



Department of Defense

Military Commission Instruction No. 10

March 24, 2006

SUBJECT: Certain Evidentiary Determinations

- References:**
- (a) Military Commission Order No. 1 (current edition)
 - (b) Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (Nov. 16, 2001)
 - (c) Section 113(d) of Title 10 of the United States Code
 - (d) Section 140(b) of Title 10 of the United States Code
 - (e) Military Commission Instruction No. 1 (current edition)

1. PURPOSE

This Instruction acknowledges the obligations assumed by the United States under Article 15 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with respect to the conduct of trials by military commissions appointed pursuant to references (a) and (b).

2. AUTHORITY

This Instruction is issued pursuant to Section 7(A) of reference (a) and in accordance with references (b), (c), and (d). The provisions of reference (e) are applicable to this Instruction.

3. CERTAIN EVIDENTIARY DETERMINATIONS

The President has repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture. The President's Military Order, November 13, 2001, directs that each individual tried by military commission shall receive a "full and fair trial." The United States has assumed an obligation under Article 15 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." Nothing in this Instruction shall be construed as an indication that the United States government has been or is in possession of, or has sought or seeks to obtain, evidence made as a

result of torture, or has sought to introduce such evidence in any military commission proceeding.

A. Rule. The prosecution shall not offer any statement determined by the prosecution to have been made as a result of torture. The commission shall not admit statements established to have been made as a result of torture as evidence against an accused, except against a person accused of torture as evidence the statement was made.

B. Definition of Torture. As used in this Instruction, "torture" is defined as an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incident to lawful sanctions) upon another person within his custody or physical control. "Severe mental pain or suffering" is defined as the prolonged mental harm caused by or resulting from the:

- 1) Intentional infliction or threatened infliction of severe physical pain or suffering;
- 2) Administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- 3) Threat of imminent death; or
- 4) Threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

Cf. 18 U.S.C. § 2340; SEN. EXEC. RPT. 101-30, Resolution of Advice and Consent to Ratification (1990) (containing the reservations, understandings and declarations conditioning the Senate's advice and consent to U.S. ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

4. EFFECTIVE DATE

This Instruction is effective immediately.



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General Counsel of the Department of Defense