

Department of Defense

DIRECTIVE

NUMBER 2310.01E

September 5, 2006

USD(P)

SUBJECT: The Department of Defense Detainee Program

- References:
- (a) DoD Directive 2310.01, "DoD Program for Enemy Prisoners of War (EPOW) and Other Detainees," August 18, 1994 (hereby canceled)
 - (b) DoD Directive 5101.1, "DoD Executive Agent," September 3, 2002
 - (c) Secretary of Defense Memorandum, "Office of Detainee Affairs," July 16, 2004 (hereby superseded)
 - (d) DoD Directive 2311.01E, "DoD Law of War Program," May 9, 2006
 - (e) through (k), see Enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

1.1. Reissues Reference (a) to revise policy and responsibilities within the Department of Defense (DoD) for a Detainee Program to ensure compliance with the laws of the United States, the law of war, including the Geneva Conventions of 1949, and all applicable policies, directives, or other issuances, consistent with References (d) through (k).

1.2. Re-designates, according to Reference (b), the Secretary of the Army as the DoD Executive Agent for the Administration of Department of Defense Detainee Operations Policy.

1.3. Supersedes Reference (c) and establishes the responsibilities of the Under Secretary of Defense for Policy (USD(P)) as the lead proponent in developing, coordinating, and implementing policies and guidance pertaining to detainee operations.

2. APPLICABILITY

2.1. This Directive applies to:

2.1.1. The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all

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other organizational entities in the Department of Defense (hereafter collectively referred to as the "DoD Components").

2.1.2. DoD contractors assigned to or supporting the DoD Components engaged in, conducting, participating in, or supporting detainee operations.

2.1.3. Non-DoD personnel as a condition of permitting access to internment facilities or to detainees under DoD control.

2.1.4. All detainee operations conducted by DoD personnel (military and civilian), contractor employees under DoD cognizance, and DoD contractors supporting detainee operations.

2.2. This Directive applies during all armed conflicts, however such conflicts are characterized, and in all other military operations.

3. DEFINITIONS

Terms used in this Directive are defined, and are to be interpreted, in accordance with U.S. law and the law of war. Specific terms found in this directive are provided in Enclosure 2.

4. POLICY

It is DoD policy that:

4.1. All detainees shall be treated humanely and in accordance with U.S. law, the law of war, and applicable U.S. policy.

4.2. All persons subject to this Directive shall observe the requirements of the law of war, and shall apply, without regard to a detainee's legal status, at a minimum the standards articulated in Common Article 3 to the Geneva Conventions of 1949 (References (g) through (j), full text of which is found in Enclosure 3), as construed and applied by U.S. law, and those found in Enclosure 4, in the treatment of all detainees, until their final release, transfer out of DoD control, or repatriation. Note that certain categories of detainees, such as enemy prisoners of war, enjoy protections under the law of war in addition to the minimum standards prescribed in Common Article 3 to References (g) through (j).

4.3. Captured or detained persons will be removed as soon as practicable from the point of capture and transported to detainee collection points, holding areas, or other detention locations operated by the DoD Components.

4.4. Detainees and their property shall be accounted for and records maintained according to applicable law, regulation, policy, or other issuances.

4.4.1. Detainees shall be assigned an Internment Serial Number (ISN) as soon as possible after coming under DoD control, normally within 14 days of capture. DoD Components shall maintain full accountability for all detainees under DoD control.

4.4.2. Detainee records and reports shall be maintained, safeguarded, and provided to USD(P) and other DoD Components as appropriate.

4.5. No person subject to this Directive shall accept the transfer of a detainee from another U.S. Government Department or Agency, coalition forces, allied personnel, or other personnel not affiliated with the Department of Defense or the U.S. Government, except in accordance with applicable law, regulation, policy, and other issuances.

4.6. No detainee shall be released or transferred from the care, custody, or control of a DoD Component except in accordance with applicable law, regulation, policy, and other issuances.

4.7. Where doubt exists as to the status of a detainee, the detainee's status shall be determined by a competent authority.

4.8. Detainees under DoD control who do not enjoy prisoner of war protections under the law of war shall have the basis for their detention reviewed periodically by a competent authority.

4.9. All persons subject to this Directive shall:

4.9.1. Receive instruction and complete training, commensurate with their duties, in the laws, regulations, policies, and other issuances applicable to detainee operations, prevention of violations of same, and the requirement to report alleged or suspected violations thereof that arise in the context of detainee operations.

4.9.2. Receive instruction and complete training in advance of conducting, participating in, or supporting detainee operations, and annually thereafter. Training requirements and certifications of completion shall be documented according to applicable law and policy.

4.10. All persons subject to this Directive shall report possible, suspected, or alleged violations of the law of war, and/or detention operations laws, regulations, or policy, for which there is credible information, or conduct, during military operations other than war, that would constitute a violation of law or policy if it occurred during an armed conflict, in accordance with References (d) and (k).

4.11. The International Committee of the Red Cross (ICRC) shall be allowed to offer its services during an armed conflict, however characterized, to which the United States is a party.

5. RESPONSIBILITIES

5.1. The Under Secretary of Defense for Policy (USD(P)) shall:

5.1.1. Review, ensure coordination of, and approve all implementing policies or guidance to the DoD Detainee Program, including all detainee matters involving interaction between the Department of Defense and other U.S. Government Departments or Agencies.

5.1.2. Review, ensure coordination of, and approve all implementing policy or guidance developed pursuant to this Directive by DoD Components. DoD Components will forward copies of such documents to USD(P) for review prior to issuance.

5.1.3. Serve as the principal DoD interlocutor with the ICRC and develop policy and procedures to ensure the proper and timely reporting of ICRC communications to appropriate DoD and U.S. Government officials.

5.2. The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall:

5.2.1. Develop and oversee policy to ensure education and training programs satisfy DoD Component requirements in the areas of language, culture, customs, and related matters and to assure that persons subject to this directive have been provided requisite training, knowledge, and skills, necessary to perform detainee operations duties.

5.2.2. Ensure the Assistant Secretary of Defense for Health Affairs develops policies, procedures, and standards for medical program activities and issues DoD instructions consistent with this Directive for medical program activities required by the DoD Detainee Program.

5.2.3. Ensure the Assistant Secretary of Defense for Reserve Affairs develops policies, procedures, and standards for Reserve Components and issues DoD Instructions consistent with this Directive for National Guard and Reserve activities required for the DoD Detainee Program.

5.3. The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) shall:

5.3.1. Establish policies and procedures, in coordination with USD(P), the General Counsel, and the appropriate DoD Components, to ensure all DoD contracts pursuant to which contractor employees interact with detainees include a requirement that such contractor employees receive training regarding the international obligations and laws of the United States applicable to detention operations.

5.3.2. Ensure contractor employees accompanying DoD Components in conducting, participating in, or supporting detainee operations complete training and receive information on the law, regulations, and policies applicable to detention operations, and the requirements to report possible, suspected, or alleged violations that arise in the context of detention operations, in accordance with References (d) and (k).

5.4. The Under Secretary of Defense for Intelligence (USD(I)) shall:

5.4.1. Exercise primary responsibility for developing policy pertaining to DoD intelligence interrogations, detainee debriefings, and tactical questioning according to Reference (k).

5.4.2. Act as primary liaison between the Department of Defense and other agencies of the Intelligence Community on intelligence matters pertaining to detainees.

5.5. The General Counsel of the Department of Defense shall coordinate with the Department of Justice and other agencies regarding detainee-related litigation matters and on matters pertaining to detainees who may be U.S. citizens, dual-nationals with U.S. citizenship, or U.S. resident aliens, as appropriate.

5.6. The Heads of the DoD Components shall ensure that all personnel are properly trained and certified in detainee operations commensurate with their duties, maintaining records of such training and certification.

5.7. The Secretary of the Army is hereby designated as the Executive Agent for the Administration of Department of Defense Detainee Operations Policy and in that role shall:

5.7.1. Ensure all Executive Agent responsibilities and functions for the administration of DoD detainee operations policy are assigned and executed according to Reference (b) and this Directive.

5.7.2. Develop and promulgate guidance, regulations, and instructions necessary for the DoD-wide implementation of detainee operations policy in coordination with USD(P).

5.7.3. Communicate directly with the Heads of the DoD Components as necessary to carry out assigned functions. The Chairman of the Joint Chiefs of Staff shall be informed of communications to the Commanders of the Combatant Commands.

5.7.4. Designate a single point of contact within the Department of the Army for detainee operations policy, who shall also provide advice and assistance to USD(P).

5.7.5. Plan for and operate a national-level detainee reporting center and its elements (e.g., theater and lower levels) to account for detainees. Coordinate with USD(P) to provide reports on detainee operations to the Secretary of Defense and others as appropriate.

5.7.6. Recommend DoD-wide detainee operations-related planning and programming guidance to the USD(P), USD(AT&L), USD(I), USD(P&R), the Under Secretary of Defense (Comptroller), the Assistant Secretary of Defense for Networks and Information Integration, the Director of Program Analysis and Evaluation, and the Chairman of the Joint Chiefs of Staff. Provide information copies of such guidance to the Secretaries of the Military Departments.

5.7.7. Establish detainee operations training and certification standards, in coordination with the Secretaries of the Military Departments and the Joint Staff.

5.7.8. Develop programs to ensure all DoD detainee operations policy; doctrine; tactics, techniques, and procedures; and regulations or other issuances are subject to periodic review, evaluation, and inspection for effectiveness and compliance with this Directive.

5.8. The Chairman of the Joint Chiefs of Staff shall:

5.8.1. Provide appropriate oversight to the Commanders of the Combatant Commands to ensure their detainee operations policies and procedures are consistent with this Directive.

5.8.2. Designate a single point of contact within the Joint Staff for matters pertaining to the implementation of this Directive.

5.8.3. Ensure that operational exercises routinely test the capabilities of the DoD Components to conduct, participate in, and support detainee operations, consistent with this Directive.

5.9. The Commanders of the Combatant Commands shall:

5.9.1. Plan, execute, and oversee Combatant Command detainee operations in accordance with this Directive and implementing issuances.

5.9.2. Develop programs and issue appropriate guidance and orders implementing this Directive. All such programs and guidance shall be subjected to periodic review and evaluation for compliance and efficacy.

5.9.3. When detainee internment facilities, holding areas, collection points, or interrogation facilities are in their area of responsibility:

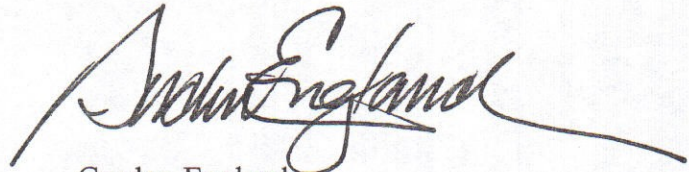
5.9.3.1. Ensure procedures are established for the treatment of detainees consistent with this Directive.

5.9.3.2. Ensure detainees are provided with information, in their own language, concerning the rights, duties, and obligations of their detention, which may include applicable provisions of the Geneva Conventions.

5.9.3.3. Ensure periodic unannounced and announced inspections of internment facilities, including temporary holding areas and collection points, are conducted to provide continued oversight of detainee operations.

6. EFFECTIVE DATE

This Directive is effective immediately.

A handwritten signature in dark ink, appearing to read "Gordon England", with a long, sweeping horizontal line extending to the right.

Gordon England
Deputy Secretary of Defense

Enclosures – 4

- E1. References, continued
- E2. Definitions
- E3. Article 3 Common to the Geneva Conventions of 1949
- E4. Detainee Treatment Policy

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Sections 2340 & 2340A of Title 18, U.S. Code
- (f) The Detainee Treatment Act of 2005, Pub. L. No. 109-163 (119 STAT. 3474-3480), Section 1401-1406, Title XIV
- (g) Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949
- (h) Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949
- (i) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949
- (j) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949
- (k) DoD Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning," November 3, 2005

E2. ENCLOSURE 2

DEFINITIONS

E2.1. Detainee. Any person captured, detained, held, or otherwise under the control of DoD personnel (military, civilian, or contractor employee). It does not include persons being held primarily for law enforcement purposes, except where the United States is the occupying power. A detainee may also include the following categories:

E2.1.1. Enemy Combatant. In general, a person engaged in hostilities against the United States or its coalition partners during an armed conflict. The term "enemy combatant" includes both "lawful enemy combatants" and "unlawful enemy combatants."

E2.1.1.1. Lawful Enemy Combatant. Lawful enemy combatants, who are entitled to protections under the Geneva Conventions, include members of the regular armed forces of a State party to the conflict; militia, volunteer corps, and organized resistance movements belonging to a State party to the conflict, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the laws of war; and members of regular armed forces who profess allegiance to a government or an authority not recognized by the detaining power.

E2.1.1.2. Unlawful Enemy Combatant. Unlawful enemy combatants are persons not entitled to combatant immunity, who engage in acts against the United States or its coalition partners in violation of the laws and customs of war during an armed conflict. For purposes of the war on terrorism, the term Unlawful Enemy Combatant is defined to include, but is not limited to, an individual who is or was part of or supporting Taliban or al Qaeda forces or associated forces that are engaged in hostilities against the United States or its coalition partners.

E2.1.2. Enemy Prisoner of War. Individuals under the custody and/or control of the Department of Defense according to Reference (g), Articles 4 and 5.

E2.1.3. Retained Person. Individuals under the custody and/or control of the Department of Defense according to Reference (g), Article 33.

E2.1.4. Civilian Internee. Individuals under the custody and/or control of the Department of Defense according to Reference (h), Article 4.

E2.2. Law of War. That part of international law that regulates the conduct of armed hostilities and occupation. It is often called the "law of armed conflict" and encompasses all international law applicable to the conduct of hostilities that is binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party (e.g., the Geneva Conventions of 1949), and applicable customary international law.

E3. ENCLOSURE 3

ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS OF 1949

E3.1. The text of Common Article 3 to the Geneva Conventions of 1949 is as follows:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

“(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

“To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

“(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

“(b) taking of hostages;

“(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

“(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

“(2) The wounded and sick shall be collected and cared for.

“An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

“The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

“The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”

E4. ENCLOSURE 4

DETAINEE TREATMENT POLICY

E4.1. In addition to the requirements in paragraph 4.2 and Enclosure 3, DoD policy relative to the minimum standards of treatment for all detainees in the control of DoD personnel (military, civilian, or contractor employee) is as follows:

E4.1.1. All persons captured, detained, interned, or otherwise in the control of DoD personnel during the course of military operations will be given humane care and treatment from the moment they fall into the hands of DoD personnel until release, transfer out of DoD control, or repatriation, including:

E4.1.1.1. Adequate food, drinking water, shelter, clothing, and medical treatment;

E4.1.1.2. Free exercise of religion, consistent with the requirements of detention;

E4.1.1.3. All detainees will be respected as human beings. They will be protected against threats or acts of violence including rape, forced prostitution, assault and theft, public curiosity, bodily injury, and reprisals. They will not be subjected to medical or scientific experiments. They will not be subjected to sensory deprivation. This list is not exclusive.

E4.1.2. All persons taken into the control of DoD personnel will be provided with the protections of Reference (g) until some other legal status is determined by competent authority.

E4.1.3. The punishment of detainees known to have, or suspected of having, committed serious offenses will be administered in accordance with due process of law and under legally constituted authority.

E4.1.4. The inhumane treatment of detainees is prohibited and is not justified by the stress of combat or deep provocation.