

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY**

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| UNITED STATES OF AMERICA v. ABD AL HADI AL-IRAQI | AE020 Defense Motion to Dismiss for Lack of Subject Matter Jurisdiction and to Compel a Status Determination pursuant to Article 5 of the Geneva Conventions 16 October 2014 |
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1. Timeliness: This motion is filed within the timeframe established by Rule for Military Commission (R.M.C.) 905 and is timely pursuant to Military Commissions Trial Judiciary Rule of Court (R.C.) 3.7.c.(1).

2. Relief Sought: The Defense seeks dismissal of this case and requests that an Article 5 hearing before a competent tribunal be convened in accordance with Article 5 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (“GPW”) 6 U.S.T. 3316.¹ Mr. Hadi al-Iraqi asserts that there is a question as to his status; and this question has existed since the time of his initial detention. Mr. Hadi al-Iraqi further asserts that this status determination should have been conducted pre-referral of charges and therefore a dismissal of the charges and referral to an Article 5 hearing, composed of three officers, is the appropriate remedy now. Because a proper Article 5 hearing has not been held, Mr. Hadi al-Iraqi’s status and the corresponding standard of treatment have not been properly established, nor can personal

¹ See AR 190–8/OPNAVINST 3461.6/AFJI 31–304/MCO 3461.1 Enemy Prisoners of War, Returned Personnel, Civilian Internees and Other Detainees, 1 October 1997, para. 1-6

jurisdiction over Mr. Hadi al-Iraqi in this military commission be determined at this stage. The defense requests that the Commission order that a proper authority convene a “status determination hearing” in accordance with Article 5 of the GPW, 6 U.S.T. 3316, at which the Government will be required to prove Mr. Hadi al-Iraqi’s alleged status. In accordance with Article 5, this hearing must be held before a “competent tribunal,” which pursuant to the procedures set forth under the multi-service regulation AR 190–8/OPNAVINST 3461.6/AFJI 31–304/MCO 3461.1, 1 October 1997, consists of three officers who review the evidence the Government would present.

3. Overview: Mr. Abd al Hadi al-Iraqi, an Iraqi citizen, was captured in Turkey in 2006, far removed from any battlefield. He has been in United States custody ever since, having been transferred to Guantanamo in April 2007. Under Article 4 of the GPW, and as explained in U.S. Army Field Manual (FM) 27-10, during a war an enemy population is divided into two general classes. One class consists of persons who are entitled to treatment as Prisoners of War upon capture (POW), also referred to as Enemy Prisoner of War (“EPW”) in the multi- service regulation AR 190–8/OPNAVINST 3461.6/AFJI 31–304/MCO 3461.1, 1 October 1997. The other class is the civilian population, which benefits to varying degrees from the provisions of the Geneva Conventions. The presumption of the GPW is that anyone captured as a combatant in an international armed conflict merits POW status. If, however, the detaining nation miscategorizes a person (such as treating a civilian as a soldier, or failing to treat a soldier as a soldier with the rights that a soldier has as a POW), the captured individual has a right to resolution of his POW status by a competent tribunal. Without this “Article 5 hearing” to determine whether the individual is entitled to POW status, that individual cannot be penalized

for acts by any judicial proceeding.

Article 5 hearings are the existing mechanism for determining status and thus the treatment to which an individual is entitled. Personal jurisdiction of military commissions is status based - alien unprivileged enemy belligerents. Article 5 hearings therefore also define the population of potential military commission defendants. Absent such a hearing the exercise of discretion by the Government in preferring charges and the Convening Authority in referring them is very nearly unfettered, and entirely arbitrary and capricious. A post-referral status determination is therefore inadequate.

While Mr. Hadi al-Iraqi's capture may have occurred in the context of an international armed conflict between signatories to the GPW (the United States and Afghanistan), it has not been established whether he took a direct part in those hostilities and an Article 5 status determination has not been made. In 2009, the Government alleged that Mr. Hadi al-Iraqi was an "enemy combatant." Having now discarded that term, the Government currently asserts Mr. Hadi al-Iraqi is an "alien unprivileged enemy belligerent" -- but, the Government has never established that Mr. Hadi al-Iraqi actually is either of these.

In the absence of a properly conceived Article 5 status determination, this military commission should dismiss this case for lack of jurisdiction.

4. Burden and Standard of Proof: The burden of proof is on the government to establish Mr. Hadi al-Iraqi's status by a preponderance of the evidence. *United States v. Hamdan*, Decision and Order, Motion to Dismiss for Lack of Jurisdiction, dated 4 June 2007, at 3; *see also* AR 190-8/OPNAVINST 3461.6/AFJI 31-304/MCO 3461.1, 1 October 1997.

5. Facts:

- a) Mr. Hadi al-Iraqi was captured, unarmed, in Turkey in 2006. Mr. Hadi al-Iraqi has been in custody since then, and held at the U.S. Naval Station, Guantanamo Bay, since April 2007.
- b) Mr. Hadi al-Iraqi's case was evaluated by the Guantanamo Review Task Force pursuant to Executive Order 13492. The task force determined that he was an "enemy combatant" and therefore subject to continued detention. However, this process did not determine whether Mr. Hadi al-Iraqi belongs to any of the categories enumerated in Article 4 of the GPW, nor did it determine whether Mr. Hadi al-Iraqi is an "unprivileged enemy belligerent" as that term is defined in the Military Commissions Act of 2009 ("MCA"). *See* 10 U.S.C. § 948a(7).
- c) Accordingly, it has never been determined by a competent tribunal whether Mr. Hadi al-Iraqi belongs to any of the categories enumerated in GPW Article 4 as is required under Article 5 of the GPW, nor has it been determined whether he is an "alien unprivileged enemy belligerent," subject to jurisdiction under the MCA. *See* 10 U.S.C. 948c.

6. Law and Argument:

A military commission under the MCA does not have jurisdiction to try any offense unless it is committed by an "alien unprivileged enemy belligerent." MCA 10 U.S.C. § 948c. Article 5 of the GPW creates the presumption that a captive, such as Mr. Hadi al-Iraqi, is a prisoner of war -- not an "alien unprivileged enemy belligerent" -- who is entitled to all the protections afforded a prisoner of war under the GPW. As Mr. Hadi al-Iraqi is presumed to be a prisoner of war who is entitled to the protections of the GPW, he cannot be tried by a military

commission unless, and until, a “competent tribunal,” as provided under Article 5 of the GPW, determines that he does not merit the status of a prisoner of war.

Article 5 hearings are the existing mechanism for determining status and thus the treatment to which an individual is entitled. Personal jurisdiction of military commissions is status based, applying only to alien unprivileged enemy belligerents. Article 5 hearings therefore also define the population of potential military commission defendants. Absent such a hearing the exercise of discretion by the prosecutors in preferring charges and the convening authority in referring them is very nearly unfettered, and entirely arbitrary and capricious. A post-referral status determination is therefore inadequate.

This request conforms with legal precedent applied in the Guantanamo Military Commissions, in *United States v. Hamdan*. There, the military judge dismissed the case against Mr. Hamdan because jurisdiction had not been established; he ordered a status determination hearing, finding that such a hearing was required before any war crimes trial could proceed in the Guantanamo Military Commissions. *See United States v. Hamdan*, Decision and Order – Motion to Dismiss for Lack of Jurisdiction (corrected order), at 3 (June 4, 2007) (“The Government having failed to determine, by means of a competent tribunal, that the accused is an ‘unlawful enemy combatant’ using the definition established by Congress, it has not shown, by a preponderance of the evidence, that the accused is subject to the jurisdiction of this Commission.”); *but see United States v. Khadr*, 717 F. Supp. 2d 1215 (USCMCR 2007), decision appealed but dismissed for lack of timely filing in *United States v. Khadr*, 753 F. Supp. 2d 1178, (USCMCR 2008) (While the issue before the Court was not whether the Accused had a right to an Article 5 hearing, the Court did find that the Military Judge had authority under subsection (i) of § 948a(1)(A) of the M.C.A. of 2006 to hear evidence concerning and ultimately

decide defendant's alien unlawful enemy combatant status.)

Articles 4 and 5 of the GPW were instituted largely at the instigation and insistence of the United States, following World War II. These articles were adopted in a revision of the 1929 Geneva Conventions to further mitigate harsh treatment by the captors of enemy combatants and non-combatants. Under Articles 4 and 5 of the GPW, a framework has been set up whereby persons who have been captured can correctly be categorized as prisoners of war (soldiers or others meriting this designation) or civilians, and accorded the protections respectively associated with membership in each of those groups. Specifically, under Article 4 of the GPW, prisoners of war are persons belonging to any of a number of enumerated categories, who have fallen into the power of the enemy.

If a captured person asserts that they are not correctly categorized under Article 4, or that they are a non-combatant civilian, Article 5 of the GPW mandates that they be brought before a tribunal to determine their status, as follows:

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation. Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

Notwithstanding these settled categorizations of persons during armed conflicts, in February 2002, then-President Bush issued a Memorandum stating that “none of the provisions of Geneva apply,” and that detainees captured in the Global War on Terrorism (GWOT) are “unlawful combatants and, therefore, do not qualify as prisoners of war.”² As a consequence,

² Memorandum of the President, *Humane Treatment of al Qaeda and Taliban Detainees*, dated 7 February 2002; see also Presidential Military Order, *The Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism*, dated 13 November 2001.

Mr. Hadi al-Iraqi was not afforded an Article 5 hearing that complied with AR 190–8/OPNAVINST 3461.6/AFJI 31–304/MCO 3461.1, 1 October 1997, and his legal status remains in doubt.

While Mr. Hadi al-Iraqi does not admit or concede to having committed any belligerent acts or hostile actions against any party, he claims the protections of the GPW for all purposes applicable to him. He specifically requests a determination of his status, as required by Article 5 of the GPW. The process governing a status determination hearing for persons referred to in Article 4 of the GPW is outlined in one domestic authority: AR 190–8/OPNAVINST 3461.6/AFJI 31–304/MCO 3461.1, 1 October 1997. This multi-service regulation implements international law, both customary and codified, particularly the 1949 GPW. Under AR 190–8/OPNAVINST 3461.6/AFJI 31–304/MCO 3461.1, 1 October 1997 para. 1-6, a tribunal may determine a subject belongs to four possible categories of persons, which parallel the categories enumerated in Article 4 of the Geneva Conventions: Enemy Prisoner of War (EPW), retained personnel (RP), civilian internees (CI), and innocent civilians who should be immediately released. All, except innocent civilians, may be detained during hostilities, and these detainees must be treated in accordance with the laws governing POWs. The U.S. military's authority for status determination tribunals is explicit as to the structure of the tribunal:

“A competent tribunal shall be composed of three commission officers, one of whom must be of a field grade. The senior officer shall serve as President of the Tribunal. Another non-voting officer, preferably an officer in the Judge Advocate General Corps, shall serve as the recorder.”

AR 190–8/OPNAVINST 3461.6/AFJI 31–304/MCO 3461.1, 1 October 1997, para 1.6(c)

Mr. Hadi al-Iraqi's request for status determination hearing includes a request for a hearing that

conforms with settled military regulations and Article 5 of the GPW. While in *Hamdan*, the military judge himself held the Article 5 hearing, this was pursuant to an agreement between the parties. See *United States v. Hamdan*, Ruling on Defense Motion for Article 5 Status Determination, Dec. 17, 2007, at 4 (“Both parties have conceded that this Commission is a competent tribunal within the meaning of Article 5.”) In view of the explicit language of the multi-service regulation, Mr. Hadi al-Iraqi requests a three officer panel Article 5 hearing in compliance with the existing regulation.

In the MCA, Congress affirmed its intent that the GPW is to be complied with, both explicitly and implicitly. Congress demonstrated its intent to comply with GPW by defining “privileged belligerent” as an individual “belonging to one of the eight categories enumerated in Article 4 of the GPW.” See § 948a(6). This definition conforms with Article 4 of the GPW. See Article 4 of the GPW. The MCA then defines “unprivileged enemy belligerent” simply as an individual who is someone “other than a privileged belligerent” – using, again, the wording of the GPW. See § 948a(7). In the MCA therefore, Congress has explicitly endorsed the GPW into United States law.

Consequently, establishing the jurisdiction of a military tribunal over an individual requires a two-step process. First, to accord with the GPW as Congress intended, a hearing complying with Article 5 must be conducted, following the procedures set forth in AR 190–8/OPNAVINST 3461.6/AFJI 31–304/MCO 3461.1, 1 October 1997. Only then, if it is found that Mr. Hadi al-Iraqi does not belong to any of the eight categories enumerated in Article 4, can the Military Commission take the next step, and endeavor to determine whether Mr. Hadi al-Iraqi is subject to Commission jurisdiction as an “alien unprivileged enemy belligerent.” 10 U.S.C. § 948a(7) If, however, Mr. Hadi al-Iraqi belongs to any of the categories enumerated in

Article 4 of the GPW, he cannot be subjected to the jurisdiction of this Commission.

Mr. Hadi al-Iraqi moves for dismissal of the charges and a proper Article 5 status determination hearing. He asserts that he must be afforded the protections of Article 5 of the GPW, protections he has thus far been denied. A status determination must be made by a competent tribunal, under the procedures set out in AR 190-8/OPNAVINST 3461.6/AFJI 31-304/MCO 3461.1 , 1 October 1997.

7. Request for Oral Argument: The Defense requests oral argument. RMC 905(h).
8. Request for Witnesses: The Defense does not anticipate a need to call witnesses in connection with this motion.
9. Conference with Opposing Counsel: We have conferred with the prosecution and they have indicated they oppose this motion.

10. Attachments:

- A. Certificate of Service
- B. Articles 4 and 5 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War 6 U.S.T. 3316
- C. AR 190-8/OPNAVINST 3461.6/AFJI 31-304/MCO 3461.1, Enemy Prisoners of War, Returned Personnel, Civilian Internees and Other Detainees, 1 October 1997, Para. 1-6

Respectfully Submitted,

//s//
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//s//
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ATTACHMENT A

Filed with TJ
16 October 2014

Appellate Exhibit 020 (al Hadi)
Page 10 of 18

ATTACHMENT B

Filed with TJ
16 October 2014

Appellate Exhibit 020 (al Hadi)
Page 12 of 18

The 1949 Geneva Convention Relative to the Treatment of Prisoners of War ("GPW") 6 U.S.T. 3316

Art 4. A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:[

(a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention: (1)

Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it

occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

Art 5. The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

ATTACHMENT C

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16 October 2014

Appellate Exhibit 020 (al Hadi)
Page 15 of 18

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**Army Regulation 190-8
OPNAVINST 3461.6
AFJI 31-304
MCO 3461.1**

Military Police

Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees

**Headquarters
Departments of the Army,
the Navy, the Air Force,
and the Marine Corps
Washington, DC
1 October 1997**

UNCLASSIFIED

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medical annex of OPLANs, OPORDs and contingency plans includes procedures for treatment of EPW, CI, RP, and ODs. Medical support will specifically include:

(a) First aid and all sanitary aspects of food service including provisions for potable water, pest management, and entomological support.

(b) Preventive medicine.

(c) Professional medical services and medical supply.

(d) Reviewing, recommending, and coordinating the use and assignment of medically trained EPW, CI, RP and OD personnel and medical material.

(e) Establishing policy for medical repatriation of EPW, CI and RP and monitoring the actions of the Mixed Medical Commission.

h. U. S. Army Criminal Investigation Command (USACIDC). USACIDC will provide criminal investigative support to EPW, CI and RP Camp Commanders per AR 195-2.

1-5. General protection policy

a. U.S. policy, relative to the treatment of EPW, CI and RP in the custody of the U.S. Armed Forces, is as follows:

(1) All persons captured, detained, interned, or otherwise held in U.S. Armed Forces custody during the course of conflict will be given humanitarian care and treatment from the moment they fall into the hands of U.S. forces until final release or repatriation.

(2) All persons taken into custody by U.S. forces will be provided with the protections of the GPW until some other legal status is determined by competent authority.

(3) The punishment of EPW, CI and RP known to have, or suspected of having, committed serious offenses will be administered IAW due process of law and under legally constituted authority per the GPW, GC, the Uniform Code of Military Justice and the Manual for Courts Martial.

(4) The inhumane treatment of EPW, CI, RP is prohibited and is not justified by the stress of combat or with deep provocation. Inhumane treatment is a serious and punishable violation under international law and the Uniform Code of Military Justice (UCMJ).

b. All prisoners will receive humane treatment without regard to race, nationality, religion, political opinion, sex, or other criteria. The following acts are prohibited: murder, torture, corporal punishment, mutilation, the taking of hostages, sensory deprivation, collective punishments, execution without trial by proper authority, and all cruel and degrading treatment.

c. All persons will be respected as human beings. They will be protected against all acts of violence to include rape, forced prostitution, assault and theft, insults, public curiosity, bodily injury, and reprisals of any kind. They will not be subjected to medical or scientific experiments. This list is not exclusive. EPW/RP are to be protected from all threats or acts of violence.

d. Photographing, filming, and video taping of individual EPW, CI and RP for other than internal Internment Facility administration or intelligence/counterintelligence purposes is strictly prohibited. No group, wide area or aerial photographs of EPW, CI and RP or facilities will be taken unless approved by the senior Military Police officer in the Internment Facility commander's chain of command.

e. A neutral state or an international humanitarian organization, such as the ICRC, may be designated by the U.S. Government as a Protecting Power (PP) to monitor whether protected persons are receiving humane treatment as required by the Geneva Conventions. The text of the Geneva Convention, its annexes, and any special agreements, will be posted in each camp in the language of the EPW, CI and RP.

f. Medical Personnel. Retained medical personnel shall receive as a minimum the benefits and protection given to EPW and shall also be granted all facilities necessary to provide for the medical care of EPW. They shall continue to exercise their medical functions for the benefit of EPW, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the United States Armed Forces. They shall be provided with necessary transport and allowed to periodically visit EPW situated in working detachments or in hospitals outside the

EPW camp. Although subject to the internal discipline of the camp in which they are retained such personnel may not be compelled to carry out any work other than that concerned with their medical duties. The senior medical officer shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel.

g. Religion.

(1) EPW, and RP will enjoy latitude in the exercise of their religious practices, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities. Adequate space will be provided where religious services may be held.

(2) Military chaplains who fall into the hands of the U.S. and who remain or are retained to assist EPW, and RP, will be allowed to minister to EPW, RP, of the same religion. Chaplains will be allocated among various camps and labor detachments containing EPW, RP, belonging to the same forces, speaking the same language, or practicing the same religion. They will enjoy the necessary facilities, including the means of transport provided in the Geneva Convention, for visiting the EPW, RP, outside their camp. They will be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Chaplains shall not be compelled to carry out any work other than their religious duties.

(3) Enemy Prisoners of War, who are ministers of religion, without having officiated as chaplains to their own forces, will be at liberty, whatever their denomination, to minister freely to the members of their faith in U.S. custody. For this purpose, they will receive the same treatment as the chaplains retained by the United States. They are not to be obligated to do any additional work.

(4) If EPW, RP, do not have the assistance of a chaplain or a minister of their faith. A minister belonging to the prisoner's denomination, or in a minister's absence, a qualified layman, will be appointed, at the request of the prisoners, to fill this office. This appointment, subject to approval of the camp commander, will take place with agreement from the religious community of prisoners concerned and, wherever necessary, with approval of the local religious authorities of the same faith. The appointed person will comply with all regulations established by the United States.

1-6. Tribunals

a. In accordance with Article 5, GPW, if any doubt arises as to whether a person, having committed a belligerent act and been taken into custody by the US Armed Forces, belongs to any of the categories enumerated in Article 4, GPW, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

b. A competent tribunal shall determine the status of any person not appearing to be entitled to prisoner of war status who has committed a belligerent act or has engaged in hostile activities in aid of enemy armed forces, and who asserts that he or she is entitled to treatment as a prisoner of war, or concerning whom any doubt of a like nature exists.

c. A competent tribunal shall be composed of three commissioned officers, one of whom must be of a field grade. The senior officer shall serve as President of the Tribunal. Another non-voting officer, preferably an officer in the Judge Advocate General Corps, shall serve as the recorder.

d. The convening authority shall be a commander exercising general courts-martial convening authority.

e. Procedures.

(1) Members of the Tribunal and the recorder shall be sworn. The recorder shall be sworn first by the President of the Tribunal. The recorder will then administer the oath to all voting members of the Tribunal to include the President.

(2) A written record shall be made of proceedings.

(3) Proceedings shall be open except for deliberation and voting by the members and testimony or other matters which would compromise security if held in the open.

(4) Persons whose status is to be determined shall be advised of their rights at the beginning of their hearings.

(5) Persons whose status is to be determined shall be allowed to attend all open sessions and will be provided with an interpreter if necessary.

(6) Persons whose status is to be determined shall be allowed to call witnesses if reasonably available, and to question those witnesses called by the Tribunal. Witnesses shall not be considered reasonably available if, as determined by their commanders, their presence at a hearing would affect combat or support operations. In these cases, written statements, preferably sworn, may be submitted and considered as evidence.

(7) Persons whose status is to be determined have a right to testify or otherwise address the Tribunal.

(8) Persons whose status is to be determined may not be compelled to testify before the Tribunal.

(9) Following the hearing of testimony and the review of documents and other evidence, the Tribunal shall determine the status of the subject of the proceeding in closed session by majority vote. Preponderance of evidence shall be the standard used in reaching this determination.

(10) A written report of the tribunal decision is completed in each case. Possible board determinations are:

(a) EPW.

(b) Recommended RP, entitled to EPW protections, who should be considered for certification as a medical, religious, or volunteer aid society RP.

(c) Innocent civilian who should be immediately returned to his home or released.

(d) Civilian Internee who for reasons of operational security, or probable cause incident to criminal investigation, should be detained.

f. The recorder shall prepare the record of the Tribunal within three work days of the announcement of the tribunal's decision. The record will then be forwarded to the first Staff Judge Advocate in the internment facility's chain of command.

g. Persons who have been determined by a competent tribunal not to be entitled to prisoner of war status may not be executed, imprisoned, or otherwise penalized without further proceedings to determine what acts they have committed and what penalty should be imposed. The record of every Tribunal proceeding resulting in a determination denying EPW status shall be reviewed for legal sufficiency when the record is received at the office of the Staff Judge Advocate for the convening authority.

1-7. The National Prisoner of War Information Center (NPWIC)

The NPWIC will—

a. Forward blocks of ISNs to designated Branch PWIC in Theater and CONUS, as required.

b. Obtain and store information concerning EPW, CI and RP, and their confiscated personal property. Information will be collected and stored on each EPW, CI, and RP captured and detained by U.S. Armed Forces. This includes those EPW, RP, who were captured by the United States but are in custody of other powers and those who have been released or repatriated. EPW, CI and RP cannot be forced to reveal any information however they are required to provide their name, rank, serial number and date of birth. The Geneva Convention requires the NPWIC to collect and store the following information for EPW, RP:

- (1) Complete name.
- (2) ISN.
- (3) Rank.
- (4) Serial number.
- (5) Date of birth.
- (6) City of birth.
- (7) Country of birth.
- (8) Name and address of next of kin.
- (9) Date of capture.
- (10) Place of capture.

- (11) Capturing unit.
- (12) Circumstances of capture.
- (13) Location of confiscated personal property.
- (14) Nationality.
- (15) General statement of health.
- (16) Nation in whose armed services the individual is serving.
- (17) Name and address of a person to be notified of the individual's capture.
- (18) Address to which correspondence may be sent.
- (19) Certificates of death or duly authenticated lists of the dead.
- (20) Information showing the exact location of war graves together with particulars of the dead.
- (21) Notification of capture.
- (22) List of personal articles of value not restored upon repatriation.

c. Obtain and store information concerning CI and ODs who are kept in the custody of U.S. Armed Forces who are subjected to assigned residence, or who were interned and then released. The following information will be collected:

(1) Any particulars that may assist in the individual's identification. This information shall include at least the person's surname, first names, place and date of birth, nationality, last residence and distinguishing characteristics, the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent and the name and address of the person to be informed.

(2) The individual's personal data for notification of his or her internment, state of health, and changes to this data.

(3) Certificates of death or authenticated lists of the dead and information showing the location of graves.

(4) Authenticated lists of personal valuables left by these protected persons.

(5) Information pertaining to children living in territories occupied by the United States. This will include all data necessary for identifying children whose identity is in doubt.

d. Process all inquiries concerning EPW and RP captured by U.S. Armed Forces.

e. Make reports to the ICRC, the State Department, and other Federal agencies as required.

f. Provide to the adverse party via the ICRC's Central Tracing Agency (CTA) all pertinent information pertaining to EPW, CI, and RP, in custody of the U.S. Armed Forces.

g. Transmit via the CTA/ICRC/PP, all official documents and information on judicial proceedings concerning EPW and RP captured, interned, retained or detained by U.S. Armed Forces.

h. Information and Property Transfers.

(1) In response to an inquiry, the NPWIC will forward all information and documents to the CTA or PP.

(2) Valuables and personal property which can be returned to a released or repatriated person will be forwarded through the CTA or PP.

(3) Valuables and personal property of deceased EPW/RP, which can be released, will be forwarded to the next of kin through the CTA or PP.

i. The ICRC/PP transmits information, documents, and personal effects to the State it represents as follows:

(1) If civilians are concerned, to their countries of origin and/or residence.

(2) If combatants or EPW, CI, and RP are concerned, to their country of origin or to the Power on which they depend.

1-8. The Branch PWIC

a. The Branch PWIC functions as the field operations agency for the NPWIC. It is the central agency responsible to maintain information on all EPW, CI and RP and their personal property within an assigned theater of operations or in CONUS.

b. The Branch PWIC serves as the theater repository for information pertaining to:

(1) Accountability of EPW, CI, and RP and implementation of DOD policy.