

U.S./UK Consultations RELEASED IN FULL

HUMAN RIGHTS AND TERRORISM

Possible Guantanamo questions and answers

**Q: Over 600 individuals continue to be detained at the U.S. naval base at Guantanamo Bay. On what legal basis does the U.S. continue to detain these people?**

**A: As to the legal framework for the detention, we have been very clear that individuals detained at Guantanamo are enemy combatants captured in the course of ongoing hostilities or directly supporting hostile forces. These enemy combatants pose a serious threat to the United States and its coalition partners. As such, they are being held in accordance with the laws and customs of war, which permit the United States to capture and detain enemy combatants to prevent their re-engaging in the on-going armed conflict.**

**Q: Isn't the U.S. concerned about establishing a bad precedent?**

**A: It is firmly established in domestic and international law that combatants may be captured and detained. This was stated explicitly by the U.S. Supreme Court during the Second World War and confirmed recently by the Court of Appeals for the Fourth Circuit in relation to the detention of an enemy combatant in the current armed conflict (Hamdi).**

**Q: While stating that the prisoners will be treated in accordance with the principles of the Geneva Conventions, the U.S. has refused to grant prisoner of war status to prisoners at Guantanamo. Why has the U.S. taken this position?**

**A: The Geneva Conventions do not apply to Al-Qaida detainees because Al-Qaida is not a State party to the Conventions. While Afghanistan is a party to the Geneva Conventions, the Taliban detainees are not entitled to POW status because, they do not meet the legal criteria for POW status under Article 4 of the Fourth Geneva Convention of**

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1949. Therefore, neither the Taliban nor the Al-Qaida detainees are entitled to POW status.

**Q: Why hasn't the U.S., pursuant to the Geneva Conventions, allowed a "competent tribunal" to determine their status?**

**A:** Article 5 of the Third Geneva Convention does not require a party to convene tribunals to consider status determinations unless there is doubt. There is no doubt about the status of members of al Qaida and the Taliban, captured while engaged in ongoing hostilities or directly supporting hostile operations. They are not entitled to the status of POWs. Neither group meets the recognized requirements for lawful armed forces under Article IV. A different conclusion would not change the authority to detain enemy combatant detainees until the end of hostilities.

**Q: Is the U.S. torturing people at Guantanamo or elsewhere; what about Amnesty International's and Human Rights Watch's allegations regarding their treatment?**

**A:** At the time the President decided the status of these detainees, the White House Press Secretary stated on February 7, 2002 "Today President Bush affirms our enduring commitment to the important principles of the Geneva Convention. Consistent with American values and the principles of the Geneva Convention, the United States has treated and will continue to treat all Taliban and al Qaida detainees in Guantanamo Bay humanely and consistent with the principles of the Geneva Convention."

**Q: Why hasn't the U.S. granted international human rights groups (like Amnesty and HRW) access?**

**A:** The International Committee of the Red Cross has visited detainees privately at Guantanamo. Some detainees have been visited by government officials from their country of nationality and many are communicating by mail with their families. That said, there is a need for certain security precautions in light of the serious threat of physical harm posed by the detainees to the military personnel transporting and guarding them.

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**Q. Why has the US refused to allow access to the Guantanamo detainees to the CHR Working Group on Arbitrary Detentions?**

**A. --** It is our view that the Working Group on Arbitrary Detentions lacks the mandate to address law of armed conflict issues, which explains why the US has respectfully declined a request for a visit by the Group.

**Q. Why don't the detainees have access to lawyers?**

**A:--** Enemy combatants have no legal right to counsel for the purpose of challenging their detention while hostilities are ongoing. The United States is well within its rights under international law to detain enemy combatants for the duration of an armed conflict. If a detainee were charged with a crime, he would have access to counsel and would receive a fair trial.

**Q: What is the U.S. response to Amnesty International's allegation that the Guantanamo detainees have been denied access to legal counsel and courts?**

**A: --** There is no law requiring a detaining power to prosecute enemy combatants or release them prior to the end of hostilities. Likewise, under the laws and customs of war, detained enemy combatants have no right of access to counsel or the courts to challenge their detention. Should a detainee be charged with a criminal offense, he would have the right to counsel and would receive a fair trial.

**Background on the Geneva Conventions:** The Third Geneva Convention of 1949 is an international treaty designed to protect prisoners of war from inhumane treatment at the hands of their captors in conflicts covered by the Convention. It is among four treaties concluded in the wake of WWII to reduce the human suffering caused by war. These four treaties provide protections for four different classes of people: 1) the military wounded and sick in the land of conflicts; 2) the military wounded, sick and shipwrecked in conflicts at sea; 3) military persons and civilians accompanying the armed forces in the field who

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are captured and qualify as prisoners of war; and, 4) civilian non-combatants who are interned or otherwise found in the hands of a party during an armed military conflict.

**Military Commissions**

**Q:** The ICCPR states that parties will ensure that individuals "within its territory and subject to its jurisdiction" receive the protections of the ICCPR. Are we depriving them of protections afforded under the ICCPR?

**A:** At the time the President decided the status of the detainees as enemy combatants, the White House Press Secretary stated on February 7, 2002 "Today President Bush affirms our enduring commitment to the important principles of the Geneva Convention. Consistent with American values and the principles of the Geneva Convention, the United States has treated and will continue to treat all Taliban and al Qaida detainees at Guantanamo Bay humanely and consistent with the principles of the Geneva Conventions.

**Q:** The U.S. has criticized the use of military commissions in Peru, Egypt among other countries in the *Country Reports on Human Rights Practices*. How can we justify our use of the commissions when we criticize other countries for using the same mechanism?

**A:** Military commissions in the countries cited failed to meet due process standards in several respects. DoD has issued its first military commission order, which sets forth procedures for trials by military commission of certain non-U.S. citizens in the War Against Terrorism which are consistent with the basic requirements of the Third Geneva Convention of 1949, with customary international law, and with other relevant international obligations of the United States.

**Q:** During what other instances has the U.S. relied on military tribunals and has the U.S. Supreme Court upheld their use?

**A:** The U.S. has used military commissions since the Revolutionary War, including in the Mexican-American War, the U.S. Civil War, and WWII. The Europeans also used military commissions extensively in the 19<sup>th</sup> and 20<sup>th</sup>

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Centuries, including WWI and WWII. As a matter of historic precedent, the U.S. and its European allies have convened military commissions primarily in connection with war-related offenses.

The U.S. Supreme Court has upheld the use of military commissions several times, including cases in which commissions convicted U.S. citizens.

**Q: The military commissions were announced November 13 and rules were issued on March 21. Don't the new rules fail to meet the core basic human right requirement of appellate review among other safeguards?**

**A: As I stated before, DoD has issued its first military commission order, which is consistent with the basic requirements of the Third Geneva Convention of 1949, with customary international law, and with other relevant international obligations of the United States.**

**Q: Are the procedures for the military commissions consistent with the International Covenant for Civil and Political Rights (ICCPR)?**

**A: Any U.S. military commissions will be fair, just, and consistent with international and U.S. law.**

**Q: Why haven't we used the military commissions to try John Walker Lindh or Zacarias Moussaoui?**

**A: With regard to the Lindh case, the President's military order explicitly does not apply to American citizens only to foreign nationals. In addition, it should be noted that the Presidential order does not foreclose options, it merely creates an alternative forum. The Department of State is in no position to comment on ongoing criminal actions or the forum chosen for such prosecution.**

**Q: Some argue that the creation of military commissions have upset the balance between national security and civil liberties. Why isn't the U.S. judicial system adequate to try terrorism suspects?**

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A: Trial by military commission is a common and well-established practice recognized by international and fully consistent with U.S. law. As I have already stated, as a matter of historic precedent, the U.S. and its European allies have convened military commissions in connection with offenses related to armed conflicts.

Q: Are the military commissions ready to prosecute?

A: The Defense Department is working to implement the President's order.

BACKGROUND:

Both the U.S. and UK take issue with the notion that terrorist acts constitute human rights violations. Since, by definition, human rights are rights people hold with respect to governments, only states can commit human rights violations. The U.S. has argued that the resolutions gave terrorist groups a measure of legitimacy by equating their criminal acts with those of state actors. The U.S. and UK have also argued that the Sixth Committee was a better forum for examination of terrorism. The U.S. does not want action by the Third Committee to interfere with the work of the Sixth Committee on an international legal framework for the prevention, repression and elimination of terrorism.

Although reluctant to consider terrorism a "violation" of human rights, the U.S. and other Western delegations have supported resolutions in the CHR which stated that hostage-taking is an illegal act aimed at the destruction of human rights. Similar language is found in the Universal Declaration of Human Rights which states, "Nothing in the declaration may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

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