



For Immediate Release
Office of the Press Secretary
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Myth/Fact: Clarifying Common Article 3

MYTH: The Administration Is Proposing To "Reinterpret" The Definition Of Common Article 3 Or To "Redefine" Common Article 3.

FACT: The Administration Is Proposing To CLARIFY Common Article 3 – Not Reinterpret Or Redefine It

- **Parts Of Common Article 3, The Standard That Now Applies To The Treatment Of Detainees By U.S. Personnel In The War On Terror, Are Currently Vague And Undefined.** Many of the provisions of Common Article 3 prohibit actions that are universally condemned, such as "violence to life," "murder," "mutilation," "torture," and the "taking of hostages." However, Common Article 3 also prohibits "[o]utrages upon personal dignity, in particular, humiliating and degrading treatment." This phrase is susceptible to uncertain and unpredictable interpretation and application.
- **If Congress Does Not Pass Legislation Clarifying Common Article 3, Its Application Would Subject U.S. Personnel To An Uncertain Legal Standard That May Be Influenced By Foreign Tribunals.** United States senior civilian and military leaders accordingly have requested that Congress clarify United States obligations under Common Article 3.
- **Without The Clarification Provided By The Proposed Legislation, The Meaning Of Common Article 3 Could Be Influenced By The Evolving Interpretations Of Foreign Tribunals And Governments.** The Supreme Court has said that in interpreting a treaty provision such as Common Article 3, the meaning given to the treaty language by foreign tribunals must be accorded "respectful consideration," and the interpretations adopted by other state parties to the treaty should be given "considerable weight."
- **The Administration's Bill Clarifies Our Obligations Under Common Article 3 By Reference To The U.S. Constitutional Standard Already Adopted By Congress In The McCain Amendment And In The U.S. Reservation To The Convention Against Torture.**
 - **Last Year, After A Significant Public Debate On The Standard That Should Govern The Treatment Of Captured Al Qaeda Terrorists, Congress Adopted The McCain Amendment.** The McCain Amendment – which is part of the Detainee Treatment Act (DTA) -- prohibits "cruel, inhuman, or degrading treatment or punishment," as defined by reference to the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution, for all detainees held by the United States, regardless of nationality or geographic location.
- **The McCain Amendment's Baseline Standard Fully Satisfies Our International Obligations Under Common Article 3.** The Administration's proposed Bill makes this clear for all purposes under Federal law.
- **Top Military JAG Lawyers Say The Administration's Proposal Clarifying Obligations Under Common Article 3 Would "Be Helpful To Our**

Fighting Men And Women At War. "We do not object to section 6 of the Administration proposal, which would clarify the obligations of the United States under common Article 3 of the Geneva Conventions, and section 7 of the Administration proposal, which would address crimes under the War Crimes Act. Indeed, we think these provisions would be helpful to our fighting men and women at war on behalf of our Country." (Major General Scott Black, U.S. Army, Judge Advocate General, Major General Charles J. Dunlap, Jr., U.S. Air Force, Deputy Judge Advocate General, Rear Admiral Bruce Macdonald, U.S. Navy, Judge Advocate General, Brigadier General James C. Walker, Staff Judge Advocate To The U.S. Marine Corps, Colonel Ronald M. Reed, U.S. Air Force, Legal Counsel To The Chairman Of The Joint Chiefs Of Staff, Letter To Sen. John Warner And Rep. Duncan Hunter, 9/13/06)

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