

Separation and Common Article 3 Talking Points

- **Technique meets Common Article 3 Standards**
 - No suggestion of "torture," unless prolonged isolation or sensory deprivation, and severe mental suffering involved
 - Not "cruel, inhuman, or degrading," as it is a technique used extensively in US prisons and does not "shock the conscience"
 - Been subject to numerous legal reviews, from DoD to DOJ

- **Separation may not be used on EPW's, for interrogation, due to the following GPW provisions:**
 - Article 17 – "prisoners who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind." (emphasis added)
 - Article 21 – subject to disciplinary and health measures, EPW's "may not be held in close confinement;" close confinement means confinement to a cell or room.
 - Article 22 – EPW's "shall not be interned in penitentiaries;" and the nations agree they "shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent."

- **EPW treatment/standards are the right policy choice:**
 - DoDD 2311.1E, "DoD Law of War Policy," says that US forces will "comply with the law of war during all armed conflicts, however such conflicts are characterized, and in all other military operations."
 - Army has chosen to train to the highest standards – those applicable to international armed conflict.

- **Separation a necessary technique:**
 - "Separation" was viewed by the COCOMs as an essential tool for interrogation, particularly in the first few weeks of internment.
 - Therefore, the "separation" technique was added, as a carefully controlled, or "restricted" technique, solely for unlawful combatants [to whom the GPW does not apply, but who are covered by Common Article 3]

~~FOR OFFICIAL USE ONLY~~



UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-5000

SEP 28 2007

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR POLICY
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
COMMANDER, U.S. ARMY, CRIMINAL INVESTIGATION
COMMAND
DIRECTOR, JOINT STAFF
DIRECTOR, DEFENSE INTELLIGENCE AGENCY
DEPUTY CHIEF OF STAFF FOR INTELLIGENCE, U.S.
ARMY
DIRECTOR OF NAVAL INTELLIGENCE
DIRECTOR OF INTELLIGENCE, SURVEILLANCE AND
RECONNAISSANCE, U.S. AIR FORCE
DIRECTOR OF INTELLIGENCE, HEADQUARTERS, U.S.
MARINE CORPS
DIRECTOR, COUNTERINTELLIGENCE FIELD ACTIVITY**

**SUBJECT: Clarification of Intelligence Interrogation Policy—Detainee Status
Determinations and the Conduct of Interrogations during Segregation and
Separation**

- References:** (a) U.S. Army Field Manual (FM) 2-22.3, *Human Intelligence Collector Operations*, September 6, 2006
(b) Deputy Secretary of Defense memorandum, "Global Screening Criteria for Detainees," February 20, 2004
(c) Deputy Secretary of Defense memorandum, "Enemy Combatant Status Determinations," January 19, 2007
(d) DoD Directive Z310.01E, "The Department of Defense Detainee Program," September 5, 2006

The purpose of this memorandum is to (1) explain the difference between segregation and the restricted interrogation technique of separation, (2) clarify that detainees segregated for security or other valid purposes may be interrogated, (3) restate the requirements governing the use of separation as a restricted interrogation technique, (4) underscore the requirement that separation may be used only in conjunction with interrogation of a detainee previously determined to be an unlawful enemy combatant, and (5) identify those policy documents available for use in making enemy combatant status determinations.

~~FOR OFFICIAL USE ONLY~~

~~FOR OFFICIAL USE ONLY~~

Detainees may be segregated from other detainees for purposes unrelated to interrogation, including administrative, health, safety, or security reasons. Although segregation may not be requested or conducted for the purpose of facilitating interrogation, interrogators may interrogate detainees who have been properly segregated.

The restricted interrogation technique of separation involves removing the detainee from other detainees and their environment, while still complying with all applicable standards of humane treatment and prohibitions against torture or cruel, inhuman, or degrading treatment or punishment. Interrogators seeking to interrogate a detainee, who is not already segregated from other detainees, may employ the separation interrogation technique only after receiving prior approval in accordance with U.S. Army Field Manual (FM) 2-22.3, *Human Intelligence Collector Operations*, September 6, 2006, Appendix M (Reference (a)). Before approving the use of the separation technique, a competent authority (i.e., a person designated by a combatant commander) must determine that the detainee is an unlawful enemy combatant. Separation is not an authorized interrogation technique for lawful enemy combatants.

In making unlawful enemy combatant status determinations, the competent authority will follow the guidance and definitions contained in the following memoranda and directive: Deputy Secretary of Defense memorandum, "Global Screening Criteria for Detainees," February 28, 2004 (Reference (b)); Deputy Secretary of Defense memorandum, "Enemy Combatant Status Determinations," January 19, 2007 (Reference (c)); and DoD Directive 2310.01E, "The Department of Defense Detainee Program," September 5, 2006 (Reference (d)).

The global screening criteria and the enemy combatant status determination memoranda apply to the Global War on Terrorism and provide criteria for making enemy combatant status determinations of suspected members of the Taliban, al Qaeda, or specified international terrorist organizations. DoD Directive 2310.01E defines who is an unlawful enemy combatant. In accordance with the two applicable Deputy Secretary of Defense memoranda referenced above, and applying the definition of unlawful enemy combatant contained in DoD Directive 2310.01E, a competent authority may determine that suspected members of the Taliban, al Qaeda, or specified international terrorist organizations are unlawful enemy combatants and may authorize use of separation as a technique in connection with their interrogation for the purposes of the Global War on Terrorism.

DoD Directive 2310.01E applies during all armed conflicts, regardless of how the armed conflicts are characterized, and during all other military operations. Therefore, competent authority may also authorize the use of separation against detainees who may not be members of the Taliban, al Qaeda, or associated terrorist organizations, but who have been determined to be unlawful enemy combatants as that term is defined in DoD

~~FOR OFFICIAL USE ONLY~~

~~FOR OFFICIAL USE ONLY~~

Directive 2310.01E. For example, insurgents operating in Iraq who target U.S. forces might fall into this category.

In all cases, a status determination that a detainee is an unlawful enemy combatant must occur prior to employing the separation interrogation technique. Again, if the detainee is already being segregated for legitimate administrative, health, safety, or security reasons unrelated to interrogation, the detainee may be interrogated in accordance with FM 2-22.3.

In accordance with FM 2-22.3, Appendix M, combatant commanders must authorize the use of the separation interrogation technique in their areas of responsibility prior to subordinate commanders approving requests to implement separation. Trained and certified interrogators will submit requests to employ separation in accordance with applicable law and policy, including FM 2-22.3, Appendix M, and applicable combatant command interrogation policies. The officer in charge of interrogations must maintain accurate records regarding requests for use of separation, regardless of whether the requests are approved.


James R. Clapper, Jr.

~~FOR OFFICIAL USE ONLY~~

~~SECRET//NOFORN~~

DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

JAN 19 2007



MEMORANDUM FOR COMMANDER, U.S. CENTRAL COMMAND

SUBJECT: Enemy Combatant Status Determinations (ECSD)

48) Pursuant to Deputy Secretary of Defense memorandum, "Global Screening Criteria (GSC) for Detainees," February 20, 2004, the combatant commanders shall assess individuals over whom they obtain control in connection with War on Terrorism operations to determine whether they are enemy combatants (EC) and are therefore subject to detention by DoD personnel. The Detainee Treatment Act of 2005 provides that no person in the custody or under the effective control of the Department of Defense shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Field Manual on Intelligence Interrogations. Field Manual 2-22.3, "Human Intelligence Collector Operations," September 6, 2006, provides that separation as an interrogation technique may only be used in the interrogation of persons determined to be unlawful enemy combatants. The National Defense Authorization Act, 2005 requires that the Secretary of Defense submit to Congress an annual report that includes, among other things, the number of individuals determined to be enemy combatants. Finally, pursuant to Deputy Secretary of Defense memorandum, "Policy Guidance on Department of Defense Detention Operations in Iraq," September 16, 2005, provides additional DoD policy guidance on detention operations in Iraq and includes a definition of enemy combatant.

49) The GSC defines "enemy combatant" as any person that U.S. or allied forces could properly detain under the laws and customs of war. For the purposes of the war on terrorism, an enemy combatant 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. A determination that an individual is an enemy combatant in the war on terrorism is equivalent to a determination that a detainee is an unlawful enemy combatant.

50) Determining which detainees are unlawful enemy combatants is important for a number of reasons, including in preparation for the transition of detainees to Government of Iraq control, to identify those detainees who are eligible for separation pursuant to the Field Manual, and to ensure that DoD has the necessary information to report accurately to Congress the status of detainees under DoD control.

~~Excluded from automatic downgrading and declassification~~

~~SECRET//NOFORN~~



DECLASSIFIED BY OUSDI
DATE 03/17/2016
FOIA CASE # 14-F-0444

~~(S)~~ U.S. forces are conducting war on terrorism operations against al Qaeda in Iraq. Although the designation of detainees as enemy combatants under the GSC applies globally, it is understood that individuals detained in Iraq generally are held as security internees under the law of war and relevant U.N. Security Council Resolutions. Because some of these detainees are al Qaeda and associated forces and would meet the criteria for designation as unlawful enemy combatants under the GSC, it is necessary that such detainees be formally evaluated pursuant to the GSC, consistent with the September 16, 2005, Iraq policy guidance.

~~(S)~~ For the purposes of applying the GSC in Iraq and other areas in the U.S. Central Command area of responsibility, Commander, U.S. Central Command, may delegate to the level of Task Force Commander, including to the Deputy Commanding General for Detainee Operations, the authority to designate detainees as enemy combatants in the war on terrorism under the GSC.

~~(S)~~ It is necessary that we have accurate information on the status of detainees, including the number of unlawful enemy combatants in Iraq, for congressional reporting and other purposes. For example, as stated above, the technique of separation may be used only in the interrogation of unlawful enemy combatants. Moreover, in order to complete the required 2006 report to Congress under reference (d), we will need to ensure that information on the distinct categories of detainees, including unlawful enemy combatants in Iraq, is accurate. Paragraph 47 of the September 16, 2005, Iraq policy guidance requires individualized reporting of each such status determination. That requirement is waived; however, I expect such determinations will be reported accurately to OSD when requested, including for the preparation of congressional reports.

~~(S//NF)~~ Please review your procedures and policies regarding determination of enemy combatant status and confirm that such determinations are being made consistent with the requirements referenced above. Should you require further guidance regarding these matters, please let me know.