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**RECOMMENDATIONS REGARDING  
COERCIVE INTERROGATION**

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**Part One:**

**Recommendations Regarding Coercive Interrogation**

Rules proscribing the use of torture by the United States provide little guidance as to the content of specific interrogation devices and their availability against particular individuals. The exact coverage of the torture prohibition is not clear. Nor does there exist any other set of specific rules and procedures regarding highly coercive interrogation, not forbidden by the U.N. Convention Against Torture. In this context, the use of particular coercive techniques remains subject to serious abuse. These recommendations address that problem.

- I. **The U.S. should abide by its statutory and treaty obligations that prohibit torture and the cruel, inhuman, or degrading treatment that falls within our reservation to the Convention Against Torture.**
  - A. Nothing in the following effort to define compliance with these obligations is intended to supplant our additional obligations when particular circumstances make applicable the 3<sup>rd</sup> and 4<sup>th</sup> Geneva Conventions.
  
- II. **The U.S. should abide by its treaty obligations not to transfer individuals to a country if it has probable cause to believe that the individual will be tortured.**
  - A. If past conduct suggests that a country has engaged in torture of suspects, the U.S. should not transfer a person to that country unless the Secretary of State has forwarded to

- B. the Attorney General the assurances he has received that the person will not be tortured. The Attorney General must then decide whether these assurances are "sufficiently reliable" to allow deportation or other forms of rendition.
  - C. The United States shall not direct or request information from an interrogation or provide assistance to foreign governments in obtaining such information if it has substantial grounds for believing that torture will be utilized to obtain the information.
  - D. The United States shall not encourage another nation to make transfers in violation of the prohibitions of the Convention on Torture.
- III. Highly coercive interrogation methods ("HCI") are all those techniques (e.g. sleep deprivation, hooding, sexual humiliation, or maintaining stress positions) that fall in the category between torture and those traditionally allowed for a voluntary confession under the Due Process clauses of the United States Constitution.**
- A. The Attorney General shall recommend and the President shall promulgate and provide to the Senate and House Intelligence, Judiciary, and Armed Service Committees, guidelines stating what specific HCI techniques are permitted by U.S. law and international treaties and are authorized by the President.

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1. Lawfulness under the U.S. reservation to Article 16 of the Convention Against Torture (“cruel, inhuman, or degrading treatment”) requires compliance with the Due Process prohibition against actions that the courts find “shock the conscience.”
  2. These guidelines should address the duration of use of a particular technique, and the effect of combining several different techniques together.
  3. No U.S. official or employee and no other individual acting on behalf of the United States may use an HCI technique not specifically authorized in this way except with the express approval of the President on the basis of findings of an urgent and extraordinary need. The finding, to be submitted to the Armed Services and Intelligence Committees of both Houses of Congress, must state the reason to believe that:
    - a. the information sought to be obtained concerns a specific plan that threatens American lives;
    - b. the information is in possession of the individual to be interrogated; and
    - c. there are no other reasonable alternatives to save the lives in time.
- B. The Attorney General shall brief the Intelligence Committees and other appropriate committees of both

houses upon request, and no less frequently than every six months, as to what HCI's are presently being utilized by federal officials or those acting on their behalf.

**IV. No person should be subject to highly coercive interrogation techniques authorized under Article III above unless interrogators have probable cause to believe that he is in possession of significant information about either:**

A. A specific plan that threatens American lives and which cannot securely be prevented by any other reasonable alternative or--

B. A group or organization making such plans whose capacity could be significantly reduced by exploiting the information.

**V. The determination of whether probable cause is met under Article IV should be made by senior government officials.**

A. The determination should be made in writing on the basis of sworn affidavits.

B. The determination and its basis should be made available to Congressional intelligence committees, the Attorney General, and the Inspectors General of the pertinent departments (i.e. Department of Justice, Department of Defense, etc.).

**VI. Individual remedies.**

- A. An individual subjected to HCI in circumstances where the conditions prescribed above have not been met, or in violation of the provisions of the Convention Against Torture, shall be entitled to damages in a civil action against the United States.
  
- B. No information obtained by highly coercive interrogation techniques may be used at a U.S. trial against the individual detained.