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CORRESPONDENTS' REPORTS

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- Remarks of John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, 'The Ethics and Efficacy of the President's Counterterrorism Strategy' (Woodrow Wilson Center for Scholars, Washington, DC, 30 April 2012) <http://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy>

The current administration has often used public speeches by high-level officials to defend the legality of its war-fighting policies. As noted in the United States report for 2010, this practice began with a speech of State Department Legal Advisor Harold Koh to the American Society of International Law, which covered the administration's positions on the International Criminal Court, the holding of detainees at the Guantánamo Naval Base in Cuba, and drone attacks on individuals believed to be terrorist leaders. The practice continued in 2012 with speeches by Attorney General Eric Holder and presidential counterterrorism adviser John Brennan (later appointed to head the Central Intelligence Agency).

These two speeches focused on what has become the most controversial US tactic against al-Qaida and associated armed groups, the use of armed unmanned airplanes (drones) to attack individual leaders of those groups. The speakers reasserted the US position that the US is at war with a Stateless enemy, prone to shifting operations from country to country (Holder) and in an armed conflict with al-Qaida, the Taliban, and associated forces, in response to the 9/11 attacks (Brennan). They further reaffirmed the position that in this situation international law allowed the use of force in self-defense against non-State actors that presented an imminent threat. Both government spokesmen also argued that the US had the right to attack al-Qaida and its associates on the territory of other States even without the consent of that State if it was unable or unwilling to deal effectively with an imminent threat to the US (neither speaker defined 'imminent').

From an analytical standpoint, the most striking feature of these speeches is their heavy reliance on four fundamental (Holder) or basic (Brennan) law-of-war principles governing the use of force. Since at least 1917, US military manuals have recognized that the law of war is

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based on the three principles of military necessity, humanity and chivalry.[2] It has been relatively rare, however, for the government as a whole to formulate and appeal to the fundamental principles of the law of war. Speaking for the executive branch of the US government, the Obama administration has now officially espoused four general principles of law in defense of its use of drones. In March, presidential adviser Brennan stated and applied these principles in some detail as follows:

> I think it's useful to consider such strikes against the basic principles of the law of war that govern the use of force.
>
> Targeted strikes conform to the principle of necessity, the requirement that the target have definite military value. In this armed conflict, individuals who are part of al-Qaida or its associated forces are legitimate military targets. We have the authority to target them with lethal force just as we target enemy leaders in past conflicts, such as Germans and Japanese commanders during World War II.
>
> Targeted strikes conform to the principles of distinction, the idea that only military objectives may be intentionally targeted and that civilians are protected from being intentionally targeted. With the unprecedented ability of remotely piloted aircraft to precisely target a military objective while minimizing collateral damage, one could argue that never before has there been a weapon that allows us to distinguish more effectively between an al-Qaida terrorist and innocent civilians.
>
> Targeted strikes conform to the principle of proportionality, the notion that the anticipated collateral damage of an action cannot be excessive in relation to the anticipated military advantage. By targeting an individual terrorist or small numbers of terrorists with ordnance that can be adapted to avoid harming others in the immediate vicinity, it is hard to imagine a tool that can better minimize the risk to civilians than remotely piloted aircraft.
>
> For the same reason, targeted strikes conform to the principle of humanity which requires us to use weapons that will not inflict unnecessary suffering. For all these reasons, I suggest to you that these targeted strikes against al-Qaida terrorists are indeed ethical and just.

In April, Attorney General Holder restated the principles more succinctly:

> [U]se of lethal force by the United States will comply with the four fundamental law of war principles governing the use of force. The principle of necessity requires that the target have definite military value. The principle of distinction requires that only lawful targets — such as combatants, civilians directly participating in hostilities, and military objectives — may be targeted intentionally. Under the principle of proportionality, the anticipated collateral damage must not be excessive in relation to the anticipated military advantage. Finally, the principle of humanity requires us to use weapons that will not inflict unnecessary suffering.
>
> These principles do not forbid the use of stealth or technologically advanced weapons. In fact, the use of advanced weapons may help to ensure that the best intelligence is available for planning and carrying out operations, and that the risk of civilian casualties can be minimized or avoided altogether.

[2] War Department, *Rules of Land Warfare* (1917) para. 9, attributing the three principles to the writings of Lassa Oppenheim; US Department of the Army, *The Law of Land Warfare* (Field Manual 27-10, 1956) para. 3; US Department of the Air Force, *International Law — The Conduct of Armed Conflict and Air Operations* (AFP 110-31, 1976) para. 1-3a.

Traditionally, general principles of the law of war have been used to fill gaps in specific treaty and customary rules. For example, the committee of experts appointed by the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia to assess NATO's bombing campaign turned to the general principles of military necessity and proportionality in the absence of any firm rules on collateral damage to the environment during armed conflict.[3] Believing that its intensive use of drone attacks raised new issues not adequately covered in the existing rules of humanitarian law, the Obama administration appears to have believed that it was appropriate to resort to the general principles of military necessity, distinction, proportionality and humanity to justify its policies. Indeed, presidential adviser John Brennan expressly recognized that the US was creating State practice that might one day be turned against it and was therefore trying to act prudently:

> The United States is the first nation to regularly conduct strikes using remotely piloted aircraft in an armed conflict. Other nations also possess this technology, and many more nations are seeking it, and more will succeed in acquiring it. President Obama and those of us on his national security team are very mindful that as our nation uses this technology, we are establishing precedents that other nations may follow, and not all of those nations may — and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians.
>
> If we want other nations to use these technologies responsibly, we must use them responsibly. If we want other nations to adhere to high and rigorous standards for their use, then we must do so as well. We cannot expect of others what we will not do ourselves. President Obama has therefore demanded that we hold ourselves to the highest possible standards, that, at every step, we be as thorough and as deliberate as possible.

Cases — Material Support for Terrorism not a Violation of the Law of War

☛ *Hamdan v. United States*, 696 F 3d 1238 (D.C. Cir., 16 October 2012) <http://www.mc.mil/Portals/0/pdfs/Hamdan%20v%20US%20Court%20Of%20Appeals%20Decision%20Oct%202012.pdf>

In 1996, Salim Hamdan, a national of Yemen, traveled to Afghanistan where he attended an al-Qaida training camp and later became a driver for that organization, transporting personnel, supplies and weapons. He eventually rose to become Osama bin Laden's personal driver, taking him to meetings to plan attacks on the US and its armed forces, including the 11 September 2001 attacks on Washington and New York that led to the US invasion of Afghanistan. In November 2001, he was captured driving a vehicle carrying two anti-aircraft missiles towards Kandahar, then the scene of active fighting between US forces and al-Qaida. Eventually transferred to Guantánamo Bay Naval Station, he was tried as an unlawful combatant/unprivileged belligerent by a military commission and convicted of material support for terrorism, as defined in the *Military Commissions Act of 2006*.[4]

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[3] *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia* (1999) para. 15 <www.icty.org/x/file/About/OTP/otp_report_nato_bombing_en.pdf>.

[4] Public Law No. 109-366, 120 Stat. 2600, 2630. The offense is currently codified in 10 USC § 950t(25):

After his conviction was affirmed by the Court of Military Commissions Review, Hamdan's lawyers appealed the case to the US Court of Appeals for the District of Columbia Circuit, a civilian tribunal one level below the US Supreme Court in the hierarchy of US federal courts.

After determining that the case should not be dismissed as moot on the grounds that Hamdan had served his sentence and had been returned to Yemen, the court next took up the issue of whether the defendant had been convicted under a retroactive criminal statute (an *ex post facto* law in the language of the *US Constitution*).[5] Hamdan had been convicted of material support for terrorism, defined as a crime in 2006, while the actions on which the conviction was based occurred between 1996 and 2001. In order to avoid a possible conflict between the *Military Commissions Act* and the *US Constitution*, the court interpreted the Act to apply only prospectively, and held that it did not apply to the actions of the defendant in this case.

That ruling did not dispose of the appeal, however. At the time of Hamdan's actions, another statutory basis for US military commission jurisdiction had been in force for over fifty years. Article 21 of the *Uniform Code of Military Justice* ('UCMJ') provides that:

> The provisions of this chapter [the UCMJ] conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.[6]

The use of military commissions to enforce the law of war has a long history in US military practice, going back to the war with Mexico in 1846–48. It was clear from this history that the term law of war in Article 21 referred to the international law of war. Examining the sources of international law, all three judges on the panel concluded that material support for terrorism was not an offense under the international law of war. As Judge Kavanaugh wrote for the court:

> Material support for terrorism was not a recognized violation of the international law of war as of 2001 (or even today, for that matter). As we have noted, the Geneva Conventions and the Hague Convention do not prohibit material support for terrorism. The 1998 Rome Statute of the International Criminal Court, which catalogues an extensive list of international war crimes, makes no mention of material support for terrorism. Nor does the Statute of the International Tribunal for the Former Yugoslavia, the Statute of the International Tribunal for Rwanda, or the Statute of the Special Court for Sierra Leone. Nor have any international tribunals exercising common-law-type power determined that material support for terrorism is an international-law war crime.
>
> Commentators on international law have similarly explained that material support for terrorism is not an international-law war crime. ….

> Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism … , or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

The 2009 amendments to the *Military Commissions Act* were found not to be material to this case.

[5] *US Constitution*, Article II, § 9, cl. 3: 'No Bill of Attainder or ex post facto Law shall be passed.'

[6] 10 USC § 821.

> In short, neither the major conventions on the law of war nor prominent modern international tribunals nor leading international-law experts have identified material support for terrorism as a war crime. Perhaps most telling, before this case, no person has ever been tried by an international-law war crimes tribunal for material support for terrorism.
>
> ….
>
> To be sure, there is a strong argument that aiding and abetting a recognized international-law war crime such as terrorism is itself an international-law war crime. And there are other similar war crimes. But Hamdan was not charged with aiding and abetting terrorism or some other similar war crime. He was charged with material support for terrorism. And as the Government acknowledges, aiding and abetting terrorism prohibits different conduct, imposes different mens rea requirements, and entails different causation standards than material support for terrorism. If the Government wanted to charge Hamdan with aiding and abetting terrorism or some other war crime that was sufficiently rooted in the international law of war (and thus covered by 10 U.S.C. § 821) at the time of Hamdan's conduct, it should have done so.

Unprivileged belligerents, not entitled to prisoner of war status, have traditionally been subject to prosecution under the municipal laws of the detaining power for acts such as killing an enemy soldier, which would not be subject to punishment if committed by a privileged belligerent.[7] If Hamdan was properly classified as an unlawful combatant/unprivileged belligerent, then the US arguably could have punished him for material support for terrorism under its national law, had the *ex post facto* issue not been present. Judge Kavanaugh took this position in note 6 of his opinion, but the other two members of the court panel were not willing to consider this issue and did not concur with note 6.

As of the time of writing, it appears that the prosecution has accepted the court's decision and will not appeal it further or seek a rehearing. According to press reports, the Hamdan decision has also cast doubt over the legitimacy of charging Guantánamo detainees with conspiracy to violate the laws of war, up until now a common practice, since conspiracy is a common law concept not widely accepted as a violation of the international law of war.[8]

Cases — Court-martial Prosecution of US Army Staff Sergeant for Murder of Civilians

- US Forces, 'Soldier Faces Criminal Charges' (Press Release 2012-03-CA-001) <http://www.isaf.nato.int/article/isaf-releases/u.s.-forces-afghanistan-release-soldier-faces-criminal-charges-usfor-a-2012-03-ca-001.html>
- 'News Briefing with General John Allen, Commander, International Security Assistance Force, US Department of Defense Office of the Assistant Secretary of Defense (Public Affairs)' (26 March 2012) <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4998>

[7] See, e.g., M. Boethe, K. J. Partsch, and W.A. Solf, *New Rules for the Victims of Armed Conflicts* (Martinus Niijhoff, 1982) p. 243; J. Stone, *Legal Controls of International Conflict* (Rinehart & Co, New York, 1954) pp. 562–568 .

[8] See C. Savage, 'U.S. Legal Officials Split Over How to Prosecute Terrorism Detainees', *The New York Times* (New York, US), 7 January 2013 <http://www.nytimes.com/2013/01/08/us/us-lawyers-divided-over-prosecuting-terrorism-cases.html?pagewanted=2&_r=3&ref=charliesavage>.

- Luis Ramirez, 'Afghan Massacre Suspect to be Arraigned', *Voice of America*, 16 January 2013 <http://www.voanews.com/content/us-afghanistan-bales-massacre/1585341.html>

On the night of 11 March 2012, Staff Sergeant Robert Bales allegedly left his base in Kandahar province, Afghanistan, walked to a village and shot 16 civilians to death, apparently at random. He was later charged with premeditated murder under Article 118 of the UCMJ and military authorities referred his case to trial by general court-martial. The trial is expected to take place in the fall of 2013 in the US at Joint Base McChord in the state of Washington. The prosecution has announced that it intends to seek the death penalty. US military authorities in Afghanistan paid an undisclosed amount of compensation to the families of the victims.

Legislation — Transfer and Release of Detainees at Guantánamo Naval Station, Cuba

- *National Defense Authorization Act for Fiscal Year 2013*, Public Law No. 112-239, 126 STAT. 1632, §§ 1022–1029 <http://www.gpo.gov/fdsys/pkg/PLAW-112publ239/html/PLAW-112publ239.htm>
- Statement by the President on H.R. 4310 (3 January 2013) <http://www.whitehouse.gov/the-press-office/2013/01/03/statement-president-hr-4310>

In late December 2012, the US Congress passed the *National Defense Authorization Act for Fiscal Year 2013*. Almost 700 pages in length, the law authorizes the executive branch of government to expend government funds for the operation of the Department of Defense and the armed services, and also prohibits expenditures for certain purposes. As in previous years, in this Act, Congress prohibited spending any funds to construct or modify facilities in the US to house detainees from Guantánamo (§ 1022) or to bring detainees from Guantánamo to the US (§ 1027).

Several provisions reflect concern over the problem of recidivism (i.e., return to combat against the US and its allies) of individuals from Guantánamo who are transferred or released to a foreign country. The law requires reports from US intelligence services to Congress assessing the factors that cause or contribute to such recidivism (§ 1023). In addition, Guantánamo detainees are not to be transferred to any foreign country until after the Secretary of Defense has submitted a certification to Congress (in considerable detail) assessing the ability of the country to maintain control over the transferee and its past record in dealing with transferred detainees (§ 1028).

Reflecting concern that detainees on US navy ships outside US waters may affect naval readiness, the Act requires a report to Congress on the use of naval vessels for detention outside the US, and notice to Congress within 30 days whenever an individual is first detained on a US naval vessel (§ 1024).

The Obama administration opposed many of these provisions. However, the President nevertheless signed the legislation due to the need to authorize continued operations by US armed forces. President Obama issued the following statement after signing the Act on 3 January 2013:

> Today I have signed into law H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013. I have approved this annual defense authorization legislation, as I have in previous years, because it authorizes essential support for service members and their families, renews vital national security programs, and helps ensure that the United States will continue to have the strongest military in the world.

….

> Sections 1022, 1027 and 1028 continue unwise funding restrictions that curtail options available to the executive branch. Section 1027 renews the bar against using appropriated funds for fiscal year 2012 to transfer Guantanamo detainees into the United States for any purpose. I continue to oppose this provision, which substitutes the congress's blanket political determination for careful and fact-based determinations, made by counterterrorism and law enforcement professionals, of when and where to prosecute Guantanamo detainees. For decades, Republican and Democratic administrations have successfully prosecuted hundreds of terrorists in Federal court. Those prosecutions are a legitimate, effective, and powerful tool in our efforts to protect the Nation, and in certain cases may be the only legally available process for trying detainees. Removing that tool from the executive branch undermines our national security. Moreover, this provision would, under certain circumstances, violate constitutional separation of powers principles.
>
> Section 1028 fundamentally maintains the unwarranted restrictions on the executive branch's authority to transfer detainees to a foreign country. This provision hinders the Executive's ability to carry out its military, national security, and foreign relations activities and would, under certain circumstances, violate constitutional separation of powers principles. The executive branch must have the flexibility to act swiftly in conducting negotiations with foreign countries regarding the circumstances of detainee transfers. The congress designed these sections, and has here renewed them once more, in order to foreclose my ability to shut down the Guantanamo Bay detention facility. I continue to believe that operating the facility weakens our national security by wasting resources, damaging our relationships with key allies, and strengthening our enemies.

Government Policy — Military Commissions — Violations of the Law of War – New Charges Preferred in 2012

- 'DOD Announces Charges Referred Against Detainee Majid Shoukat Khan' (Department of Defense Press Release No. 112-12, 15 February 2012) <http://www.defense.gov/Releases/Release.aspx?ReleaseID=15067>
- 'DOD Announces Charges Referred Against 9-11 Co-Conspirators' (Department of Defense Press Release No. 235-12, 4 April 2012) <http://www.defense.gov/Releases/Release.aspx?ReleaseID=15158>
- 'DOD Announces Charges Sworn Against Al Darbi' (Department of Defense Press Release No. 715-12, 29 August 2012) <http://www.defense.gov/Releases/Release.aspx?ReleaseID=15544>

In 2009, the incoming Obama administration halted prosecutions before US Military Commissions of detainees at Guantánamo for violations of the law of war. Nevertheless, the prohibition against military commission trial was eventually reversed, due to popular and congressional opposition to bringing defendants to the US.[9] In April 2011, Attorney General Eric

[9] See Comment on *Legislation — Transfer and Release of Detainees at Guantánamo Naval Station, Cuba* in this *YIHL* Report. See also S. Shane and M. Landler, 'Obama Clears Way for Guantánamo Trials', *The New York Times* (New York, US), 7 March 2011 <http://www.nytimes.com/2011/03/08/world/americas/08guantanamo.html?ref=militarycommissions&_r=0>.

Holder had civil indictments dismissed in five major cases involving Guantánamo detainees Khalid Sheikh Mohammed and four others believed to have been involved in the 11 September 2001 attacks on New York's World Trade Center and the Pentagon, and had referred them to the Department of Defense for possible trial by military commission.[10] At that time, the Attorney General, a strong advocate of trying terrorism cases in US civilian rather than military courts, blamed the dismissals on congressional opposition. However, in his speech at Northwestern University on 5 March 2012,[11] Attorney General Holder implied evidentiary problems may also have been involved, noting that a key difference between civil courts and military commissions was that in military commissions, evidentiary rules reflect the realities of the battlefield and of conducting investigations in a war zone, citing as an example admission into evidence of confessions not preceded by a warning against self-incrimination.

On 4 April 2012, the Department of Defense announced that charges against the five detainees allegedly responsible for the planning and execution of the attacks of 11 September 2001 (Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarak Bin 'Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, and Mustafa Ahmed Adam al Hawsawi), had been referred to trial by military commission. The charges were referred to a capital military commission, meaning that the death penalty could be imposed. The five accused were charged with terrorism, hijacking aircraft, conspiracy, murder in violation of the law of war, attacking civilians, attacking civilian objects, intentionally causing serious bodily injury, and destruction of property in violation of the law of war.

In February 2012, the Department of Defense referred charges for military commission trial against Majid Shoukat Khan. Khan was charged with conspiracy, murder and attempted murder in violation of the law of war, providing material support to terrorism, and spying. In August, the military commission prosecutor issued sworn charges against Ahmed Mohammed Ahmed Haza al Darbi for conspiracy, aiding and abetting the offense of attacking civilian objects, aiding and abetting the offense of hazarding a vessel, aiding and abetting the offense of terrorism and aiding the enemy. While charges were filed against al Darbi, they had not been referred for trial at the time of writing. It may be speculated that this delay reflects the decision of the US Court of Appeals in *Hamdan v. United States*.[12] The government may be considering amending the charges to eliminate the conspiracy allegation and others that do not state internationally accepted violations of the law of war. Similar review may be taking place in the other cases referred to trial.[13]

Investigations — Detainee Deaths and Interrogation Methods

- 'Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees' (Department of Justice Press Release 12-1067, 30 August 2012) <http://www.justice.gov/opa/pr/2012/August/12-ag-1067.html>

[10] 'Statement of the Attorney General on the Prosecution of the 9/11 Conspirators' (Washington, D.C., 4 April 2011) <http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-110404.html>.

[11] See Comment on *Government Policy — Targeting of Individual Hostile Belligerents with Drones* in this *YIHL* Report.

[12] See Comment on *Cases — Material Support for Terrorism not a Violation of the Law of War* in this *YIHL* Report.

[13] Charge sheets and other public court documents for the above cases are available from <http://www.mc.mil/CASES/MilitaryCommissions.aspx>.

Following the attacks against the US on 11 September 2001, Central Intelligence Agency interrogators used enhanced interrogation techniques, including water-boarding, a procedure that induces a sensation of drowning, on a few high value detainees that many have alleged amounted to torture. In addition, two detainees died while in CIA custody. During the Bush administration, career prosecutors in the Department of Justice reviewed the evidence and concluded that no criminal charges should be brought against CIA personnel involved.

In 2009, Attorney General Eric Holder decided to reopen the investigation, appointing Assistant US Attorney John Durham to recommend whether there was a sufficient basis for a full investigation into whether the law was violated in connection with the interrogation of certain detainees.[14] In June 2011, Mr Durham recommended a full investigation into the two detainee deaths. On 30 August 2012, Attorney General Holder announced the closure of the investigation and his decision not to file criminal charges.

> [Assistant United States Attorney] John Durham has now completed his investigations, and the Department has decided not to initiate criminal charges in these matters. In reaching this determination, Mr. Durham considered all potentially applicable substantive criminal statutes as well as the statutes of limitations and jurisdictional provisions that govern prosecutions under those statutes. Mr. Durham and his team reviewed a tremendous volume of information pertaining to the detainees. That review included both information and matters that were not examined during the Department's prior reviews. Based on the fully developed factual record concerning the two deaths, the Department has declined prosecution because the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt.

To illustrate the difficulties the prosecution would face, it may be noted that the US criminal statute implementing the *Convention on Torture* defines torture as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.[15] Proving specific intent is always a severe challenge to prosecutors.

Government Policy — Atrocity Prevention

- 'Remarks by the President at the United States Holocaust Memorial Museum' (23 April 2012) <http://www.whitehouse.gov/the-press-office/2012/04/23/remarks-president-united-states-holocaust-memorial-museum>
- 'Fact Sheet: A Comprehensive Strategy and New Tools to Prevent and Respond to Atrocities' (23 April 2012) <http://www.whitehouse.gov/the-press-office/2012/04/23/fact-sheet-comprehensive-strategy-and-new-tools-prevent-and-respond-atro>
- 'Fact Sheet: Mitigating and Eliminating the Threat to Civilians Posed by the Lord's Resistance Army' (23 April 2012)

[14] 'Statement of Attorney General Eric Holder Regarding a Preliminary Review into the Interrogation of Certain Detainees' (24 August 2009) <http://www.usdoj.gov/ag/testimony/2009/ag-testimony-090824.html>.
[15] 18 USC § 2340(1).

<http://www.whitehouse.gov/the-press-office/2012/04/23/fact-sheet-mitigating-and-eliminating-threat-civilians-posed-lord-s-resi>

As reported last year, in August 2011, President Obama issued a directive declaring prevention of mass atrocities and genocide to be a core national security interest and core moral responsibility of the US and to this end, he directed the establishment of an inter-agency Atrocities Prevention Board (APB). At the same time he ordered the White House National Security Advisor to review and assess the US government's anti-atrocity capabilities and recommend changes to fill gaps in those capabilities.

On 23 April 2012, in a speech at the US Holocaust Memorial Museum, the President announced that the APB would hold its first meeting that day, and outlined other measures being taken as part of the atrocity prevention policy, such as the dispatch of US military advisers to help Uganda and neighboring countries stop atrocities committed by the Lord's Resistance Army in central Africa.

A White House fact sheet released that same day noted that the President had accepted the recommendations from his National Security Advisor's review, announced further details of the APB's organization and mission, and outlined other measures being adopted as part of a comprehensive strategy to prevent and respond to atrocities.

The APB will include representatives of the Departments of State, Defense, Treasury, Justice, and Homeland Security, the Joint Staff, the US Agency for International Development, the US Mission to the United Nations, the Office of the Director of National Intelligence, the Central Intelligence Agency, and the Office of the Vice President. According to the fact sheet, the APB will meet at least monthly to oversee the development and implementation of atrocity prevention and response policy, and additionally on an *ad hoc* basis to deal with urgent situations as they arise. The APB will be chaired by the White House National Security Staff Senior Director for Multilateral Affairs and Human Rights. At least once each year it will meet at the ministerial or head of agency level to review the Board's work, and the chair will report the results of this review to the President.

The APB's initial task was the preparation of a draft presidential Executive Order to set forth publicly the structure, functions, priorities, and objectives of the Board, provide further direction for its work, and include further measures for strengthening atrocity prevention and response capabilities as identified in the course of the Board's work. As of the date of writing, this Executive Order had not been issued.

As part of the comprehensive strategy, the US military was assigned a significant role. The Department of Defense is to develop operational principles and planning techniques specifically tailored for atrocity prevention and response. Regional commands were tasked to incorporate mass atrocity prevention and response as a priority in their planning. The armed forces are also to organize routine exercises incorporating mass atrocity prevention and response scenarios to test operational concepts supporting mass atrocity prevention and response.

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