiers around the world, said Joanne Mariner, terrorism and counterterrorism director at Human Rights Watch. The Geneva rules protect everyone taken into custody in wartime, including American servicemen and women.

The administrations decision is an important reversal from past policy. In January 2002, Secretary of Defense Donald Rumsfeld announced that detainees captured in Afghanistan were unlawful combatants who were not entitled to protection under the 1949 Geneva Conventions governing the humane treatment of prisoners. Human Rights Watch emphasized at that time that the U.S. approach was tragically shortsighted. By ignoring its obligations under the Geneva Conventions, the United States was undercutting the viability of these crucial international protections.

The July 7 memo, signed by U.S. Deputy Defense Secretary Gordon England, instructs recipients to ensure that all Department of Defense (DOD) policies, practices and directives comply with Common Article 3 of the Geneva Conventions. You will ensure that all DOD personnel adhere to these standards, the memo says, citing the Supreme Courts decision in *Hamdan*.

Notably, the Pentagon memo asserts that Defense Department policies and practices already comply with Common Article 3. This claim severely undercuts the administrations assertion, made in current debates over the *Hamdan* ruling, that compliance with Common Article 3 would impose an unreasonable burden on U.S. troops.

Common Article 3 provides that all detainees, whether prisoners of war, civilians or so-called unlawful combatants, are legally entitled to humane treatment in all circumstances. They may not be subject to cruel treatment and torture or outrages upon personal dignity, in particular, humiliating and degrading treatment.

While the United States has consistently claimed that it treats detainees humanely as a matter of policy, its views of what constitutes humane treatment have been far off the mark. Bush administration officials have, for example, claimed that waterboarding (suffocating a person until he believes he is about to drown) is not torture. In a November 2002 memorandum to Rumsfeld, Defense Department General Counsel William J. Haynes also stated that abusive techniques such as forced nudity and 20-hour interrogation might also be legally available.

Human Rights Watch expressed concern that the Pentagons recognition of the applicability of Common Article 3 only covered detainees in U.S. military custody, and not those held by the CIA. Some three dozen terrorist suspects are believed to be in CIA custody in secret prisons abroad, and there have been numerous, credible allegations that they have been subject to torture.

Human Rights Watch also noted that many CIA and military detainees were not captured as part of an armed conflict. Although the U.S. government has asserted that anyone apprehended for involvement in terrorism may be treated as an enemy combatant, no matter where they are found and regardless of the circumstances, this open-ended expansion of the concept of armed conflict has no basis under international law.

Human Rights Watch pointed out that a number of detainees held at Guantnamo and in Iraq were captured during international armed conflicts, and thus merit the protections of the Third or Fourth Geneva Conventions. Those conventions extend to all combatants

captured in international armed conflicts, even those who are deemed to be unprivileged combatants not entitled to prisoner-of-war status.

Because terrorist groups are not states, other military operations against them are covered by Common Article 3 of the Geneva Conventions, which governs armed conflicts that are not between two states. Those detained as a result of such military operations must be protected from mistreatment as provided under Common Article 3.

The Pentagon's policy change goes some way toward bringing Defense Department policies into compliance with the Supreme Court's recent ruling in *Hamdan v. Rumsfeld*. In that decision, the court ruled that the military commissions established at Guantanamo Bay, Cuba by President George W. Bush were illegal under both U.S. military law and the Geneva Conventions. In reaching this conclusion, the court found that Common Article 3 to the Geneva Conventions applies to the armed conflict with al-Qaeda.

This policy change does not impose new burdens on U.S. soldiers, nor will it impede their effectiveness, Mariner said. Rather, it enhances U.S. moral authority at a time when that authority has been under serious question.

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