Department of Defense
DIRECTIVE

NUMBER 5105.70
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DA&M

SUBJECT: Appointing Authority for Military Commissions

References: (a) U.S. Constitution, Article II, Section 2, Clause 2
(b) Sections 113 and 131(b)(8), title 10, United States Code
(c) Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (November 16, 2001) ("President's Military Order")
(d) DoD Military Commission Order No. 1, "Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism," March 21, 2002
(e) through (i), see enclosure 1

1. PURPOSE

Pursuant to the authority vested in the Secretary of Defense under references (a), (b), and (c), this Directive establishes the position and office of the Appointing Authority for Military Commissions, with the responsibilities, functions, relationships, and authorities as prescribed herein.

2. APPLICABILITY AND SCOPE

This Directive applies to:

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

2.2. Any special trial counsel of the Department of Justice who may be made available by the Attorney General of the United States to serve as a prosecutor in trials before military commissions pursuant to Section 4(B)(2) of reference (d)

2.3. Any civilian attorney who seeks qualification as a member of a pool of qualified Civilian Defense Counsel authorized in Section 4(C)(3)(b) of reference (d); and to any attorney who has been qualified as a member of that pool.

3. ORGANIZATION

3.1. The Appointing Authority for Military Commissions is established in the Office of the Secretary of Defense under the authority, direction, and control of the Secretary of Defense.

3.2. The Office of the Appointing Authority shall consist of the Appointing Authority, the Legal Advisor to the Appointing Authority, and such other subordinate officials and organizational elements as are established by the General Counsel of the Department of Defense within the resources assigned by the Secretary of Defense.

4. RESPONSIBILITIES AND FUNCTIONS

4.1. The Appointing Authority for Military Commissions is an officer of the United States appointed by the Secretary of Defense pursuant to the U.S. Constitution and 10 U.S.C. (references (a) and (b)). In this capacity, the Appointing Authority for Military Commissions shall exercise the duties prescribed in DoD Military Commission Order No. 1 (reference (d)) and this Directive and shall:

4.1.1. Issue orders from time to time appointing one or more military commissions to try individuals subject to the President's Military Order (reference (c)) and reference (d); and appoint any other personnel necessary to facilitate military commissions.

4.1.2. Appoint military commission members and alternate members, based on competence to perform the duties involved. Remove members and alternate members for good cause pursuant to Military Commission Instruction No. 8 (reference (e)).

4.1.3. Designate a Presiding Officer from among the members of each military commission to preside over the proceedings of that military commission. The Presiding Officer shall be a military officer who is a judge advocate of any United States Armed Force.

4.1.4. Approve and refer charges prepared by the Prosecution against an individual or individuals subject to reference (c).

4.1.5. Approve plea agreements with an Accused.

4.1.6. Decide interlocutory questions certified by the Presiding Officer.

4.1.7. Ensure military commission proceedings are open to the maximum extent practicable. Decide when military commission proceedings should be closed pursuant to references (c) and (d).

4.1.8. Make decisions related to attendance at military commission proceedings by the public and accredited press and the public release of transcripts. Such matters, including policy and plans for media coverage shall be coordinated with the Assistant Secretary of Defense for Public Affairs (ASD(PA)) and, as appropriate, the Assistant Secretary of Defense for Special

Operations/Low Intensity Conflict (ASD(SO/LIC)) under the Under Secretary of Defense for Policy (USDP)).

4.1.9. Approve or disapprove requests from the Prosecution and Defense to communicate with news media representatives regarding cases and other matters related to military commissions. Such matters shall be coordinated with the ASD(PA).

4.1.10. Detail or employ personnel such as court reporters, interpreters, security personnel, bailiffs, and clerks to support military commissions, as necessary. When such details effect resources committed to operational missions, coordinate with the ASD(SO/LIC) under the USD(P) and the Heads of appropriate DoD Components.

4.1.11. Order that such investigative or other resources be made available to Defense Counsel and the Accused as deemed necessary for a full and fair trial, including appointing interpreters.

4.1.12. Promptly review military commission records of trial for administrative completeness and determine appropriate disposition, either transmitting the record of trial to the Review Panel or returning it to the military commission for any necessary supplementary proceedings.

4.1.13. Implement directions of officials with final decision-making authority for sentences.

4.1.14. Perform supervisory and performance evaluation duties pursuant to this Directive and DoD Military Commission Instruction No. 6 (reference (f)).

4.1.15. Coordinate matters involving members of the Congress, including correspondence, with the Assistant Secretary of Defense for Legislative Affairs; and coordinate and exchange data and information with other OSD officials, the Heads of the DoD Components, and other Federal officials having collateral or related functions.

4.1.16. Establish, maintain, and preserve records that serve as evidence of the organization, functions, policies, decisions, procedures, operations, and other activities of the Office of the Appointing Authority for Military Commissions in accordance with Title 44 U.S.C. (reference (g)).

4.1.17. Perform such other functions as the Secretary of Defense may prescribe.

4.2. The General Counsel of the Department of Defense shall:

4.2.1. Review and approve such regulations, instructions, memoranda, and other DoD publications prepared by the Appointing Authority (see paragraph 6.3., below) for the conduct of proceedings by military commissions established pursuant to references (c) and (d).

4.2.2. Provide guidance and issue instructions necessary to facilitate the conduct of proceedings by military commissions established pursuant to references (c) and (d), including but not limited to instructions pertaining to military commission-related offices, performance evaluations and reporting relationships.

4.3. The Chairman of the Joint Chiefs of Staff and the OSD Principal Staff Assistants shall exercise their designated authorities and responsibilities as established by law or DoD guidance to support the Appointing Authority for Military Commissions in the implementation of the responsibilities and functions specified herein.

4.4. The Secretaries of the Military Departments shall support the personnel requirements of the Appointing Authority as validated by the General Counsel of the Department of Defense and provide other requested assistance and support within their capabilities.

5. RELATIONSHIPS

5.1. In the performance of assigned functions and responsibilities, the Appointing Authority for Military Commissions shall:

5.1.1. Report directly to the Secretary of Defense.

5.1.2. Use existing facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve an appropriate level of efficiency and economy.

5.2. Other OSD officials and the Heads of the DoD Components shall coordinate with the Appointing Authority for Military Commissions on all matters related to the responsibilities and functions cited in section 4., above.

5.3. Nothing herein shall be interpreted to subsume or replace the responsibilities, functions, or authorities of the OSD Principal Staff Assistants, the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Commanders of Combatant Commands, or the Heads of Defense Agencies or the Department of Defense Field Activities prescribed by law or Department of Defense guidance.

6. AUTHORITIES

The Appointing Authority for Military Commissions is hereby delegated authority to:

6.1. Obtain reports and information, consistent with DoD Directive 8910.1 (reference (h)) as necessary to carry out assigned functions.

6.2. Communicate directly with the Heads of the DoD Components as necessary to carry out assigned functions, including the transmission of requests for advice and assistance. Communications to the Military Departments shall be transmitted through the Secretaries of the Military Departments, their designees, or as otherwise provided in law or directed by the

Secretary of Defense in other Department of Defense issuances. Communications to the Commanders of the Combatant Commands, except in unusual circumstances, shall be transmitted through the Chairman of the Joint Chiefs of Staff.

6.3. Subject to the approval of the General Counsel of the Department of Defense, issue DoD Publications and one-time directive-type memoranda consistent with DoD 5025.1-M (reference (i)); Military Commission Instructions consistent with DoD Military Commission Instruction No. 1 (reference (j)); and such other regulations as are necessary or appropriate for the conduct of proceedings by military commissions established pursuant to references (c) and (d). Instructions to the Military Departments shall be issued through the Secretaries of the Military Departments. Instructions to the Combatant Commands, except in unusual circumstances, shall be communicated through the Chairman of the Joint Chiefs of Staff.

6.4. Communicate with other Government officials, representatives of the Legislative Branch, members of the public, and representatives of foreign governments, as applicable, in carrying out assigned functions.

7. EFFECTIVE DATE

This Directive is effective immediately.

Donald Rumsfeld
Secretary of Defense

Enclosures – 1
E1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

(e) DoD Military Commission Instruction No. 8, "Administrative Procedures," April 30, 2003
(f) DoD Military Commission Instruction No. 6, "Reporting Relationships for Military Commission Personnel," April 30, 2003
(g) Title 44, United States Code
(h) DoD Directive 8910.1, "Management and Control of Information Requirements," June 11, 1993
(i) DoD 5025.1-M, "DoD Directives Systems Procedures," March 5, 2003
(j) DoD Military Commission Instruction No. 1, "Military Commission Instructions," April 30, 2003