

# US military moves to condone “humiliating and degrading” treatment of prisoners

By Joe Kay  
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The US military is preparing a new version of the Army Field Manual that will eliminate language prohibiting “humiliating and degrading treatment” of prisoners held in US custody, according to a report published Monday by the *Los Angeles Times*. The new manual would be a further step in the repudiation of international law and the codification of torture as a component of US interrogation policy.

Summarizing the essence of the discussions, the *Times* quotes an individual described as being familiar with the debates in the Pentagon as saying: “The overall thinking is that they need the flexibility to apply cruel techniques if military necessity requires it.”

By altering the language of the Field Manual, which is the standard of conduct for all US soldiers on the ground, the Pentagon is sending a signal to the military as a whole: prisoner abuse will continue to be tolerated and encouraged.

The new version of the Army’s manual on interrogation was due out earlier this year but has been delayed amidst disputes within the political establishment over how to formulate interrogation policy. One of the issues in this dispute, according to the *Times*, centers on language in the manual that repeats standards included in Common Article 3 of the Geneva Conventions.

Common Article 3 prohibits “at any time and in any place whatsoever...violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, [and] outrages upon personal dignity, in particular, humiliating and degrading treatment.” This passage was intended as a basic standard for the humane treatment of all prisoners, whether or not they were officially classified as POWs, who under the Geneva Conventions are accorded more extensive rights.

The *Times* does not state explicitly how the Pentagon is seeking to modify the language—whether the entire passage from Common Article 3 will be eliminated or only the final clause. Regardless, the effect of the change will be to condone a number of techniques that, in fact, amount to torture.

According to the *Times*, “The military has long applied

Article 3 to conflicts—including civil wars—using it as a minimum standard of conduct, even during peacekeeping operations.... But top Pentagon officials now believe Common Article 3 creates an ‘unintentional sanctuary’ that allows Al Qaeda members to keep information from interrogators.”

The new language would be only the latest in a series of moves by the Bush administration to undercut international law and legitimize torture as an instrument of US policy, using the “war on terrorism” as a pretext.

Shortly after the invasion of Afghanistan, the Bush administration declared that prisoners captured during the conflict (including those the US government decided to identify as either Taliban or Al Qaeda) would not be given POW status under the Geneva Conventions. At the same time, it declared that these prisoners would be denied protections under Common Article 3, on the spurious grounds that this section applied only to “armed conflicts not of an international character.”

The basic intent of the Bush administration’s argument was to create a category of prisoner, the “unlawful combatant,” who would be completely outside of any protections under international law. These combatants could include anyone, including US citizens, picked up in any part of the world. At the same time, administration lawyers, including then-White House counsel and current Attorney General Alberto Gonzales, were drafting memoranda that argued for the president’s constitutional authority as commander-in-chief to order torture.

One problem that the administration confronted, however, is the fact that the military’s own guidelines, included in the Army Field Manual, contain language prohibiting the types of techniques that the Pentagon has begun to employ. While the manual is not US law, it is a critical formulation of military policy and is also considered important in determining “common law,” the set of basic human rights principles to which all countries are considered bound under international law.

The language in the Army manual was highlighted in

March of this year, when a group of military lawyers (judge advocates general), who have on a number of occasions come into conflict with the administration on the question of torture, submitted a memo to the Senate Armed Services Committee concluding that several of the techniques employed at Guantánamo Bay violated the manual because they are “humiliating and degrading.”

The *Washington Post* reported on March 16 that the lawyers “wrote that forcing a detainee to wear a woman’s bra and thong underwear on his head, insulting a detainee’s mother and sister, calling a detainee a homosexual and implying that others know he is a homosexual, forcing a detainee to perform dog tricks, and forcing a detainee to stand naked in the presence of female soldiers would not be consistent with the Army’s policy.” All of these techniques have been used on prisoners in Guantánamo Bay. They are not far removed from the techniques photographed at Abu Ghraib.

One argument the administration has employed to get around the Army Field Manual has been that the manual supposedly applies only to prisoners protected by the Geneva Conventions.

This was one of the central issues behind a dispute that emerged within the political establishment last year over an amendment that would require the military to follow the field manual for all prisoners under its control. The amendment, attached to the Defense Appropriations bill last year and associated primarily with Republican Senator John McCain, prohibits torture and states that no person under the control of the Department of Defense “shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.”

At the time, Vice President Dick Cheney strongly opposed the amendment, intervening personally in an attempt to get McCain to drop support for it, and the Bush administration threatened a veto. After it was nevertheless passed by Congress with a veto-proof majority, Bush, upon signing it, declared that it would be interpreted in a manner that did not violate the constitutional powers of the President as commander-in-chief—powers that administration lawyers have argued include torture.

In part as a response to the amendment, the Pentagon has moved to include wording in the Army Field Manual to allow the sorts of techniques that it has already been using—including, in particular, sexual humiliation.

Cheney has reportedly been principally behind the attempt to eliminate the Common Article 3 language from the new manual. The *Times* reports that the inclusion of the Geneva Convention language was “opposed by officials from Vice President Dick Cheney’s office and by the Pentagon’s

intelligence arm, government sources said. David S. Addington, Cheney’s chief of staff, and Stephen A. Cambone, defense undersecretary for intelligence, said it would restrict the United States’ ability to question detainees.”

The aim of these officials is not only to specifically eliminate the language on humiliation, but more generally to break the correspondence between the provisions of the Army manual and the Geneva Conventions. This is intended to underscore the fact that the US does not consider itself to be bound by international law and human rights standards.

The divisions within the political establishment over this issue do not reflect fundamental differences over policy, but rather the gloss that this policy is given publicly. On the one hand, Vice President Cheney and his staff, along with Defense Secretary Donald Rumsfeld and Attorney General Alberto Gonzales, have been pushing for a more open declaration of the US government’s right to abuse prisoners picked up in the “war on terrorism.” In addition to the desire to create a pseudo-legal foundation for torture, there is concern within these circles that administration officials could end up being prosecuted for authorizing techniques that are blatantly illegal.

On the other hand, officials within the State Department and some in Congress have raised concerns that the open disavowal of international law in relation to prisoner abuse has undermined the human rights pretenses of the United States. The *LA Times* notes in its article that revisions in the manual “may make it more difficult for the administration to portray such incidents [as Abu Ghraib and the massacre of Iraqi citizens in Haditha] as aberrations. And it undercuts contentions that US forces follow the strictest, most broadly accepted standards when fighting wars.”

What the discussions over the Army manual reveal, however, is precisely that these incidents are not aberrations, but products of a definite policy—a policy that includes the assertion of unlimited powers of the president as commander-in-chief, the practice of rendition to countries that practice torture, the setting up of CIA prisons around the world where prisoners are held in secret and abused, and the assault of democratic rights within the United States.

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