

I. President Bush's Executive Order 13440

[Source: United States, Executive Order 13440, "Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency", 20 July 2007; available at <http://www.archives.gov/federal-register/executive-orders/2007.html> ^[1]]

Executive Order 13440 of July 20, 2007

Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency

By the authority vested in me as President and Commander in Chief of the Armed Forces by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force [...], the Military Commissions Act of 2006 [...] [See United States, Military Commissions ^[2]], it is hereby ordered as follows:

Section 1. General Determinations.

- a. The United States is engaged in an armed conflict with al Qaeda, the Taliban, and associated forces. Members of al Qaeda were responsible for the attacks on the United States of September 11, 2001, and for many other terrorist attacks, including against the United States, its personnel, and its allies throughout the world. These forces

continue to fight the United States and its allies in Afghanistan, Iraq, and elsewhere, and they continue to plan additional acts of terror throughout the world. On February 7, 2002, I determined for the United States that members of al Qaeda, the Taliban, and associated forces are unlawful enemy combatants who are not entitled to the protections that the Third Geneva Convention provides to prisoners of war. I hereby reaffirm that determination [See United States, Status and Treatment of Detainees Held in Guantánamo Naval Base].

- b. The Military Commissions Act defines certain prohibitions of Common Article 3 for United States law, and it reaffirms and reinforces the authority of the President to interpret the meaning and application of the Geneva Conventions.

Sec. 2. Definitions. [...]

- c. “Cruel, inhuman, or degrading treatment or punishment” means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

Sec. 3. Compliance of a Central Intelligence Agency Detention and Interrogation Program with Common Article 3.

- a. Pursuant to the authority of the President under the Constitution and the laws of the United States, including the Military Commissions Act of 2006, this order interprets the meaning and application of the text of Common Article 3 with respect to certain detentions and interrogations, and shall be treated as authoritative for all purposes as a matter of United States law, including satisfaction of the international obligations of the United States. I hereby determine that Common Article 3 shall apply to a program of detention and interrogation operated by the Central Intelligence Agency as set forth in this section. The requirements set forth in this section shall be applied with respect to detainees in such program without adverse distinction as to their race, color, religion or faith, sex, birth, or wealth.
- b. I hereby determine that a program of detention and interrogation approved by the Director of the Central Intelligence Agency fully complies with the obligations of the United States under Common Article 3, provided that:
 - i. the conditions of confinement and interrogation practices of the program do not include:
 - A. torture, as defined in section 2340 of title 18, United States Code;

- B. any of the acts prohibited by section 2441(d) of title 18, United States Code, including murder, torture, cruel or inhuman treatment, mutilation or maiming, intentionally causing serious bodily injury, rape, sexual assault or abuse, taking of hostages, or performing of biological experiments;
 - C. other acts of violence serious enough to be considered comparable to murder, torture, mutilation, and cruel or inhuman treatment, as defined in section 2441(d) of title 18, United States Code;
 - D. any other acts of cruel, inhuman, or degrading treatment or punishment prohibited by the Military Commissions Act [...] and the Detainee Treatment Act of 2005 [...];
 - E. willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual in a manner so serious that any reasonable person, considering the circumstances, would deem the acts to be beyond the bounds of human decency, such as sexual or sexually indecent acts undertaken for the purpose of humiliation, forcing the individual to perform sexual acts or to pose sexually, threatening the individual with sexual mutilation, or using the individual as a human shield; or
 - F. acts intended to denigrate the religion, religious practices, or religious objects of the individual;
- ii. the conditions of confinement and interrogation practices are to be used with an alien detainee who is determined by the Director of the Central Intelligence Agency:
- A. to be a member or part of or supporting al Qaeda, the Taliban, or associated organizations; and
 - B. likely to be in possession of information that:
 1. could assist in detecting, mitigating, or preventing terrorist attacks, such as attacks within the United States or against its Armed Forces or other personnel, citizens, or facilities, or against allies or other countries cooperating in the war on terror with the United States, or their armed forces or other personnel, citizens, or facilities; or
 2. could assist in locating the senior leadership of al Qaeda, the Taliban,

or associated forces;

- iii. the interrogation practices are determined by the Director of the Central Intelligence Agency, based upon professional advice, to be safe for use with each detainee with whom they are used; and
 - iv. detainees in the program receive the basic necessities of life, including adequate food and water, shelter from the elements, necessary clothing, protection from extremes of heat and cold, and essential medical care.
- c. The Director of the Central Intelligence Agency shall issue written policies to govern the program, including guidelines for Central Intelligence Agency personnel that implement paragraphs (i)(C), (E), and (F) of subsection 3(b) of this order, and including requirements to ensure:
- i. safe and professional operation of the program;
 - ii. the development of an approved plan of interrogation tailored for each detainee in the program to be interrogated, consistent with subsection 3(b)(iv) of this order;
 - iii. appropriate training for interrogators and all personnel operating the program;
 - iv. effective monitoring of the program, including with respect to medical matters, to ensure the safety of those in the program; and
 - v. compliance with applicable law and this order.

[...]

[Signed:] George W. Bush

THE WHITE HOUSE,

July 20, 2007.

II. President Obama's Executive Order 13491

[Source: United States, Executive Order 13491, "Ensuring Lawful Interrogations", 22 January 2009; available at <http://www.archives.gov/federal-register/executive-orders/2009-obama.html>

Executive Order 13491 of January 22, 2009

ENSURING LAWFUL INTERROGATIONS

By the authority vested in me by the Constitution and the laws of the United States of America, in order to improve the effectiveness of human intelligence gathering, to promote the safe, lawful, and humane treatment of individuals in United States custody and of United States personnel who are detained in armed conflicts, to ensure compliance with the treaty obligations of the United States, including the Geneva Conventions, and to take care that the laws of the United States are faithfully executed, I hereby order as follows:

Section 1. Revocation.

Executive Order 13440 of July 20, 2007, is revoked. All executive directives, orders, and regulations inconsistent with this order, including but not limited to those issued to or by the Central Intelligence Agency (CIA) from September 11, 2001, to January 20, 2009, concerning detention or the interrogation of detained individuals, are revoked to the extent of their inconsistency with this order. Heads of departments and agencies shall take all necessary steps to ensure that all directives, orders, and regulations of their respective departments or agencies are consistent with this order. Upon request, the Attorney General shall provide guidance about which directives, orders, and regulations are inconsistent with this order.

Sec. 2. Definitions. [...]

- f. “Treated humanely,” “violence to life and person,” “murder of all kinds,” “mutilation,” “cruel treatment,” “torture,” “outrages upon personal dignity,” and “humiliating and degrading treatment” refer to, and have the same meaning as, those same terms in Common Article 3.

[...]

Sec. 3. Standards and Practices for Interrogation of Individuals in the Custody or Control of the United States in Armed Conflicts.

- a. **Common Article 3 Standards as a Minimum Baseline.** Consistent with the requirements of the Federal torture statute, [...] the Convention Against Torture, Common Article 3, and other laws regulating the treatment and interrogation of individuals detained in any armed conflict, such persons shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment, and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment), whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States.
- b. **Interrogation Techniques and Interrogation-Related Treatment.** Effective immediately, an individual in the custody or under the effective control of an officer, employee, or other agent of the United States Government, or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict, shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in Army Field Manual 2 22.3 (Manual). [...] Nothing in this section shall preclude the Federal Bureau of Investigation, or other Federal law enforcement agencies, from continuing to use authorized, non-coercive techniques of interrogation that are designed to elicit voluntary statements and do not involve the use of force, threats, or promises.
- c. **Interpretations of Common Article 3 and the Army Field Manual.** From this day forward, unless the Attorney General with appropriate consultation provides further guidance, officers, employees, and other agents of the United States Government may, in conducting interrogations, act in reliance upon Army Field Manual 2 22.3, but may not, in conducting interrogations, rely upon any interpretation of the law governing interrogation – including interpretations of Federal criminal laws, the Convention Against Torture, Common Article 3, Army Field Manual 2 22.3, and its

predecessor document, Army Field Manual 34 52 issued by the Department of Justice between September 11, 2001, and January 20, 2009.

Sec. 4. Prohibition of Certain Detention Facilities, and Red Cross Access to Detained Individuals.

- a. **CIA Detention.** The CIA shall close as expeditiously as possible any detention facilities that it currently operates and shall not operate any such detention facility in the future.
- b. **International Committee of the Red Cross Access to Detained Individuals.** All departments and agencies of the Federal Government shall provide the International Committee of the Red Cross with notification of, and timely access to, any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States Government, consistent with Department of Defense regulations and policies.

Sec. 5. Special Interagency Task Force on Interrogation and Transfer Policies.

- a. **Establishment of Special Interagency Task Force.** There shall be established a Special Task Force on Interrogation and Transfer Policies (Special Task Force) to review interrogation and transfer policies.

[...]

- e. **Mission.** The mission of the Special Task Force shall be:
 - i. to study and evaluate whether the interrogation practices and techniques in Army Field Manual 2 22.3, when employed by departments or agencies outside the military, provide an appropriate means of acquiring the intelligence necessary to protect the Nation, and, if warranted, to recommend any additional or different guidance for other departments or agencies; and
 - ii. to study and evaluate the practices of transferring individuals to other nations in order to ensure that such practices comply with the domestic laws, international obligations, and policies of the United States and do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of

the United States to ensure the humane treatment of individuals in its custody or control.

[...]

[Signed:] Barack Obama

THE WHITE HOUSE,

January 22, 2009

Source URL: <https://casebook.icrc.org/case-study/united-states-treatment-and-interrogation-detention>

Links

[1] <http://www.archives.gov/federal-register/executive-orders/2007.html>

[2] <https://casebook.icrc.org/case-study/united-states-military-commissions>

[3] <http://www.archives.gov/federal-register/executive-orders/2009-obama.html>